



“Tried, Convicted, and Condemned, in Almost
Every Bar-room and Barber’s Shop”: Anti-Irish
Prejudice in the Trial of Dominic Daley
and James Halligan, Northampton,
Massachusetts, 1806

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ON Friday morning, 17 March 2006, residents of Northampton, Massachusetts, having enjoyed a St. Patrick’s Association breakfast, gathered on West Street for an unusual wreath-laying ceremony. They stood before a stone marker near the site where the commonwealth had executed two convicted murderers and highway robbers, Dominic Daley and James Halligan, two hundred years earlier. After reading Governor Michael Dukakis’s 1984 proclamation stating that “the historical record shows that religious prejudice and ethnic intolerance played a significant role in [the men’s] arrests and trial, which resulted in the denial of their right to due process and a miscarriage of justice,” dignitaries paid their respects to the memory of Daley and Halligan before retiring to the Clarion Hotel for a reservations-only luncheon, sponsored by the neighboring Greater Easthampton Chamber of Commerce. These St. Patrick’s Day ceremonies marked the beginning of an array of bicentennial observances that concluded on the anniversary of the execution, 5 June 2006,

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when an Interfaith Service for Justice and Reconciliation at First Churches of Northampton was followed by a procession back to the monument where the wreath had been laid in March. Widely reviled in 1806, Dominic Daley and James Halligan had officially become martyrs two centuries later.¹

The proceedings signaled a remarkable, but not wholly unprecedented, turn of events. Seven years before “pardoning” Daley and Halligan, Governor Dukakis had issued an official proclamation condemning the 1921 trial of Ferdinando Nicola Sacco and Bartolomeo Vanzetti as unjust and declaring that henceforth “any disgrace should be forever removed from their names.”² That the governor chose to revisit a world-famous case that had long divided conservatives, liberals, and radicals is not particularly surprising. But what are we to make of the hitherto-obscure case of Daley and Halligan, the long-dead men who would become the Irish equivalents of Sacco and Vanzetti? To the historian of the early republic, the threat of anachronism—the application of late-twentieth-century standards of justice to the early nineteenth century—is pertinent. Accordingly,

¹The “Daley & Halligan Bicentennial Schedule of Events & Community Read Calendar,” a collaborative project led by Historic Northampton Museum and Education Center, 46 Bridge Street, Northampton, MA 01060 can be found at http://historic-northampton.org/daleyandhalligan/dh_events.html. John S. Bowman of Northampton reports that the stone marker is dated 1878 and has evidently been appropriated as a Daley and Halligan monument because of its proximity to the execution site. A bronze plaque affixed to the stone reads: “Dominic Daley/James Halligan/Executed 1806/Exonerated 1984.” The text of Governor Dukakis’s proclamation is in Michael C. White, *The Garden of Martyrs* (New York: St. Martin’s Press, 2004), pp. 356–57. A significant scholarly literature supported Governor Dukakis’s proclamation and the bicentennial observances dating from 1955 to 1978. See Richard C. Garvey, “The Hanging of Daley and Halligan,” in *The Northampton Book: Chapters from 300 Years in the Life of a New England Town, 1654–1954*, ed. Daniel Aaron and Harold Faulkner (Northampton, Mass.: Northampton Tercentenary Committee, 1954), pp. 90–95; Robert Sullivan, “The Murder Trial of Halligan and Daley—Northampton, Massachusetts, 1806,” *Massachusetts Law Quarterly* 49 (1964): 211–24; James M. Camposeo, “Anti-Catholic Prejudice in Early New England: The Daley-Halligan Murder Trial,” *Historic Journal of Western Massachusetts* 6 (1978): 5–17. White’s novel *Garden of Martyrs* treats Daley and Halligan as victims of prejudice, as does Peter F. Stevens, *The Hidden History of the Boston Irish: Little-Known Stories from Ireland’s “Next Parish Over”* (Charleston, S.C.: History Press, 2008), pt. 1, chap. 1, “Your Eyes Are Full of Murder”—Dominic Daley and James Halligan.”

²The Dukakis proclamation was dated 19 July 1977. It declared 23 August 1977 as a memorial day for Sacco and Vanzetti, according to Eileen McNamara, writing in the *Boston Globe*, 2 March 1997.

this study will consider whether the two downtrodden Irish immigrants who suffered hanging and the further dishonor of being “dissected and anatomized” were, in fact, denied due process so as to become victims of “a miscarriage of justice” in 1806. It will examine the legal standards in place in one important state less than two decades after the start of government under the Constitution of the United States.³

I.

We might begin with the question of nationality. For at least a generation following independence, every adult who claimed United States nationality, native born or naturalized, remembered possessing a heritage of at least one different nationality. Before July 1776, even the longest-settled four-generation signers of the Declaration had regarded themselves, like their forbears, as English, Dutch, Swedish, Welsh, Scots, Irish, or even British, or some mixture thereof. First- or second-generation signers, like many other settlers, possessed even more tenuous American identities, as did native-born citizens whose mother tongues were German, Dutch, French, Spanish, or Portuguese.⁴

That said, however, persons denominated “foreigners” turned up with some frequency in criminal courts in the 1780s and 1790s. Though they do not appear disproportionately

³*Report of the Trial of Dominic Daley and James Halligan for the Murder of Marcus Lyon . . . April 1806* (Northampton, 1806), p. 88.

⁴Linda Colley, *Britons: Forging the Nation, 1707–1837* (New Haven: Yale University Press, 1992), explains that the creation of British nationality stretched across a century, so among those of mixed ancestry from the British Isles—such as blendings of English, Welsh, Irish, or Scots—a British identity was likely. The persistent ambiguities of national identity played a significant role in the War of 1812, as explained by Denver Brunsman, “Subjects vs. Citizens: Impressment and Identity in the Anglo-American Atlantic,” *Journal of the Early Republic* 30 (Winter 2010): 557–86, and Alan Taylor, *The Civil War of 1812: American Citizens, British Subjects, Irish Rebels, and Indian Allies* (New York: Knopf, 2010), pp. 8, 102, 105, 122, 359, 361, 373. According to Parliament, if one was born a British subject, one remained a British subject—and hence a candidate for impressment—whether one was a naturalized citizen of the United States or not. Further complexities of national identity are elucidated in Douglas Bradburn, *The Citizenship Revolution: Politics and the Creation of the American Union, 1774–1804* (Charlottesville: University of Virginia Press, 2009), esp. chaps. 3 and 4.

represented among felons or the drifting poor—even in maritime Rhode Island, fewer than 4 percent of “warned out transients were foreign born”—when such people did find their way into court, their nationalities might be noted in newspaper accounts.⁵ Nevertheless, the press did not play up national identifications, nor did they enter the legal record. Several examples illustrate the point. Cassumo Garcelli, an Italian sailor, was among the first to be executed following the peace in 1783. Convicted at Boston for the fatal stabbing of a local white man, the Livorno native was not identified by nationality in most press reports, nor was his fellow defendant, Bartholomeu Martell, a French sailor. The single newspaper that did refer to Garcelli’s nationality mistakenly identified him as Portuguese.⁶ The fact that the court arrived at different verdicts for Garcelli and Martell suggests that the rights of alien defendants had not been compromised, as did the two-month interval between Garcelli’s sentencing and execution. Since newspaper coverage was minimal and did not sensationalize a local man’s fatal stabbing by an Italian, xenophobia was evidently not yet highly developed or salient.⁷

Several trials in 1784 reinforce the view that although Americans drew distinctions between themselves and foreigners, in the criminal courts they were treated much the same as citizens. The rape conviction and execution of Patrick O’Bryan, for example, were reported from Pennsylvania north to Vermont without mention of national identity.⁸ A burglary perpetrated

⁵Daniel A. Cohen, *Pillars of Salt, Monuments of Grace: New England Crime Literature and the Origins of American Popular Culture, 1674–1860* (New York: Oxford University Press, 1993), pp. 123–24, and Ruth Wallis Herndon, *Unwelcome Americans: Living on the Margin in Early New England* (Philadelphia: University of Pennsylvania Press, 2001), p. 13. The four immigrants Herndon found in her sample, drawn from 1750 to 1800, included one Englishman, one German, one Irishman, and one West African (p. 175).

⁶*Boston Gazette*, 10 November 1783 and 19 January 1784. The identification of Martell comes from the broadside *The Life, Last Words and Dying Speech of Cassumo Garcelli* (Boston, 1784).

⁷*The Life, Last Words and Dying Speech of Cassumo Garcelli*. See also Daniel Allen Hearn, *Legal Executions in New England: A Comprehensive Reference, 1623–1960* (Jefferson, N.C.: McFarland, 1999), p. 166.

⁸Daniel Allen Hearn, *Legal Executions in New Jersey, A Comprehensive Registry, 1691–1963* (Jefferson, N.C.: McFarland, 2005), p. 56; *Pennsylvania Packet*, and *General*

by a New Yorker and a French man generated the same terse, commonplace language as the Garcelli case. When Richard Barrick and John Sullivan were convicted of highway robbery in Boston, and Alexander White was condemned for murder and piracy, newspapers made no mention of their national identity or religion—though all three proved to be Irish, and one, who had arrived recently from England, referred to the image of a man swinging from a cross-beam as the Irish “coat of arms.”⁹ At their executions, the convicts were counseled as Christians by a Protestant clergyman. Whatever national or religious prejudices may have been at work, they were muted.

II.

By the 1790s, however, as was evident in Congressional debates over naturalization, citizenship, and the Alien Act of 1798, Americans were expressing a more sharply defined national consciousness. The case of “the Irish,” who figured prominently in the decade’s controversies, is revealing. Americans were heirs to the ancient English legacy of enmity toward the British Isles’ Celtic inhabitants, particularly Ireland’s Roman Catholics, which dated back to the sixteenth century. But perhaps because there were few Catholic priests and fewer Catholic churches in British America, common prejudice against “Irishmen” tended to be ethnic rather than religious. The “wild” Irish, as they were sometimes called, were more often Protestants of Scots descent, not Catholics from the southern counties—though to many Americans they were all one and the same. In the early republic, the stereotype of the hard-drinking, hard-fighting, rustic Irish frontiersman and laborer was well established.¹⁰ Still, Irish immigrants, both Protestants and Catholics, and their

Advertiser, 1 July 1784; *Connecticut Journal* (New Haven), 7 July 1784; *Massachusetts Spy: Or, The Worcester Gazette*, 15 July 1784; *Boston Gazette*, 19 July 1784; *Essex Journal* (Newburyport, Mass.), 23 July 1784; *Vermont Journal and the Universal Advertiser* (Windsor, Vt.), 4 August 1784.

⁹Cohen, *Pillars of Salt, Monuments of Grace*, p. 124.

¹⁰David Noel Doyle, *Ireland, Irishmen, and Revolutionary America, 1760–1820* (Dublin and Cork: Mercier, 1981), pp. 80, 87, 101, and Thomas Archdeacon, *Becoming American: An Ethnic History* (New York: Free Press, 1983), pp. 25, 26.

first-generation descendants won high civil and military offices, practiced law and medicine, and, like the brothers John and James Sullivan, in some states married into the highest levels of society.¹¹

The 1796 Hampshire County case of John Farrell is instructive. Farrell, identified in one local paper as “a native of Ireland,” in another as “John Farrol, a Frenchman,” and in a third as “John Farrel, a Frenchman,” was convicted of sodomizing a dog and sentenced to hang.¹² But neither Farrell’s religion nor his nationality was decisive, as a petitioning campaign organized by Farrell’s lawyer, Caleb Strong of Northampton, demonstrated. Farrell’s former Worcester County neighbors and patients—he was a “cancer doctor”—445 voters in all, appealed to Governor Samuel Adams for a pardon. Their petitions, which defended Farrell’s morality and professional skill, were silent on the matter of his nationality and religion.¹³ At the grass roots in the 1790s, people who came from other states and countries, as well as other towns and counties, were often called “strangers,” but evidently none were yet considered “aliens.”

A decade later, one can detect a shift. An 1806 letter to the *Hampshire Federalist* of Springfield voiced a rising sentiment of hostility toward immigrants. Its author recalled an earlier time “when our benevolence and universal love of mankind overflowed[,] . . . when the rags and tatters of all nations were greedily sought for, and invited to our shores; a society was formed . . . for the express purpose of aiding and assisting foreigners coming to the United States.” But times

¹¹Doyle, *Ireland, Irishmen, and Revolutionary America*, p. 182. Ronald Hoffman, in collaboration with Sally D. Mason, *Princes of Ireland, Planters of Maryland: A Carroll Saga, 1500–1782* (Chapel Hill: University of North Carolina Press for the Omohundro Institute of Early American History and Culture, 2000) offers an example of how commitment to the cause of independence secured the heroic place of the Catholic Carrolls of Maryland (e.g., p. 389).

¹²*Hampshire Gazette* (Northampton), 5 October 1796, p. 3, col. 2; *American Intelligencer* (West Springfield), 4 October 1796, p. 3, col. 3; *Massachusetts Spy: Or, The Worcester Gazette*, 12 October 1796, p. 3, col. 1.

¹³Petitions in John Farrell, 1796, Governor’s Council Pardon file, Massachusetts Archives, Boston.

had changed; and it would “now be thought wise in the Legislature to grant to this society the power of expending their funds to aid the *emigration* of some thousands from our own, to foreign countries.”¹⁴ *Send foreigners home* was the message. Though Hampshire County towns—80 to 130 miles distant from Boston—were hardly overrun with recent immigrants, at least one dyspeptic citizen declared that Americans must now retreat from their “universal love of mankind.”

At about this time, two murder cases came to trial before the Supreme Judicial Court, meeting in Northampton in April 1806. In both, Irishmen were charged with killing Yankees. In one case, James Busby, described in the press as “an Irishman,” was tried for conspiring with the victim’s wife to murder the Northampton resident John Ellis, who was found hanging in his home after Busby spent the night. Although a grand jury found sufficient evidence to indict Busby and Susannah Ellis, neither was convicted. Prejudice against Irish people may have been widespread in Hampshire County, but even given the sensational circumstances of a conspiracy to murder a local husband, this jury of Yankee householders voted to acquit.¹⁵

The other case was that of Dominic Daley and James Halligan. On 9 November 1805, Marcus Lyon, a Connecticut resident carrying a large sum of money as he passed through Hampshire County on horseback, was attacked. The next evening, a Sunday, local men discovered Lyon’s body in Wilbraham. His corpse, which had been beaten, bore a single bullet hole; it had been dragged and “buried” in the Chicopee River near the turnpike road that Lyon and the two suspects had

¹⁴*Hampshire Federalist* (Springfield, Mass.), 11 March 1806, p. 3.

¹⁵*Hampshire Federalist*, 11 March 1806, p. 3, col. 2; *Republican Spy* (Northampton, Mass.), 29 March 1806, p. 3; and *The Reporter* (Brattleboro, Vt.), 3 May 1806, p. 2. Because there was no conviction or execution, the case produced neither a trial report nor an execution sermon, and so its specifics remain obscure. The inflammatory possibilities of such a trial were evident in the 1779 case of Bathsheba Spooner and her foreign—in this instance British—confederates, charged with murdering her husband. See Deborah Navas, *Murdered by His Wife* (Amherst: University of Massachusetts Press, 1999).

traversed in opposite directions. At daybreak, local men set off southward along the main road to search for Lyon's killer or killers. Their hunt turned into a pursuit of Daley and Halligan, who were seized late the next day at Cos Cob, Connecticut, 130 miles distant from the crime scene.¹⁶ Though the two men could be indirectly implicated in the crime, the only witness who came forward to identify them was a thirteen-year-old boy, who reported seeing them with the victim's horse near the site of his body.

By today's standards, the evidence against Daley and Halligan was faulty: it was circumstantial, and the sole eyewitness was a child. But whether it was more problematic than that of many of the period's capital trials is less certain. A few months earlier, the Supreme Judicial Court had sent a father to the gallows on the strength of his thirteen-year-old daughter's testimony, and many murder convictions were founded on evidence no more substantial than that offered against Daley and Halligan. So when the suspects came to trial, few would have paused to wonder why the men were convicted, sentenced to hang, and—to underscore the heinous threat posed by highway robbery and murder—had their bodies assigned to medical students to be “anatomized.”¹⁷ In contrast to the Irishman John Farrell, also convicted and sentenced in Northampton, or James Busby, tried by the same jury that just one day before had found Daley and Halligan guilty, these two hapless defendants' status as foreigners and as Irish Catholics prompted an outpouring of xenophobia and prejudice.

The most developed expression of this hostility that survives in print was broadcast barely a week after the murder and long before the trial. It came on the Sunday after the Irishmen's

¹⁶*Report of the Trial of Daley and Halligan*, pp. 8, 9. A modern measurement of the distance from Wilbraham to Cos Cob is 116 miles. According to a 14 November 1805 report in the *American Mercury* (Hartford, Conn.), the suspects were “two foreigners,” a designation that also appeared in the *Hampshire Gazette* (Northampton) on the 20th of that month. A letter from Northampton of 12 November 1805 spoke merely of “two transient persons” (*Independent Chronicle*, Boston, 18 November 1805).

¹⁷Irene Q. Brown and Richard D. Brown, *The Hanging of Ephraim Wheeler: A Story of Rape, Incest, and Justice in Early America* (Cambridge: Harvard University Press, 2003), p. 361, n. 45; *Report of the Trial of Daley and Halligan*, p. 88.

arrest, from the pulpit of the local pastor, the Reverend Ezra Witter, a thirty-eight-year-old Yale graduate who, like the murdered man, hailed from eastern Connecticut.¹⁸ Witter, no champion of the universal love of mankind, mocked “Ye champions of the Age of Reason, the perfectability [*sic*] and approaching innocence of man!” Though Daley and Halligan had only just been captured and questioned, Witter readily denounced the “two ruffian footpads” as the killers.¹⁹ In the jeremiad Lyon’s murder incited, Witter condemned Thomas Paine and Enlightenment optimism, and he attacked foreigners as socially depraved. He did not mince words:

We see the evil attending a continual influx of vicious and polluted foreigners into this country. Many of the outrages we suffer, proceed from this source. Who break open our houses, in the unsuspecting hours of sleep?—Who set fire to our large cities and towns for the sake of plunder? and Who rob and commit murder on our highways?

To the preacher, Daley and Halligan epitomized the crisis; after all, “a great portion of the crimes above mentioned, together with many others . . . are committed by foreigners,” he insisted. Immigrants “crowded . . . our state-prisons” and polluted and burdened the country.²⁰ Though Wilbraham was hardly the epicenter of immigration, Witter complained of “the rapid influx upon us, of late, of the vilest and most abandoned of the human race.” He informed his parish that “the prisons of Europe and the West-Indies are now disgorging themselves upon our shores; and this country is thus becoming the general asylum of convicts.” Witter’s only consolation in the present tragedy was that the perpetrators were not “our neighbors and brethren.” Local Yankees could take satisfaction that “we are so

¹⁸“Ezra Witter,” in Franklin B. Dexter, *Biographical Sketches of the Graduates of Yale College with the Annals of the College History*, vol. 5 (June 1792–September 1805) (New York: Henry Holt, 1911), pp. 94–95.

¹⁹Ezra Witter, *A Discourse Delivered in Wilbraham, November 17, 1805, occasioned by the murder of Marcus Lyon* (Springfield, n.d. [1805?]), p. 8. One may speculate that Witter was the anonymous letter writer in the *Hampshire Federalist* of 11 March 1806.

²⁰Witter, *A Discourse Delivered in Wilbraham*, p. 13. The word order of “state-prisons” and “crowded” are here reversed.

clearly exonerated from this crime, the stigma is wiped away.” At least the people of Wilbraham and all Hampshire County had “escaped reproach and disgrace.”²¹

The fact that Witter’s excited sermon was published promptly at neighboring Springfield suggests a responsive audience for his xenophobia. Yet Witter’s targets were not specifically Irish or Catholic; he referred broadly to “Europe and the West-Indies.” Indeed, anti-Irish and anti-Catholic sentiments did not commonly appear in print, although a Springfield account of the “ROBBERY AND MURDER!” reprinted in Hartford, not only echoed Witter’s observation that such heinous crimes had been limited in earlier times to “large seaport towns or vicinities” but went on to label the suspects “natives of Ireland.” Like Witter, the author of the Springfield report emphasized that “our villages in the interior part of the Country have been heretofore exempt from outrages of this nature”; indeed, the headline screamed that the crime was “*In this part of the Country unparalleled!*” Such overheated printed remarks help explain why this “novel event excited uncommon emotion.”²²

One of Daley and Halligan’s four defense attorneys, Francis Blake, declared before court opened that it was “a fact that will not be contested” that “the prisoners have . . . been tried, convicted, and condemned, in almost every bar-room, and barber’s shop, and in every other place of public resort in the county.” Employing reverse psychology, he brought anti-Irish, anti-Catholic prejudice to the fore, attempting to win acquittal as he urged jurymen to demonstrate their commitment to fairness by overruling local prejudices.²³

²¹Witter, *A Discourse Delivered in Wilbraham*, pp. 13, 14. Cohen, *Pillars of Salt, Monuments of Grace*, p. 98, stresses Witter’s implicit condemnation of America’s open immigration policy.

²²*American Mercury* (Hartford), 5 December 1805.

²³*Report of the Trial of Daley and Halligan*, p. 32. Just a few years earlier, the gentlemen of the Connecticut Academy of Arts and Sciences, then surveying the condition of their state, had asked local leaders to enumerate their capital criminals, suicides, and their poor and to specify whether they were “natives or foreigners” (Connecticut Academy of Arts and Sciences, first solicitation to towns in Connecticut in 1800 [New Haven, 1802], pp. 6, 9). It is reprinted in *Voices of the New Republic: Connecticut Towns, 1800–1832*, vol. 1: *What They Said*, ed. Christopher P. Bickford,

Blake, a thirty-one-year-old Jeffersonian known for his “ardent temperament” and his “vivid and impassioned” courtroom oratory had been born in Boston and educated at Harvard. He had settled in Worcester in 1802, where, a few years after defending the two Irishmen, he was elected to the state senate (1810, 1811). Appointed by the court to defend James Halligan, Blake understood Massachusetts jurymen even though this was his first capital case, and he did his best to appeal both to the reason and the idealism of the jury.²⁴ The evidence, he maintained, was merely circumstantial. The Boston shopkeeper who had sold two pistols resembling those found near the corpse to a laboring “man who talked like an Irishman” had not positively identified either of the suspects; rather, because of the weapons’ high cost and the buyer’s occupation, he simply surmised that his customer had been the thirty-four-year-old Daley, who had come to Boston in 1803, or the twenty-seven-year-old Halligan, who had arrived in 1805.²⁵ Moreover, the wad of banknotes the two men carried when arrested could not be positively traced to the victim. Because neither the gun purchase nor the banknotes could be directly linked to the crime, Blake insisted that the court exclude them as evidence, and the judges complied. Blake also contended that his clients’ traveling pace, ordinary from Boston to Wilbraham and rapid

Carolyn C. Cooper, Sandra Rux, *Memoirs of the Connecticut Academy of Arts and Sciences*, vol. 26 (New Haven: Connecticut Academy of Arts and Sciences, 2003), pp. xiii–xiv. The other defense attorneys were, for Dominic Daley, Thomas Gould and Edward Upham and, for James Halligan, Jabez Upham, who was not closely related to Edward Upham (see Camposeo, “Anti-Catholic Prejudice in Early New England,” p. 10, and *Report of the Trial of Daley and Halligan*, p. 6). Jabez Upham was a 1785 Harvard graduate and current member of the Massachusetts legislature; later in 1806, he was elected as a Federalist to the United States Congress.

²⁴On Blake and the other attorneys, see [Dominic Daley and James Halligan,] *Brief Account of the Murder of Marcus Lyon* (Palmer, Mass., [1806]), p. 11. There were two editions of this pamphlet: the first, of sixteen pages, is held by the Forbes Library, Northampton; the second, two pages shorter because it lacks the elegy for the two men, is held by the American Antiquarian Society and reproduced in *Early American Imprints: Series II: Shaw-Shoemaker, 1801–1819*. See also, Cohen, *Pillars of Salt, Monuments of Grace*, p. 146.

²⁵*Report of the Trial of Daley and Halligan*, p. 24. The ages of the two men are from *Hampshire Federalist* (Springfield), 10 June 1806, p. 3; their arrival in Massachusetts is from Camposeo, “Anti-Catholic Prejudice in Early New England,” p. 9.

thereafter, did not reflect culpability, and he dismissed the thirteen-year-old witness as merely “this lad.” Claiming that a conviction required the jury to believe there was “not even a *possibility*” that someone else had committed the crime, Blake declared that, unless jurymen were themselves captives of anti-Irish prejudice, they must acquit the prisoners.²⁶

Neither the prosecution attorney, John Hooker, nor the elected attorney general of Massachusetts, James Sullivan—who, though a Protestant, was himself the son of Irish Catholic immigrants—ever mentioned the defendants’ origins; instead, the prosecutors simply referred to the suspects as “the prisoners.” Defender Blake, however, repeatedly cited Daley and Halligan’s ethnicity and the anti-Irish prejudice prevalent in the community. In closing, Blake emphasized “the inveterate hostility against the people of that wretched country [Ireland] from which the Prisoners have emigrated, for which the people of New-England are peculiarly distinguished.” Appealing to their idealism and national pride, Blake reminded jurors that Daley and Halligan had

lived under the fostering protection of our government, and are now to be tried by the beneficent provision of our laws.—Whether they have brought with them all the vices, without any of the virtues of this generous but degraded people, whether they are wandering fugitives from justice or exiled victims of oppression,—whether they have been transported for their crimes, or have been driven across the Atlantic by the storms of internal commotion, it is enough to ensure them a fair and impartial trial.

Regardless of “the popular fury” and claims arising from the “prolific imaginations of news-mongers,” Blake exhorted jurors to recognize that they had “pledged by their oaths, to guard . . . against the approach of prejudice.” Thus he instructed, “Do not therefore believe them guilty, because they are *Irishmen* but viewing them as your *countrymen*, remember you are sworn

²⁶*Report of the Trial of Daley and Halligan*, pp. 21, 22; “this lad,” pp. 48, 49.

to believe them innocent, until every reasonable doubt of their guilt is removed from your minds.”²⁷

Blake’s courtroom oratory testifies to the profoundly conflicting sentiments at play in the case, which pitted the Enlightenment idealism of Thomas Paine’s 1776 “asylum of the oppressed” and its related ideology of equality before the law against the exclusivity of the Puritans’ “city upon a hill” and their corresponding anti-Catholicism, now laced with the doctrine of republican virtue and insular Yankee xenophobia. In summing up, Blake decried the “national prejudice” that prompted one witness, the Boston gunshop keeper, to “prejudge the prisoners because they are Irishmen.” Passionately, he declaimed, “Pronounce then a verdict against them! Condemn them to the gibbet! Hold out an awful warning to the wretched fugitives from that oppressed and persecuted nation!” Blake’s words thrust the local trial into the framework of the national political debates that had agitated the country in the run up to the Alien Act of 1798:

Tell them that though they are driven into the ocean, by the tempest which sweeps over their land, which lays waste their dwellings, and deluges their fields with blood;—though they float on its billows upon the broken fragments, of their liberty and independence;—yet our inhospitable coast presents no Ararat upon which they can rest in safety; that although we are not cannibals, and do not feast upon human flesh, yet with all our boasted philanthropy, which embraces every circle on the habitable globe, we have yet no mercy for a wandering and expatriated fugitive from Ireland. That the name of an Irishman is, among us, but another name, for a robber and an assassin; that every man’s hand is lifted against him; that when a crime of unexampled atrocity is perpetrated among us, we look around for an Irishman; that because he is an outlaw, with him the benevolent maxim of our law is reversed, and that the moment he is accused, he is presumed to be guilty.

Nearing his conclusion, Blake called attention to the pathetic scene of the prisoners’ families, who had faithfully attended the

²⁷*Report of the Trial of Daley and Halligan*, pp. 34, 32, 33, 34–35.

trial. And then he quoted the Irish orator John Philpot Curran, who famously instructed jurors at a 1798 treason trial that one day all of them would have to stand before God and answer for the verdict they were about to give.²⁸

Although Blake's strategy won immediate praise in the press, it failed to achieve its goal.²⁹ Attorney General Sullivan, himself a sometime target of anti-Irish rhetoric, spoke for the prosecution. "[T]he most powerful eloquence, or the highest strains of rhetoric," he insisted, do not refute evidence. Compassion and mercy, albeit admirable, must not supplant justice. Immediately deflecting Blake's emotional appeal, Sullivan told jurors that "the idea that you may be prejudiced against them because they are foreigners, can have no foundation but in a warm imagination"; it was "an ill treatment of your characters" to suppose otherwise. "The prisoners," Sullivan stated, "are men, [and] they are as men entitled to as fair a trial as the men of the first rank and eminence can have." Neither "out-door opinion against them, [n]or the feelings of pity and compassion for them," could determine their guilt or innocence. As for Blake's assertion that any "*possibility*" of doubt should bar a guilty verdict, Sullivan declared flatly that "there is no such legal expression in the books." In the authoritative words of the judge who charged them, the issue was "*reasonable doubt*." Sullivan noted that "nothing exists beyond a possible doubt in the minds of men." Though humans are fallible and "our senses may decieve [*sic*] us, yet we cannot refuse their evidence." Eschewing "prejudice, . . . partiality, avarice, envy, pride, malice, ambition, self-interest . . . fear and cowardice,"

²⁸*Report of the Trial of Daley and Halligan*, pp. 52–53, 63, 65. Blake's defense covers pages 28 to 65, and a textual note reports that he supplied it in writing (from memory) to the lawyer who compiled the trial report. In November and December 1805, New York newspapers advertised an Irish edition of Curran's speeches, including the one Blake quoted. Curran's popularity is suggested by the facts that one of his speeches opposing standing armies was reprinted in a Jeffersonian paper in Richmond, Virginia, in 1802 and that Isaac Riley published a two-volume edition of his speeches (New York City, 1809 and 1811).

²⁹Daley and Halligan praised Blake and the other defense attorneys in their *Brief Account of the Murder of Marcus Lyon*, p. 11. Blake was also lauded in the Springfield, Massachusetts, *Courier*, 7 May 1806, p. 3, which reported that he spoke "at great length, and with much ability."

Sullivan explained, the jury had a duty to act “with an upright heart, and from pure motives.” After deliberating for a single hour, at midnight the jury returned a guilty verdict.³⁰

The defeated attorneys made one last effort to save their clients. Drafting a pardon petition to Governor Strong to be signed by Dominic Daley’s mother, Ann, they recapped the defense’s arguments about the circumstantial nature of the evidence and stressed that public opinion in Northampton had prohibited a fair trial:

How natural to prejudge the wayfaring strangers as the perpetrators of the crime? Neither can your Excellency be unconscious of the strong prejudice prevailing among the Inhabitants of the interior against the common Irish people who have emigrated to the United States; and in the present case the public mind had been influenced in great degree by conversations and news-paper publications which precluded the possibility of that impartiality of trial which the Law contemplates.³¹

Governor Strong, a lifelong Northampton resident and popular Hampshire County resident, was the Federalist attorney who had defended the Irishman John Farrell in 1796 and then led his successful pardon campaign. Yet Strong had also, as governor, announced a five-hundred-dollar reward for Marcus Lyon’s “murderer or murderers,” and he now joined with the council to deny Ann Daley’s request to save her son from the gallows.³²

To be sure, it is hard to imagine that prejudice exercised no influence in Daley and Halligan’s prosecution and conviction; but from a procedural standpoint, their trial appears no different from a score of others in which American citizens stood charged with murder. The evidence was neither more nor less substantial than that of numerous other cases, gathered, as it

³⁰*Report of the Trial of Daley and Halligan*, pp. 67, 75, 79, 80, 81, 86.

³¹Ann Daley, “Petition for the Pardon of her son Dominick Daley under sentence of Death in Hampshire County,” Pardons Not Granted file, 1780–1820, Massachusetts Archives.

³²The reward proclamation of 12 November 1805 appeared in *Independent Chronicle* (Boston) on 18 November, p. 4. Strong signed and annotated Daley’s petition, stating that the council had advised against clemency.

was, in the customary way by a justice of the peace and local inhabitants. Court-appointed attorneys, though they might be luminaries of the county bar, normally had just a day or two to study their cases and formulate their arguments. These circumstances placed a premium on rhetorical, not investigatory, powers. So it is reasonable to conclude that the 1806 Supreme Judicial Court that acquitted the Irishman James Busby after having condemned Dominic Daley and James Halligan dispensed justice equally to all three foreigners. Yet, in light of Ezra Witter's 1805 sermon at Wilbraham and the xenophobic letter in the 1806 *Hampshire Federalist*, Francis Blake's passionate condemnation of anti-Irish sentiment must be understood as more than a courtroom tactic. For a decade Blake, a Jeffersonian, had been doing battle with the Federalists of central Massachusetts, so his criticism of their oft-expressed antipathy to foreigners was both partisan and, insofar as it invoked the nation's destiny as an "asylum of liberty," idealistic; it was also familiar.

Two months after the trial, when the two convicts faced the gallows, anti-Irish sentiment, now accompanied by explicit anti-Catholicism, surged once again. At the prisoners' request, Boston's Father John Cheverus traveled to Northampton to pray with the condemned men and to preach their execution sermon. Local hostility was so strong that he chose as his text "Whosoever hateth his brother is a murderer."³³ Shunning the usual conventions of the execution sermon—the cautionary example of the condemned and the call for personal reform—Cheverus turned his gaze upon the citizens of Northampton, those "to whom the death of their fellow beings is a spectacle of

³³*Hampshire Federalist*, 10 June 1806, p. 3. The text, from 1 John 3:15, is embedded within a broad statement about the nature of divine love, sinfulness, and human responsibility. The text leaves no doubt about the thrust of Cheverus's sermon. According to Scott D. Seay, author of *Hanging Between Heaven and Earth: Capital Crime, Execution Preaching, and Theology in Early New England* (DeKalb: Northern Illinois University Press, 2009), who has compiled a database of all extant printed execution sermons in the colonies and the United States, Cheverus was the only person who chose this text or, indeed, any text from the Book of John. Inquiries to Catholic archives in Boston and in Maryland, for the Church in the United States, have not uncovered any record of the visit to Northampton.

pleasure, an object of curiosity.”³⁴ Having witnessed the Terror during the French Revolution and having himself initially been refused accommodations in Northampton, the Frenchman Cheverus, the first Catholic to speak publicly in the town, took to heart the likelihood that prejudice had been directed against the Irishmen. Ultimately, according to a local historian, residents’ antagonism softened, and after the execution, they invited Cheverus to preach more sermons.³⁵ But it cannot be doubted that Protestant New Englanders were intolerant of Catholics in general, notwithstanding Father Cheverus’s personal and pastoral skills and his success at disarming prejudice in Northampton. Nevertheless, based on newspaper reports of the execution, Daley and Halligan’s religious profession was of less concern than their nationality. A few newspapers were entirely silent as to their identities, but whereas the press never mentioned the men’s faith, at least eleven newspapers pointed out, without further elaboration, that “they were both natives of Ireland.”³⁶ The pamphlet account of the murder

³⁴James Russell Trumbull, *History of Northampton, Massachusetts, from Its Settlement in 1654*, 2 vols. (Northampton, 1902), 2:589–92. The full text of Cheverus’s sermon seems not to have survived. It is not in any Catholic archive in Boston nor elsewhere in the United States; it may, however, be in the Vatican, since Cheverus returned to France, where he rose to the rank of cardinal. The passage quoted by Trumbull is part of a single paragraph said to be from Cheverus’s sermon and found in M. Hamon (André Jean Marie), *The Life of Cardinal Cheverus, archbishop of Bordeaux, and formerly Bishop of Boston*. From the French of J. Huen-Dubourg [pseudo.]; trans. from the French by E. Stewart (Boston: James Munroe, 1839), p. 87. The biography was evidently Trumbull’s chief source for his account of Cheverus’s sojourn in Northampton. The authenticity of the text cannot be verified and, having passed through translation by both French- and English-speaking writers, may be doubted; yet its publication in Boston within living memory of the event, and its reproduction by a Northampton historian who was familiar with oral traditions, lend general credibility to the account.

³⁵The report that Cheverus was denied lodging because he was Catholic comes from a reminiscence, “About Old Times,” dated South Hadley, 24 January 1870 and reported in the *Hampshire Gazette and Courier*, 1 November 1870; Trumbull, *History of Northampton*, p. 591. Trumbull’s account follows that of Hamon’s *Life of Cardinal Cheverus* almost verbatim.

³⁶*Hampshire Federalist*, 10 June 1806, p. 3; *Boston Gazette*, 12 June 1806, p. 2; *Portsmouth [N.H.] Oracle*, 14 June 1806, p. 3; *The Reporter* [Brattleboro, Vt.], 14 June 1806, p. 3; *Salem Register*, 16 June 1806, p. 3; *Salem Gazette*, 17 June 1806, p. 3; *Courier* [Norwich, Conn.], 18 June 1806, p. 3; *Freeman’s Friend* [Salem, Maine], 18 June 1806, p. 3; *Eastern Argus* [Portland, Maine], 19 June 1806, p. 2; *Haverhill Museum* [Haverill, Mass.], 24 June 1806, p. 4; and *Post-Boy* [Windsor, Vt.], 24 June

issued under Daley and Halligan's name also pointedly noted that the convicts were "Irishmen of *foreign birth*."³⁷

III.

It is not surprising that an increased consciousness of foreigners—and concern with national origins—coincided with Americans' growing awareness of their own national identity. Indeed, as time passed, that consciousness became more and more associated with prejudice. But we should not assume that such bias necessarily compromised foreigners' rights and their access to equality before the law because, paradoxically, just as Americans' prejudice was rising, so was a national ideology of impartial justice and equality before the law. Thus, the same people who disparaged the vices of foreigners and decried the costs they imposed on taxpaying citizens could simultaneously defend the ideal of providing alien immigrants with equal protection under the law. And yet in practice the ideal could also be compromised by widely accepted national stereotypes. The uneven and unpredictable interaction between prejudice and the competing values of fairness, justice, and the rule of law was evident in the trial of mariner Henry Phillips.

Following a quarrel at Boston's Roe Buck Tavern, near the Fish Market, Phillips, accompanied by fellow mariner Joseph M'Cann, approached Italian confectioner's assistant Gaspard Denegri from behind and hit him over the head with an iron bar. Eight days later, on 8 December 1816, Denegri died from his wound, and the commonwealth's solicitor general charged Phillips with murder and M'Cann as an accomplice. At the request of the defendants' attorneys—George Sullivan, son and past partner of the former attorney general and governor, and Lemuel Shaw, future chief justice of the state's Supreme Judicial Court—Phillips and M'Cann were tried separately.

1806, p. 199. It should be noted that at least four papers reported the execution without mentioning nationality, and several carried advertisements for the printed trial report but did not report the execution at all.

³⁷*Brief Account of the Murder of Marcus Lyon*, p. 9; italics added.

M'Cann, who was evidently of Irish birth or descent, was in due course acquitted.³⁸

At the start of Phillips's trial, the ambiguities of American nationality, even forty years after independence, were evident in the prosecution's opening statement. Solicitor General Daniel Davis, not recognizing the defendant's accent, mistakenly described him as "a native American, but a stranger to this part of the country."³⁹ In fact, Henry Phillips Stonehewer Davis, known as Henry Phillips, was a twenty-five-year-old native of Wales who, sent to sea as a nine-year-old, had traveled throughout the Mediterranean and Atlantic, touching Europe, Africa, North and South America, as well as British ports.⁴⁰ Given his background, it is no wonder that the exact nationality of this English-speaking stranger was not apparent, but it is significant that the prosecutor did not identify him as a foreigner. Instead, the prosecution argued that the jury should convict the "American," Phillips, for murdering an Italian, a man who had been in the country for only four months and could not speak English.⁴¹ The prosecution was clearly committed to the ideal of equal justice, even if it demanded hanging an American for killing a foreigner.

In defending him, Phillips's distinguished attorneys indirectly attacked the notion of equal justice and justified their client's actions as a legitimate response to well-established and commonly acknowledged national traits. After the initial fracas between Phillips and Denegri, witnesses testified, "the idea of an Italian with a concealed knife about him spread consternation and dismay throughout the house." Lemuel Shaw explained

³⁸*Report of the Trial of Henry Phillips, for the murder of Gaspard Denegri, . . . 9th & 10th Jan. 1817. With the Address of the Chief Justice to the Prisoner, in pronouncing Sentence of Death, and an appendix containing a concise history of the Prisoner's Life* (Boston: Russell, Cutler & Co., 1817), pp. 4, 5; report of M'Cann's acquittal in *Hampden Federalist* (Springfield, Mass.), 22 March 1817, p. 2.

³⁹*Report of the Trial of Henry Phillips*, p. 6.

⁴⁰*Report of the Trial of Henry Phillips*, pp. 50, 51.

⁴¹[Henry Phillips], *Trial of Henry Phillips for the Murder of Gaspard Denegri* ([Boston: Bangs, 1817]), p. 5. This twenty-four-page account was advertised on 15 January, just five days after the trial ended; the forty-eight-page account published by Russell, Cutler & Co. was advertised as "just published" on 30 January 1817.

that the accused “did fully and honestly believe, that Denegri was armed with a deadly weapon,” so in light of “the known ferocity and vindictive temper of the Italian character,” Phillips had simply defended himself. Shaw elaborated: “So firmly is this bad reputation established, particularly among sailors, that in their intercourse with foreigners, the dread of a quarrel with a Spaniard or an Italian is habitual and almost instinctive; this is founded on an impression, that they are ready, upon slight occasions, to resort to the poignard and stiletto.” Because Phillips was convinced that “this foreigner had a knife for mischievous purposes, and a disposition to use it,” his assault on Denegri “was not so criminally rash as is supposed.”⁴² In short, Shaw asserted that prevailing stereotypes about national character should be viewed as mitigating factors in assessing criminality.

Although the defense attorney’s appeal to the jurors’ biases may well have influenced their judgment, when the chief justice delivered his summary charge to the jury, he explicitly rebutted Shaw’s argument. Alluding to the rumor that Denegri had carried a knife, Justice Isaac Parker acknowledged that “this suspicion may have arisen from the dread our people have of an Italian.” But even if such a prejudice were understandable—it arose, he said, “from stories of travellers, founded sometimes in fact, but exaggerated in the number of instances of assassinations said to have taken place in Italy and some other European countries”—it had no validity in an American court. Assassination was “a practice which is probably owing to the nature of government in those countries, and to the lax principles and morals of the nobles and others, who give a stamp to the character of their nation,” Parker opined. But in the United States there was “little reason to apprehend assassination, even from the subjects of a country where it is said to be practiced.” To rely on the “loose and idle suspicion, therefore, that a person intended to assassinate, merely because he was an Italian, without any proof that he had the means of doing it, or any menaces indicating such intention, would not,” the judge concluded, “be a reasonable ground of proceeding to violence.” Rejecting the

⁴²*Report of the Trial of Henry Phillips*, pp. 7, 27.

anti-foreigner defense, the chief justice explained that “experience proves that, from the vigilance of our laws, or the moral influence of our government and manners those foreigners who come to reside here, are generally as harmless and inoffensive as our own people.”⁴³ Even as Parker dismissed Shaw’s appeal to jurors’ prejudices, he expressed his own. Prejudice, no matter how apparently reasonable, should not be a basis for judgment but, he insisted, a further inducement to the rule of law and equal justice. The jury evidently agreed—finding Phillips guilty of murder; so Justice Parker sentenced him to hang.

Sympathy for the English-speaking foreigner Phillips, however, continued to run strong. The fullest newspaper account of the trial made no mention of nationality—American, British, or Italian—but an abbreviated trial report, rushed into print within a week of the verdict, recorded “the dread our people have of an Italian . . . [as] it is well known that assassination by stabbing, is a frequent mode of revenge, both in Italy and Spain.”⁴⁴ Defense attorneys Shaw and Sullivan appealed to the governor. Their client deserved a pardon because he had no “design” to kill, they argued; he had struck Denegri only because, like “all those about him,” he believed the “Italian, had armed himself with a knife for the purpose of doing mischief.” Reasonable men would agree that this circumstance, though admittedly outside “the rules of law,” diminished Phillips’s “moral turpitude.”⁴⁵ Additional petitions, one signed by 137 individuals, including a few prominent gentlemen, and one marked by the illiterate convict himself, pleaded for mercy because Phillips was “a stranger and a foreigner” and “destitute of friends.” But the governor and council were unmoved. So on 13 March 1817, Phillips, who thanked “the Court for their humane indulgence, and impartiality during the trial” and went on to declare “his

⁴³*Report of the Trial of Henry Phillips*, pp. 41–42.

⁴⁴*Boston Daily Advertiser and Repertory*, 23 January 1817, p. 2; *Trial of Henry Phillips*, p. 17.

⁴⁵Lemuel Shaw and George Sullivan to Governor John Brooks, Boston, 18 January 1817, re: Henry Phillips, Inactive Pardons & Pardons Not Granted collection, Massachusetts Archives.

conviction that the jury decided correctly according to the law and the evidence,” was hanged.⁴⁶

Although national identity played a significant role in Phillips’s case, in others the issue aroused no discussion whatsoever. When an 1811 New Hampshire jury acquitted George Ryan of highway robbery, neither press coverage nor the trial report mentioned his origins.⁴⁷ Six years later, when a jury convicted William M’Donnough for murdering his wife, the fact that he was “not a native of this country” was noted but seemed of little consequence. Though he bore an Irish surname, M’Donnough had arrived from London, worked as a gilder in Boston for twenty years, and was known to play “Scotch airs.” In what many would likely have considered a last-ditch attempt, M’Donnough’s defense attorney appealed for pity toward “a foreigner, without many of the ties of consanguinity or friendship in this country”; the defendant’s thirty-year marriage had, however, produced a son and a daughter, now grown. Later, when the press reported that M’Donnough had died in jail as he awaited execution, no mention was made of his nationality.⁴⁸

The same indifference to nationality was evident in two trials held about the same time at Dedham, a few miles west of Boston. Two Irish glass-factory workers, Stephen Murphy and John Doyle, accused of raping a fifteen-year-old girl, Rebecca Day Jr., won acquittal. The attorney general who prosecuted the case was silent about the defendants’ nationality. Only the

⁴⁶Shubael Bell and 136 others, Petition to Gov. John Brooks, *et al.*, 29 January 1817, and Henry Phillips, Petition to Gov. John Brooks, *et al.*, 29 January 1817 (in the hand of Lemuel Shaw, attested by him and S. Bell, Gaoler), re: Henry Phillips, Inactive Pardons & Pardons Not Granted collection, Massachusetts Archives. An account of the execution that includes Phillips’s remarks at the gallows appears in *Boston Weekly Messenger*, 20 March 1817.

⁴⁷*Report of the Trial of George Ryan, before the Superior Court, at Charlestown, N.H., in the County of Cheshire, May Term . . . 1811 . . . for Highway Robbery* (Keene, N.H., n.d.). Many New England newspapers reported on this episode without ever mentioning Ireland or the Irish; see, e.g., *New England Palladium* (Boston), 15 March 1811, p. 1.

⁴⁸[William M’Donnough], *Trial of William M’Donnough, on an indictment for the murder of his wife, Elizabeth M’Donnough, before the Hon. Supreme judicial court, . . . at November term, holden at Boston . . . on the fourth Tuesday of November, 1817 . . . from minutes taken at the trial, by a gentleman of the bar* (Boston, 1817), pp. 5, 8, 15, 53; *Boston Repertory*, 20 January 1818, p. 2.

defendants' attorney, George Sullivan, who with Lemuel Shaw had unsuccessfully defended Henry Phillips earlier that year, raised the subject; and he did so, as had Shaw then and as had Blake in Daley and Halligan's case, in order to arouse sympathy for his clients. Stephen Murphy, Sullivan told the jury, "is a foreigner . . . to our land, but he is not a foreigner to our hearts, and he will not be a stranger to your justice." Later on, he characterized both the accused as "valuable and respectable young men," and without specifying Ireland, he respectfully cited the "ardent friendship" and loyalty typical of Murphy's nation.⁴⁹

To characterize defendants favorably and discredit accusers was, of course, standard practice in defending rape cases. But the fact that no one in court or in the press made any effort to disparage the two factory hands on ethnic grounds is striking. The same was true in the 1820 case of Michael Powers, a one-time County Wexford farmer who had come to Boston in 1802, worked as a hodcarrier (carrying bricks and mortar), and lived frugally. Powers had recently loaned part of his hard-earned savings to bring three relatives to America, including Timothy Kennedy, who, Powers claimed, refused to pay his debt. After legal remedies failed, Powers murdered Kennedy with an axe, stole his property, buried the corpse in his basement, and fled to Philadelphia. There Powers was captured as he made ready to sail for Ireland. At Powers's trial, courtroom argument and press reports barely mentioned his nationality or that of his victim.⁵⁰

The brutality of Powers's crime and his intended destination presented sensational opportunities for expressing ethnic

⁴⁹[Stephen Murphy and John Doyle], *Report of the Trials of Stephen Murphy and John Doyle, before the Supreme Judicial Court, at Dedham, Oct. 23, 1817, for the Rape of Rebecca Day, Jun., on the 10th Aug. 1817. By a Gentleman of the Norfolk Bar* (Boston, 1817), pp. 7, 16, 21.

⁵⁰[Michael Powers], *Life of Michael Powers, now under sentence of death, for the murder of Timothy Kennedy* (Boston, 1820), pp. 5–7. The crime, Powers's flight, capture, and trial were covered in many press accounts from Portland, Maine, southward to Richmond, Virginia. All accounts had their origin in the *Boston Daily Advertiser* or the *Boston Patriot and Daily Mercantile Advertiser* but were often briefer and, when shortened, usually omitted reference to Irish ethnicity/nationality.

prejudice in print. But bigotry did not materialize. Instead, the victim, Timothy Kennedy, was accorded a respectful obituary:

The deceased was a native of Ireland; about 20 years of age, and had been nearly two years in this country—his disposition was amiable; he was industrious and faithful, and was never known to taste spirits of any kind. He was a constant attendant at the Roman Catholic Chapel, and though without money when he came to this country, he subscribed five dollars towards the Catholic Chapel at South Boston;—he was fond of reading religious books, and borrowed a book last Tuesday, which he has not returned, entitled the “Rich Cabinet, full of Heavenly Jewels.”⁵¹

IV.

Evidently America’s citizens were of two minds when it came to immigrants in general and the Irish in particular. Responding to partisan condemnation of Irish immigrants, a New York writer defended the Irish along with American blacks. Their detractors claimed that Irishmen, even those naturalized as citizens, should be excluded from public life because they had been born abroad. And though blacks could vote because they were American born, critics argued that they should not be called “Americans, because their ancestors were from Africa.” Such wrongheaded reasoning, if applied generally, the writer insisted, would disenfranchise “the American citizen” because he would still be “called a Dutchman, an Englishman, a Swede, a Highlander or Hessian.” To be sure, Irish immigrants in New York City were little more than “ashes gatherers and day laborers,” but they had once been “proprietors of Irish soil,” at least until the conquering English reduced them to ignorance by forbidding schools and “interdicting reading.” The Irish were themselves “republicans” who rose in revolt against British tyranny and who, after defeat, “became ashes-men in America—preferring

⁵¹*Repertory*, 9 March 1820, p. 4. Between 1811 and 1831, this paper was also known as the *Repertory and General Advertiser*, *Boston Advertiser*, or *Boston Daily Advertiser*.

liberty accompanied with labor to inglorious indulgence at home.”⁵² For this writer, the logic of American nationality dictated equal rights, not false distinctions based on origins.

Nevertheless, the vigor of the defense suggests that this logic was contested. Public officials responsible for suppressing crime and caring for the poor were coming to regard immigrants as social burdens. And although theirs was not an unprecedented response to new arrivals, they gave prejudice authoritative expression. In Boston, the Massachusetts solicitor general, Daniel Davis, complained of immigrants in the courtroom. When he had prosecuted Henry Phillips, Davis had declared that according to “the numerous provisions of our laws,” foreigners enjoyed “every protection and assistance . . . which may be necessary for a perfectly impartial trial.” In Massachusetts, he had asserted, “although it is possible the guilty may here escape, the innocent can never be in danger of punishment.”⁵³ Now, however, in language that resembled that of the rural pastor Ezra Witter fifteen years earlier, Davis was using the courtroom to castigate immigrants. “Most of the robberies in this part of the country, have been committed by foreigners,” he announced, as he prosecuted Irish immigrant Michael Martin for highway robbery in 1821. Elaborating on his xenophobia, Davis contrasted America’s own “peaceful and happy state of society” and “the civil, social and religious blessings we enjoy” with the “manners and morals” of “the countries from which these foreigners have fled.” His prediction for the future was dark: “as the knowledge of this happy country shall be spread among the old and corrupted countries of Europe, we shall be visited and infested by its profligate and vicious inhabitants, who will be ready to flock in among us, for the sole objects of rapine and plunder.”⁵⁴

Perhaps Davis’s rhetorical volley merely reflected differences between the case he had prosecuted in 1816 and the one he

⁵²“Irish Emigrants,” *Essex Patriot* (Elizabethtown, N.J.), 31 May 1817, p. 1.

⁵³*Report of the Trial of Henry Phillips*, p. 6.

⁵⁴[Michael Martin], *Trial of Michael Martin, for Highway Robbery, before the Supreme Judicial Court of Massachusetts, for the county of Middlesex, October Term, 1821. Reported by F. W. Waldo, Esq.* (Boston, 1821), pp. 5, 6.

was arguing in 1821. But by resorting to prejudicial language, he was tapping into New Englanders' rising conviction that foreigners were disproportionately responsible for the twin evils of poverty and crime. Redford Webster, a Boston apothecary and Overseer of the Poor, offered the most informed statement of this perception when he issued an official report on the city's social ills in 1814.⁵⁵ He found that of the 570 individuals admitted to Boston's almshouse and workhouse over the preceding year, over half (291) were "foreigners." In the category of "foreigners," however, he made no distinction between those hailing from other countries and those simply from other states. All, Webster maintained, finding themselves "stranger[s] among strangers," were at a great disadvantage and deserved help. Unlike local people, they had no relatives, friends, or neighbors to assist them. As for the Irish, Webster never mentioned them, although he did point out that "among all the religious societies in the town, the Catholic is the most attentive to its people. . . . The children are early made accountable; and they *never* are found begging in the street."⁵⁶

By contrast, "coloured people" who came from elsewhere failed to adapt. The East and West Indians were "generally miserable a short time after landing." More alarming and in greater numbers, were the "rogues and run-away slaves from southern states." Webster had no wish to return them to slavery, but he angrily insisted that "there is a material difference between an asylum for liberty, and a city of refuge for rogues."

⁵⁵[Redford Webster], *Miscellaneous Remarks on the Police of Boston; as respects paupers; alms and work house; classes of poor and beggars; laws respecting them; charitable societies; evils of the justiciary; imprisonment for debt; remedies* (Boston, 1814). The report covers forty-two pages. Ironically Webster's own son, Harvard Professor John W. Webster, was convicted of the most heinous of crimes, the 1849 murder of Dr. George Parkman. When the Connecticut Academy of Arts and Sciences printed a questionnaire to be distributed to every town in the state in 1800, it asked specifically about capital crimes and suicides, "whether committed by natives or foreigners" (p. 6). It also inquired about the poor, "whether natives or foreigners," as well as "Free blacks; their number, vices and modes of life, their industry and success in acquiring property; whether those born free are more ingenious, industrious and virtuous, than those who were emancipated after arriving to adult years" (p. 9). It is reprinted in *Voices of the New Republic*, pp. xiii–xiv.

⁵⁶*Miscellaneous Remarks on the Police of Boston*, pp. 5, 14, 15, 24.

Having been corrupted by slavery, these foreigners constituted “the most profligate wretches that ever disgraced society. . . . No beings among us are so bold, impudent and flagitious; they seem to be above all shame.” They gambled and fought with each other in court and out; Webster was shocked by their “licentiousness.”⁵⁷ Yet as disturbing as he found their behavior, he did not propose to deny them support. “Foreigners” of all colors, citizens felt, taxed their coffers and their tolerance; but for Webster no one in the republic, whether native or foreign born, should be deprived of his or her right to equal treatment under the law.

V.

It may well be that Webster’s measured views, expressed eight years after the trial of Daley and Halligan, more accurately reflect the mood of the court that condemned the two Irish men than does the rank injustice Blake claimed in 1806 and that Governor Dukakis treated as fact almost two centuries later. Certainly prejudice was at work in Massachusetts and in Northampton when the two transients from Boston were convicted, but it is also true that the very same court acquitted the Irishman James Busby the next day.⁵⁸ Moreover, the record of capital trials in Massachusetts demonstrates that every defendant was assigned at least one capable defense attorney—usually two—and that the standards of evidence, however improper they appear today, were the same whether the defendant or the victim was a foreigner or a native. Circumstantial evidence and the testimony of children led to the conviction of Americans as well as foreigners; and no defendant in a capital trial was permitted to testify on his or her own behalf.

⁵⁷*Miscellaneous Remarks on the Police of Boston*, pp. 8, 32. “Flagitious”: Of persons: Guilty of or addicted to atrocious crimes; deeply criminal, extremely wicked (OED). In the original text, the word is misprinted as “flatigious,” a word that does not exist.

⁵⁸It should be noted that anti-Catholicism became more prevalent after 1815 when, intermittently from 1824 onward, Protestant Orangemen from Northern Ireland clashed with Catholics from southern Ireland in New York, Philadelphia, and elsewhere (Doyle, *Ireland, Irishmen and Revolutionary America, 1760–1820*, p. 212).

American or foreign, the verdict against a defendant rested on many variables.⁵⁹

Perhaps the most interesting aspect of the Daley and Halligan trial is the fact that Francis Blake chose to ground his defense on claims of anti-Irish prejudice, a strategy that his senior associate on the case, Jabez Upham—a 1785 Harvard graduate who was serving in the legislature as a Federalist and who would be elected to the United States Congress that fall—apparently endorsed. By playing the prejudice card, Blake hoped to undermine the prosecution's evidence and its arguments. He could, he reasoned, appeal to jurors as officers of the court whose sense of equality before the law—what we might call “liberal guilt”—would prompt them to acquit the prisoners. But Blake was up against the elected attorney general and soon-to-be-elected governor, James Sullivan, a prosecutor who rarely lost a case. Moreover Sullivan's own ethnic heritage as the son of Irish Catholic immigrants undermined the force of Blake's rhetoric. Although Blake may well have been correct when he claimed that his clients had been “tried, convicted, and condemned in almost every bar-room and barber's shop,” their trial was held before the Supreme Judicial Court, not in a barroom or barbershop.

In the last hundred years, observers witnessing the virulent prejudices that flourished during the post-famine Irish migration, prejudices that persisted into the twentieth century, have mistakenly interpreted a defense lawyer's tactical rhetoric as an accurate representation of jurors' motivations in rendering a decision against Daley and Halligan. Moreover, because standards of procedure and evidence have dramatically altered in favor of defendants since the early nineteenth century, one might easily conclude from the trial report that the two Irishmen were indeed treated unfairly. But if the modern reader

⁵⁹Alan Rogers, *Murder and the Death Penalty in Massachusetts* (Amherst: University of Massachusetts Press, 2008), chaps. 1–3. Melvin Patrick Ely, *Israel on the Appomattox: a southern experiment in Black freedom from the 1790s through the Civil War* (New York: Vintage, 2005), chap. 6 (“Law and Order”), esp. pp. 231–33, indicates that the imperatives of equal justice could even shape judicial outcomes in the context of a racialized slave society. Prejudice did not always hold sway.

fails to bring a historical perspective to capital trials of the early republic, she or he will readily presume that every conviction involved a denial of “due process” and a “miscarriage of justice.” Only by viewing Daley and Halligan’s trial within the full gamut of the early republic’s capital trials, those of Americans and foreigners alike, can one fairly assess the role that prejudice may have played in the outcome. That anti-Irish prejudice was present in Northampton in 1806 is certain; but whether that or the prosecution’s arguments produced the verdict against the unhappy men is beyond a historian’s reach.

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