

4 U.S.: Patrick Byrne in Philadelphia

by John D. Gordan, III

Introduction

Patrick Byrne maintained a printing, publishing and bookselling business in Dublin from about 1779 until 1800.¹ Byrne was primarily a “pirate” who, alone or in partnership with other Dublin booksellers, reprinted works lately published in London, mostly popular fiction, plays and, in the 1790s particularly, law books. Until the Act of Union annexing Ireland to Great Britain, British publications had no copyright protection in Ireland, and Byrne was free to reprint and sell them in Ireland and westward with impunity. This he did in substantial volume and with considerable success, to the point that Mary Pollard could say that his bookselling “business was probably the biggest in Dublin at the end of the century.” However, like other Dublin booksellers and publishers, Byrne’s apogee was in the first four years of the 1790s, followed by a steady decline after that. A United Irishman, from May 1798 until June 1800, Byrne was held in Newgate Prison in Dublin on charges of high treason.²

Byrne’s imprisonment arose from his less prolific bookselling activities on the political, rather than the piratical, side. This essay explores this aspect of Byrne’s life, noted but neglected by bibliographers for the time he lived in Dublin and seemingly unnoticed for the period of his exile in Philadelphia from 1801 until his death in 1814. His publishing activities in Philadelphia seem to have been influenced by his political sympathies as much as when he was in Dublin.

¹ This brief history is written from the shoulders of giants: M. Pollard, *A Dictionary of Members of the Dublin Book Trade 1550-1800* (London 2000), 73; R.B. McDowell, *Historical Essays [1938-2001]* (Dublin 2003); R.B. McDowell, *Proceedings of the Dublin Society of United Irishmen* (Irish Manuscripts Commission 1998); James Raven et al., *The English Novel 1770-1829: A Bibliographical Survey of Prose Fiction Published in the British Isles*, Volume I: 1770-1799 (Oxford 2000); M. Durey, *Transatlantic Radicals and the Early American Republic* (Kansas 1997); V. Kinane, “Literary Food for the American Market: Patrick Byrne’s Exports to Matthew Carey”, 104 *Proc. of Am. Antiquarian Assoc.* 315 (1995); R.C. Cole, *Irish Booksellers and English Writers 1740-1800* (London 1986); James W. Phillips, *Printing and Bookselling in Dublin* (Dublin 1998), 28, 39. The author would also like to thank Conrad K. Harper, James Raven, Christian G. Fritz and Jordan D. Luttrell for their helpful comments and suggestions.

² Durey, *supra* n.1, at 98.

DUBLIN 1779-1800

Byrne was born in about 1740 and established his first business premises at 35 College Green in 1779, about the time that his imprint first appears. He remained at College Green until 1785, when he moved a short distance to 108 Grafton Street, where he was located until his imprisonment and exile.

From the outset he published pamphlets with political overtones. Even in the 1780s he published such examples of enlightened thinking as Paine's *Letter addressed to the abbé Raynal on the affairs of North-America* (1782); *The constitutions of the several independent states of America*, which also included the Declaration of Independence and the Articles of Confederation (1783); and *The Whole of the Proceedings at the Assizes at Shrewsbury on Friday August the sixth, 1784, in the case of the King...against William Davies Shipley, Dean of St. Asaph, for a libel* (1784), more commonly known as the Dean of St. Asaph's Case, in which Thomas Erskine's heroic advocacy against the limitation of the jury's role in criminal libel cases established by Lord Mansfield laid the groundwork for Fox's Libel Act in 1793. In 1790 Byrne led five other Dublin booksellers in republishing *The Whole Proceedings on the Trial of an Information exhibited ex officio, by the King's Attorney General against John Stockdale*, twice printed and sold by the defendant, a London bookseller successfully defended by Erskine on charges of libelling the House of Commons in connection with the Hastings impeachment proceedings.

From 1790 until the rising of 1798, Byrne published a canon of radical literature, primarily pirating tracts and trials first published in London; he also published Edmund Burke. But some of his political output was local and original – sedition prosecutions and pamphlets on the Catholic question. Most important of all was Byrne's apparent selection as printer for Ireland's revolutionary leader, Theobald Wolfe Tone, with whom he appears to have had a personal connection as well as common political views.

Theobald Wolfe Tone

Tone was the spirited and nationalistic guiding intellect and voice of the movement for Catholic emancipation in Ireland, a founder of the Society of United Irishmen in both Belfast and Dublin and, finally, the emissary to France and the hotspur of the revolutionary movement leading to the rising of 1798. In that failed effort to break England's grip, after a battle at sea off the Irish coast Tone was captured aboard a French warship, the "Hoche", in the second of the two fleets he had raised, in 1796 and 1798, from the French Government for the liberation of Ireland. Carried to Dublin, in his French brigadier's uniform Tone pleaded guilty to treason in summary proceedings before a British military tribunal in November 1798 and cheated the hangman by cutting his own throat in his cell on the eve of his execution two days later.

In 1790, though, Tone was only twenty-seven and trained in London for the legal profession, which he despised and barely began. Within a year and a half, he had written three important anonymous pamphlets, the last the most important and highly influential in the unfolding developments in Ireland at the time:

A Review of the Conduct of Administration During the Seventh Session of Parliament (April 6, 1790)

Spanish War! An Inquiry How Far Ireland Is Bound, of Right to Embark in the Pending Contest on the Side of Great Britain (June 20, 1790)

Catholics. An Argument on Behalf of the Catholics of Ireland (August 1, 1791).³

All of these pamphlets were printed by Patrick Byrne individually, and without sharing the imprint with others, as he often did.

In his freewheeling criticism of the government in the Review, the first of the pamphlets, Tone also repeated the Whig parliamentary criticism of the Chief Justice of the Irish Court of King's Bench, for holding an unidentified printer in £ 7800 special bail in a civil action for libel "on some

obscure characters and on one which was known only for its peculiar infamy.” The unnamed printer was John Magee, editor of the *Dublin Evening Post*, and the “peculiar[ly] infam[ous]” was one Francis Higgins, editor of the pro-government “Freeman’s Journal”.⁴ On June 28, 1790, Magee was brought to the Court of King’s Bench on habeas corpus for the trial of libel action brought against him by the patentee and manager of the Theatre-Royal in Dublin, for destroying his business by publishing a defamatory poem. The poem is not reproduced in the record, and Magee’s insanity defense failed; the jury awarded the plaintiff £ 200. Byrne printed the trial.⁵

In a rather lighthearted – and possibly exaggerated memoir – Tone wrote while awaiting the sailing of the first French fleet to Ireland in 1796, he described the conservative response to the second of his pamphlets, regarding England’s Spanish war:

On the appearance of a rupture with Spain, I wrote a pamphlet to prove that Ireland was not bound by the declaration of war, but might, and ought, as an independent nation, to stipulate for neutrality. In examining the question, I advanced the question of separation with scarcely any reserve, much less disguise; but the public mind was by no means so far advanced as I was, and my pamphlet made not the smallest impression. The day after it appeared, as I stood *perdue* in the bookseller’s shop, listening after my own reputation, Sir Henry Cavendish, a notorious slave of the House of Commons, entered, and throwing my unfortunate pamphlet on the counter in a rage, exclaimed: *Mr. Byrne, if the author of that work is serious, he ought to be hanged.* Sir Henry was succeeded by a bishop, an *English* Doctor of Divinity, with five or six thousand a year, laboriously earned in the church. His lordship’s anger was not much less than that of the other personage. *Sir*, said he, *if the principles contained in that abominable work were to spread, do you know that you would have to pay for your coals at the rate of five pounds a ton?* Notwithstanding these criticisms, which I have faithfully quoted against myself, I continue to think my pamphlet a good one, but apparently the publisher, Mr. Byrne, was of a different opinion, for I have every reason to believe that he suppressed the whole impression, *for which may his own Gods damn him.*⁶

³ T.W. Moody et al. (eds.), *The Writings of Theobald Wolfe Tone* (OUP 1998), I, 26, 50, 108 (hereafter “I Tone”). Generally, the publication dates appear to be based on the dates of first advertisement.

⁴ I Tone 43-46.

⁵ *The Trial of John Magee, for Printing and Publishing a Slanderous and Defamatory Libel against Richard Daly, Esq.* (1790).

⁶ T. Bartlett (ed.), *Life of Theobald Wolfe Tone* (Dublin 1998), 30-31.

The extreme rarity of all of Tone's pamphlets makes it difficult to appraise his accusation of suppression against Byrne. Yet, despite Tone's condemnation of Byrne, just a year later that Byrne printed Tone's pamphlet for Catholic emancipation. Indeed, although its origins and subject distinguish it markedly, Byrne also printed in 1790, after "Spanish War!", a satirical "bodice-ripper" entitled *Belmont Castle or, Suffering Sensibility*, written by Tone and two friends while studying law in London.⁷

Thomas Paine

In 1782 Byrne had co-published Paine's *Letter Addressed to the Abbe Raynal on the Affair of North America*. In 1791 he and thirty-five other booksellers published the first Irish edition of *Rights of Man, Part I*. This was followed in early 1792 by the still more provocative and inflammatory *Rights of Man, Part II*, which Byrne published alone, reprinting, again alone, another edition of Part I to go with it. According to David Dickson, "The (sic) Rights of Man II was published in London on 9 February 1792, and three days later Patrick Byrne produced an Irish edition."⁸ Later in the year, Byrne and others published Paine's recent *Letter Addressed to the Addressers*.

The latter two works of Paine, together with Pigott's three-part satire on the English royalty and establishment, *The Jockey Club*, which Byrne and six other Dublin booksellers began to publish also in 1792, formed the bases for a substantial number of seditious libel prosecutions of booksellers in England. In December 1792, Paine was convicted *in absentia* for *Rights of Man, Part II* in the King's Bench, Erskine's valiant efforts to protect him thwarted by an aggressive letter challenging the prosecution that Paine chose to send directly the Attorney General from his safe haven in Paris on

⁷ *Belmont Castle, or Suffering Sensibility*, edited by Marion Deane (Dublin 1998). According to Ms. Deane, the book "was not completed until the late summer of 1790." *Id.* at 2. It was reviewed in the November 1790 issue of *The Universal Magazine and Review or Repository of Literature*, which Byrne published from 1789-92. Slightly rarer than Tone's political pamphlets, copies exist at the National Library of Ireland, Seton Hall in New Jersey, the Bodleian Library and in private hands. The first two of these were in Tone's luggage on the "Hoche" when he was captured.

⁸ "Paine and Ireland" in D. Dickson et al., eds., *The United Irishmen - Republicanism, Radicalism and Rebellion* (Dublin 1993), 141.

the eve of trial; Joseph Gurney's shorthand report of the trial was republished in Ireland by Byrne and seven other Dublin booksellers after the turn of the year. By the spring of 1793, both Henry Symonds and James Ridgway, the leading publishers of literature of that sort in London, were in Newgate Prison, convicted of publishing *Rights of Man, Part II*, the *Letter Addressed to the Addressers* and the *Jockey Club*. However, the authorities in Ireland seem to have let the Dublin booksellers like Byrne alone.

The Catholic Convention

Tone's advocacy of Catholic emancipation, both through his publications and the United Irishmen, led to the revival in 1791 of The General Committee of the Catholics of Ireland, which met in Dublin for a week in December 1792 and for another in April 1793, followed by its dissolution and the Catholic Relief Act.⁹ Although a Protestant, Tone was a member of the small inner circle which guided its activities.¹⁰ While not its official printer, Byrne, a Catholic, was a member of the Committee, and benefited from the Catholic Relief Act by admission as a brother to the Guild of St. Luke the Evangelist, which governed the stationers of Dublin but from which Catholics had hitherto been barred. In 1792 Byrne published extensively on the Catholic question:

- The Report of a committee appointed by the Society of United Irishmen of Dublin, to enquire and report the popery laws enacted in this realm (2d Ed.)
- Petition of the Roman Catholics of Ireland
- Sketch of the debates in the House of Commons of Ireland, on Wednesday February 9, 1792
- A report of the debate which took place at a general meeting of Roman Catholics of the city of Dublin, held...Friday March 23, 1792...
- An address from the general committee of Roman Catholics, to their Protestant fellow subjects
- Transactions of the general committee of the Roman Catholics of Ireland, during the year 1791

⁹ Pollard, *supra* n.1.

¹⁰ I *Tone* xxxv-vi, 443.

- A report of the debates of both Houses of Parliament of Ireland, on the Roman Catholic bill, passed in the session of 1792.
- a letter to the Societies of United Irishmen of the town of Belfast...by William Todd Jones.

The Society of United Irishmen of Dublin

In October 1791, based on a statement of principles drafted by Tone, the Society of United Irishmen of Belfast was formed. This was followed by formation of a similar group in Dublin in December of that year, also announced by a circular drafted by Tone. The Belfast statement expressed the harsher and more radical view which characterized the difference in thought and action between the two urban centers for the remainder of the decade: “WE HAVE NO NATIONAL GOVERNMENT; we are ruled by Englishmen, and the servants of Englishmen, whose object is the interest of another country, whose instrument is corruption, and whose strength is the weakness of Ireland...” Parliamentary reform which included Irishmen of every religious persuasion was the Society’s object. In Dublin, the expression of such negative statements was not personalized to the English and more muted in calls for national solidarity.¹¹

The Society in Dublin, which at its height had a membership of 400 to 450, came to include most of the significant figures in the rising of 1798 and the political struggle that led to it: James Napper Tandy, Archibald Hamilton Rowan, Henry Sheares, the barrister, and his brother John, Tone himself, William Drennan, and Thomas Addis Emmet.¹² Patrick Byrne was an early member, being recorded as successfully sponsoring a candidate for membership in January, 1792, along with Leonard McNally, a barrister of whom more later.

Byrne’s 1793 publishing seems to have been devoid of radical political content but for the later parts of The Jockey Club and the Paine trial. Perhaps he was pre-occupied by the loss by fire of

¹¹ I Tone 139, 155.

¹² McDowell, *supra* n.1, at 224-254.

his home, together with some of his stock stored there, early in the year.¹³ However, events had been unfolding in both England and Ireland which would lead to significant political publications the following years.

In 1793 the authorities began a crack-down campaign on the Society of United Irishmen. After initial arrests of two of its leaders in March, Rowan was arrested in December and brought to trial on January 29, 1794 for distributing the year before with James Napper Tandy a Society pamphlet encouraging the revived and radicalized Volunteers for Ireland. Rowan was convicted and sentenced to two years imprisonment. The report of his trial was “printed for Archibald Hamilton Rowan” and “sold by Patrick Byrne.”

The intended publication of the report led to a purported confrontation between Byrne and Lord Clonmel, Chief Justice of the Court of King’s Bench, who had presided at the trial:

“*Lord Clonmel.*—Your servant, Mr. Byrne: I perceive you have advertised Mr. Rowan’s trial.

“*Byrne.* – The advertisement, my Lord, is Mr. Rowan’s, he has selected me as his publisher, which I think an honour, and I hope it will be profitable.

“*Lord Clonmel.* – Take care, Sir, what you do; I give you this caution; for if there are any reflections on the Judges of the land, by the eternal G—I will lay you by the heels!

“*Byrne.* – I have many thanks to return your Lordship for your caution; I have many opportunities of going to Newgate, but I have never been ambitious of that honour, and I hope in this case to stand in the same way. Your Lordship knows I have but one principle in trade, which is to make money of it, and that if there were two publications giving different features to the trial, I would publish both. There is a trial published by M’Kenzie.

“*Lord Clonmel.* – I did not know that; but say what you may on the subject, if you print or publish what may inflame the mob, it behoves the Judges of the land to notice it; and I tell you, by the eternal G—, if you publish or misstate my expressions, I will lay you by the heels! One of Mr. Rowan’s advocates set out with an inflammatory speech, misstating what I

¹³ Pollard, *supra* n.1.

said and stating what I did not say. I immediately denied it, and appealed to the Court and gentlemen in it, and they all contradicted him, as well as myself. These speeches were made for the mob, to mislead and inflame them, which I feel it my duty to curb. If the publication is intended to abuse me, I don't value it; I have been so long in the habit of receiving abuse, that it will avail little; but I caution you how you publish it; for if I find anything reflecting on or misstating me, I will take care of you.

“*Byrne*. – I should hope Mr. Rowan has too much honour to have anything misstated or inserted in his trial that would involve his publisher.

“*Lord Clonmel*. – What! Is Mr. Rowan preparing his own trial!

“*Byrne*. – He is, my Lord.

“*Lord Clonmel*. – Oho, oho! that is a different thing. That gentleman would not have been better used by me, standing in the situation he did, if he was one of the Princes of the blood.

“*Byrne*. – My Lord, Mr. Rowan being his own printer, you know he will publish his own trial; I stand only as his publisher.

“*Lord Clonmel*. – Even as his publisher, I will take care of you; and I have no objection to this being known.

“*Byrne*. – I return your Lordship many thanks.”¹⁴

The Reverend William Jackson

In mid-April, three months later, Rowan, who was given the run of the prison and dined there with his family nightly, received a visit from the Reverend William Jackson, an English curate with an interesting past¹⁵ lately come from France via London to recruit an Irish radical to travel to France and persuade the Directory to mount an invasion of Ireland. Introduced through Leonard MacNally, Jackson was accompanied by an English lawyer named Cockayne, who had begun informing

¹⁴ J.T. Gilbert, *History of the City of Dublin*, (1854, 1859), III, 213-214. Byrne had other scrapes with the authorities. In 1794 John Giffard, lately Sherriff of Dublin, brought a libel action against Byrne and a street hawker for printing and selling a pamphlet about him called “The Last Speech and Dying Words of the Dog.” The defendants prevailed in successive trials. Richard R. Madden, *The History of Irish Periodical Literature* (1867), II, 126.

¹⁵ Matthew J. Kinservik, *Sex, Scandal, and Celebrity in late Eighteenth-Century England* (New York 2007); Durey, *supra* n.1, at 48.

the Pitt government of Jackson's activities before they had ever left London. In Rowan's cell Jackson persuaded Tone, another visitor whom Jackson had already met, to draft an exposition on the favorable reception the French might expect from the Irish if such an invasion occurred. Tone did so, and Rowan revised it; and although, when Jackson tried to induce Tone to travel to France, Tone retrieved his original, Jackson mailed copies Rowan had made to France, the authorities intercepted the mail, and Jackson was arrested on April 28. Rowan then used his warm relationship with his jailers to effect his escape. The authorities closed down the Society of United Irishmen in Dublin. Tone, compromised and in danger, made an uneasy and ambiguous truce with the government and in May, 1795 left Ireland, with his family, for Princeton, New Jersey.¹⁶

Shortly before Tone's departure, Jackson was put on trial in Dublin for treason after a year's incarceration, on April 23, 1795. Despite the efforts of his defender, the great John Philpot Curran, he was convicted. Brought up for sentencing on April 30, Jackson had apparently taken poison in his cell earlier that day and died in the dock in the courtroom before sentence could be imposed. After his death in 1820, it came to light that Leonard MacNally, mentioned earlier, the most senior of Jackson's junior trial counsel and a United Irishmen, had become a valued government spy after being compromised by his association with Jackson.¹⁷

Byrne and Hugh Fitzpatrick, printer to the Catholic Convention, published Jackson's trial, which had been taken in shorthand by Curran's most junior assistant counsel, William Sampson. In April 1795, Byrne also printed, alone this time, the great speech delivered by Arthur O'Connor in the Irish House of Commons on May 4, 1795, in which O'Connor emerged as the radical revolutionary he had become, his ringing peroration: "The cause of freedom is the cause of God."¹⁸

¹⁶ Marianne Elliott, *Wolfe Tone – Prophet of Irish Independence* (New Haven 1989), 237-259.

¹⁷ T. Bartlett (ed.), *Revolutionary Dublin 1795-1801 – The letters of Francis Higgins to Dublin Castle* 38-46 (Dublin 2004); William J. Fitzpatrick, *Secret Service under Pitt* (2d ed. 1892), 174-210.

¹⁸ Speech of Arthur O'Connor: Esq. in the House of Commons of Ireland, Monday, May 4th, 1795, on the Catholic bill. See generally Jane Harter Hames, *Arthur O'Connor, United Irishmen* (Cork 2001), 88-89.

The prosecutions of the London Corresponding Society

In England, in mid-1794 – just days after Jackson’s arrest – Pitt’s regime cracked down on the London Corresponding Society, and in the fall of 1794 brought its leaders to trial successively for high treason. Each of them – Thomas Hardy, John Horne Tooke and John Thelwall – was successively defended by Thomas Erskine. There were a number of competing editions of these trials published in England, and Byrne put out a unique version of his own, drawn substantially and ultimately *verbatim* from the accounts of these trials published by the *Morning Chronicle* in London, although Byrne chose to misascribe his edition of at least Hardy’s trial to one of the professional stenographers who put out his own edition, Manoah Sibly. In addition, Byrne published and advertised on the title page of each of the three trials a Dublin edition of *The First and Second Reports of the Committee of the Secrecy of the House of Commons*, containing the internal papers of the L.C.S. Ever the entrepreneur, Byrne subsequently wrapped all four pamphlets in a 1795 common title page, leaving the separate 1794 title pages on, and sold them as a unit; he also published separately Erskine’s speech to the jury at the *Hardy* trial.

The rising of 1798

The crackdown on the United Irishmen merely drove the Irish radicals underground to plot revolution. Tone proceeded from Princeton to Paris and, as noted, raised his first fleet in 1796, only to have it blown out to sea within sight of its destination. In Ireland, the planning and recruiting for the rising coalesced around such figures as O’Connor, Lord Edward Fitzgerald, Thomas Addis Emmet and William Sampson.¹⁹

Byrne seems not to have been idle. His surviving publications after 1794 declined along with the rest of the Dublin book trade’s, and if he published political tracts in the 1795-98 period – as

¹⁹ Elliott, *supra* n.16, at 300-312; Hames, *supra* n.18, at 122-164; R. O’Donnell, Robert Emmet and the Rebellion of 1798 (Dublin 2003); S. Tillyard, Citizen Lord-Edward Fitzgerald 1763-1798 (Vintage 1998) (paperback); T. Pakenham, The Year of Liberty – The History of the Great Rebellion of 1798 (New York 1969).

distinct from selling other people's publications –none exists with his imprint. But that he was still active in selling radical publications is clear. Francis Higgins, the pro-government newspaper publisher turned government informant, reported to his handler in May 1797, that Byrne, along with Fitzpatrick and James Moore, another Dublin publisher, were “of the brotherhood and send out a distributive share of these kind of libels.” But Byrne's continuing political radicalism is best remembered by the unwitting part he played in one of the episodes in the spring of 1798, as the rebellion emerged under the intense pressure of the authorities to repress it by arresting its leadership.²⁰

The rising was scheduled to start in Dublin on May 23, although the French fleet that was to carry Tone to Ireland and death was several months from setting sail. However, on May 19, Lord Edward Fitzgerald, one of the rebellion's principal leaders, was apprehended in a firefight and died shortly thereafter. Martial law and a curfew were declared in Dublin. Among other incidents, on May 21 the Sheares brothers, mentioned earlier, and Patrick Byrne were arrested by British authorities. Byrne's shop in Grafton Street was also ransacked. According to an eyewitness: “It was a pitiful sight to behold the amount of property in beautifully bound books ruthlessly torn to pieces and tossed out of the windows into the street.”²¹ Three weeks later, in Paris, Tone learned this news and that the insurrection had spread, with greatest success in County Wexford.²²

The trial of the Sheares brothers, which took place on July 12, less than two months after their arrests, established that the Sheares brothers and Patrick Byrne were arrested because of Byrne's bad judgment. John Armstrong, a captain in the King's County Militia, testified that he had been in Byrne's shop in Grafton Street, which for two years he frequented nearly daily “to purchase every political pamphlet as it came out.”²³ Byrne, who knew Armstrong, had followed him out into the street

²⁰ Bartlett, *supra* n.17, at 154.

²¹ Fitzpatrick, *supra* n.17, at 393.

²² *Id.* at 136-37.

²³ 27 T.B. Howell (ed.), *A Collection of State Trials* (1820), 307.

(there being other customers in the shop) and asked if he were willing to meet the elder brother, Henry Sheares, the lawyer. Armstrong consulted a fellow officer and returned to Byrne's establishment that evening, where "in the inner shop", Byrne introduced him as "a true brother" to both Henry and John Sheares. John Sheares advised him that the insurrection would shortly begin without waiting for the French fleet and that they wished to recruit Armstrong to deliver the King's County militia, then encamped outside Dublin. He had further meetings with the brothers at Henry Sheares's home during the ensuing week to finalize his role in the uprising but was reporting all his contacts to his commanding officer of his regiment and to Lord Castlereagh. According to Armstrong's testimony, John Sheares was arrested on May 21, the day after their last meeting. The prosecution also introduced various compromising and incendiary documents found in John Sheares's possession. Despite the efforts of the legendary Curran, assisted by the ubiquitous spy MacNally and others to prove Armstrong a turncoat, liar and war criminal, the Sheares brothers were convicted after seventeen minutes deliberation by the jury, sentenced the next day, and executed the day after, following the failure of the efforts to obtain clemency from the Castle. The statutorily prescribed brutality was enhanced by the ineptitude of the executioner. Other like proceedings followed.

Byrne was luckier; no doubt he was more of a sympathizer than an active participant in the rising. On October 6, 1798, the King approved a series of acts of the Irish Parliament designed to counter the rising. Among these was "an Act to prevent Persons from returning to His Majesty's Dominions, who have been, or shall be transported, banished or exiled, on Account of the present Rebellion, and to prohibit them from passing into any Country at War with His Majesty" (38 Geo. III ch. 78). This Banishment Act of 1798 was the outcome of an agreement between the surviving leaders of the rising – Arthur O'Connor, Thomas Addis Emmet and William Sampson – to provide confessions, more or less circumscribed in the event, in return for permanent exile for themselves and other

prisoners.²⁴ The statute named those three and about eighty other individuals, including “Patrick Byrne, of the city of Dublin, printer and bookseller,” as seeking royal pardon on condition of banishment, with death the price of returning. Section III of the Act prohibited anyone resident in the Kingdom from “hold[ing] any communication or correspondence, by writing or otherwise, with any person so transported...”

For reasons not readily apparent, despite the enactment of the statute in October 1798, Byrne languished in Newgate Prison until about June 1800; there is but one publication with his (sole) imprint for all of 1799, though more than that in 1800. He petitioned for his release in February 1799 on the grounds that his health was bad and that his business was failing due to the death of his wife four months before.²⁵ In the fall of 1800 he left Ireland for Philadelphia, where he arrived in November.²⁶

PHILADELPHIA 1800-1814

From his arrival in November 1800 until 1802, Byrne has left little trace; his output for 1801 consisted of a single 74-page 12 mo. pamphlet, the so-called third edition of George Colman the Younger’s comedy, “The Poor Gentleman”.²⁷ But in 1802 he burst back onto the scene as a substantial bookseller and a modest publisher. He advertised in the radical newspaper *Aurora*²⁸ and in June published a sixty-six page priced catalogue entitled: *A Catalogue of the Quire Stock of Books of P. Byrne*, advising that orders were executed “at his house No. 72, Chesnut Street, Philadelphia, or 108

²⁴ In his *Memoirs of William Sampson* (2d ed. 1817), 38-9, Sampson reports that to overcome his hesitation, and O’Connor’s, to finalize the agreement, the authorities began executing those who had been tried and convicted after the Sheares trial, starting with William Byrne.

²⁵ Pollard, *supra* n.1; McDowell, *supra* n.1, refers to two petitions by Byrne, the second claiming responsibility for improving the art of printing in Ireland and the promotion of industrious families. Kinane, *supra* n.1, at 330, identifies a February 1799 petition and a further petition dated April 17, 1799, in which Byrne referred to the destruction of his business. See also Durey, *supra* n.1, at 129.

²⁶ Pollard, *supra* n.1; Kinane, *supra*, n.1, at 331.

²⁷ “The Poor Gentleman” was printed for Byrne by Joseph Charless, an earlier arrival from Dublin and long-time business associate of Mathew Carey. Charless also printed Byrne’s 1802 Vesey and East volumes and is an interesting pioneer in U.S. printing history. See David Kaiser, *Joseph Charless – Printer in the Western Country* (U. Penn. 1963), 31, 139.

²⁸ Kinane, *supra* n.1, at 331.

Grafton Street, Dublin” and claiming that “of most of the books in this catalogue, Byrne has large quantities – of many the whole impressions.” The “Preface” to the catalogue says:

P. Byrne has his most grateful acknowledgment to make to the Gentlemen of the law, for their very liberal support of him, since his commencement of business in this city, and for the encouragement they have given him in his undertaking to print good American Editions of new Law Books . . .

Byrne announced that he had completed printing Willis’s Reports in two volumes and volume 3 of Vesey, Junior, and that volumes 4 and 5 of Vesey were in the press, as was volume 1 of East’s Reports – a continuation of Dunford and East’s existing 8-volume report of King’s Bench decisions (offered for sale in the catalogue).²⁹ Byrne also boasted of his variety of “Miscellaneous Books” and assured the reader that “[b]y every vessel from Dublin he gets an new supply of Books, Law, Miscellany, etc.”

Byrne was hardly unknown in Philadelphia when he got there: for a decade before his imprisonment he had carried on extensive commercial relations with Mathew Carey, its leading publisher. English law books which Byrne pirated in Dublin in the 1790s and carried his imprint were found in many American lawyers’ libraries. Moreover, Byrne was in a city which for the last ten years had been the seat of the national government, then on the eve of its move to the new capitol, and where Jeffersonian Republicans had made the support of radical emigré publishers a significant adjunct to their political program.³⁰ The best example of this was Thomas Jefferson’s support of William Duane, editor of the *Aurora* and would-be government printer during Jefferson’s administration.

Byrne published little original material in Philadelphia compared to his heyday in Dublin, devoting his energies to bookselling in a succession of downtown stores and maintaining a “miscellaneous bookstore” in Baltimore managed by his son. Much of what Byrne did publish were

²⁹ To these may be added Peake’s *Compendium of the Law of Evidence*, which Byrne also published in 1802.

³⁰ Michael Durey, “Thomas Paine’s Apostles: Radical Emigrés and the Triumph of Jeffersonian Republicanism”, *Wm. & Mary Quarterly*, (Oct. 1987), 3d Series, Vol. 44, pp. 661-688 at 681-88.

American editions of British law books, as noted above.³¹ In three instances, Byrne published with co-publishers, either pirated – as with Giles Jacob’s *Law Dictionary* in six volumes (1811) with Isaac Riley, a New York legal publisher best known for printing Cranch’s *Reports of Decisions of the Supreme Court of the United States*,³² or original – as with *A Report of the Trial of an Action for Damages, brought by the Reverend Chester Massey* (1804), published with Bernard Dornin of New York City, another United Irish refugee, and John Anthon’s *A General Course of Preparatory Studies for the Duties of the Bar* (1810), published with others in New York, Philadelphia, Boston, Richmond, Savannah and Albany.³³

But the original material Byrne did publish truly stands out because of its authorship were:

- Joseph Priestley
- Thomas Cooper
- Alexander James Dallas
- Thomas Lloyd
- Hugh Henry Brackenridge

Priestley, Cooper, Dallas and Brackenridge were each correspondents of Thomas Jefferson, and Dallas his political appointee. All five more or less shared similar liberal or radical views – in Brackenridge, perhaps colored by misanthropy – which got all of them into trouble. Moreover, while there are no known personal connections between Brackenridge and the others named, Priestley and Cooper had the

³¹ In addition to those already mentioned, Byrne published four volumes of Espinasse’s Reports (1805-1807), five volumes of two series of Bosanquet’s Reports (1805-1809) and two volumes of Saunder’s Reports (1807). He also published Joseph Chitty’s Treatise on the Laws of Bills of Exchange (1803), A Treatise of Equity, by John Fonblanque (1807), East’s Treatise of Pleas of the Crown (1806), Blackstone’s Reports (1808) (2 vols.), two more editions of Peake in 1806-7 and 1812, On the Law of Bailments, by Sir William Jones (1804), Roper’s Treatise on the revocation and republication of wills and testaments (1803) and two editions (1804 and 1811) of The Rules of Evidence on Pleas of the Crown, by the duplicitous Leonard MacNally, not yet exposed.

³² Marguerite V. Doggett, Long Island Printing 1791-1830 (Long Island Hist. Soc. 1979), 125.

closest of friendships; Cooper and Dallas were also politically allied. Priestley was an exile from Birmingham accompanied by Cooper, who, along with Lloyd and Patrick Byrne, had been in prison because of their politics – Cooper in Philadelphia in 1800, Lloyd – although an American – in London 1793-95, and Byrne in Dublin in 1798-1800. Cooper’s politics made him popular with the Irish expatriates of Philadelphia, particularly William Duane, manager of the *Aurora*, who emigrated and worked with Thomas Lloyd, and who was represented in his legal battle with the United States Senate in 1800 by Dallas and Cooper.³⁴ Cooper and Brackenridge were both Pennsylvania judges. Cooper was impeached and removed from office by the Pennsylvania legislature in 1812. Brackenridge provoked an address by the Pennsylvania legislature to Governor McKean in 1804 for his removal, but Governor McKean refused to remove him;³⁵ Dallas successfully represented the rest of the Supreme Court bench at their related impeachment trial.³⁶

Joseph Priestley

An indefatigable and extraordinary scientist, theologian, Dissenter and political activist self-exiled to the United States after a mob destroyed his home and laboratory in Birmingham in 1791,

³³ Byrne co-published a few non-law books, such as *Aesop’s Fables* (1802) and *The Parent’s Friend* (1803), the latter printed by Jane Aitken for Byrne and Matthew Carey, and both sold by them and other booksellers. Byrne also published a few miscellaneous non-legal books while in Philadelphia.

³⁴ Dumas Malone, *The Public Life of Thomas Cooper*, (Yale 1926), 131-133. Lyman Butterfield described Duane as “a printer of colorful international background, [who] succeeded B[enjamin] F[ranklin] Bache as proprietor of the Philadelphia *Aurora*, which was for some years the most powerful Jeffersonian newspaper in the country under Duane’s spirited management; during those years he was the Democratic-Republican ‘boss’ of Philadelphia” L.H. Butterfield, *Letters of Benjamin Rush* (Princeton 1951), II, 904 n.8.

³⁵ Claude M. Newlin, *The Life and Writings of Hugh Henry Brackenridge* (Princeton 1932), 241-45.

³⁶ Omitted from this last and any extended discussion is Byrne’s two-volume edition of Peters, *Admiralty Reports* in 1807. It was one of two, the other published by William P. Farrand. Printed by the same printer, the two editions are identical except for the name of the publisher on the title pages.

Byrne was a prolific advertiser of his stock, but no advertisement from Byrne’s edition of the *Admiralty Reports* has been identified. Byrne’s edition is also much less common in the antiquarian book trade. No explanation for these circumstances has been found.

Joseph Priestley is the subject of nearly annual book-length biographical studies.³⁷ So wide were his talents that biographies of his London publisher, Joseph Johnson, and his friend, Benjamin Vaughan, are as much biographies of Priestley as they are of their titular subject.³⁸

For the first few years after his arrival in exile in Pennsylvania in 1794, Priestley's principal publisher seems to have been Thomas Dobson.³⁹ In later years Priestley spread the printing and publishing around, primarily to his immediate followers in Northumberland, Pennsylvania, Andrew Kennedy and John Binns, United Irishmen who had been acquitted with Arthur O'Connor at the Maidstone assizes in 1798. However, in the last year of his life, which ended on February 6, 1804, the bulk of Priestley's publishing was handled by Patrick Byrne. These included *Socrates and Jesus Compared*;⁴⁰ *A Letter to the Reverend John Blair Linn, A.M., Pastor of the First Presbyterian Congregation in the City of Philadelphia In Defense of the Pamphlet, Intituled, Socrates and Jesus Compared*; *A Second Letter to the Revd. John Blair Linn D.D. Pastor of the First Presbyterian Congregation of the City of Philadelphia in Reply to His Defense of the Doctrine of the Divinity of*

³⁷ 2008's was I. Rivers (ed.), *Joseph Priestley, Scientist, Philosopher, and Theologian* (Oxford 2008), preceded by *Joseph Priestley and English Unitarianism in America* (Penn. State 2007). Most useful for this study were the second volume of the magisterial biography by R.E. Schofield, *The Enlightened Joseph Priestley – A Study of His Life and Work* (Penn. State 2004), and J. Graham, *Revolutionary in Exile – The Emigration of Joseph Priestley to America 1794-1804*. *Transactions of the American Philosophical Society*, LXXXV, pt. 2 (1995). A recent publication dealing with his scientific achievements in Birmingham is Uglow, *The Lunar Men - Five Friends Whose Curiosity Changed the World* (New York 2002). See also Durey, *supra* n.1, at 18-21, 141, 180.

³⁸ H. Braithwaite, *Romanticism, Publishing and Dissent – Joseph Johnson and the Cause of Liberty* (Palgrave 2003); C.C. Murray, *Benjamin Vaughan (1751-1835) – the Life of an Anglo-American Intellectual* (New York 1982).

³⁹ R.D. Arner, *Dobson's Encyclopedia – the Publisher, Text and Publication of America's First Britannica, 1789-1803* (Penn. 1991), 15, 25. To his 1794 publication of Priestley's *Letters Addressed to the Philosophers and Politicians of France on the Subject of Religion*, Dobson attached a priced catalogue of 77 works by Priestley which Dobson evidently offered for sale. He also printed the auction catalogue for the sale of Priestley's library after his death.

⁴⁰ Summarized by Schofield, the gist of *Socrates and Jesus Compared* was: "Prince of heathen philosophers, Socrates was nonetheless a polytheist and public practitioner of divination. Priestley's comparison of the two showed Jesus superior in every regard." Schofield, *supra* n.37, at 387.

Christ and Atonement;⁴¹ and *The Originality and Superior Excellence of Mosiac Institutions Demonstrated*. Published in 1803, all but the first were printed by Kennedy, presumably on presses in Northumberland; the first was “printed for the Author and sold by P. Byrne.”⁴² In addition, in 1803 Byrne published second editions of *The Doctrine of Phlogiston Established, and That of the Composition of Water Refuted*⁴³, and the two-volume *Lectures on History and General Policy*. Priestley made additions to each, undeterred by Byrne’s pirated editions of the latter published in Dublin in 1788 and 1791, and Byrne took the opportunity to insert a four-page catalogue of law books into the back of the first volume of this new edition.

Thomas Jefferson admired Priestley tremendously. Writing to David Rittenhouse – liberal, scientist and first Director of the United States Mint – in February 1795 from Monticello, having left Washington’s cabinet, he said: “If I had but Fortunatus’s wishing cap to seat myself by your fireside, and to pay a visit to Dr. Priestl[e]y, I would be contented. His writings evince that he must be a fund of instruction in conversation, and his character an object of attachment and veneration.”⁴⁴ In August 1800, then in direct correspondence with Priestley, Jefferson wrote: “I trust the day is not distant when America will be proud of your presence, & be anxious only to find occasions of obliterating the pain which some of her degenerations stimulated by and countenanced by foreign malice, have been able to

⁴¹ The published correspondence with Linn was a pamphlet which began with what Priestley conceived was Linn’s misattribution to Socrates of precepts from the Gospels and moved on from there to the core issue of the anti-Trinitarian Unitarianism espoused by Priestley – the humanity of Jesus. Schofield, *supra* n.37, at 387-388.

⁴² James Green, Librarian of the Library Company of Philadelphia, has kindly brought to my attention another printing of *Socrates and Jesus Compared* with two different title pages: “Philadelphia, Printed for P. Byrne” and “From the Press of the Late R. Aitkin”. As the presswork is identical but different from the edition noted in the text, it appears that both versions mentioned in this footnote were printed by Jane Aitken. One of the latter is a presentation copy from Priestley to Dr. Benjamin Rush.

⁴³ Phlogiston was a chemical substance which Priestley conceived to explain phenomena he encountered in his experiments. His discovery of oxygen in 1772-5 has been a more enduring success. Schofield, *supra* n.37, at 112.

⁴⁴ J. Catanzariti (ed.), *Papers of Thomas Jefferson* (Princeton 2000), XXVIII, 279.

excite in your mind.”⁴⁵ After Priestley’s death, Jefferson wrote Thomas Cooper that “no man living had a more affectionate respect” for Priestley than Jefferson. “In religion, in politics, in physics, no man has rendered more service.”⁴⁶

Jefferson’s correspondence with Priestley continued during his presidency, and on April 3, 1803, he wrote to Priestley of the responsive chord *Socrates and Jesus Compared* had struck in him, expanded on a moral view of Jesus compared to Greek and Roman philosophers “omit[ing] his divinity” (perhaps in deference to Priestley’s Unitarianism), urged Priestley to expand the work and invited him to Washington:

As yet we are but a cluster of villages; we cannot offer you the learned society of Philadelphia; but you will have that of a few characters whom you esteem, & a bed & a hearty welcome with one who will rejoice in every opportunity of testifying to you of his high veneration and affectionate attachment.⁴⁷

So taken was Jefferson with *Socrates and Jesus Compared* that he wrote a similar letter to Dr. Benjamin Rush, expanding on his own views in a “syllabus of an estimate of the merit of the doctrines of Jesus, compared with those of others”, which he drafted and enclosed. This remarkable document, although noting that because Jesus “fell an early victim to the jealousy & combination of the altar and the throne”, insists that “a system of morals is presented to us, which, if filled up in the true style and spirit of the rich fragments he left us, would be the most perfect and sublime that has ever been taught by man . . . He pushed his scrutinies into the heart of man; erected his tribunal in the region of his thoughts, and purified the waters at the fountain head.” But, pace Priestley, the “question of his being a member of the

⁴⁵ B. Oberg (ed.), *Papers of Thomas Jefferson* (Princeton 2005), XXXII, 95.

⁴⁶ Graham, *supra* n.37, at 165, quoting Thomas Jefferson to Thomas Cooper, July 9, 1807.

⁴⁷ Thomas Jefferson, *Writings* (Library of America 1984), 1120-22.

Godhead, or in direct communication with it . . . is foreign to the present view, which is merely an estimate of the intrinsic merit of his doctrine.”⁴⁸

Jefferson’s receipt of the *Second Letter to Linn* and the phlogiston pamphlet elicited a laudatory, if less expansive, letter to Priestley, dated January 29, 1804.⁴⁹ Whether it reached Northumberland before February 6, when Priestley died, is unknown. However, after Priestley’s death, his son Joseph corresponded with Jefferson concerning the *Doctrine of Heathen Philosophy compared with Revelation*, printed by Binns, Priestley’s last work undertaken at Jefferson’s suggestion. Priestley’s son advised that “I have desired Mr. Patrick Byrne bookseller of Pa to send you a copy . . .” Jefferson responded on December 27, 1804 noting that he had no objection to it being known that he had encouraged Priestley in the work, but that “my wish was confined to the suppression of the Syllabus I sent him, until the political passions which have been kindled against me shall be so far subsided as to admit its being read with candid & just dispositions.” Byrne sent the book on January 2, 1805, and Jefferson wrote to Byrne acknowledging receipt on February 14.⁵⁰

Thomas Cooper

Fortunate in his single biographer,⁵¹ Thomas Cooper was a radical and close friend of Joseph Priestley, at his side in his later exile in Northumberland, Pennsylvania, and author of the eulogistic appendices in Priestley’s posthumously published memoirs.⁵² Cooper was successively a pamphleteer,⁵³ travel writer,⁵⁴ newspaper editor, convict, lawyer, judge, scientist, academician, and like

⁴⁸ Id. at 1122-26. Rush responded briefly, noting his disagreement. Butterfield, *supra* n.34, 863, 864. Jefferson’s letters to Priestley and Rush continued to reverberate, however, and were a subject of Jefferson’s August 22, 1813 letter to John Adams. Leslie J. Cappon (ed.), *The Adams-Jefferson Letters* (1959), 367, 368-369.

⁴⁹ Thomas Jefferson, *supra* n.47, at 1141.

⁵⁰ E.M. Sowerby, *Catalogue of the Library of Thomas Jefferson* (Washington, D.C. 1952), I, 121-22.

⁵¹ Malone, *supra* n.34. See also Durey, *supra* n.1, at 24-25, 167, 180.

⁵² *Memoirs of Dr. Joseph Priestley to the Year 1795, written by himself, with a continuation, to the time of his Decease, by his Son, Joseph Priestley* (London, J. Johnson 1806); Lawrence Beatson, “‘Back Country’ Politics and Culture: A Letter from Thomas Cooper to Joseph Clay”, *Penn. Mag. of Hist. and Biog.* CXX, (1996) 107-117.

⁵³ Malone, *supra*, n.34, at 402-406.

Priestley, a correspondent of Thomas Jefferson,⁵⁵ a great admirer who tried hard but failed to secure Cooper for the faculty of the University of Virginia.

Cooper's legal career began in this country before Patrick Byrne's arrival, inauspiciously. Antagonizing the Federalist establishment in the Senate with his defense of William Duane in early 1800,⁵⁶ in April 1800 Cooper found himself the object of a seditious libel indictment laid under the Sedition Act of 1798 for an attack in a handbill he published on President John Adams's handling of the Jonathan Robbins case, accompanied by his exchange of letters with Joseph Priestley in 1797. Tried on April 16, 1800, two days after arraignment, in the United States Circuit Court in Philadelphia before Justice Samuel Chase and Judge Richard Peters, Cooper defended the case *pro se* and was convicted and sentenced to 6 months imprisonment and a \$400 fine.⁵⁷

While serving his sentence, Cooper prepared a book-length hornbook on the short-lived Federalist Bankruptcy Act of 1800, which was "sold at the Aurora-Office, in Market Street."⁵⁸ Cooper dedicated the book to Alexander James Dallas "for having enriched the Lawyer's Library with a collection of decisions, which would do credit to any Court of Judicature as well as to any reporter, either in this country, or in Europe."

⁵⁴ Some Information Respecting America, Collected by Thomas Cooper, Late of Manchester (London J. Johnson 1794).

⁵⁵ Malone, *supra* n.34, at 164-173.

⁵⁶ *See infra* at pp. 29-30.

⁵⁷ *An Account of the Trial of Thomas Cooper of Northumberland; on a Charge of Libel Against the President of the United States* (Philadelphia 1800). *See also* James Morton Smith, *Freedom's Fetters* (Cornell 1956), 307-333. In his post-rapprochement July 22, 1813 letter to Jefferson, Adams blamed Cooper for preventing Adams from forming a relation with Priestley such as Jefferson had had: "If Priestley had lived, I should certainly have corresponded with him. His friend Cooper . . . had as fatal an influence over him as Hamilton had over Washington; and whose rash hot head led Priestley into all of his Misfortunes and most [of] his Errors in Conduct, could not have prevented explanations between Priestley and me * * * Scarcely anything that has happened to me, in my Curious Life has made a deeper Impression upon me, than that such a learned ingenious scientific and talented Madcap as Cooper, could have had influence enough to make Priestley my enemy." Cappon, *supra* n.52, at 362, 363. *See also* Steven Johnson, *The Invention of Air* (New York 2008), 188-196.

His conviction did no damage to his legal career. After his release and three years of service as a Luzerne Commissioner hearing land claims, in August 1804 Governor Thomas McKean appointed Cooper a judge: President Judge of Third District, and after the reorganization of the courts in 1806, of the Eighth District. His judicial tenure ended in 1811 on his removal by the governor upon joint-address of the legislature, then in the hands of the political opponents.

While on the bench, Cooper had occasion to sit on the High Court of Errors and Appeals, the appellate court which then reviewed decisions of the Pennsylvania Supreme Court. Argued twice by the cream of the Philadelphia bar, *Dempsey, Assignee of Brown v. Insurance Company of Pennsylvania*, turned on the then-vexed question of the conclusiveness of a decree of condemnation by a foreign admiralty court, often decisive of the owner's claim against his insurers. Cooper dissented from an otherwise unanimous decision, declaring himself:

not being prepared to decide upon second rate evidence – upon testimony unsatisfactory to honest minds – not prepared to declare the law one way, while the real facts look another, my opinion decidedly is, that every sentence of a foreign court of Admiralty or Vice Admiralty is examinable in all its parts: that it is evidence of nothing, but that the property captured was condemned . . .”

Cooper apparently printed his opinion himself but arranged for Alexander James Dallas to write an introduction of some length, dated May 14, 1810; the dissent was then republished as *The Opinion of Judge Cooper, on the Effect of a Sentence of a Foreign Court of Admiralty* (Philadelphia 1810), printed for Patrick Byrne. Cooper also wrote to Thomas Jefferson on May 10, 1810, advising him that Dallas would be reporting the opinion and offering a copy once it was published.⁵⁹

Cooper's next legal publication came after he had accepted the position of professor of chemistry at Carlisle College (Dickinson College) in Carlisle, Pennsylvania. It was *The Institutes of Justinian With Notes* (Philadelphia 1812), a massive, over 700-page volume printed for Patrick Byrne,

⁵⁸ Thomas Cooper, *The Bankruptcy Law of America Compared with the Bankrupt Law of England* (Philadelphia 1801).

evidently the first book on Roman law published in America.⁶⁰ In 1812 Cooper published *The Introductory Lecture of Thomas Cooper, Esq., Professor of Chemistry at Carlisle College, Pennsylvania*, which was “printed by Archibald Loudon” at Carlisle, but the verso of its title page advertises as “Publications to be had at the Book-store of Patrick Byrne, Philadelphia” both Cooper’s dissent in “Dempsie” and *the Institutes of Justinian*, the latter described as “In the Press and speedily will be Published.”

Cooper sent both his 1812 publications to Jefferson when they came out, but with respect to the *Institutes*, Jefferson took time to read it before replying. Much as Priestley’s *Socrates and Jesus Compared* had done nine years earlier, the *Institutes* stimulated an intellectual response in Jefferson. Writing to Cooper under date of January 16, 1814, Jefferson canvassed at length the history of common law treatises, preferring Bracton to all others and proposing that Cooper update and annotate Bracton’s work as he had just done for the *Institutes*. Jefferson also reported his plans to create a new university in Virginia – a work in which he ultimately succeeded – which, he told Cooper, “would offer places worthy of you, and of which you would be worthy.”⁶¹ Jefferson followed his January 16 letter with another, dated February 10,⁶² in which he made good his earlier letter’s promise to send Cooper a section copied from his commonplace book entitled, in its first pamphlet edition, “Whether Christianity is part of the Common Law?”⁶³

⁵⁹ *Papers of Thomas Jefferson, Retirement Series* (Princeton 2005), II, 375-377.

⁶⁰ The importance of Cooper’s *Justinian* is discussed in articles by R.M. Helmholz and M.H. Hoeflich. R.M. Helmholz in “Symposium: Relationships among Roman Law, Common Law, and Modern Civil Law: Roman Law in American Legal Culture”, *Tulane L.Rev.*, vol. 66, 1649-1684, 1723-1743 (1992), and in M.H. Hoeflich “Translation and Reception of Foreign Law in the Antebellum United States”, *Am. J. Comp. Law* 50, 753-775 (2002).

⁶¹ *The Writings of Thomas Jefferson* (Washington, D.C. 1907), XIV, 54-63.

⁶² Thomas Jefferson, *supra* n.47, at 1321-29.

⁶³ Thomas Jefferson, *Reports of Cases Determined in the General Court of Virginia* (Charlottesville 1829), Appendix.

Alexander James Dallas

Dallas is an important figure in American history and in the history of American law.

Born in Kingston, Jamaica, on June 21, 1759, he migrated to Philadelphia in 1783, joined its bar in 1785 and became politically active in The Society of Lately Adopted Sons of Pennsylvania with Matthew Carey, among others.⁶⁴ In 1787 he became the editor of Spottswood's *Pennsylvania Evening Herald* and reported speeches on both sides of the Pennsylvania convention to ratify the Constitution, earning him the enmity of the Federalists and a public attack by their reporter, Thomas Lloyd.⁶⁵

In 1790, Dallas accepted the position of Secretary of the Commonwealth, effectively chief of staff and stand-in for Governor Thomas Mifflin, a position he held under Mifflin and his successor, Thomas McKean, until 1801. He also completed the publication of a volume he had been preparing since at least 1788, *Reports of Cases Ruled and Adjudged in the Courts of Pennsylvania Before and Since the Revolution*, which, although it lacks reports of any strictly federal cases, has nonetheless become Volume 1 of the United States Reports, the series in which decisions of the Supreme Court of the United States continue to be reported to this day. In 1792 he began the publication of what became a three-volume series of Pennsylvania statutes, with subsequent volumes published in 1795 and 1801.

Party politics in Philadelphia, the seat of the national government from 1790-1800, were brutal. Dallas's liberal political tendencies as a Democratic-Republican led him to organize, with other like-minded Philadelphians, the Philadelphia Democratic Society in 1793. In 1794 tensions were exacerbated by the erratic behavior of France's envoy, Genet, followed by the Whiskey Rebellion. With the narrow election of John Adams as President in 1796, the administration threw the national government's weight behind the Federalists' efforts to repress the Democratic-Republican opposition.

⁶⁴ Maurice J. Bric, *Ireland, Philadelphia and the Re-Invention of America, 1760-1800* (Dublin 2008), 69-77.

⁶⁵ Raymond Walters, Jr., *Alexander James Dallas, Lawyer-Politician-Financier* (U. Penn. 1943).

First came the prosecution in June 1798 of Benjamin Franklin Bache, grandson of Benjamin Franklin and a leading Democratic Republican, accused of the seditious libel of President Adams in the *Aurora*, the newspaper of which he was the editor. Judge Richard Peters's refusal to dismiss the charge led to an application for a writ of prohibition by Dallas, Bache's counsel, at August term of the Supreme Court of the United States. The Court adjourned before it could act due to the threat of yellow fever. A month later Bache, who had remained in the city to publish the *Aurora*, succumbed to it, abating the case.⁶⁶

A few months afterwards Dallas was called upon to represent William Duane, a recently-arrived radical who succeeded Bache as both editor of the *Aurora* and, later, husband of Mrs. Bache, and others of similar persuasion who got into a political shoving-match with Federalists in a churchyard during which one flourished a pistol. Two weeks later the "rioters" were tried in the Philadelphia Court of Oyer and Terminer, represented by Dallas, who gained an acquittal.⁶⁷

William Duane became a constant client for Dallas. His attacks on the Adams administration led to two indictments for seditious libel in the summer of 1799 which came on for trial in the United States Circuit Court in October 1799. After it appeared that Duane could prove the truth of his claims against President Adams the trial was adjourned until the following June 1800.⁶⁸

Not content with either the outcome or the delay, the Federalists in the United States Senate brought contempt charges against Duane for publishing a report of their planned machinations with respect to the upcoming presidential election. Duane appeared before the Senate accompanied by his two counsel, Dallas and Thomas Cooper, who were not allowed to put forward a defense and the next day noisily withdrew while Duane absconded. Deprived of their first choice of victim, the

⁶⁶ M. Marcus (ed.), *The Documentary History of the Supreme Court of the United States*, (Columbia Univ. Press; 8 vols. 1985-2007), VIII, 116-117; *see also* Durey, *supra* n.1, at 230-233.

⁶⁷ Francis Wharton, *State Trials of the United States* (Philadelphia 1849), 345-391; *see also* Durey, *supra* n.1, at 253, and Bric, *supra* n.64, at 274-278.

⁶⁸ Smith, *supra* n.57, at 284-286.

Federalists had Cooper prosecuted instead, and he was sentenced to six months in jail after a trial in April 1800.⁶⁹

In all this political chaos, Dallas kept up his publications on reports of decisions. In 1798 he published “Volume II” of his *Reports of Cases Ruled and Adjudged in the Several Courts of the United States, and of Pennsylvania*, printed “at the Aurora Office”. In 1799 he published Volume III. Volume II contains the first collected reports of decisions of the Supreme Court of the United States and the United States Circuit Courts.⁷⁰

On October 17, 1800, weary of the fruitless pursuit by its Sergeant-at-Arms, the Federalist Senate had Duane indicted for seditious libel; Dallas was at his side at his arraignment and arranged for commissioners to take testimony from Senators who had now moved to the new capitol. When the case came on again at the next term of court in May 1801, the Circuit Court was staffed by Federalist “midnight judges” under the Judiciary Act of 1801, and Duane was represented by Thomas Cooper, now out of prison, Dallas being on the verge of an appointment as United States District Attorney for the Eastern District of Pennsylvania by Thomas Jefferson, now the President. Another continuance to obtain evidence was granted, following which President Jefferson had the indictment quashed.⁷¹

The election of Thomas McKean as governor of Pennsylvania in the fall of 1799, followed by Thomas Jefferson’s election as President in early 1801, led to the destabilization of the Pennsylvania Republican party, notably a falling out between those who joined the administration – Dallas and Gallatin – and those who remained outside – Michael Lieb and Duane, who believed their

⁶⁹ Smith, *supra* n.57, 287-301; *see, supra*, at pp. 24-25.

⁷⁰ How accurate they are is another matter. *See* William R. Casto, “There Were Great Men Before Agamemnon”, 62 *Vanderbilt L.Rev.* 371, 387-88 n.86 (March 2009); John D. Gordan, III, “United States v. Joseph Ravara”, in M. Marcus, *Origins of the Federal Judiciary – Essays on the Judiciary Act of 1789* (OUP 1992) 106, 134-135. *See also* n.74, *infra*.

⁷¹ Smith, *supra* n.57, 303-306.

rightful claims to patronage fell on stony ground.⁷² At the height of this battle the *Aurora* published a series of articles from August 2 to August 8, 1805, attacking Dallas as a scoundrel and turncoat. In the August 5th article, the *Aurora*'s charges ran from hypocrisy to political corruption – the latter particularized as follows:

On the morning previous to the meeting of the ward delegates, Mr. Dallas wrote a very polite note addressed to the editor of the *Aurora*, and with a second addressed “or Mr. Mat. Carey,” offering the publication of some one or other of his law reports, the job well managed, might be worth, say a thousand dollars; however the note was returned, without any answer, to be carried either to Mr. Dallas or Mr. Carey; on that very night Mr. Dallas attacked the editor of this paper, and denounced him whom he had not succeeded to seduce by pecuniary temptation in the morning.⁷³

The business went instead to Patrick Byrne, who in 1806 published a second edition of Volume I of Dallas's *Reports* and in 1807 published the first edition of Volume IV, now known as “4 U.S.,” the last in this series by Dallas, who had already effectively ceded future volumes to William Cranch when the Supreme Court moved to Washington, D.C., with the rest of the government.⁷⁴

Ever one to sprinkle his catalogues in his publications, Byrne printed one on the last leaf and a second just ahead of the appendix in the reprint of Volume I. In Volume IV the last leaf prints testimonial letters from William Rawle and Thomas Cooper, praising Byrne's new (pirated) edition of Saunders's *Reports*, thus juxtaposing praise from the prosecutor and the man he convicted. In any event, Dallas published only one more report of decisions, Judge Thomas Cooper's in *Dempsey* in 1810; as noted above at pp. 25-26, the publisher was once again Patrick Byrne.

⁷² Walters, *supra* n.65, at 120-122; Nigel Little, *Transoceanic Radical*, William Duane (London 2008), 160-63.

⁷³ The political background to this event is discussed in Jeffrey L. Pasley, “*The Tyranny of Printers*” (Va. 2001) 305-319.

⁷⁴ In the latter Dallas reported the decision of the Pennsylvania Supreme Court in *The Commonwealth v. Dallas, Attorney of the United States, etc.* rejecting the efforts of his erstwhile political allies to force him out of the position of Recorder for the City of Philadelphia, to which Governor McKean had appointed him. 4 U.S. 229 (1801). An infinitely more complete account of the opinion of the court and the arguments of counsel appears in the Pennsylvania state reports. 4 Yeates 300.

Thomas Lloyd

Thomas Lloyd was a shorthand writer. In terms of output he is obviously outclassed by the four generations of worthy Gurneys, but on his own and in his way he is every bit as important.⁷⁵

Born in London on August 14, 1756, he was educated at St. Omer's and then emigrated to Maryland. He fought for the colonists in the Revolution and was shot, bayoneted and taken prisoner by the British.

Settling in Philadelphia, Lloyd worked for John Dunlap's *Pennsylvania Packet* in the 1780s⁷⁶ and he became the shorthand reporter for the Pennsylvania Assembly, publishing for his own account *Proceedings and Debates of the General Assembly. Taken in short-hand by Thomas Lloyd*, 4 vols. (Philadelphia 1787-88). This was swiftly followed by his *Debates of the Convention, of the State of Pennsylvania, on the Constitution, Proposed for the Government of the United States, In Two Volumes* (1788). In the event, only Volume I appeared, containing the speeches of James Wilson and Thomas McKean, who favored ratification; this led to accusation in the anti-Federalist press that the Federalists had gotten to Lloyd. Similar rumors accompanied Lloyd's presence at the ratification convention in Maryland, but no notes of his were ever published.

After the ratification of the Constitution, Lloyd set afoot a commercial project to record in shorthand and report on a weekly basis as *The Congressional Register* the debates in the new House of Representatives convened in the First Congress. He did so, with lapses and – according to James

⁷⁵ Marion Tinling, "Thomas Lloyd's Reports of the First Federal Congress," *William & Mary Quarterly*, vol. 18, (Oct. 1961) 4. *See also* "Exercise at the Dedication of the Tablet Erected by the National Shorthand Reporters' Association in Memory of Thomas Lloyd, 'the Father of American Shorthand Reporting', Philadelphia, PA., August 22, 1903." *The Phonographic Magazine and National Shorthand Reporters* (1903), XVII, 53-64.

⁷⁶ Marcus Daniel, *Scandal & Civility – Journalism and the Birth of American Democracy* (Oxford 2008), 245.

Madison much later – inebriated, from the spring of 1789, until March 1790, when publication ceased, although he apparently continued to record the debates.⁷⁷

In 1791 Lloyd returned to England, to go into the building business with his father. In the next year he found himself imprisoned for debt and amused himself by posting an inflammatorily seditious placard in the prison refectory.⁷⁸ For this and for allegedly fomenting a mass jail break, Lloyd was indicted in two counts, along with fellow inmate Patrick Duffin, and the two were tried, unrepresented by counsel, and convicted by Lord Chief Justice Kenyon and a jury on December 17, 1792.⁷⁹ On January 31, 1793, Lloyd was sentenced to three years imprisonment.

Ever the enterprising publisher, Lloyd had the trial published by Daniel Isaac Eaton,⁸⁰ the verso of its title page a virtual sandwich board for publications “to be sold, by Thomas Lloyd’ in

⁷⁷ Tinling, *supra*. The fruits of his labors are set out in full, alongside other contemporaneous sources, and critically analyzed in vols. 10-12, *Documentary History of the First Federal Congress*, C.B. Bickford, et al., (17 vols. to date, 1972-__), at Vol. 10, XXIX-XXIII. Lloyd’s publication, whatever its shortcomings, is the major source of detailed information of Congress’s activities in this early period.

⁷⁸ One is apparently photographically reproduced, without attribution, as Plate 13 in Michael Phillips, “Blake and the Terror”, *The Library* (1994), Sixth Series, XVI, 263 at 279.

⁷⁹ This was the day before the seditious libel trial of Thomas Paine, in which Thomas Erskine represented the absent defendant. Lloyd’s extended peroration on Magna Carta must still have been echoing in the Guildhall, as Erskine made reference in his summation to “the language of defiance” of “that unfortunate criminal who appeared here yesterday”. Joseph Gurney, *The Whole Proceedings on the Trial of an Information Exhibited ex Officio by the King’s Attorney-General Against Thomas Paine*, (1793), 114.

⁸⁰ *The Trial of P.W. Duffin . . . and Thomas Lloyd, a Citizen of the United States of America, for a Supposed Libel* (London 1793).

Newgate.”⁸¹ The diary Lloyd kept in short-hand while in Newgate serving his sentence shows desultory activity in support of his publishing ventures.⁸²

Lloyd was released in January 1796 and in May set sail for Philadelphia, escorting on shipboard Dallas’s future client, William Duane, and his family.⁸³ Lloyd and Duane began editing *The Merchant’s Daily Advertiser* for Thomas Bradford and shortly found themselves under attack by William Cobbett.⁸⁴ They moved on to the *Aurora*, in its last year of editorship by the beleaguered Benjamin Franklin Bache, whom Duane succeeded at his death in the fall of 1798.⁸⁵ Not long afterwards, Lloyd appears to have parted company with Duane, at least as a close business associate,

⁸¹ These included *Commentaries on the Constitution of the United States of America; The Debates of the Congress of the United States, in fifty-six numbers*, and *The Debates of the Assembly of Pennsylvania*, in four volumes. Copies of the first do exist – they are the body of Lloyd’s publication of the *Debates of the Convention of the State of Pennsylvania, on the Constitution, Prepared for the Government of the United States, in Two Volumes*, with a new half-title, with a price of three shillings, and a title page, identifying as the publishers Debrett, Joseph Johnson, and J.S. Jordan, with a 1792 publication date.

⁸² The diary is published as chapter five of Michael T. Davis, et al., *Newgate in Revolution – An Anthology of Radical Prison Literature in the Age of Revolution* (London 2005), 81-116. In 1794 Lloyd also published *Impositions and Abuses in the Management of the Jail of Newgate*, which was sold by the *crème de la crème* of radical booksellers: Eaton, Ridgway, Symonds, Clio Rickman, Thomas Spence and Daniel Holt. *Id.* at 69-80. Lloyd was very much at the center of the radicals imprisoned on the state side of Newgate and appears prominently in the prints of the group by William Holland.

⁸³ Little, *supra* n.72, at 115, 117; Durey, *supra* n.1, at 181-182. In December 1796, at the start of the second session of the Fourth Congress, Lloyd also attempted, in competition with Thomas Carpenter, to obtain a paid appointment to take in short-hand and publish the debates of the House of Representatives, much as he had nine years before at his own expense. After debating the matter the House rejected both proposals; however, Carpenter carried on at his own expense. Thomas Carpenter, *The American Senator* (1796), I, 5, 27, 33-37.

⁸⁴ Little, *supra* n.72, at 123-25.

⁸⁵ *Id.* at 127. Durey, *supra* n.1, at 247, reports that Lloyd made a detour through debtors’ prison in Philadelphia. Lloyd’s association with Duane led to occasional reference to him as “Newgate” Lloyd in attacks on Duane by John Ward Fenno in the *Gazette of the United States*. Richard N. Rosenfeld, *American Aurora* (New York 1997), 209-210, 215, 555, 883. In December 1798, Fenno “exposed” Lloyd as one of 17 named United Irishmen in Philadelphia, a circumstance understandably puzzling to a leading scholar on the subject. Bric, *supra* n.64, at 227. See also Maurice Bric, “The United Irishmen, International Republicanism and the Definition of Policy in the United States of America, 1791-1800”, Proceedings of the Royal Irish Academy 104C [4]:81-106 at 87.

serving in 1800 and 1801 as secretary or clerk to Thomas Cooper in adjudicating the Luzerne land claims.⁸⁶

In January 1803, Lloyd returned to the preparation of verbatim short-hand reports for commercial publication, this time recording trials of celebrated cases.⁸⁷ Starting with the impeachment trial of federalist state court judge Alexander Addison in the Pennsylvania legislature, Lloyd shared short-hand duties with Jeffersonian publisher Samuel H. Smith at the impeachment trial of Justice Samuel Chase in the United States Senate in early 1805, and he also recorded the trial in Philadelphia in December 1805 of the malicious prosecution action brought by Patrick Lyon against the officers of the Bank of Pennsylvania.⁸⁸ These were followed by three trials held in 1806: *The Trial of the Boot and Shoemakers* in the Mayor's Court in Philadelphia, published by Lloyd; *The Trials of William S. Smith, and Samuel G. Ogden, for Misdemeanors* in the United States Circuit Court for the New-York District (1807), published by Isaac Riley and *The Trial of William O. Selfridge* in the Supreme Court of Massachusetts, in which Lloyd shared reporting duties with George Caines, an early reporter of New York judicial decisions.⁸⁹

⁸⁶ M.J. Griffin, "Thomas Lloyd, Reporter to the First House of Representatives of the United States", *Records of the American Catholic Historical Society* (1891), III, 221, 236-37.

⁸⁷ Such publications were then a rarity in this country, in marked contrast to England. Lloyd was preceded by two 1800 publications by Thomas Carpenter, the trials of the Fries Conspirators and the libel action brought against Cobbett by Dr. Benjamin Rush. Similarly, David Robertson, a Richmond lawyer who had taken down and published the proceedings of the Virginia ratification convention in 1788, recorded for newspaper publication the greater part of the trial of James T. Callender in June, 1800.

⁸⁸ *Trial of Samuel Chase, An Associate Justice of the Supreme Court of the United States*, 2 vols. (Washington, D.C. 1805); *Robbery of the Bank of Pennsylvania in 1798, the Trial in the Supreme Court of Pennsylvania*, Reported from notes by T. Lloyd (1808). In G.S. Rowe, *Embattled Bench – The Pennsylvania Supreme Court and the Forging of a Democratic Society 1684-1809* (Delaware U. Press 1994), 345, Lloyd is credited with reporting *Report of the Trial and Acquittal of Edward Shippen, Esq., Chief Justice, and Jasper Yeates and Thomas Smith, Esqs., Assistant Justices of the Supreme Court of Pennsylvania, on Impeachment Before the Senate of the Commonwealth*, January 1805 (Lancaster 1805); on inquiry by the author of this article, Professor Rowe could not support his attribution, although he may well be correct.

⁸⁹ The *Selfridge* trial has no publication date but is attributed by Morris Cohen in BEAL to 1807.

Lloyd's stenographic activities in this period seem not to have been limited to the reporting of sensational criminal cases like these. In a letter dated August 16, 1808, to President Thomas Jefferson, evidently supporting a presidential pardon for Holland Land Co. settlers incarcerated for resisting eviction on federal process, Lloyd began as follows:

The civil causes between the proprietors of the Holland Companies, and the actual settlers in the Triangle at the North West corner of this State, has kept the Commonwealth greatly agitated for a number of years past, and occupied the courts of justice to my personal knowledge ever since 1799. I have taken down much contradictory argument by Learned counsel on both sides also many various and discordant opinions delivered from the bench by More Learned Judges, supposed to be wholly disinterested as to the land in dispute;⁹⁰

In 1809 Byrne published the first of two trials by Lloyd, *A Report, of the Whole Trial of Gen. Michael Bright, and Others; Before Washington & Peters, in the Circuit Court of the United States, in and for the District of Pennsylvania, in the Third Circuit*, a prosecution conducted by Alexander James Dallas, as United States District Attorney, of the general commanding the Pennsylvania state militia for resisting, as required by a Pennsylvania statute enacted for the purpose, process issued by the United States District Court in a case with its origins in a privateering capture during the Revolution. The following year Byrne published the *Report of the Case of Trespass & Assault and Battery*, tried before Associate Justice Hugh Henry Brackenridge of the Pennsylvania Supreme Court, a squabble among Quakers involving an alleged illegal entry by three women into the house of a man who had resigned from their Society. Both trials issued with wraps made up of their titles and, in the case of *Bright*, Lloyd's name, but the balance of the front wraps and all of the back wraps, are almost identical lists of priced lawbooks available from Byrne. This late in Byrne's

⁹⁰ Library of Congress: The Thomas Jefferson Papers, Series I. General Correspondence. 1651-1827. In his essay on William Lewis of the Philadelphia bar, Brown makes the following comment:

[B]ut few of his speeches have been reported. Whether he resembled Mr. Pinckney, in refusing publication, on the ground that *rumor* was better than *print*, we cannot say. It is much to be regretted that phonography was unknown during his time; and Mr. Thomas Lloyd, an aged and imperfect stenographer, was almost the only reporter, and by no means very accurate.

(continued).

Philadelphia period a few United States volumes made their appearances: four volumes of Dallas's reports, four volumes of Cranch's reports, and the first few volumes of Johnson's reports of New York decisions and Massachusetts reports. Between the publication of the two trials the number of volumes of Johnson's and Massachusetts advertised increased. Byrne also advertised the *Bright* trial through the mail by printed circular; the one he sent to Thomas Jefferson on June 12, 1809 survives in the Jefferson Papers.⁹¹

There are no further Lloyd trials published by anyone before Byrne's death in 1816.

Hugh Henry Brackenridge

Referring to Brackenridge's early law practice on the frontier, now Pittsburgh, Joseph Ellis asserts that:

. . . Brackenridge also confounded his western friends by defending Indians accused of crimes and insisting that Indian rights be protected under the law. When one settler challenged him to a duel because of his defense of two Indians accused of murder, Brackenridge responded that he did not duel and he did not love Indians, although he respected their legal rights. He then broke a chair over the settler's head and tossed him into the fireplace.⁹²

Horace Binney, the Federalist bard of the early Philadelphia bar, appraised Brackenridge's subsequent service on the Pennsylvania Supreme Court unenthusiastically:

"Brackenridge's appointment was the greatest legal blunder that Governor McKean ever made. He despised the law, because he was utterly ignorant of it, and affected to value himself solely upon his genius and taste for literature, both of which were less valued by everyone else. * * * The misfortune of the bench was that he had not a grain of the learning he undervalued . . . It is not certain that Brackenridge was at all times sane, and he would have been just as good a judge as he was if he had been crazy outright."⁹³

David Paul Brown, *The Forum; or Forty Years Full Practice at the Philadelphia Bar* (1856) vol. I, 449.

⁹¹ Papers of Thomas Jefferson, Retirement Series (Princeton 2004), I, 214 n.

⁹² Joseph J. Ellis, *After the Revolution – Profiles of Early American Culture* (New York 1979), 90.

⁹³ Charles C. Binney, *The Life of Horace Binney* (1903), 40-41.

No one can doubt from just these passages that Brackenridge was one of a kind – an American “original”. Born in Scotland in 1748, he came to Philadelphia with his parents in 1753. In 1768 he entered the College of New Jersey, now Princeton, where he was associated with James Madison and William Bradford and formed a literary alliance with Philip Freneau, with whom he wrote *Father Bombo’s Pilgrimage to Mecca*. Graduating in 1771, and receiving his Master’s degree in 1774, Brackenridge was successively a divinity student, a school teacher, a chaplain in the Continental Army during the Revolution and during 1779 the editor and publisher of *The United States Magazine* in Philadelphia. He took the opportunity to study law with future Justice Samuel Chase, was admitted to practice in 1790, and departed for the western frontier – Pittsburgh.⁹⁴

There Brackenridge established a successful law practice and also began the publication of the *Pittsburgh Gazette*. He was elected to the State Assembly in 1786 and returned to Philadelphia, where he was a strong supporter of the federal Constitution in the following year, but was not elected to the ratification convention nor re-elected to the Assembly.⁹⁵

Brackenridge resumed his legal and literary career in Pittsburgh, combining them in a serial publication under the title *Modern Chivalry*, which began in 1792 and continued in subsequent volumes and revisions published in Philadelphia, Richmond and Pittsburgh until 1819, after his death.⁹⁶ *Modern Chivalry* was at once allegorical, satirical and didactic, a fictionalized social commentary in large part devoted to the expression of Brackenridge’s idiosyncratic philosophical views on important political issues of the day.⁹⁷

Opposed to the excise tax, in the Whiskey Rebellion in 1794 Brackenridge played a prominent but ambiguous role as an intermediary between the rebels and the Government and was

⁹⁴ Claude M. Newlin, *The Life and Writings of Hugh Henry Brackenridge* (Princeton 1932) 1-57. Madeline Sapienza, *Modern Chivalry in Early American Law* (Univ. Press of Am. 1992), xiv-xix.

⁹⁵ Newlin, *supra* n.94, at 58-106.

⁹⁶ Newlin, *supra* n.94, at 319-321.

⁹⁷ Sapienza, *supra* n.94; Ellis, *supra* n.92.

suspected of duplicity by the orthodox on both sides and by Hamilton of treason. Having successfully extricated himself, Brackenridge turned his experiences into a two-volume *apologia*, *Incidents of the Insurrection in the Western Parts of Pennsylvania in the Year 1794*, published in Philadelphia in 1795.⁹⁸

In 1798 Brackenridge re-emerged on the political scene as what his biographer calls “the founder and leader of the Republican party in Western Pennsylvania”.⁹⁹ Although Brackenridge was bested in the 1798 Congressional elections by Albert Gallatin and failed of election to the Assembly in 1799, the election of Republican Thomas McKean as governor led to Brackenridge’s appointment to the Supreme Court of Pennsylvania on December 18, 1799, over the howls and insults of the Federalists. He served in that capacity until his death in 1816, although his insistence on being impeached along with his judicial colleagues in 1804 was obliged by an address from the state legislature for his removal from the bench which Governor McKean promptly rejected. It is hard to dispute Newlin’s appraisal that Brackenridge had “peculiar independence of character and striking individualism.”¹⁰⁰

The full title of Brackenridge’s *Law Miscellanies*,¹⁰¹ which Byrne published in 1814, is suggestive of its eclectic contents. It represented the fruits of his efforts, otherwise abandoned, to prepare a Pennsylvania equivalent to the five-volume gloss on Blackstone under the law of Virginia published a few years earlier by St. George Tucker. It does contain discussion of interest to the lawyer and the legal historian, such as his slightly non-Jeffersonian approval of the Judiciary Act of 1801 but more Jeffersonian in the proposal he coupled it with – abolition of federal court diversity jurisdiction. More populist still is the introductory explanation in the essay “An enquiry into that obloquy under

⁹⁸ Steven R. Boyd (ed.), *The Whiskey Rebellion – Past and Present Perspectives* (Westport, CT 1985); Thomas P. Slaughter, *The Whiskey Rebellion – Frontier Epilogue to the American Revolution* (OUP 1986); Newlin, *supra* n.94, at 134-175.

⁹⁹ Newlin, *supra* n.94, at 198.

¹⁰⁰ Newlin, *supra* n.94, at 280.

which the supreme court of this state has labored from the year 1800, down, during a period of several years.”¹⁰² *Modern Chivalry*, perhaps more accessible than *Law Miscellanies*, is seen by scholars as his intellectual legacy.¹⁰³

Conclusion

In many ways the story of Patrick Byrne’s Philadelphia period illustrates, at the micro level and bibliographically, some of the major themes in Michael Durey’s magisterial work on radical immigrants. Although Byrne arrived before Jefferson’s election and was inactive until 1802, he seems to have followed the paradigm of radical publishers and gravitated to the leading Jeffersonian Republicans, unsurprising enough given Byrne’s own politics. But at that moment in Philadelphia that coalition was beginning to come apart with the defeat of the Federalists. Byrne’s patrons to be – particularly Dallas and Cooper – seem to have moved in a conservative direction in the years following the 1801 election. On the other hand, Priestley was too multi-dimensional to wear a particular label, and there is no evidence of any immediate change in Lloyd’s evident post-Newgate radicalism or in William Duane’s. Once established, Byrne also had access to Jefferson. He published what Jefferson read, sold him books directly¹⁰⁴ and felt able to send him advertisements for his publications.

¹⁰¹ *Law Miscellanies: Containing an Introduction to the Study of Law; Notes on Blackstone’s Commentaries; shewing the Variations of the Law of Pennsylvania from the Law of England, and what Acts of Assembly might require to be repealed or modified; Observations on Smith’s edition of the Laws of Pennsylvania; Strictures on Decisions of the Supreme Court of the United States and on Certain Acts of Congress, with Some Law Cases and a Variety of other Matters, chiefly original.*

¹⁰² *Id.* at 282, 305. Also included (at 345-361) is an 1808 newspaper article in which Brackenridge published an earlier undelivered opinion denying the conclusive nature of a foreign prize court decision on the issue of contraband, and characterizes the like opinion which Thomas Cooper, while a Pennsylvania judge, delivered in Dempsey case as one “which exhibits the *utmost comprehension of mind which is the characteristic of a great judge*; and is the finest specimen of legal reasoning that ever fell from a bench.” (See *supra* at 25-26).

¹⁰³ Ellis, *supra* n.92, at 108-110.

¹⁰⁴ Jefferson’s Memorandum Books (Princeton 1997), II, 1147 & n.4.

Whether Byrne remained an adherent of what Durey calls “militant Paineite-Jeffersonian radicalism”,¹⁰⁵ the condition he undoubtedly arrived in, or mellowed with those who gained power after the 1801 election – as some thought Jefferson himself did – can not be determined.¹⁰⁶ But these are nuances within a group whose leaders had much in common politically with Byrne and with each other, however hard one battled another when they fell out. Byrne was hardly the only publisher in Philadelphia,¹⁰⁷ but each of these authors came to him, and Byrne published them all, in keeping with his United Irishmen politics and the practice he inaugurated with Wolfe Tone over twenty years earlier in Dublin.

¹⁰⁵ Durey, *supra* n.1, at 228.

¹⁰⁶ *See* Bric, *supra* n.64, at 294.

¹⁰⁷ Rosalind Remer, *Printers and Men of Capital – Philadelphia Book Publishers in the New Republic* (U. Penn. 1996).