

Drama in the Courtroom, Theater in the Streets: Philadelphia's Irish Riot of 1831

ON JULY 12, 1831, some 400 Irish Protestants paraded in Philadelphia to celebrate the 141st anniversary of the Battle of the Boyne, where William of Orange defeated James II and established the Protestant Ascendancy in Ireland. Nearly a thousand Irish Catholics came to watch. A riot ensued, in which dozens of people were injured, some of them seriously. Three months later, a long and complicated trial of a number of the participants took place, occupying Philadelphians for weeks. This article seeks to explore what these two public spectacles meant to the participants, and what issues they raised for the inhabitants of the complex, growing city in which they lived.

Whenever riots have occurred in American history, they have captured the public imagination, giving rise to concerns about the stability of our public order and, in varying degrees, shaking our faith in our political, social, and economic institutions. When, as has often been the case, riots originate in religious, ethnic, or racial hostilities, they challenge fundamental American ideals of liberty and equal opportunity in a diverse society.¹

The author is indebted to Ditta Baron Hoeber, whose analytic and editorial insights played a major role in shaping this article. An earlier version of this paper was presented at the November 1997 meeting of the Pennsylvania Historical Association.

¹ The 1960s and 1970s gave rise to extensive interest in riot studies among historians and stirred debate about their meaning. See, for example: E. P. Thompson, *The Making of the English Working Class* (New York, 1963); George Rudé, *The Crowd in History, A Study of Popular Disturbances in France and England, 1730-1848* (New York, 1964); Jesse Lemisch, "Listening to the 'Inarticulate,'" *Journal of Social History* 3 (1969), 28; Thompson, "The Moral Economy of the English Crowd," *Past and Present* 51 (1971), 76-136; Pauline Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776* (New York, 1972), 3-48; Jesse Lemisch and John K. Alexander, "The White Oaks, Jack Tar, and the Concept of the 'Inarticulate,'" *William and Mary Quarterly* 29 (1972), 109; David Montgomery, "The Shuttle and the Cross: Weavers

Usually it is difficult to know what riots meant to the participants. In most instances, we read only official reports or newspaper accounts of public demonstrations, colored by the political or social perspectives of those who report on or publish the accounts. There are few instances in which the voices of the participants themselves are heard. This is not surprising: rioters are mostly anonymous, and if their accounts are not suppressed by the authorities, they often censor themselves in order to avoid the legal consequences of their actions. Philadelphia's Protestant/Catholic riot of July 12, 1831, was different. For in October of that year, just three months after the event, and within a hundred yards of where the worst violence occurred, some seventy-five witnesses testified as to what they saw and heard at the riot scene and what their intentions were, and their lawyers—some of the great advocates of the day—articulated what the participants thought and felt and believed. The record of the trial thus provides a promising point of entry into the mind of the urban citizen of 170 years ago, a useful way to read what riots meant to both participants and observers of the events. Because we can gain access to the first-hand testimony of the participants themselves, we can, if we listen respectfully to their voices and to the significance of the things they say, get closer to understanding why they acted as they did. And by listening to the words of the lawyers and judges, we can begin to understand how the city's institutions thought about the resolution of communal conflict in an increasingly diverse society.

Although the participants in the riot of July 12, 1831, lived in Philadelphia, many of them were recent immigrants from Ireland. The riot itself was a value-laden spectacle, full of symbolic and ritual elements, from the bits of colored cloth some of the participants wore to the swords a few

and Artisans in the Kensington Riots of 1844," *Journal of Social History* 5 (1972), 411-46; Mark Haller, "Recurring Themes," in *The Peoples of Philadelphia: A History of Ethnic Groups and Lower-Class Life, 1790-1940*, ed. Allen F. Davis and Mark H. Haller (Philadelphia, 1973), 281-89; Charles Tilly, Louise Tilly, and Richard Tilly, *The Rebellious Century, 1830-1930* (Cambridge, 1975); Michael Feldberg, *The Philadelphia Riots of 1844: A Study of Ethnic Conflict* (Westport, Conn., 1975); Bruce Laurie, *Working People of Philadelphia, 1800-1850* (Philadelphia, 1980). See also Susan Desan, "Crowds, Community, and Ritual in the Work of E. P. Thompson and Natalie Davis," in *The New Cultural History*, ed. Lynn Hunt (Berkeley, 1989), 48. For recent scholarship on riots see Paul Gilje, *The Road to Mobocracy: Popular Disorder in New York City, 1763-1834* (Chapel Hill, 1987); Gilje, *Rioting in America* (Bloomington, 1996); David Grimsted, *American Mobbing, 1828-1861: Toward Civil War* (New York, 1998); Kimberly K. Smith, *The Dominion of Voice: Riot, Reason, and Romance in Antebellum Politics* (Lawrence, Kans, 1999).

of them carried. To understand the event, one has to know something of the common Irish history from which both Protestants and Catholics derived their communal consciousness.

Conflict between Protestants and Catholics in Ireland was the legacy of hundreds of years of British colonization, oppression, and intolerance. The conflict began with the early colonization of Ireland's eastern provinces by Henry II in the twelfth century and continued through centuries of English domination. In the seventeenth century, James II of England (James Stuart) attempted to rehabilitate Roman Catholicism in England and Ireland, appointing Catholics to many posts and making no secret of his own adherence to the Roman faith. The Protestant nobility, alarmed at James's reversion, encouraged his son-in-law, William of Orange, to invade England from Holland and seize the throne. James fled to France, where Louis XIV provided him with an army, and made his way to Ireland, whither he was pursued by William. On the banks of the River Boyne, on July 12, 1690, the Orange forces defeated James's army, his French and Irish allies, and his Catholic followers. William established the Protestant Ascendancy in Ireland, that is, the civil and religious primacy of Protestants and Protestantism in the island. A series of anti-Catholic statutes, known as the Penal Laws, some old but many newly enacted, deprived Catholics in Ireland of most of their civil rights, severely limited the role of priests and the practice of the Catholic religion, and restricted Catholic land ownership and tenancy and participation in commerce. The effect of the latter provisions, which were enacted after 1691, led inevitably to the economic subordination of Catholics, reducing them to an ever-worsening peonage and poverty.²

Conflict in Ireland reached a peak in the 1790s, as Protestant, Catholic, and secular secret societies proliferated. Inspired by the French Revolution, the radical United Irishmen—originally encompassing both Catholic and Protestant revolutionaries—began plotting the overthrow of the Protestant Anglo-Irish ruling class. At the same time, Protestant loyalist societies and rogue gangs, such as the Peep O' Day boys, fired up religious animosities with attacks on Catholics and their property. Catholics responded to the terrorism by setting up their own organization known as the Defenders. In a pivotal confrontation in 1795, a Protestant paramilitary group defeated a

² Kerby A. Miller, *Emigrants and Exiles: Ireland and the Irish Exodus to North America* (New York, 1985), 19–25.

much larger group of Catholic Defenders at a crossroads in County Armagh. The Protestant victors memorialized the occasion by forming a new fraternal and protective association, the Loyal Orange Order, named for William of Orange. The Orange Order quickly became the point of unification for many Irish Anglicans in support of the Protestant Ascendancy, the aristocracy, and the government. Subsequently, with the addition of Presbyterians, the Orange Order came to symbolize the split between Irishmen who were Protestants and Irishmen who were Catholics, a split which continues in Ulster to the present day.³

By 1831, the Irish had a long history in Philadelphia. The Friendly Sons of Saint Patrick, later combined with the Hibernian Society for the Relief of Immigrants from Ireland, dated from 1771 and counted a number of prominent Americans among its members.⁴ Before 1800, most Irish immigrants to Philadelphia were Protestants. The 1790s brought a wave of refugees from the abortive rebellion of the United Irishmen, including the prominent radical William Duane, of whom more later. The federal government then sitting in Philadelphia, thick with elitist and pro-aristocratic elements, was not pleased with the Irish presence, Protestant or not. In 1798, speaking in support of the Naturalization Act and the Alien and Sedition Acts, Congressman Harrison Gray Otis of Boston delivered a famous speech in which he declared that he did "not wish to invite hoards of wild Irishmen, nor the turbulent and disorderly of all parts of the world, to come here with a view to disturb our tranquillity," and the reactionary William Cobbett, an English journalist running a pro-Federalist newspaper

³ Miller, *Emigrants and Exiles*, 66–69; Hereward Senior, *Orangeism in Ireland and Britain, 1795–1836* (London, 1966), 13–21; Senior, "The Early Orange Order, 1795–1870," in *Secret Societies in Ireland*, ed. T. Desmond Williams (New York, 1973), 36–45; E. W. McFarland, *Protestants First: Orangeism in Nineteenth Century Scotland* (Edinburgh, 1990), 34–35. From the earliest days of the Orange Order in Ireland to the present day, parades in celebration of the Protestant victory in the Battle of the Boyne have been a regular event on July 12 each year. In the 1960s, 20,000 Orangemen marched in Belfast each July 12, dressed in the uniform of the stereotypical middle-class British clerk, a dark suit and bowler hat, while all 20,000 marchers carried rolled black umbrellas in lieu of the ritual swords of earlier periods. Tony Gray, *The Orange Order* (London, 1972). On through the 1990s Orange parades on July 12 continued to build the solidarity of pro-British Unionists and served as a flash point for violent conflict in Northern Ireland. In the years following the Good Friday Agreement of April 10, 1998, officials have attempted to lessen the potential for confrontation by strictly controlling parade routes.

⁴ Dennis Clark, *The Irish in Philadelphia: Ten Generations of Urban Experience* (Philadelphia, 1973), 35, 107–8; Clark, *Erin's Heirs: Irish Bonds of Community*, (Lexington, Ky., 1991), 26–35.

in Philadelphia, published his *Detection of a Conspiracy formed by the United Irishmen, with the Evident Intention of Aiding the Tyrants of France in Subverting the Government of the United States*, in which he warned Philadelphians of the impending rebellion of 1500 Irish assassins that was about to explode in the city.⁵ Such predictions of doom notwithstanding, Philadelphia's Irish community continued to grow through the early nineteenth century, especially the Irish Catholic community, whose churches and religious activities made them an increasing presence in the city.⁶ The American financial panic of 1819 sharply reduced economic opportunities in the 1820s, resulting in a diminution of immigration generally and of Irish immigration in particular. While the majority of Irish immigrants to Philadelphia remained skilled and semi-skilled Presbyterian Ulstermen, by the late 1820s unskilled Catholic laborers made up as much as a fourth of the Irish immigrant stream.⁷

The first decades of the new American republic were years of political turmoil. Rivalries between radical pro-democracy factions, represented by the Democratic-Republican and Jeffersonian parties, and more conservative factions with elitist tendencies, represented by the Federalists, were intense in Philadelphia, and continued even after the seat of the federal government shifted from Philadelphia to Washington in 1800. Discourse over civic issues seemed to be constantly at the boiling point. Political controversy was fueled by fundamental differences over social and economic issues and the role of government in a free society.⁸

⁵ Edward C. Carter II, "A 'Wild Irishman' Under Every Federalist's Bed: Naturalization in Philadelphia, 1789-1806," in *The Demographic History of the Philadelphia Region, 1600-1860*, ed. Susan E. Klepp (Philadelphia, 1989), 180-81; James Tagg, *Benjamin Franklin Bache and the Philadelphia Aurora* (Philadelphia, 1991), 367-68; William Cobbett, *Peter Porcupine in America: Pamphlets on Republicanism and Revolution*, ed. David A. Wilson (Ithaca, 1994), 241-57.

⁶ Dale B. Light, *Rome and the New Republic: Conflict and Community in Philadelphia Catholicism between the Revolution and the Civil War* (Notre Dame, Ind., 1996); Hugh J. Nolan, *The Most Reverend Francis Patrick Kenrick, Third Bishop of Philadelphia, 1830-1851*, (Philadelphia, 1948), 1-102; Joseph Kirlin, *Catholicity in Philadelphia from the Earliest Missionaries down to the Present Time* (Philadelphia, 1909), 150-274.

⁷ Miller, *Emigrants and Exiles*, 193-96; Tyler Anbinder, *Nativism and Slavery: The Know Nothings and the Politics of the 1850s* (New York, 1992), 3-6.

⁸ J. Thomas Scharf and Thompson Westcott, *History of Philadelphia, 1609-1884* (3 vols., Philadelphia, 1884), 1:529. For an overview of the state and local politics of this period, see Sanford W. Higginbotham, *The Keystone in the Democratic Arch: Pennsylvania Politics, 1800-1816* (Harrisburg, 1952); Kim T. Phillips, "William Duane, Philadelphia's Democratic Republicans and the Origins of Modern Politics," *Pennsylvania Magazine of History and Biography* 101 (1977), 365-87.

Radical and conservative newspapers hurled scurrilous libels at one another, and the 1798 Congress passed the Alien and Sedition Acts. A dispute between the partisans and opponents of these opprobrious laws actually fomented a riot in the churchyard of Saint Mary's on Fourth Street in 1799. Labor disputes, too, for the first time disrupted the city's economy in the early nineteenth century, and challenged traditional relationships between the laboring and merchant classes. By the 1820s, an important but short-lived Workingmen's Party challenged the existing economic order with a strong socialist platform. Religious turmoil also infected the city, especially among Roman Catholics, many of whom were of Irish origin. Catholic working-class dissatisfaction with the tradition of deference to privileged elites found voice in the parish churches, where congregants challenged the ecclesiastical hierarchy, claiming the ownership of church property and the right to elect their own priests. The schismatics who led movements for independence from clerical authority, particularly at St. Mary's Church, defied the bishops in the face of excommunication and interdict. Their revolt against diocesan power endured in various forms over twenty years, with the last of the rebels capitulating to the new bishop, Francis Patrick Kenrick, lately arrived from Dublin, on May 21, 1831, just a few weeks before the July 12 riot which is the subject of this article.⁹

Numerous Irishmen were at the center of many of these contests over authority and democracy. Principal among them was the radical newspaper editor and politician William Duane, who fled to the United States from Ireland in 1798, following the abortive uprising of the United Irishmen. Duane published the *Aurora*, a highly partisan newspaper that noisily supported Jeffersonian democratic ideology. He and several of his United Irishmen cohorts, notably Dr. James Reynolds and John Binns, were at the forefront of the radical wing of Pennsylvania's Democratic-Republican party from 1800 to 1809. They brought with them from Ireland a Jacobin ideology of democratic unity in a classless society.¹⁰ A more moderate but equally

⁹ Stanley Elkins and Eric McKittrick, *The Age of Federalism: The Early American Republic, 1788-1800* (New York, 1993); Michael Durey, *Transatlantic Radicals and the Early American Republic* (Lawrence, Kan., 1997), 125, 253; Light, *Rome and the New Republic*, 52-53, 263-68; Ronald Schultz examines "the fissiparous history of Philadelphia's Jeffersonian party" and its impact on Philadelphia's working people in *The Republic of Labor: Philadelphia Artisans and the Politics of Class, 1720-1830* (New York, 1993); Kirlin, *Catholicity in Philadelphia*; Francis E. Tourscher, *The Hogan Schism and Trustee Troubles in St. Mary's Church, Philadelphia, 1820-1829* (Philadelphia, 1930).

¹⁰ Durey, *Transatlantic Radicals*, 249-93; Phillips, *William Duane*, 378-79.

prominent Irish immigrant was Mathew Carey, indefatigable entrepreneur, printer, politician, and Philadelphia booster. His publishing firm issued hundreds of books and pamphlets in his lifetime, including a 1790 edition of the Douay Bible and Carey's own 700-plus page *Vindiciae Hibernicae*, refuting claims of barbarism by Catholics in Ireland in the mid-seventeenth century. Carey, however, was integrated into Philadelphia's elite business and social circles; by 1820 he had been invited to participate in the prestigious Wistar parties.¹¹

Irish immigrants, then, were a definite presence in the Philadelphia community by 1831. Some were prominent and political, others not. Many of the Irish Protestants were settled in Southwark, immediately south of the city proper, and many were active in the Orange Order, whose principles and practices they had brought over from Ireland. One prominent leader was Britton Evans, appointed alderman (a position analogous to justice of the peace with legislative responsibilities added) by Governor Joseph Hiester in 1823. Another was Jeremiah Saunders, a clergyman. In the pride and pugnacity of these two men, in large part, lay the origins of the riot of July 12, 1831.¹²

The story of the riot is told in the transcript of the trial held three months later. This transcript (published as *A Full and Accurate Report of the Trial for Riot before the Mayor's Court of Philadelphia, On the 13th day of October, 1831, Arising out of a Protestant Procession on the 12th of July, and in Which the Contending Parties were Protestants and Roman Catholics*) sets forth the substance of the testimony of the seventy-five witnesses who testified over nine days, along with the arguments of the attorneys for the Protestant and the Catholic factions.¹³

¹¹ James N. Green, *Mathew Carey, Publisher and Patriot*, exhibition catalogue, Library Company of Philadelphia (Philadelphia, 1985), 9–25; Rosalind Remer, *Printers and Men of Capital: Philadelphia Book Publishers in the New Republic* (Philadelphia, 1996), 34–38; Thomas Payne Govan, *Nicholas Biddle, Nationalist and Public Banker, 1786–1844* (Chicago, 1959), 73.

¹² As should become apparent, the dynamics of the 1831 riot were very different from the more famous anti-Catholic riots of 1844. The 1831 riot was primarily a conflict between two groups of Irish immigrants of different religious identifications, while the latter disturbances arose out of conflicts, including economic conflicts, between Irish immigrants and native-born Americans. Feldberg, *The Philadelphia Riots of 1844*.

¹³ Henry Darley (Court Reporter), *A Full and Accurate Report of the Trial for Riot before the Mayor's Court of Philadelphia, On the 13th day of October, 1831, Arising out of a Protestant Procession on the 12th of July, and in Which the Contending Parties were Protestants and Roman Catholics*.

Trial transcripts are a treasure trove for the study of Philadelphia social history. "History's inarticulate"—the term is Jesse Lemisch's—may leave few written records of their own, but in court they become articulate indeed. Their testimony, recorded and reported by private shorthand transcribers, is packed with rich detail about mundane matters of the daily lives of ordinary people, as well as the cataclysmic events that brought them to court. The details of major trials were of sufficient interest and entertainment value to a broad audience that it was profitable for court reporters to sit in trials for days, transcribe their shorthand notes, have them set in type, printed and bound as pamphlets, and offer them for sale to the general public.

Despite sharp contradictions in the testimony about the details of what happened on July 12, 1831, the general outlines are clear. On June 3, 1831, at a meeting at the Independence Hotel, a group of Orangemen¹⁴ met to plan a celebratory procession to commemorate the Battle of the Boyne the following July 12. The meeting, chaired by Alderman Britton Evans, adopted a series of resolutions, which included a plan to celebrate with "a public dinner, and other demonstrations of joy" the 141st anniversary of "freedom from Popery and arbitrary power." Although the participants denominated themselves the "Protestants of the city and county of Philadelphia," it was clear they represented a small and distinctive faction of that group. A follow-up meeting at the same hotel on June 10 featured an inspiring speech by Jeremiah Saunders who declared the Battle of the Boyne to be "one of the most important events recorded in the history of the Protestant cause." Protestants should think of their ancestors, he said, and "shed tears of gratitude to Almighty god, who inspired them with courage to stand and conquer their numerous and barbarous foes," and remember the Protestant faith "for which they [the ancestors] suffered all the barbarity that Popery could invent." He went on in this vein at some length. Declaring that

(hereafter, *Report*) (Philadelphia, 1831). I have quoted extensively from Darley's *Report* throughout this paper, treating it as a reasonably reliable account of what was said in the courtroom. Further comment on the *Report* will be found below, in the section of this paper dealing with the trial.

¹⁴ At the trial, the counsel for the Catholics asked many questions on cross examination concerning the Protestants' membership in the Orange Order or in a related organization called the Gideonites. The testimony was rather inconclusive; some of the Protestants in the procession were members of these organizations, but others clearly were not. Nevertheless, it seems appropriate to refer to the Protestant participants in the parade generally as Orangemen, because most were unquestionably Irish Protestants animated by an elemental antagonism to Catholics. On the other hand, while Britton Evans and others testified that the procession was one endorsed by Protestants generally, participation was limited almost exclusively to men of Irish birth.

"popery" controlled the press in America, and that the press would not, therefore, publicize the forthcoming procession, Saunders proposed to publish a notice in the only newspaper available to them, a New York weekly called *The Protestant*.¹⁵ Squire Evans—so called by virtue of his office as alderman—took charge of publicizing the event at other churches, and delivered notices to the Presbyterian, Baptist, and Methodist churches in Southwark, Presbyterian and Baptist churches on Spruce Street in Philadelphia proper, and two Baptist churches in the Northern Liberties.¹⁶

The parade was not an extraordinary event in terms of the cultural vocabulary of antebellum Philadelphia. The proclamation of a group's status through the medium of a parade was a common feature of popular culture in that period.¹⁷ Naturally, a parade in celebration of a particular group did not draw the broad support of, say, parades in celebration of national holidays, such as the Fourth of July or Washington's Birthday, or in observance of civic successes, like the completion of a canal or other major public work. The latter served to celebrate civic unity and the established social order.¹⁸ But parades celebrating a particular group could, as here, highlight discontinuities in the city's social fabric. Ethnic groups, political factions, labor groups, and merchants' associations, among others, used parades as a medium to express their distinctiveness, and to reinforce the internal cohesion of their members and their attachment to the bonds of a common heritage or political program. But in celebrating group unity, such parades and public demonstrations sometimes also communicated the message that they did not feel themselves to be full members of the dominant social order, and that they intended to resist majoritarian attempts to impose on them conformity to ideas or behavior that were incompatible with their distinctive customs or interests.¹⁹ As we shall see, the Orange parade of July 12, 1831, had as its declared objective the celebration and

¹⁵ The full text of the speech is reproduced in *Report*, 61–63.

¹⁶ *Report*, 16, 22–23.

¹⁷ Susan G. Davis, *Parades and Power: Street Theatre in Nineteenth-Century Philadelphia* (Philadelphia, 1986), especially chap. 5.

¹⁸ David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776–1820* (Chapel Hill, 1997).

¹⁹ Mary Ryan, "The American Parade: Representations of Nineteenth Century Social Order," in Hunt, *The New Cultural History*, 144–46, 151–53. The distinction between "official" commemorations, designed to foster unity across the society, and "vernacular" commemorations, designed to foster communal solidarity apart from the larger society, is explored in John Bodnar, *Remaking America: Public Memory, Commemoration, and Patriotism in the Twentieth Century* (Princeton, 1992).

promotion of just such discontinuities.

On the morning of Tuesday, July 12, otherwise a workday, Evans and Saunders's group assembled in the garden of a respectable Moyamensing tavern called LaGrange, "where beneath its shady trees they might in retirement and peace discuss the circumstances which brought them together."²⁰ Many wore orange ribbons, some a tricolor cockade, and a dozen or so of the group's leaders carried swords. At about 10 A.M., they listened to an address by Mr. Horatio Hubbell, an attorney who would later represent them in the trial. Forming into a procession and accompanied by a band (all of whom were black), the Orangemen then marched some 400 strong up to South Street, accompanied by peace officers John McMasters and William Cooper. At South Street, the procession turned east until they reached Second Street, then turned south on Second to the Southwark Baptist Church located between German (now Fitzwater) and Catherine Streets.²¹ There they were addressed by the Rev. Mr. William Ashton, who delivered "an appropriate sermon" concerning "the abuses of the Roman Catholic church and its persecution of the Protestants under James the Second, who violating his oath on coming to the throne, and getting assistance from the king of France, &c." After this address, the congregation took up a collection for missionary purposes. Their devotions completed, the group reassembled in Second Street for the next stage of their celebration.²²

Not all of Philadelphia's citizens shared Evans and Saunders's enthusiasm for William of Orange and the "liberation" of Ireland from Catholic oppression. In fact, as soon as the procession exited Mr. Ashton's Church, they encountered a crowd of young men and boys, who yelled at them and heckled them. The crowd of hecklers grew as the parade progressed. It proceeded up Second Street to Spruce Street, where it made a left turn, then turned right at Sixth and walked north to Independence Square. At Chestnut Street, the procession turned right and paraded east to Fourth Street, turned south on Fourth one block to Walnut, and west on Walnut Street to Fifth. Just below Walnut Street on Fifth was the Odd Fellows

²⁰ The bucolic setting of the LaGrange Hotel near what is now Thirteenth and Carpenter Streets is described in John F. Watson, *Annals of Philadelphia in the Olden Time* (rev. ed., enlarged by Willis P. Hazard, 3 vols., Philadelphia, 1898), 3:393.

²¹ Also known as the Third Baptist Church of Philadelphia, this building seated 400–500 people. It still stands at 771 South Second Street. Philadelphia Historical Commission, Neziner Synagogue File.

²² *Report*, 15–22, 26.

Hall, a fine large building newly constructed the year before, which the group had rented for the afternoon for its celebratory banquet.²³

The route taken by the procession is significant, for it proceeded around two sides of Independence Square and the complex of government offices housed in the State House (Independence Hall), City Hall, and the court buildings located there. Thus the demonstrators placed themselves very prominently within the cognizance of civil authorities of all levels, in effect calling upon the government to support, or at least condone, their demonstration. The music of the band—fifes, drums, and “clarionets”—certainly attracted the attention of the hundreds of government functionaries who toiled within the government complex. East of Fifth Street, Chestnut Street was densely lined with banks and businesses, as well as the white marble Greek temple that housed Nicholas Biddle’s Bank of the United States, the most powerful financial institution in America. The offices of many other prominent commercial enterprises lined the route of the procession on both Fourth Street and Walnut Street.

As the parade wound to its destination, the opposing crowd of Catholics had steadily grown in number.²⁴ There were now several hundred men and boys on the sidewalk across the street from the Odd Fellows Hall. The hall itself was on the west side of Fifth Street, about fifty yards from the entrance to State House Square. It was at the corner of Adelphi Street, an alley separating the hall from Rev. Absalom Jones’s St. Thomas Episcopal Church, referred to at the trial as the African Church. Although places had been laid in the hall for 140 participants, only 75 sat down to eat, the others having been scared off by the noisy and intimidating crowd in the street outside. It must have been a difficult dinner. The summer heat necessitated keeping the windows open, and the speeches and ceremonies were constantly interrupted by shouting and catcalls from the crowd outside. Boys would

²³ *Report*, 32. James McMurtry, caretaker of the hall, testified that a group called the Gideonites had rented it for the afternoon.

²⁴ My use of the term Catholics to describe the street crowd is risky, but it does reflect what they were called in reports and testimony at the time. At the trial, many of those in the crowd denied that they were practicing Roman Catholics, and said that they attended no church, or various churches, as the spirit moved them. Nevertheless, the testimony, legal argument, court papers, and newspapers described the crowd that got into a fight that day with the Orangemen as Catholics. What that term meant may be irrelevant to our consideration. For the participants and the observers, the ascriptive denomination of one faction of the participants as “Catholics” was all that was required. Thus, for the public’s purposes, the opponents of the Protestants became Catholics because that was what they were called.

climb up to look in the windows and perch on the fence along Adelphi Street immediately outside. Nevertheless, the Protestants were able to offer a number of toasts, including at least one to the memory of George Washington and one to William of Orange. One Protestant witness claimed that there was a toast to President Andrew Jackson. One of the Catholic witnesses later claimed to have heard the cheer "Hurra for King George!" but his testimony was not corroborated by anyone else. Under cross-examination, Britton Evans admitted that the band played "Boyne Water," an anthem of the Orangemen, but he denied that either "Croppies Lie Down" or "Kick the Pope" was played.²⁵

Mayor Benjamin Woods Richards had his office a block up Fifth Street from the Odd Fellows Hall, in the rear of the first floor of old City Hall, with windows looking out on the street. He heard the commotion created by the procession and by the crowd of counter-demonstrators. He dispatched members of the watch to see what was going on and report back to him. Apparently the report was alarming, for the mayor then went out himself with High Constable Willis Blaney. By now it was about 4:00 P.M. At that time, according to the mayor's subsequent testimony, the crowd was relatively quiet, save for one Patrick Reilly, who "appeared to be in a state of frenzy." The mayor arrested Reilly and took him to his office where charges were pressed against him by Constable Jacob Albright, who claimed that Reilly had punched him in the chest. Seeing the size and mood of the mob outside the Odd Fellows Hall, the mayor and Constable Blaney went in and spoke with Jeremiah Saunders and Britton Evans. Saunders told the mayor that the members of his group had been "insulted and annoyed" and asked the mayor's advice. The mayor said that they should wait about forty-five minutes and then disperse singly from the hall, "and not to present any appearance, but to separate early and in day light." The mayor told Saunders he would return with a squad of peace officers at the appointed time for the breakup of the demonstration.²⁶

But Saunders and Evans, and another Protestant leader, Robert Elliott, decided not to stick to the mayor's plan, and the Orangemen left early, at about 4:30 P.M. How they left was later the subject of endless contradictory testimony. Apparently they thought it prudent to remove their orange sashes

²⁵ *Report*, 23.

²⁶ *Report*, 10, 50.

and ribbons before they opened the door. That they left together, rather than separately, is undisputed. That those who first emerged from the hall carried swords, for reasons to be discussed later, is also undisputed. They were almost certainly scared, because, according to the testimony of Evans and Saunders and others, the mob outside by now numbered upwards of a thousand, including women and boys, screaming and shouting and yelling insults and curses.

The heart of the conflicting testimony about what happened next is, almost literally, the question of who cast the first stone. Did the Protestants draw their swords and "flourish" them, provoking an otherwise peaceable crowd of observers to violence? Or did the Catholics start the fight by throwing stones and brickbats, causing the Protestants to draw their swords in self-defense? The Protestants declared that their swords were sheathed when they opened the door to exit the hall. The Catholics tended to report that the swords were out of their scabbards when the door opened, or that the Protestants drew their swords as they emerged, or that they drew them a few minutes later. Some said that Britton Evans and others were brandishing their swords the moment they stepped out of the hall. In any event, either with or without the prior provocation of the brandished swords, the emergence of the first Protestants from the hall was the signal for escalating the confrontation. A brick came flying across Fifth Street and crashed into the door next to Evans's head. Rallying his group, Evans formed the Protestants into a double line and, staying close together, the Orangemen headed down the west side of Fifth Street in the direction of their home turf of Southwark. Soon another brick was thrown, then paving stones torn up from the street, then an absolute deluge of "stone coal" stolen from a pile in the yard of a shop. As the Protestants passed the African Church at the corner of Prune Street (now Locust), a stone sailed over their heads and smashed through a plate glass window. Huddling close together, the Protestants marched faster and faster, trying to maintain some semblance of dignity, pelted all the way with stones and coal and bricks and porter bottles. Many of them were struck. Throughout, the mob hurled imprecations at those in the procession—"damned rascals," "damned Orange villains" and the like—and threatened to break their heads.²⁷

The Protestants' retreat turned into a rout, as increasing numbers of

²⁷ Report, 12–25.

Catholics joined the chase. At least some of the pursuers had weapons—witnesses saw one man with an ax or shingling hatchet, another swinging an ax handle, another with what looked like a bayonet, but which later turned out to be a large carpenter's file. About a block down Fifth Street, pursuers and pursued passed the gateway to the churchyard of Saint Mary's Roman Catholic Church, where a funeral was just coming to an end. Seeing the commotion, the mourners quickly forgot their grief and joined in the affray, picking up stones and flinging them at the hapless Protestants.

When the procession reached Fifth and Pine, the violence escalated even more. Men on the Catholic side barged into a blacksmith's shop on the southeast corner and seized iron rods and bars and ingots to use as weapons. Hugh Flanagan, who denied being armed but who was identified by numerous witnesses as the man with what was variously described as a hatchet or ax or hammer, got close enough to Britton Evans and Robert Elliot to menace them with his weapon, whatever it was. He later claimed that he had come by the procession as an innocent passerby, and that he had nothing to drink that day, except a single glass of gin. Evans and Elliott testified later that Flanagan seized one of the Protestants, McAuley, by the throat and struck him twice on the head with the hatchet, and aimed another blow at the man next to him. Faced with what appeared to them to be a maniac with a hatchet, Evans and Elliott turned their swords on Flanagan, slashing at his head and arms and body. Bleeding profusely, Flanagan fell to the ground, and Evans in his fury kept hacking away at him. Witnesses found it miraculous that Flanagan's head was not severed from his body. He would spend two months in the hospital but recover sufficiently to testify against his opponents.²⁸

Recognizing that the shedding of Flanagan's blood would likely inflame their antagonists, the remaining Protestants turned tail and fled. One, Carrick, threw his sword into a tavern as he ran and concealed himself under a pile of shavings in a carpenter's shop. When Captain Barger of the watch found him there, he begged to be arrested for his own protection. Barger obliged. Robert Elliott ran two or three blocks further, fled into Herman Bokum's school on Eighth Street, carrying with him a sword dripping blood, and hid in a closet. Dozens of raging Catholics pursued him there, but the schoolmaster was evidently able to prevail upon them not to harm him. A

²⁸ *Report*, 4–6, 21.

policeman came, persuaded the remaining Catholics to leave, and took Elliott into custody. The riot, which had lasted less than fifteen minutes, was over.²⁹

What did it all mean to the participants? The Protestant procession was in part a symbolic creation, a premeditated event to broadcast a message to the Philadelphia community about who its organizers were and what they thought of themselves. The Orangemen wanted to tell a story in images and symbolic action through the medium of a march or parade, a form of street theater with a rhetorical purpose. As a cultural "text" of sorts it said: "We are Protestants; we are distinctive Protestants, because we come from Ireland, but we are one with the general community of Philadelphia Protestants; we want to show our solidarity with the generality of Philadelphia Protestants by showing our enmity toward the Catholics; the Catholics were our enemies in Ireland, so they must be the enemies of Protestants in Philadelphia."³⁰

The Orangemen used a host of media to communicate their message to the community. Their publication of notices of the event to a variety of Protestant churches, and their claim that this was a march of Protestants, rather than Orangemen, constituted an attempt to bring the majority of the Philadelphia population into common cause with the marchers. The day they chose for the march was significant. Marching on the anniversary of the Battle of the Boyne set the agenda vividly; any Irishman—Protestant or Catholic—would grasp its symbolic importance immediately. Engaging in such celebratory activity on what was otherwise a work day emphasized the unique nature of the date. The wearing of orange ribbons provided visual evidence of the communal cohesion of the marchers, excluding those who were not of their party. The carrying of swords—the simplest of phallic symbols—constituted an aggressive display of masculine identification, an

²⁹ *Report*, 13, 56.

³⁰ In arrogating to themselves the role of spokesmen for the entire Philadelphia Protestant community, the Orangemen miscalculated badly. Philadelphia Protestants were not about to make common cause with the Orangemen, and resented the attempt to misrepresent their position as allies of this foreign element. Thus, three days after the riot, an anonymous writer ("S. J.") to the *United States Gazette* expressed outrage at the claim that the procession was supported by the majority of Philadelphia's Protestants: "[T]o say that it [the Orange procession] was sanctioned by the respectable Protestants of the city and county, either in cause or consequence, is what I will venture to pronounce a wholesale libel on the Protestant community. I challenge the Gideonite to the proof of his assertion." *United States Gazette*, July 15, 1831, 2.

implied demand that any who saw them acquiesce in the Orangemen's self-assertion. By marching to martial music past the great seats of power in the city—the State House and the Bank of the United States—the Orangemen sought at least the tacit approval of the civic establishment for their public message. The celebratory banquet in the Odd Fellows Hall, complete with an array of toasts in which the cause of the gathering was made explicit, was consistent with the widespread use of such events to mark important occasions throughout the early nineteenth century. A cursory glance through Scharf and Westcott's *History of Philadelphia* (1883) reveals that dozens, if not hundreds, of such banquets occurred in Philadelphia annually in this period. All of these elements of the event conveyed messages in a well-understood vocabulary of public assertion used by a variety of groups in early nineteenth-century Philadelphia.³¹

The turmoil which their parade precipitated should not have come as a surprise to the Orangemen, given the history of conflict in Ireland. Still, the Catholic attack on the procession seems to have been as spontaneous as the parade was premeditated. Much of the trial, then, focused on whether the Protestants' procession, carefully thought out and laden with meaning, much of it hostile to Philadelphia's Irish Catholic population, was deliberately provocative, and constituted incitement to riot as a matter of law. With court protection of First Amendment rights to engage in public demonstrations many decades away, the question would come down to whether the Protestant marchers constituted as much of a threat to public order as did their Catholic attackers.

The riot trial that began in Philadelphia on October 13, 1831, was a

³¹ Scharf and Westcott, *History of Philadelphia*, 1:476–633; Davis, *Parades and Power*. Colored ribbons had been potent political insignia for decades. In the 1790s, Federalist and Democratic-Republican street gangs, marked with black cockades and tricolor ribbons, respectively, roamed the streets of Philadelphia harassing passersby. Durey, *Transatlantic Radicals*, 254. The inflammatory potential of emblematic accoutrements in this period was dramatically demonstrated in a Baltimore riot in 1812, in which a Republican crowd attacked and destroyed the printing presses of a Federalist newspaper deemed disloyal to the American cause in the War of 1812. There, the victimized Federalists, recognizing that the wrong emblems could incite a hostile crowd to riot, found it prudent to strip off their eagles and ribbons representing the aristocratic Society of the Cincinnati. In the same conflict, the elites showed that they were cognizant of the acute class differences between militiamen demonstrated by the fact that some wore red feathers (artisans) and others wore white feathers (upper-class merchants). Paul A. Gilge, "The Baltimore Riots of 1812 and the Breakdown of the Anglo-American Mob Tradition," *Journal of Social History* 13 (1980), 547, 553.

cultural spectacle that rivaled the riot itself. The riot was outwardly a spontaneous, disorderly, chaotic event, with its participants operating on emotion and instinct rather than reason. There was, nevertheless, a surprisingly simple order in what happened that afternoon. The outlines were easy to follow: the Orangemen's procession, the Catholic attack, the Protestant counterattack, and the dispersion of the crowd. The trial was, in terms of developing a coherent narrative of the events, less orderly. Despite the fact that the trial had a procedural framework and a ritualistic structure within which the witnesses told their stories and the lawyers argued their cases, the telling of the tale was chaotic. In fact, the trial was a storytelling contest, a verbal free-for-all. The contending witnesses told their particular corners of the tale: what *they* saw and heard on that day. None of them saw everything. And the lawyers, whose job it was to make a coherent whole out of the multifaceted stories told by dozens of witnesses, were little help, since they saw it as their job only to describe the whole in terms consistent with the particular needs of their clients, while disregarding the elements of the story that might damage their position.

The trial played to a large and enthusiastic audience. Early nineteenth-century courts were a favorite source of free public entertainment. The government buildings on Independence Square were a beehive of activity, the locus of city, county, and state offices of all three branches of government. There were the offices of the mayor and the police, council chambers, and courtrooms. The last were the main venues for great throngs of citizens of all ranks who could not get enough of courtroom drama. Literally hundreds of idlers and loafers hung around the courts every day, anxious to attend each suit or prosecution that came along. When the courtroom doors opened, crowds poured in, grabbing every available seat, cramming in tight, pushing, shoving, shouting. The spectators at trials in Jacksonian Philadelphia behaved badly indeed, cheering their heroes, hissing their villains, laughing at the bad witnesses and applauding the good ones and, when sentence was pronounced, breaking into a general stamping of feet. The space was cramped, the ventilation poor, the sanitation deplorable, and disorder rampant. It was a people's court in a raucous era.³²

³² Allen Steinberg, *The Transformation of Criminal Justice, Philadelphia, 1800-1880* (Chapel Hill, 1989), 13-33. Deplorable courtroom conditions were a source of shame to lawyers and the city's elite population, who felt that the shabby and crowded structures did not do justice to a large modern city like Philadelphia. Max Page, "From 'Miserable Dens' to the 'Marble Monster': Historical Memory and the

The riot trial of 1831 was crucially different from modern criminal proceedings. At that time in Pennsylvania, criminal prosecution was not a function of the state but of one citizen acting against another. All criminal prosecutions were privately initiated and pursued; the state provided the magistrates, judges, courtrooms, and prisons, but the prosecutors were private individuals. The prosecuting citizen could choose whether or not to have the case presented through an attorney. If the case was to be presented by an attorney, the individual bringing the criminal action selected, retained, paid for, and directed that attorney throughout the proceeding.

A prosecution was initiated when a person claiming to be a victim of a crime swore out a criminal complaint against the accused before the local alderman, an appointed member of the minor judiciary, and paid a fee. (There were fifteen aldermen for the city of Philadelphia at the time.) Upon hearing the complaint, the alderman could dispatch his constable to arrest the accused and bring him or her before the one-man tribunal. The accuser would tell his version of the facts, the accused his, and each might call additional witnesses. The alderman then either released the accused or remanded him to prison to await trial. The alderman could also release the accused on bail, in which case the alderman collected a cut of the bail.

If the accused was held, the private prosecutor would be then called to present his or her case before a grand jury of twenty-four citizens, who would hear cases briefly and in private to see if there was enough evidence to warrant a trial. The grand jury dismissed a high proportion of cases brought before it, often because the prosecutor failed to appear, but if they handed down an indictment the accused was held for trial by a petit jury of twelve men. At the actual trial, the accuser continued in the role of prosecutor, sometimes through counsel, sometimes *pro se* (i.e., speaking "for himself").³³

Legal historian Allen Steinberg has described in detail the procedures of the private prosecution system and its effect on the administration of criminal justice in Philadelphia in the nineteenth century. On the one hand, everyone had access to the criminal justice system. Anyone who felt himself

Design of Courthouses in Nineteenth-Century Philadelphia," *Pennsylvania Magazine of History and Biography* 119 (1995), 299-343.

³³ Steinberg, *Transformation of Criminal Justice*, 37-80; John Binns, *Binns's Magistrate's Daily Companion: A Treatise on the Office and Duties of Aldermen and Justices of the Peace in the Commonwealth of Pennsylvania* (Philadelphia, 1845) 47-49, 227-32.

or herself victimized (a majority of the prosecutors were women) could, for a fee of a dollar, bring a dispute to the alderman and anticipate some kind of equitable relief. Aldermen were typically residents of their jurisdictions, and provided an important medium for the administration of social order. On the other hand, the private prosecution system was subject to serious abuses, and the payment of fees to the aldermen invited corruption.³⁴

The riot trial of 1831 was very much the creature of this peculiar system of private prosecution. The Catholics prosecuted the Protestants and the Protestants prosecuted the Catholics. The cross-filed criminal complaints were consolidated into a single criminal proceeding. There were four Protestant defendants, including Alderman Britton Evans, Robert Elliott, and Andrew McCarron—the inflammatory Jeremiah Saunders escaped prosecution—and sixteen Catholic defendants. The two groups each retained three high-powered attorneys to represent them. These attorneys served both to defend their own clients and to prosecute the opposite group of defendants. Seventy-five witnesses were called by both sides, their testimony lasting six days, and arguments by counsel summing up the case took another two-and-a-half days. It was a rare spectacle that kept the city enthralled throughout its course.

The trial proceedings recorded by stenographer Henry Darley and published soon after as a pamphlet have their own peculiarities. Darley advertised his *Report* as "taken in short hand during the trial," but that does not mean it is a verbatim record of the words spoken by each witness. Unlike today's trial transcripts, which try to capture the exact speech of all participants in the trial, Darley's *described* the testimony. For example, the testimony of one witness reads this way:

Andrew McMullen sworn—examined by Mr. Hubbell. As the procession was going into the Hall, on the 12th of July, last, saw a rush made on them, when several of them turned and went home; saw Neal Harkan in front of the mob; witness walked about until dinner was over, and on his return saw a man with a hatchet. . . .

Cross-examined by Mr. Haly. The procession was at the African church when the first brickbat was thrown, and it was there the swords were drawn. Is a

³⁴ Steinberg, *Transformation of Criminal Justice*, 43–44. See also Edward Surrency, "The Evolution of an Urban Judicial System: The Philadelphia Story, 1683–1968," *American Journal of Legal History* 18 (1974), 95–123.

Methodist and his father says he is twenty-one years of age. . . .³⁵

The author of the *Report* does not include the questions asked by the counsel, nor any of the procedural questions or objections that might be interposed by opposing counsel. The failure to report the questions asked is a particular loss, since experienced lawyers have long recognized that the way a question is asked plays a large role in how the question is answered.³⁶ We cannot tell whether the attorneys led the witnesses by asking questions that suggested answers or tried to discredit witnesses or blunt the impact of their testimony through sarcasm or ridicule. Moreover, because the *Report* is not a verbatim transcription, it omits pauses, slang, interjections, and repetitions that might evidence the witnesses' emotional state, and so on. Thus, the transcript is limited to "substantive" evidence, that is, testimony relevant to the disposition of the issues in the case; it omits the digressions into irrelevance that characterize the testimony of many witnesses in almost any trial. The arguments between attorneys, the court, and witnesses over what is relevant and what is not, what is fact and what is opinion, often give fascinating insights into the values and thoughts of trial participants. Such colloquy is, unhappily, absent from Darley's transcript.

On the other hand, Darley was attentive to the recording of some direct quotes. When a witness ascribed particular statements to particular participants in the riot, Darley got it down precisely. Thus, one Robert McClatchey is reported as having testified that he "thinks he saw one with a sash on; they walked peaceably; heard one of the mob cry out, '*Now is the time to kill the damn'd rascal, we'll never have a better opportunity*' . . ." ³⁷ The stenographer knew that the precise words were the essence of this testimony, and by placing the words in quotes and italics dramatized the fact that he was reporting the witness's testimony verbatim—if only selectively. Darley was careful to capture phrases that he found especially witty, as well as arguments that were particularly flamboyant or telling, presumably for their entertainment value.

Despite these shortcomings, the *Report* contains a wealth of useful detail and appears to be reasonably objective. At the least, it is difficult to discern any bias toward either the Protestant or Catholic side in the dispute. Only

³⁵ *Report*, 40.

³⁶ See Elizabeth Loftus, *Eyewitness Testimony* (New York, 1975), chap. 5.

³⁷ *Report*, 40. Italics in original.

by being impartial could Darley sell his transcript to sympathizers on both sides. Hence, he found it prudent to proclaim his objectivity:

To Americans, as well as Irishmen, the result [of the trial] was a matter of consideration, as a question which may at any time be applicable to their rival institutions. The object of the publisher has, however, been accomplished by producing to the public a faithful record of that trial, without comment or observations—leaving the community to the full indulgence of their opinions, on a subject about which, while there are people in the world of different persuasions, there will be different ideas.³⁸

The riot case of 1831 was tried in Mayor's Court, the principal criminal court for the City of Philadelphia. Mayor's Court was presided over by a panel of five officials (single judge trial courts did not become the norm until 1838) and a jury of twelve men. The president of the judicial panel was Mayor Benjamin Wood Richards who had participated in quelling the riot and who would be called by the Catholics as a witness in the case. The second member of the court was Recorder Joseph McIlvain, who functioned as the chief judge, even though he was subordinate to Mayor Woods. The recorder was a principal legal official of the City of Philadelphia under the city charter of 1789 (and, despite the title, had nothing to do with recording anything).³⁹ While most aldermen and other judges until the early nineteenth century were laymen, the recorder was required to be an attorney, a man "learned in the law." It was the recorder who charged the jury at the end of the trial, instructing them on the relationship between the facts they had heard and the interpretation of the governing statutes and relevant common law. He was clearly the most important individual on the judicial panel. McIlvain had been appointed to the position by the governor in 1829.⁴⁰

The remaining members of the court were three aldermen selected for the

³⁸ *Report*, 104. For an account of the rise of trial transcripts as popular literature, see Daniel A. Cohen, *Pillars of Salt, Monuments of Grace: New England Crime Literature and the Origins of American Popular Culture, 1674–1860* (New York, 1993), especially chaps. 8 and 9.

³⁹ This was a judicial office that originated in England, was provided for in Philadelphia's Charter of 1701, and was confirmed by statute in 1715. It is not the same as the recorder of deeds. Scharf and Westcott, *History of Philadelphia*, 2:1571, 3:1771.

⁴⁰ Surrency, "Evolution of an Urban Judicial System," 98, 100; *Report*, 52, 97–98; Scharf and Westcott, *History of Philadelphia*, 3:1738; John C. Lowber, *Ordinances of the Corporation of the City of Philadelphia* (Philadelphia, 1812), 67, 69.

occasion: Thomas McKean, William J. Duane, and Andrew Pettit. Two of these were prominent politicians and public figures. Thomas McKean was the son and namesake of the former chief justice and governor of Pennsylvania, a giant on Pennsylvania's political stage for more than thirty years. William J. Duane was a Jackson Democrat and the son of the fiery radical of the same name who published the newspaper the *Aurora* (see footnote 5, above). The younger Duane was alderman in Philadelphia for ten years until President Andrew Jackson appointed him secretary of the treasury a few years after the riot trial. He played a brief but critical role in the "wars" over the Bank of the United States when, in 1833, he refused President Jackson's direct order to withdraw federal funds from the bank.⁴¹ Both Duane, a Catholic, and McKean, a Protestant, were members of the Friendly Sons of Saint Patrick, which meant they retained ties to their Irish heritage, even though neither was Irish-born, while also demonstrating their commitment to civic respectability in their adopted city.⁴² Both McKean's and Duane's fathers were among the most prominent politicians of their generation, and alternately great allies and bitter foes in Pennsylvania politics.

The attorneys hired by the respective parties to present their cases were among the best known lawyers and finest orators of the day. The Protestants were represented by David Paul Brown, Joseph R. Ingersoll, and Horatio Hubbell. David Paul Brown was a gorgeously handsome man in his middle thirties, an amateur dramatist, and moderate abolitionist. He was highly regarded for his histrionic declamations, flowing oratory, and the skill and power he possessed in the examination of witnesses. He participated in every major criminal trial of the period.⁴³ Joseph R. Ingersoll was less flamboyant than Brown, but an important public figure nonetheless. He was the son of revolutionary era leader Jared Ingersoll, a signer of the Constitution, and the brother of Charles Jared Ingersoll. Unlike his brother, who was a Democrat, Joseph was a conservative Whig, supported the Bank of the United States

⁴¹ Schultz, *The Republic of Labor*, 151–53; Robert V. Remini, *Andrew Jackson and the Bank War: A Study in the Growth of Presidential Power* (New York, 1967), 114–24; Govan, *Nicholas Biddle*, 233–38.

⁴² John H. Campbell, *History of the Friendly Sons of St. Patrick and of the Hibernian Society for the Relief of Immigrants from Ireland in Philadelphia* (Philadelphia, 1892), chap. 3.

⁴³ Robert W. Torchia, *John Neagle, Philadelphia Portrait Painter* (Philadelphia, 1989), 160. Brown's moving oration at the dedication of the abolitionists' huge Philadelphia meeting hall in 1838 is recorded in *History of Pennsylvania Hall, Which Was Destroyed by a Mob. On the 17th of May 1838* (1838; reprint, New York, 1968), 13–35.

against the attacks of President Jackson, became president of Philadelphia's Select Council in 1832, and later served in Congress for ten years. His reputation for eloquence later led to his selection as the lead orator at the funeral of Chief Justice John Marshall in 1835. The third and junior member of the team was Horatio Hubbell, who did most of the direct examination of the witnesses called by the Protestant side.⁴⁴

The Catholics had equally prominent counsel. The first was George Mifflin Dallas, son of the aristocratic lawyer and financier Alexander James Dallas, secretary of the treasury under Madison during the War of 1812. George M. Dallas served as mayor of Philadelphia from 1828 to 1829 (being replaced by Benjamin Woods Richards, who presided at the riot trial), and was appointed to fill out a term in the United States Senate in 1831, shortly after the trial ended. Although he was a political ally of Jackson's, in the Senate Dallas supported the recharter of the Bank of the United States, an institution critical to Philadelphia's economic well-being. Dallas served as vice president to James K. Polk from 1845 to 1849, and was later ambassador to Russia.⁴⁵

William Sampson of New York was the Catholics' second attorney. He was a premier defender of civil rights in the early republic. He had been expelled from Ireland in 1796, where he had conducted the legal defense of numerous members of the revolutionary United Irishmen, and been an ally there of William Duane, Sr. In the United States, Sampson quickly became a prominent New York lawyer, arguing important early constitutional cases. He helped to confirm principles of religious freedom in a case that upheld the sanctity of the confessional; defended the early union movement in the famous New York Cordwainers strike case; argued against the use of English common law in America and in favor of codified statutes that ordinary people could understand; and defended Catholics in a similar Boyne Day riot case in Greenwich Village in 1824.⁴⁶ Sampson and Dallas were backed up by attorney William W.

⁴⁴ Scharf and Westcott, *History of Philadelphia*, 2:1532, 1549–50; Michael Grossberg, *A Judgment for Solomon: The d'Hauteville Case and Legal Experience in Antebellum America* (Cambridge, 1996), 81–82.

⁴⁵ Information on Dallas from *Dictionary of American Biography*, s.v. "Dallas, George Mifflin." See also Scharf and Westcott, 2:1545–46; J. H. Young, *Memorial History of Philadelphia from its First Settlement to the Year 1895* (2 vols., New York, 1895), 1:498–99. Dallas's father, A. J. Dallas, was a political ally of William Duane, father of Alderman William J. Duane, a member of the Mayor's Court in our trial. The elder Dallas was the attorney for the elder Duane in a notorious sedition proceeding before the U. S. Senate in 1800. Elkins and McKittrick, *The Age of Federalism*, 704–5.

⁴⁶ Walter J. Walsh, "Religion, Ethnicity, and History: Clues to the Cultural Construction of Law," in *The New York Irish*, ed. Ronald H. Bayor and Timothy J. Meagher (Baltimore, 1996), 48–79; Walter

Haly, who handled the direct examination of the bulk of the witnesses called by the Catholics.

The uproarious and dissolute environment of the courts stood in sharp contrast to the dignity that such August members of the legal profession sought to bring to court proceedings. The Mayor's Court room, where the trial was held, occupied what is now known as the Supreme Court Chamber on the first floor of Independence Hall. The building had been sold to the city by the Commonwealth of Pennsylvania in March 1816, following the removal of the state capitol to Harrisburg. Two years later, the lovely large arched openings that now give onto the vestibule from the Court Chamber were sealed off, and a rather small doorway built into the center arch. This resulted in a courtroom about 35 by 45 feet. While this was one of the larger public spaces in the city, it was crowded with a judges' bench on a dais, a jury box, counsel tables, prisoner's dock and a row of risers on the back wall to accommodate three rows of benches for spectators. Large windows opened onto the noise of Chestnut Street on one side and onto Independence Square on the other, the latter perennially crowded with bystanders and loafers, as well as people who had legitimate business with the courts and city offices. For the riot trial, the rather constricted space of the courtroom had to accommodate the following participants: five members of the court, twelve jurors, six attorneys, four Protestant defendants, sixteen Catholic defendants, seventy-five witnesses (possibly not all present at the same time), and a court reporter, or a total of 119 active participants. There must also have been a few bailiffs, newspaper reporters, and lawyers' clerks, not to mention the friends, relatives, and supporters of the contending parties, plus more than the usual number of interested citizens, curiosity seekers, idlers and gossips.⁴⁷

The record of the trial does not mention the physical conditions in the courtroom, but it must have been crowded, noisy, stuffy, and disorderly. The mild weather that prevailed that October may have enabled the mayor to have the windows kept open, providing some relief from the otherwise

J. Walsh, "Redefining Radicalism: A Historical Perspective," *George Washington Law Review* 51 (1991), 636-82; John R. Commons et al., eds., *A Documentary History of American Industrial Society* (10 vols., New York, 1958), 3:58-385 for the Cordwainers case.

⁴⁷ Edward M. Riley, "The Independence Hall Group," in *Historic Philadelphia from the Founding until the Early Nineteenth Century*, vol. 43, pt. 1, *Transactions of the American Philosophical Society* (Philadelphia, 1980), 32; Robert Gordon Stewart, "Restorations at Independence Hall, Section I: The Restoration of the 1830s," manuscript report, Independence National Historical Park Archives, box 14, row 6, Sept., 1953.

stifling atmosphere of the tightly packed crowd, but still the courtroom could not have been a pleasant place to spend nine days in an extremely contentious trial.⁴⁸ The *Public Ledger's* observations about Philadelphia courts in 1839 almost certainly reflected the conditions present at the riot trial:

... Every man who has been a party, a witness, a juryman, or even a spectator of the proceedings ... must remember with infinite loathing the vile atmosphere, the scant accommodations, the utter absence of ordinary decencies or comforts. ... The miserable dens and holes into which our Courts are now forced to shrink, are certainly of a character to excite any feeling but respect. ... The crowd is huddled into one confused and chaotic mass and no energy on the part of the Court can secure order and quietude. Noise, confusion, levity and contempt prevail.⁴⁹

In this insalubrious environment the trial for riot began on the morning of Thursday, October 13, 1831. Private criminal complaints had been sworn out and the grand jury had handed down indictments against four Protestants and sixteen Catholics on multiple counts of riot, assault, and disturbing the peace. The cross complaints had been consolidated for trial before a single trial court and jury. After a short discussion, the Court directed that the prosecution of the Catholics against the Protestants should come first.

The trial began with an opening statement by attorney W. W. Haly, who accused the Protestants of organizing an unlawful assembly. He called them members of "a wicked and malignant institution [the Orange Order and/or the Gideonites], formed for the purpose of insulting and triumphing over Roman Catholics," and asserted that their carrying of swords, and their "playing anti-Republican tunes such as the 'Boyne Water' ... caused and promoted a riot." In the first few minutes, then, Haly sought to seize the upper hand by defining the Protestants as premeditated inciters to public disorder.⁵⁰ He then called as his first witness Hugh Flanagan, the man who had been so badly cut up by the Protestants' swords. The transcript does not

⁴⁸ Pierce, *A Meteorological Account of the Weather*, 203.

⁴⁹ Quoted in Steinberg, *Transformation of Criminal Justice*, 23.

⁵⁰ *Report*, 4.

report Flanagan's appearance, but there was plenty of testimony about how, during the riot, he was covered with blood, looking as though his head was nearly severed from his body. Hence, it is likely that he was rather a mess, perhaps still showing scars and bandages and other signs of the assault. Flanagan spoke as if he had been well rehearsed to convey an air of injured innocence. He was the only Catholic defendant to testify. All other witnesses for the prosecution against the Protestants were people who were not charged themselves. Perhaps counsel for the Catholics thought Flanagan could testify safely because he had been so severely wounded in the affray that the sympathy he would arouse in the jury would outweigh the risks of testifying in his own behalf.

Aside from Flanagan, the chief witnesses called by the Catholics were public officials—Constables Jacob Albright and William Blaney, police Captain Barger, and Mayor Richards—and uninvolved bystanders, like schoolmaster Bokum. Some witnesses for the Catholics insisted on referring to the Protestants as "king's men," and one asserted that someone in the procession shouted "hurra for King George." The issue of how many swords there were in the parade, who carried them, and what they did with them became a central focus of the testimony of the Catholics. The Protestants claimed that it was usual and customary in processions of all kinds for the parade marshals to carry ceremonial swords, while the Catholics argued that it was the Protestants' brandishing of swords that instilled terror in them, provoking them to attack the Orangemen's parade.

There was some interesting testimony from Catholic witnesses who were not themselves defendants in the case. They claimed that they went to watch the Orangemen's procession out of curiosity, because they had heard of such processions in Ireland, but had always been afraid to attend them there. Because such testimony came from witnesses who had been in Philadelphia for a number of years, it is possible that this was the first Orangemen's parade in Philadelphia, or at any rate the first that was widely publicized. The Orange parades of the early nineteenth century in Ireland must, indeed, have been frightening events for Catholics. Incidents were reported of Orangemen "parading on July 12 with effigies of the Pope and the Cardinal which they intended to burn outside the main doors of a Roman Catholic Church." The experiences that the Catholic witnesses brought with them to Philadelphia from Ireland may well have led them to expect threatening

behavior from the Orangemen when they paraded in their adopted city.⁵¹

There was a good deal of testimony by Catholic witnesses about the activity of one Andrew McCarron, a Protestant defendant, who was not a member of the parade. During the riot he was outside the Odd Fellows Hall, recklessly taunting the hostile Catholics. Captain Barger "saw McCarron acting foolishly" and told him to desist, evidently without effect. Witness Francis Carlton testified that he saw McCarron "with an orange riband tied round his finger, putting it up to the people's noses, asking them how they liked it. . . . He kept doing so for an hour—he shook it under witness' [Carlton's] face. . . ." To a crowd of Irish Catholics, this was inflammatory conduct indeed. McCarron evidently got his comeuppance, for other witnesses testified that they later saw him lying senseless on the ground near Fifth and Pine.⁵²

The Catholics called a total of nineteen witnesses in support of their prosecution of the Protestants, and then rested. The Protestant prosecution of the Catholics followed immediately. Attorney Hubbell led off with an opening argument in which he sought to cast the Protestants in a virtuous light. His argument included both a general attack on Catholicism and a defense of freedom of assembly for Protestants:

. . . Shall not Irish Protestants be permitted to celebrate an event [the Battle of the Boyne] that bestowed liberty to them? . . . Events ridding Ireland and Protestantism of the greatest despot that ever wielded power [James II], were circumstances which every Irish Protestant was bound to respect. They believed that the advocates of the papal see were endeavouring, as in all countries, to extend its power in this happy land; and, through the successful agency of the Jesuits, were striving to raise the standard of Popery in this asylum of tolerance and freedom.⁵³

Hubbell's too-colorful comparison of the Catholic attack on the Protestant procession to "the attack described in Milton, of the devil against the angels" was a misstep. It provoked laughter in the courtroom, and he was obliged to admit that he "did not compare his clients to angels, yet their opponents acted very much like devils." Hubbell's opening statement, then, set up a position in

⁵¹ *Report*, 12, 14; Gray, *The Orange Order*, 74, 93. As noted earlier, an 1824 Boyne Day riot in Greenwich Village in New York precipitated a riot and trial similar to those in Philadelphia in 1831. Walsh, "Religion, Ethnicity, and History," 61–64; David A. Wilson, *United Irishmen, United States: Immigrant Radicals in the Early Republic* (Ithaca, 1998), 157.

⁵² *Report*, 4–15, 26.

⁵³ *Report*, 17–19.

direct opposition to that of the Catholics' self-portrayal of injured innocence. Like the Catholic prosecutors, the Protestant prosecution posited the riot as a battle between good and evil, but with the positions reversed. The Catholics had argued that they were the innocent victims of Protestant provocation and "triumphalism." Now the Orangemen argued that they were defenders of their Protestant faith, with both a legal and moral right to engage in a public demonstration in celebration of that faith.

At this point it is worth commenting on a point that was conspicuously absent from the trial: the principle that freedom of speech and assembly is protected by the First Amendment to the Constitution. In our late twentieth-century conception of justice, we are accustomed to having the government protect the right of any group, however unpopular, to assemble peaceably and express its views by means of a parade, demonstration, or other communication. Now, we would say that such assemblies are constitutionally protected. The First Amendment was interpreted differently in 1831. As written in 1788, it places no limitation on actions by the States. Rather, the amendment provides only that "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble. . . ." In fact, the interpretation that the Bill of Rights applied only to the United States government, and not to the states, was affirmed by the Supreme Court in 1833.⁵⁴ This reading was not revised until 1927, when the Supreme Court held that the protections of the First Amendment were extended to acts of the states by operation of the Fourteenth Amendment, adopted in 1868.⁵⁵ As the riot trial of 1831 was prosecuted under the criminal code of Pennsylvania, the protections of the Bill of Rights did not apply. At that time, there was little legal precedent in American jurisprudence affording government protection to public assemblies like the Protestant procession of July 12. Moreover, Anglo-American common law traditions of the time clearly distinguished between *private* interference in free speech, which was not prohibited, and *governmental* interference in free speech, which was.⁵⁶

⁵⁴ *Barron v. Baltimore*, 32 U. S. (7 Pet.) 243 (1833).

⁵⁵ *Fiske v. Kansas*, 274 U. S. 380 (1927).

⁵⁶ David Rabban, "The First Amendment in its Forgotten Years," *Yale Law Journal* 90 (1981) 514-95. There was already a long history in English common law holding that government in general could not restrict the peaceable assembly of its citizens. Philadelphia's own William Penn had won this point already in a precedent-setting case in 1671. When Penn was arrested for preaching Quaker doctrine to a crowd in the streets of London, he was charged with riot. He successfully argued in court, however, that the Magna Carta limited the authority of the Crown to prosecute individuals for their public

This bifurcated legal history—the absence of First Amendment protections on the one hand and the existence of a common law protection of free speech and free assembly on the other—was undoubtedly known to the experienced counsel in the riot trial, and shaped their trial strategy. It was a questionable move, then, when the Protestants called as their first witness Alderman Britton Evans. On the one hand, Evans was vulnerable to attack because of the substantial evidence that he was responsible for the vicious assault on Hugh Flanagan. On the other hand, Evans was an acknowledged leader in planning for the procession of July 12 and an articulate spokesman for the Protestant/Orangeman point of view. Evans was examined by Joseph Ingersoll, one of the senior counsel on the Protestant team. Early in his testimony, Evans described how, at the worship service at Mr. Ashton's Baptist Church on Second Street, "an appropriate sermon was delivered." At this point, Evans's testimony was interrupted by a member of the jury, who demanded loudly what he meant by "appropriate." Evans ignored the question and went on. Later, however, while he was being examined by the Protestants' other senior counsel, David Paul Brown, the same juror interrupted again and demanded what Evans meant by an "appropriate" sermon. Evans was not required to answer the question, but the juror's impertinent questioning could not have been encouraging to the Protestant side.⁵⁷

Evans's testimony was consistent with that of other Protestant witnesses; he represented the July 12 procession as a planned celebration in the mainstream of Philadelphia cultural traditions. He pointed out that he was himself not an Irishman, although a majority of those participating in the procession were. The participants included other responsible public officials like himself, including a Mr. Subert, a commissioner of the District of Moyamensing, Squire Hooten, an alderman like himself, and a Mr. Hoffner, a constable of Moyamensing. Alderman Evans also testified that most of the participants wore sashes or ribbons or other colored badges; he himself wore an orange sash, a purple sash, and a red and blue cockade. In connection with the purple sash, Evans was questioned about the Purple Order, a degree within the Orange Society, but declined to answer, indicating that he had

utterances, and was acquitted.

⁵⁷ As noted above, other witnesses testified that Ashton spoke of "the abuses of the Roman-Catholic church and its persecution of the Protestants under James the Second," and "admonish[ed] them to recollect the blood of their forefathers, spilled by the Roman Catholics." *Report*, 16, 26.

taken an oath of secrecy. He claimed, however, that the Orange Order was simply a fraternal order, and that "any mason would understand the nature of the Orange institution." This attempted explanation backfired, however, as both Dallas, counsel for the Catholics, and Duane, a member of the court, rose and said that they were Masons and they did not understand the Orange Order.⁵⁸

The Protestant prosecution continued to call witnesses for several days. Many were members of the procession. They described the Catholics as "hurraing for O'Connell," the Irish leader credited with securing passage of the 1829 Catholic Emancipation Act that restored civil rights to Catholics in Ireland. Witnesses also described the Catholic rioters as shouting "To hell with all Protestants and Orangemen, and all who take their part!" and threatening what they would do to the "Orange rascals" when they came out of the hall. Some Catholics told one prosecution witness that "they had to leave their country on their [the Protestants'] account, and that they would have satisfaction, and they were not afraid to take their own part here." Most of the witnesses who were in the procession were, in fact, born in Ireland and had been in the United States for periods of a few months to several years; the rest were native born.⁵⁹

Many, but not all, of the witnesses were members of the Orange Order, and some were also members of the Gideonite Society and the Purple Order as well. Attorney Brown took a risk when he called as a witness the fiery Jeremiah Saunders, one of the leaders in the order. Saunders was only able to testify that the parade was organized as a peaceful demonstration of Protestant solidarity, but as he remained in the Odd Fellows Hall to pay the bill he could not testify about the attack on those who left at the end of the banquet. Saunders was cross-examined closely by counsel for the Catholics, who tried to discredit the Orange Order through him. He was required to produce the membership oath of the Orange Lodge in Philadelphia, which included the affirmation that the initiate was not and had never been a "Roman Catholic or Papist." He denied that there ever "was an obligation in the Irish [Orangemen's] oath, respecting the extermination of Roman Catholics." (Once again, one is reminded of the fact that denying something

⁵⁸ *Report*, 20-26. Information about the Purple Order, an advanced degree within the Orange Order, may be found in Gray, *The Orange Order*, 209-18.

⁵⁹ *Report*, 26-48.

does not erase it, and having to deny it at all leaves the listener wondering what was the source of the suspicion that gave rise to the question in the first place.) Like Evans, Saunders refused to answer questions about the oath administered to initiates into the Purple Order of the Orange Society. This engendered a legal wrangle among the attorneys for both sides, the Protestants arguing that Saunders should not have to reveal his secret oath and the Catholics insisting that the rule of law must prevail over the secrets of a private subversive organization. Recorder McIlvain ruled that the details of the Purple oath were not relevant to the trial, and Saunders did not have to reveal them.⁶⁰

The record is replete with testimony about name-calling, mostly accounts by Protestant witnesses of things that were said or shouted at them by members of the mob outside Odd Fellows Hall. From today's perspective, it is not possible to recover what the phrases meant to the participants, or to feel just how inflammatory a particular insult could be. How is one to interpret today the impact that words had upon listeners of more than a century and a half ago? One indication of the importance of the words, however, was the amount of attention they got in the trial. Twenty-six of the forty-eight witnesses called by the Protestants spoke of insulting or provocative words and, in some cases, gestures in their testimony. Some gave only generalized accounts, testifying that members of the mob were "cursing and swearing," or were "blackguarding the procession when at dinner, through the windows," without specifying what words constituted "cursing" or "blackguarding." The most pervasive epithets cited were "damn'd rascals," "Orange rascals," "Orange puppies," "damned Protestants," or "bloody Orangemen." Although such words seem mild to us today, they were deemed grossly offensive in 1831 Philadelphia, as the Protestants clearly thought it worth their while to bring them out in their testimony. Only one phrase was considered by stenographer Darley to require censoring in the transcript, and that was "Begone you b—g—rs!"⁶¹

By the time both sides finally rested their cases, Philadelphians had been treated to days and days of conflicting evidence. The trial opened on Thursday, October 13, and witnesses testified daily, except on Sunday, until the following Wednesday, October 19, at midday. That there had been a

⁶⁰ *Report*, 32–36.

⁶¹ Presumably "buggers."

great disturbance on Fifth Street on the afternoon of July 12 was undisputed. What was unclear was who was responsible and what should be done about it. It remained the job of the attorneys for the contending sides to interpret the evidence to the jury, and by argument persuade its members to come to a conclusion that favored their clients.

William Sampson, the Catholics' aging but still flamboyant attorney brought in from New York for the occasion, was the first to plead his case. He appealed to the reason of the jury, saying that he was himself an Irish Protestant, son and grandson of Anglican clergymen of the established Church of Ireland, but he repudiated his ancestors' "conduct there, in aiding and abetting a system of persecution, and taking money which did not belong to them. . . ." Sampson asked the jury to judge his Catholic clients in the same spirit of tolerance that he demonstrated in choosing to represent them, appealing to republican ideals and to the jury's commitment to law and order. Early in his argument, Sampson focused on Alderman Britton Evans. "There were persons there [at the riot] into whose hands swords had been put, by an officer of the law, not for the promotion or protection of that law, but for the sake of harassing and oppressing a certain class of their fellow citizens, and with that officer commanding, inflicting misery and bloodshed. . . ." Here he was expounding a traditional argument of the Catholics, still used in Ireland today, to the effect that Orangemen's rallies are unprotected because they are intended to, and do, inflict psychic pain upon those who are taunted by Protestant "triumphalism." Sampson described the Protestants as childish and irresponsible, "a rabble bedizened with ribands and strings, a show for boys and girls, like a beast decorated with flowers, led by the butcher to its own destruction."⁶² Sampson played on the history of the persecution of Catholics in Ireland, an arguably irrelevant point since it did not directly relate to what anyone did in Philadelphia on July 12, 1831. He tried to evoke the jury's sympathy by reading from the British statute of 1689 which made it a felony to celebrate the mass in Latin and from Edmund Burke's writings in support of Catholic emancipation in Ireland. He accused the Protestants of being poor sorts of Americans, and claimed that the Boyne Day parade showed them to be loyal to England rather than to America: "Those who cry out for king William and king George, well know they are not faithful to this country; they gave

⁶² *Report*, 53-54.

forsooth 'the memory of Washington,' and some few others, merely to color their real [un-American] sentiments." With considerable vehemence, Sampson argued that the Protestants set out with the deliberate intention of fomenting the violence on July 12:

Counsel, though feeble, would impress on the jury, that they (the Protestants) were men of violence. They drew their swords as the signal of vengeance; if they had a right thus to blaspheme God, the others had an equal right to knock down constables, and hold green ribands to their noses; what description of city would they then have? Then was the time to put it down, by convicting them. They had not as yet committed murder, but by convicting them then, the jury would probably be saved the more painful task, at a future period, of convicting them for that crime.

On the one hand, this all seems like rhetorical hyperbole. On the other hand, Sampson was drawing on a tradition that held that the public display of weapons constitutes an incitement to riot, a principle that Recorder McIlvain would repeat in his charge to the jury.⁶³

Sampson's summing up for the Catholics was followed by that of David Paul Brown for the Protestants. He chose to provide a counterpoint to Sampson's florid and dramatic finish with a contrasting tone of reasonableness. He offered the jury what sounded like a clear, concise, and rational explication of the law concerning riots, carefully and patiently explaining the elements that had to be proven in order to establish guilt for such a riot as had occurred. Even though the legal exegesis may have been difficult for the jury to follow, Brown's juridical oratory commanded respect. He made it sound like the verdict was an easy one to reach simply by exercising common sense. Brown lightly dismissed the fact that those in the parade were "equipped with swords and badges," calling them "the usual insignia of all societies," particularly noting that there were only a dozen swords among the 240 men in the procession. Referring to stereotypes of Irish violence, Brown argued that "a shillelah, well used, was, in his opinion, better than any sword." He tread rather lightly on the issue of religious tolerance and "popery," saying mildly that the Protestants had "assembled to celebrate the one hundred and forty-first anniversary [of their liberation] from the thralldom of fanaticism." The most important issue, argued Brown,

⁶³ For Sampson's argument, see *Report*, 54-64.

was the right of citizens in America to hold differing opinions, especially on the subject of religion, to express those opinions freely and in public, and to assemble without fear of being attacked or assaulted for doing so. The Protestants, he argued, were innocently engaged in the exercise of this fundamental right when the mob in the street set upon them.⁶⁴

Joseph R. Ingersoll, the second counsel for the Protestants, followed Brown. If Brown's argument was restrained and temperate, Ingersoll's was not. He launched into an indignant counterattack on Sampson and his anti-Protestant polemic. Sampson, Ingersoll said, had left the jury to wander about in a wide expanse of contradictory evidence. "With every respect for Mr. Sampson," he claimed, "he had said not one word; . . . and though he had delighted them with his wit and humor, and displayed in his best style, considerable research in history, . . . the whole scope and tendency of his argument was, that the Protestants were guilty, or, if not, their ancestors in another clime, a hundred years ago, were, and they must therefore be brought to bar on their account." He then took his argument into the past himself, arguing that it was the Catholics who were the villains in the Old World, and the Protestants who were the heroes of tolerance. Brown had stayed away from anti-Catholic themes, but Ingersoll took them up with relish. "If he were disposed to imitate the example set him by the opposite counsel, he too, could open the page of history, and read the relations of Roman Catholic cruelty, in characters of blood. . . ." He was so disposed and described "the butchery of thirty thousand Protestants, in cold blood" by Catherine de Medici, in 1572, and the Spanish Inquisition, in which, in 1543, "four thousand persons . . . were mercilessly slaughtered; . . . some had their throats cut, others were sawn asunder, and others were thrown from the tops of lofty rocks." Characterizing Irish Protestants, too, as "victims of fanaticism," Ingersoll sought to evoke the jury's sympathy for his clients.

Above all, Ingersoll tried to appeal to the jury's innate sense of fairness. He argued that the Protestants had an inherent right to meet, to assemble, to parade, to speak out, and to celebrate an event of importance to them, even if it was unpopular with other segments of the city's citizenry. He denied that the Protestant parade engaged in any form of provocation and urged that they had the right to defend themselves when their peaceable assembly was broken up by violence and threats of violence

⁶⁴ For Brown's argument, see *Report*, 64-74.

Finally, Ingersoll argued, the dispute at issue here was a foreign one, an old dispute based on ancient animosities harbored by Catholic immigrants from Ireland:

It had been satisfactorily proved . . . that the Roman Catholics [in the riot] were threatening to murder them [i.e., the Protestants]. But they [I. e., the Catholics] should be told, that they were not to put down the citizens of Philadelphia, by the exercise of feelings brought by them from Ireland, nor to implant in this happy soil those passions which abounded in hatred and malice. The jury were enabled to judge of the fixed and determined hatred implanted in their hearts, and uttered by their tongues . . . and it was the crimes committed in Ireland that were to be avenged in Philadelphia!⁶⁵

In other words, according to Ingersoll, the dispute that gave rise to the riot was brought here from Ireland by the Catholics. They should be taught by the jury that they would not be permitted to continue such a poisonous dispute in Philadelphia's streets.

The Catholics had the last word to the jury in the person of the great lawyer, George Mifflin Dallas. Dallas took Ingersoll's argument head-on. He agreed that the dispute between the parties had been imported from Ireland, and belonged to the Irish, and did not reflect hostility between Philadelphia's Protestants and Catholics generally. He insisted, however, that it was the Orangemen, not the Irish Catholics, who had brought the dispute to the streets of the city. He accused the parade's organizers and participants of knowingly inciting the justifiable wrath of the Roman Catholics. "The exclusive purpose and leading principle of the assemblage," Dallas argued, "was the canting triumph of Orangeism over Irish Catholicity in the city of Philadelphia, the revival of old animosities, and the renewal of that which they understood in the old exclamation of *Croppies Lie Down*: it was impossible to doubt they were animated by any other purpose, and [he] would say in that case, the jury should find them [the Orangemen] guilty." He returned again and again to the theme that this was not a "Protestant" procession but an Orangemen's procession, seeking to separate the Orange defendants from respectable Protestant society. The generality of Protestants in Philadelphia, he pointed out, would have had no reason to select the anniversary of the Battle of the Boyne as a celebration day, would

⁶⁵ For Ingersoll's argument, see *Report*, 74-82.

not have "concocted" a supposedly religious celebration in a hotel tavern, nor begun it at a drinking establishment like LaGrange, and would certainly not have concluded, as did the Orangemen, that "this solemn event, the liberation of their souls from Papacy, could not be celebrated without little bits of strings and orange and green ribands, and badges in their button holes, and stars and garters, and such stuff. . . ." Once again, the inflammatory message of the Orangemen's sashes and ribbons was, it seems, so self-evident that it had only to be pointed out to the jury, not explained.

Dallas made light of the contradictions and inconsistencies in the testimony of the witnesses, saying that the confusion of the scene made it inevitable that different people would see things from different perspectives. In the case of a general conflict such as that fomented by the Orangemen, it was only to be expected that the accounts of the witnesses and participants should be at variance. He urged, therefore, that the jury should place great weight upon the physical evidence which could not be contested: the manifest injuries to Flanagan and others, and the bloody sword taken from Robert Elliott when he was apprehended at schoolmaster Bokum's.

The true villain of the event, in Dallas's telling of the story, was Britton Evans, a native-born American and an alderman to boot. He planned the parade and fomented the violence, and he and his secret society should be held to account, rather than Dallas's simple clients:

With reference to the whole design, [Evans was] the contriver and promoter of the entire evil; and by his own narrative, the prime actor, and the mischievous leader of the whole strife; he was a justice of the *peace* concerting *war*, and had prostituted the national cockade of the United States. He [Dallas] would ask the jury, if they would, under the circumstances of his guilt, lay hands on poor, ignorant, exasperated Irishmen; and let the master spirit, though an American, escape?

With this, Dallas asked the jury to acquit his clients of the charges against them, and to convict the Protestant defendants of the indictments brought by the prosecution.⁶⁶

The testimony and arguments concluded, it remained only for the chief judge to charge the jury. As Recorder Joseph McIlvain was the principal legal officer of the city, and the only member of the five-man court expected

⁶⁶ For Dallas's argument, see *Report*, 85-97.

to be "learned in the law," the jury was bound to follow his instructions. McIlvain began by expressing his appreciation for the skillful representation of the parties by distinguished counsel. He then went on to a general denunciation of public disorder and civil violence, appealing to the jurors to take such action as would deter such violence in the future. Recognizing the historic origins of the conflict between Irish Protestants and Irish Catholics, the recorder attributed the disorder of the previous July 12 to "deeply rooted passions and prejudices, forming in the bosom of our community a terrific volcano of long cherished hatred, whose eruption none could foresee." Like everyone else involved with the case, the recorder acknowledged the power of symbols, the transforming force of images that were laden with ineffable meaning: "A riband or a tune attached to those feelings [of communal animosity] might at any time consummate their dreadful effect. . . ."

The recorder showed little sympathy for the Orangemen: "As a Protestant, the Court would not hesitate to say that the spirit in which it [the procession] had been got up, was not in the true spirit of Protestantism, nor should such be encouraged in a country like [ours]; it betrayed an intolerant contraction of mind, to pretend the fear of Popery; to suppose the necessity of a great religious celebration being provided with swords, was preposterous." Most important to the verdict was the recorder's instruction that, as a matter of law, the jury must find the Protestants to have engaged in an unlawful—that is, unprotected—assembly if the procession was reasonably designed to injure the sensibilities of a group or class of citizens:

If that assembly of men went in procession or assembled with any intent to insult or wound the feelings, or call back any unpleasant recollections, or did any act to vilify, injure or annoy any class of the community, it was an unlawful assembly. . . . If they, on that occasion, knowing that the minds of the other party were full of disagreeable recollections, adopted signals, badges, and music, or by word or deed, did any act to produce or call forth those disagreeable feelings against the Roman Catholics, the part they took made them rioters, and subjected them [the Protestant defendants] to conviction.

To twentieth-century Americans, the legal presumption underlying McIlvain's charge is in some ways the most exotic element of the case. Today, lawyers would not ordinarily argue that public speech is not legally protected merely because it may "insult or wound the feelings" of "any class of the community," nor argue that those who were on the receiving end of

such speech should be forgiven for responding violently. In 1831, however, the court was more concerned with citizens treating one another with mutual respect than with freedom of speech, and said so. Today we regard freedom of speech and assembly as one of our most important liberties, but in antebellum Philadelphia other considerations took precedence. Public order, and a generous, reciprocally responsible society depended on maintaining certain standards of civility in interpersonal relations, and civility included not injuring the feelings of others. If the Protestants "did any act to call forth . . . disagreeable feeling against the Roman Catholics," then they were liable to conviction. This approach was consistent with a long-standing tradition in English common law that in an orderly society individual rights to self-expression had to be balanced against the need to maintain peace and harmony in the larger community. Thus, the law was seen as providing no protection for licentious or abusive speech and as permitting punishment of statements that had some "tendency to harm the public welfare" or to have "an immoral or illegal tendency."⁶⁷

It all seems somehow very alien, this discourse on hateful speech, and at the same time very modern. On the one hand, Americans today are very sensitive to the pain that can be inflicted by ethnic slurs and hostile speech. On the other hand, Americans have long since decided that by denying protection to odious speech we are in danger of losing the legal protection of vital political and cultural expression. While the beginning of the twenty-first century still hears calls for the government to punish racist, sexist, or other hostile and offensive speech, and while some institutions of higher education have adopted internal codes doing just that within their own confines, the American ethos so far seems to hold that protecting free speech is less harmful than restricting it. The prevalent calculus of risk is, then, quite different today from that of 1831.

Although the recorder instructed the jury that the Protestant parade could be held unlawful because of its malicious intent, he by no means intended to let the Catholics off. For, as he said, despite the provocations of the Orangemen, "yet there was not a single thing to justify the conduct of the Catholics. . . . [T]he court gave them notice that whenever they took the laws in their own hands, they would be visited with the most decided condemnation." He advised the jury that thirteen of the sixteen Catholics

⁶⁷ Rabban, "The First Amendment in its Forgotten Years," 523-24, n. 86.

indicted were "unquestionably guilty of the riot charged in the indictment," while the other three were subject to the balanced judgment of the jurors.

The recorder reserved his harshest condemnation for Alderman Evans. Evans's conduct, he said, was reprehensible both because he was the one who dreamed up the idea of the incendiary procession in the first place, and led in organizing it and carrying it out, and because he thereby violated his duty to society to behave as a responsible officer with a public trust: "Amongst the Protestant [defendants], Evans stood foremost of any on his side, and was doubly guilty, for he was the manager and conductor of it. . . . [E]ven though Evans were not guilty of riot, he was guilty of having abused his magisterial office; his vanity and folly, of such wicked and malicious tendency, was the cause of the riot."

In closing, the recorder abjured the Irish Protestants to forget "those feelings which had impaired the condition of their own country," and told them "it was their duty, as good citizens, to avoid those emblems, and every thing that would offend the most delicate Roman Catholic." For their part, the Catholics had to understand that in America, "Orangeism was as harmless an institution here, as the serpent was without its sting; a mere phantom, an object of ridicule rather than terror," and that if they engaged in violence in reaction to the activities of such an organization, they would suffer the consequences of the impartial enforcement of the law. With these balanced admonitions to both sides, the evidence and arguments came to an end.⁶⁸

The jury retired at 1:25 P.M. on Saturday, October 22, 1831. It took the twelve members of the jury less than three hours to reach a verdict on all twenty defendants. They found nineteen out of twenty guilty of the charges in the indictments. The court immediately pronounced sentence. Alderman Evans got the heaviest sentence, four months in prison and a \$100 fine. The three other Protestants received one month each in prison and lesser fines. The Catholics, too, received prison terms, from three months down to ten days, and fines of just five dollars each. Thus the dramatic and contentious trial, full of the intense emotions of witnesses and advocates for the contending parties, came to a quiet end, having, as stenographer Darley noted, "created more interest and excitement than any public investigation in many years."⁶⁹

⁶⁸ For Recorder McIlvain's charge to the jury, see *Report*, 97-101.

⁶⁹ *Report*, 104. The city's newspapers gave the end of the trial little coverage. The *Daily Chronicle* of October 24, 1831, gave just a paragraph on page 2 listing the sentences handed down to the various

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In the end, the events of 1831 were about the rejection of violence and the public affirmation of values of urban civility and accommodation in the face of communal conflict. It was also about inculcating in immigrants the values of the American republic. The two hostile factions involved in the riot were ultimately taught an important lesson: that American society would not condone the continuation of the internecine conflict they brought with them from the "old" world of Ireland.

What had happened was that on a hot summer day a group of Irish Protestants, mostly men, engaged in a provocative demonstration, predictably precipitating the violent response of a group of Irish Catholics, also mostly men. The conflict and the symbolic vocabulary through which it was voiced were undeniably transported here from the rioters' country of origin. But when judged by the larger Philadelphia community, both sides were condemned for their breach of the peace of their new city. While the riot challenged public order, the trial and its aftermath sought to neutralize that challenge by casting Philadelphia as an American community in which values of mutuality, reciprocity, and cooperation prevailed among the populace, and were to be enforced by the power of the law if need be. The values affirmed by the events included, in addition to community and civility, mutual respect for differences between people, free expression, and religious and ethnic tolerance.

Such values were by no means universally honored in America at that time. The Age of Jackson was full of social and political conflict and turmoil. This period saw savage government-sponsored programs to subjugate the Native American peoples. Southern slavery wrought its violence and brutality on countless thousands of African Americans and poisoned the atmosphere of national politics. In the North, the Jacksonian era saw the rise of a politics of exclusion, as nativist movements sought to deprive foreigners and non-Anglo Saxon ethnic groups of the full rights of citizenship. State

defendants, and the *United States Gazette* of October 25 simply reprinted the report from the *Chronicle*. The *Inquirer* had suspended publication for several months that year due to a fire in its printing plant. *Poulson's Daily Advertiser* ignored the trial completely. This absence of coverage left stenographer Darley an open market for anyone interested in the report of the trial. The absence of newspaper coverage was not unusual in 1831. It was not until five years later, when William Swain launched the *Public Ledger*, Philadelphia's first penny paper, that contemporaneous press reporting on trials became commonplace. Grossberg, *A Judgment for Solomon*, 92, 93.

and local governments continued to restrict the civil rights of citizens who were not white males. More than that, the basic concept of democracy was contested and debated, as race riots, nativist riots, and violent strikes tested society's tolerance for liberty and political equality. The frequency of civil riots in the United States was greater between 1830 and 1850 than at any other period until the 1960s.

Paradoxically, the racism, nativism, and labor unrest of the antebellum period eventually impelled the country to arrive at a more effective system for resolving the differences between groups. Even as social discord tested the assumptions upon which democracy was based, it served as the impetus for trying to find ways of mutual accommodation. For if the republic was to survive, democratic society was going to have to tame the strife that threatened the peace and stability of the community. And indeed, people and institutions came forward to oppose the divisive violence and to channel some of the dissension into paths where the conflicts could be resolved. Thus, in the midst of the divisions that shook American society in the 1830s and 1840s, there was an opposing set of vigorous forces intent on not letting conflict and hatred get the upper hand. Although riots were distressingly common, their inevitability was by no means accepted.⁷⁰ The riot and trial that are the subject of this paper epitomized the working out of the powerful strand of political discourse that saw riots as a threat to democracy and civil society, and non-violence as the desired societal norm.

The trial also attempted to promote inclusivity and the acceptance of American diversity. In court, the contending parties demanded and were given a full opportunity to be heard, to tell their stories to the American community in the shape they wanted, and to be judged impartially by a jury of their neighbors. The cross-prosecutions were initiated, paid for and controlled by the contending parties themselves, not an apparatus of the state. Protestants and Catholics both got to choose freely who would speak for them. The Recorder's charge to the jury affirmed democracy, co-operation, and mutuality by making it clear that American society should not and would not permit the expression of communal identity to erupt into

⁷⁰ The breadth and depth of anti-riot discourse is detailed in Kimberly Smith's *The Dominion of Voice*, 51-76. Smith documents the existence of a broad-based political ideology that saw violence and argument as political instruments that were fundamentally opposed to one another, and notes that this opposition and the elimination of public violence were seen as the basic organizing principle of republican politics. *Idem*, 68, 69.

physical conflict. Individual rights of free expression had to be limited in the interest of a peaceful community, and group expression could not be permitted to rise to the level of malicious provocation and violent response.

The lawyers and judges also seized on the trial as an opportunity to teach new immigrants what it meant to be an American. They demanded that the city's inhabitants, new and old, respect the feelings of other citizens, whatever their origins, and to adjust their behavior accordingly. They must also come to recognize the commonalities that as Americans they now shared with their traditional adversaries. The court's sentences, consisting mostly of moderate fines and a few days in prison, demonstrated its apparent belief that lenient action was sufficient to convey the lesson that American democracy demanded reasonable standards of civility in sociopolitical discourse.

The parade and the street fighting served to underscore the distinct, and warring, ethnic identities of the two factions in the riot, while the trial verdict served as the larger community's way of saying, in effect, "Get over it. You're in Philadelphia now." Protestant, Catholic, Irish, whatever: unrelated people, even sworn enemies, must all finally become—Americans.

Philadelphia

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