

Society of United Irishmen Revolutionary and New-York Manumission Society Lawyer:

Thomas Addis Emmet and the Irish Contributions to the Antislavery Movement in New York

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The year 2014 marks the 250th anniversary of the birth of Thomas Addis Emmet, a leader of the revolutionary Society of United Irishmen and a prominent New York lawyer following his forced exile from Ireland. Although there may have been more celebrated leaders of the movement behind the Irish Rebellion of 1798, Thomas Emmet's unselfish desire to obtain a radical parliamentary reform and Catholic emancipation earned him the recognition by Irish historian W.E.H. Lecky as, "one of the few really interesting figures connected with the rebellion."¹ In New York, Emmet devoted himself to his legal career and family, rising to the top among lawyers in the state and proving the equal of those lions of the national bar who argued before the United States Supreme Court such as William Pickney and Daniel Webster. Emmet's reputation as an Irish patriot and his willingness to champion the cause of the newly-arrived Irish in New York endeared him to his fellow immigrants, who often turned to him for counsel and leadership.

This essay explores the first case that Emmet received in New York in 1805, which involved the prosecution of the captain of a Newport, Rhode Island slave ship and traces the origins of Emmet's antislavery beliefs in Ireland and his subsequent efforts involving slavery and the slave trade in the United States, especially his work with and for the New-York Society for Promoting the Manumission of Slaves, and Protecting Such of Them as Have Been, or May Be Liberated, commonly known as the New-York Manumission Society (N-YMS). Through this first case, Emmet began the arc of his legal career in America, eventually achieving a level of success

1. W.E.H. Lecky, *A History of Ireland in the Eighteenth Century* (London: Longmans, Green, and Co., 1892), 4:253.

undreamed of when he first arrived. The case also frames an aspect of the radicalism spawned in the United Irish movement in Ireland and transplanted across the Atlantic in the Age of Revolution.

The United Irishmen gave rise to one of the more radical movements advocating the rights of man in the Anglo-Irish world at the end of the eighteenth century. These men were radicals who, by either reform or revolution, were proponents of parliamentary change and religious equality in Ireland. In New York, the more visible former United Irishmen continued to pursue a radical path in the political arena, but on social issues, in particular, some modified their views towards slavery and race, while others held fast to their previous beliefs. This study, therefore, departs from previous examinations of the Americanization of the United Irish radical tradition in one significant way: it emphasizes a less studied segment of those American United Irishmen who arrived in New York between 1802 and 1806, including Thomas Addis Emmet, William James Macneven, and William Sampson. Their antislavery attitudes, forged in revolutionary Ireland and transplanted to America, waived less than their fellow émigrés. This article explores why this later group's opposition to slavery was less influenced by the process of American accommodation that affected some of the earlier-arriving former United Irishmen.²

Few historians have examined the first case Emmet received in America, which is hardly surprising given the general paucity of court records dating back to the early nineteenth century in New York. However, a fresh look at archived records, now available online, reveals that Emmet's first case likely involved a prosecution in New York City under the federal laws against the slave trade that resulted in an unprecedented victory for the antislavery movement, a prolonged prison confinement for a young New England captain and not one, but two presidential pardons. Emmet's first case has been hailed as the most dramatic and most difficult case prosecuted by the leading New York antislavery society in its sixty-five year history.

2. For discussion of the United Irishmen's attitudes to race and slavery, see David A. Wilson, *United Irishmen, United States: Immigrant Radicals in the Early Republic* (Ithaca: Cornell University Press, 1998), 134–140; Richard J. Twomey, *Jacobins and Jeffersonians: Anglo-American Radicalism in the United States, 1790–1820* (New York: Garland Publishing, 1989), 102–106; Michael Durey, *Transatlantic Radicals and the Early American Republic* (Lawrence: University Press of Kansas, 1997), 282–288.

EMMET'S ANTISLAVERY BELIEFS IN IRELAND

Thomas Emmet was born in Cork on April 24, 1764. A doctor's son, he studied medicine at Edinburgh before changing to the law following the death of his older brother, Christopher Temple Emmet, a leading Irish barrister. In 1790, Emmet was called to the Irish bar where he joined the cause of Catholic equality and defended members of the United Irishmen, even taking its oath in open court to prove its legality. In 1797, he became one of the chief contributors to the leading opposition newspaper in Dublin, *The Press*, and became a member of the Executive Directory of the United Irish that same year, holding that leadership position until he was arrested in March 1798 after being betrayed by an informant.

Emmet's antislavery attitudes in Ireland are manifest in his public essays. Writing in *The Press* under the pen name Montanus, he metaphorically referred to Ireland as an enslaved country and identified the Irish with other slaves in their fight against oppression.³ After his arrest in 1798, Emmet continued to denounce slavery for destroying the character, dignity, and natural rights of man. "Slavery in every form which it can assume," he wrote from Kilmainham prison, "is destructive of the virtue, the genius and the spirit of man. The subjection of one people to another is of all species of slavery incomparatively the worst, and the history of human calamity has not yet exhibited such an instance of complicated and long-continued wretchedness, of forced and mortifying debasement, as the subjection of Ireland to the English power has produced."⁴

In one embittered attack on the Irish landed gentry who served the King's interests on the backs of the poor Irish, Emmet pointed out that both the Irish and the Negro slaves alike were targets of racist stereotypes that drew on a contrived paternalism in which both blacks and the poor Irish were helplessly incapable of caring for themselves: "Some supposed—what has also been asserted of the negro race—that the Irish were an inferior, semibrutal people, incapable of managing the affairs of their country, and submitted, by the necessity of their nature, to some superior power,

3. Emmet, "Letters from the Mountains," [Dublin] *The Press*, October 3, 1797, 1, in Thomas Addis Emmet, M.D., *Memoir of Thomas Addis and Robert Emmet*, (New York: Emmet Press, 1915), I:235–236; Emmet, "Letters from the Mountains," [Dublin] *The Press*, March 1, 1798, in Emmet, *Memoir*, II:437.

4. Thomas Addis Emmet, "Observations on the Causes and Consequences of the Conquest of Ireland by Britain from 1171 to 1789," in Emmet, *Memoir*, I:8–9.

from whose interference and strength they must exclusively derive their domestic tranquility.”⁵

Without taking anything away from his personal beliefs, Emmet’s anti-slavery attitude in Ireland was also reflective of the United Irishmen as a whole. Leaders of the United Irish, such as Samuel Neilson and Thomas McCabe, emerged in the 1790s as ardent opponents of British West Indian slavery. These United Irishmen saw the cause of black freedom as symbolic of a new world order in which slaves and Irish alike would break the bonds of the past and acquire new rights of liberty and equality.⁶ Among these antislavery enthusiasts, Emmet counted as one of his closest friends, Thomas Russell, one of the founders of the United Irish and an outspoken critic of the slave trade in the West Indies.⁷ By the time Emmet was forced to leave Ireland, antislavery introduced so dramatically in Ireland in the late eighteenth century had all but been subsumed by the unsuccessful and bloody Rebellion of 1798. That was, at least, the case for those remaining in Ireland. For those like Emmet who emigrated across the Atlantic Ocean carrying with them their antislavery attitudes, the battle over slavery was about to ignite a nation.⁸

EMMET JOINS THE AMERICAN BAR

Emmet arrived in New York on November 11, 1804 from France following over four years in prison and subsequent exile for his participation in the failed uprising of 1798. He spent most of the month of December 1804 in Washington, D.C. exploring business opportunities and looking for a place to settle. On December 19, Emmet was admitted to practice law before the United States Circuit Court for the District of Columbia, then sitting in Alexandria County, with the assistance of Walter Jones, an emi-

5. Thomas A. Emmet, “Part of an Essay, Towards the History of Ireland” in *Pieces of Irish History*, ed. William J. Macneven (New York: Printed for Bernard Dornin, 1807), 2.

6. For a discussion of the antislavery attitudes of the United Irishmen, see Nini Rodgers, *Ireland, Slavery and Anti-Slavery: 1612–1865* (Great Britain: Palgrave Macmillan, 2009), 2, 190–196.

7. For Emmet’s close friendship with Russell, see Emmet, *Memoir*, I:266–270. In 1803, Russell was executed for his part in the failed rising of that year led by Robert Emmet, Thomas’ younger brother.

8. Rodgers, *Ireland*, 196. In the 1830s, Daniel O’Connell would resurrect the Irish connection between the antislavery movement and repression of the Irish in the campaign to repeal the Union between Ireland and England. For a discussion of O’Connell’s failed attempt to win over the Irish immigrants in America to the abolitionist cause, see Angela F. Murphy, *American Slavery, Irish Freedom: Abolition, Immigrant Citizenship, and the Transatlantic Movement for Irish Repeal* (Baton Rouge: Louisiana State University Press, 2010).

ment counsellor and United States Attorney for the District of Columbia.⁹ To have sought and gained admission to that court so soon after landing in this country indicated that Emmet was serious about taking up residence in Washington, although his first choice was always to settle professionally in New York if he could overcome the apparent court rule that admission to the New York bar required citizenship. Because of his strong moral objection to slavery, Emmet left the South and settled in New York. In a letter from New York to Joseph McCormick, a United Irishman who had been imprisoned with Emmet at Fort George in Scotland and who later settled in Georgia and became a slave owner, Emmet noted “the insuperable objection I have always had to settling, where I could not dispense with the use of slaves, and that the more they abound, the stronger are my objections; but, in truth, circumstances have decided me to settle here, if I can.”¹⁰

Conventional wisdom holds that the first case Thomas Addis Emmet received in America, as a newly admitted attorney, was from the Quakers to defend a fugitive slave in the New York courts.¹¹ Charles G. Haines, a New York lawyer and colleague of Emmet, described that first case: “Very soon after Mr. Emmet appeared at our bar, he was employed in a case peculiarly well calculated for his display of his extraordinary powers. Several slaves had escaped from a neighboring state and found refuge here. Their masters seized them, and the rights of these masters became a matter of controversy. Mr. Emmet, I have been informed, was retained by the society of friends—the real, steady, ardent and persevering friends of humanity and justice—and of course espoused the cause of the slaves. His effort is said to have been overwhelming. The novelty of his manner, the enthusiasm which he exhibited, his broad Irish accent, his pathos and violence

9. *Alexandria Expositor*, December 19, 1804, 2; Charles G. Haines, *Memoir of Thomas Addis Emmet* (New York: G. & C. & H. Carvill, 1829), 83–84; Thomas P. Robinson, *The Life of Thomas Addis Emmet* (PhD diss., New York University, 1955), 227. For the past sixty years, Robinson’s unpublished dissertation has been the only significant biographical work solely about Thomas Emmet.

10. Thomas Addis Emmet to Joseph McCormick, January 28, 1805, in Emmet, *Memoir*, I:393. See also Thomas Addis Emmet to E[llbridge] Gerry, November 20, 1804, Miscellaneous Papers, Manuscripts and Archives Division, The New York Public Library.

11. Emmet, *Memoir*, I:406, 556. For more recent reiterations adopting this description of Emmet’s first case, see Robinson, *Life of Emmet*, 231; Kerby Miller, et al. *Irish Immigrants in the Land of Canaan, Letters and Memoirs from Colonial and Revolutionary America, 1675–1815* (New York: Oxford University Press, 2003), 612; Wilson, *United Irishman, United States*, 135; R.F. Foster, *Modern Ireland, 1600–1972* (London: The Penguin Press, 1988), 265, n.vi (asserting Emmet specialized “in pleading for the liberty of escaped slaves.”)

of gesture, created a variety of sensations in the audience. His republican friends said that his fortune was made, and they were right.”¹²

A contrary scenario was twice described by Emmet’s intimate friend of thirty years and fellow exile from Ireland, Dr. William James Macneven. On November 21, 1827, a week after Emmet’s death, Macneven observed that Emmet’s “professional career at the New York Bar began in prosecuting a suit against negro slavery.”¹³ Subsequently in 1832, in a report delivered relative to the marble cenotaph to be unveiled in Emmet’s honor in St. Paul’s churchyard in New York City, Macneven provided additional details of the beginning of Emmet’s career at the American Bar: “Thomas Addis Emmet fell unadmonished by previous illness in the midst of his forensic achievements, in this hall, in this field of his renown. It happened not inaptly to the tenor of his course, that he began his avocation at the bar of New York as counsel for the Manumission Society, vindicating the rights of man in the person of the African; and that he closed his brilliant career while defending a most humane bequest to superannuated seamen; having commenced and concluded his transatlantic life in service of liberty and charity.”¹⁴ There is strong evidence that Macneven’s earliest account of Emmet’s first case was correct and that the case was tried in federal, rather than state court and that it involved a prosecution against the slave trade, rather than a defense of fugitive slaves.

At the end of January 1805, Emmet traveled to Albany from New York

12. Haines, *Memoir*, 87–88. Haines’ description is repeated verbatim in Richard Robert Madden, *The United Irishmen, Their Lives and Times* (London: J. Madden & Co., 1843), 2:131.

13. “Monument to Mr. Emmet,” [New York] *Evening Post*, November 27, 1827, 2; Emmet, *Memoir*, 1:491. As to Emmet and Macneven’s long friendship, see William J. Macneven to P.S. Duponceau, December 7, 1827, in Emmet, *Memoir*, 1:501–502. Madden, the biographer of the United Irishmen, visited Macneven in New York City for the last time in 1839 and reported that Macneven told him that Emmet’s “first speech at the bar in the United States was in the defence of a slave.” Richard R. Madden, *The United Irishman, Their Lives and Times*, 2nd ed. (London: The Catholic Publishing and Bookselling Co., 1860), 3:242. Macneven’s revisionist memory was either due to Macneven’s late-in-life adoption of the prevailing folklore surrounding Emmet’s first case, or was because Madden unconsciously reported Macneven’s words consistent with Madden’s account published seventeen years earlier.

14. Emmet, *Memoir*, 1:543. The second-floor courtroom in which Emmet was fatally stricken was situated in the northeast corner of City Hall directly across from the Governor’s Room and now serves as the main New York City Council Chamber. *Ibid.*, 513. A white marble bust and a mural tablet were erected with an appropriate inscription to his memory by the members of the Bar. The bust and tablet were installed in 1828 on the wall of the courtroom close to the spot where Emmet was stricken. The bust sculpted by Ottaviano Giovanozzi of Florence, newly restored by the New York State Supreme Court, is now located in the rotunda of the New York County Courthouse at 60 Centre Street, Manhattan. The whereabouts of the mural tablet with its Latin inscription is unknown. Sara Weinstock, Public Design Commission of the City of New York, e-mail message to the author, July 10, 2012.

City to seek the passage of a special act by the legislature enabling him to be admitted to practice law in New York notwithstanding his alien status.¹⁵ This was to be accomplished with the assistance of George Clinton, Governor of the State of New York, and his nephew, DeWitt Clinton, Mayor of the City of New York. Such special legislation was unnecessary, however, as a different strategy emerged once Emmet arrived in Albany, namely, he would submit individual applications for bar admission to the different courts in the state. If the courts refused his admission, then special legislation would be sought.¹⁶ The strategy proved successful. In February 1805, the New York State Supreme Court granted Emmet's application to practice as a Counsellor at Law before that court, adopting the view that his alien status did not prevent his admission to the practice before that court.¹⁷ Emmet returned to New York City to commence his career at the American bar in one of the major cases involving the slave trade of that time.

THE NEWPORT SLAVE TRADE

Before examining Emmet's first trial, it is useful to survey some of the historical aspects of the slave trade. By the turn of the nineteenth century, Newport, Rhode Island had become a principal slave trading port in New England.¹⁸ From 1709 to 1807, at least 934 vessels left Rhode Island for the coast of Africa to transport over 100,000 slaves.¹⁹ Rhode Island had distilleries where molasses was made into rum. Newport ships transported barrels of rum to be used to barter for slaves on the coast of West Africa. These ships then transported their human cargo to the West Indies and their captains sold the slaves and purchased more molasses, which was

15. Thomas Emmet to Joseph McCormick, January 28, 1805, in Emmet, *Memoir*, I:393.

16. Robinson, *Life of Emmet*, 228.

17. The court's decision is reported at *In re Emmet*, 2 Cai. R. 386 (1805). [Albany, NY] *The Centinel*, February 12, 1805, 3. Emmet's arrival on the New York legal scene was not universally greeted with open arms. Among those in the opposition were Federalists who associated Emmet with the revolutionary ideas of the French. In time, Emmet counted as friends, colleagues and clients members of the Republican and Federalist parties. Even Chancellor James Kent, the lone dissenter in opposition to Emmet's admission to practice before the New York Supreme Court, later expressed joy to Emmet that the other justices overruled his objections. Haines, *Memoir*, 87. That court reversed course over a year later and by rule declared that in the future "no person, not being a natural born, or naturalized citizen of the United States, shall be admitted as an attorney or counsellor of this court." Reg. Gen., 1 Johns. R. 528 (1806).

18. George F. Dow, *Slave Ships and Slaving* (Salem, Mass.: Marine Research Society, 1927), 255–265.

19. Jay Coughtry, *The Notorious Triangle: Rhode Island and the African Slave Trade, 1700–1807* (Philadelphia: Temple University Press, 1981), 26.

returned to Newport to begin the cycle anew. In certain circles, the trade in slaves and rum was considered entirely respectable and legitimate. As one historian noted, “Despite the unsavory nature of their calling, the owners of these Newport slavers were men who commanded the respect of their fellows and played a considerable part in the public affairs of the state.”²⁰

The first national act against the slave trade originated from a Quaker petition for a law against the transportation of slaves and was passed by the United States Congress and signed by President George Washington in 1794. The Slave Trade Act of 1794 targeted the slave trade triangle by prohibiting the building, fitting, equipping, or loading of a vessel within American borders for slave trading in a foreign country.²¹ The penalties for violation of the Act included condemnation and forfeiture of the ship under Section One and for individuals who violated the Act, including the captain and crew, a fine of \$2,000 plus \$200 for each slave transported under Section Four.²² To encourage enforcement, all penalties levied under Section Four were to be shared fifty-fifty between the United States and the private individual who commenced the prosecution, in a legal proceeding known as *qui tam*.²³

While similar laws had previously been enacted by Rhode Island and its bordering states, enforcement under those state laws was intermittent. Following passage of the federal prohibition, both those who campaigned against the slave trade and transatlantic slave traders waited to see whether the national legislation would be enforced and if so, by whom. The federal authorities moved slowly on the enforcement front, without an obvious champion in Washington to lead the charge. It soon became clear that if the abolitionists wished to see the Act enforced, they would have to initiate it themselves.²⁴

20. Elizabeth Donnan, “The New England Slave Trade After the Revolution,” *The New England Quarterly* 3 (April 1930): 257. The foreign slave trade was fraught with risks but also could be extremely profitable. Coughtry, *Notorious Triangle*, 19–20.

21. W.E.B. Du Bois, *The Suppression of the African Slave-Trade to the United States of America, 1638–1870* (New York: Longmans, Green, and Co., 1896), 80–81. The importation of slaves to America was constitutionally protected until 1808 requiring the foreign slave trade to be the target of antislavery advocates until then.

22. “An Act to Prohibit the Carrying on the Slave Trade from the United States to any Foreign Place or Country,” March 22, 1794, *The Public Statutes at Large of the United States of America*, 3rd Congr., 1st Sess. (Boston: Charles C. Little and James Brown, 1945), 1:347.

23. Charles Rappleye, *Sons of Providence, The Brown Brothers, the Slave Trade and the American Revolution* (New York: Simon & Schuster, 2007), 299.

24. For the limited early success against the slave trade in Rhode Island and the ultimate collapse

NEW YORK PROSECUTIONS UNDER THE 1794 ACT

The foreign slave trade out of the port of New York at the beginning of the nineteenth century was small in comparison to that emanating out of Rhode Island, but it flourished as neighboring states closed their ports to slave traders. A Quaker petition filed in 1790 with the New York State legislature asking that slave traders be prohibited from outfitting their vessels in New York, was summarily rejected by the New York State Assembly on the grounds that the constitution vested sole power over commerce in the federal government.²⁵ Four years later, Congress passed the 1794 Act, which was subsequently enforced only occasionally in New York and those prosecutions commenced were mainly brought by the New-York Manumission Society. The Society was founded in 1785 by twelve Quakers and six interdenominational men and over its first forty years, of 454 members, 251 were Friends and the balance non-Quakers.²⁶ While the Manumission Society's long-term mission was both the private manumission and the public emancipation of slaves in New York State, its short-term goal at the beginning of the nineteenth century was the prevention of illegal kidnapping and re-enslavement of free blacks and the protection of the remaining slaves in New York from abusive owners and illegal sales.²⁷

When Emmet arrived in New York in 1804, he was welcomed by the New-York Manumission Society and soon became a member, serving as

of that effort by both the federal authorities and local abolitionists, see Coughtry, *Notorious Triangle*, 203–229; Rappleye, *Sons of Providence*, 301–339. For discussion of the difficulties in policing the American slave trade in a slightly later time period, see Warren S. Howard, *American Slavers and the Federal Law, 1837–1862* (Westport, Ct.: Greenwood Press, 1976).

25. [New York] *Daily Advertiser*, February 4, 1790, 3. Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North* (Chicago: University of Chicago Press, 1967), 160–161.

26. Thomas Robert Moseley, *A History of the New-York Manumission Society, 1785–1849* (PhD diss., New York University, 1963), 1. Gretchen Haynes, “The Quaker Conflict Over Abolition Activism,” accessed May 6, 2014, <http://www.icelandichorse.info/quakeronflctoverabolitionactivism.html>. With the Manumission Society's strong Quaker pedigree, confusion by those who reported Emmet's first case coming from the Society of Friends rather than the New-York Manumission Society is understandable.

27. Moseley, *History*, 113; Leslie M. Harris, *In the Shadow of Slavery: African Americans in New York City, 1626–1863* (Chicago: University of Chicago Press, 2003), 61, 207–208; Shane White, *Somewhat More Independent, The End of Slavery in New York City, 1770–1810* (Athens: University of Georgia Press, 1991), 81; David N. Gellman, *Emancipating New York, The Politics of Slavery and Freedom, 1777–1827* (Baton Rouge: Louisiana State University Press, 2006), 162–165, 203. To accomplish its broader aims, the N-YMS actively lobbied to enhance laws against the transportation of slaves to and from New York State and founded the African Free-School in 1787 devoted to the education of black children as preparation for life as free individuals. The Society was dissolved in 1849. Records of the New-York Manumission Society, 1785–1849, MS 1465, New-York Historical Society [Hereafter N-YMS], <http://cdm16694.contentdm.oclc.org/cdm/ref/collection/p15052coll5/id/31512>.

Counsellor for the remainder of his life. The standing committee of the Manumission Society, which was appointed and charged with collecting information on illicit slave ventures, moved forward with prosecutions in state or federal court on behalf of the Society. Members of the standing committee monitored the activities in the port for and received intelligence from local merchants and government officials on ship captains' and ship owners' illicit transportation of slaves into or out of the port of New York. When a violation of law was reported in progress, the standing committee was able to mobilize with alacrity to obtain the necessary legal writ authorizing seizure of an offending vessel or entry upon the vessel to rescue imprisoned Negroes about to be transported for sale in the West Indies or Southern states.²⁸ In early 1805, the standing committee engaged Emmet in his first case in America as part of a legal team to bring to trial for violation of the Slave Trade Act a New England captain, who commanded the brig *Peggy* in 1800 on a slave trading voyage between West Africa and the Caribbean.

THE BRIG *PEGGY*

On January 27, 1800, the brig *Peggy* was fitted out in Newport and cleared for the west coast of Africa, setting sail the following day.²⁹ The 134-ton brig was under the command of Philip Morse Topham, who was twenty-two years old and came from a prominent Newport family. John Topham, Captain Topham's father, was one of the earliest patriots of the Revolutionary War, leading a company at Bunker Hill, rising to the rank of Colonel of the Rhode Island Militia, and after the war, serving in the Rhode Island General Assembly.³⁰ Philip Topham was listed on the ship's register as both the sole owner and captain of the *Peggy*, but he likely owned little more than a nominal share in the vessel.³¹

28. White, *Somewhat More Independent*, 85–86.

29. *Newport Mercury*, January 28, 1800, 3; Coughtry, *Notorious Triangle*, 274. Topham sailed the *Peggy* from Boston arriving in Newport in late December 1799. *Newport Mercury*, December 31, 1799, 3.

30. Following the conclusion of the Revolutionary War and restart of the slave trade out of Rhode Island, the Newport firm of Topham, Boss, and Newman were owners of the brig *Hannah*, during which time it was involved in at least two slave voyages. Voyages Database. 2009. *Voyages: The Trans-Atlantic Slave Database*, www.slavevoyages.org/tast/database/search.faces (accessed May 6, 2014); *Newport Historical Magazine* 2 (July 1881):24.

31. During a subsequent legal battle over the proceeds of the slave voyage of the *Peggy*, the true owners were revealed to be two Boston merchants, Samuel Fales and George Athearn, and a sea captain experienced in the Rhode Island slave trade, Freeman Mayberry. *Fales and Athearn v. Mayberry*, 8 F. Cas.

Once off the coast of Africa, Captains Topham and Mayberry purchased and took onboard one hundred and fifty Africans and from there sailed for the West Indies. During the voyage, approximately one-half of the human cargo was lost by the time the *Peggy* reached St. Bartholomews, where a portion was sold; the remainder was sold in Havana.³² Captain Topham returned from the West Indies by way of New York City, arriving on February 25, 1801. The Manumission Society's standing committee was alerted to his presence in the City and the nature of his voyage and on February 28, Captain Topham was arrested by the federal Marshal of the District of New York.³³ A writ was issued against him by members of the standing committee for \$30,000 (the value of the penalty sought based on 150 slaves). Unable to procure bail, Captain Topham was remanded to the Common Jail in New York City.³⁴

A *qui tam* suit against Captain Topham was promptly commenced by James Robertson, chairman of the standing committee, on his own behalf and on behalf of the United States, for monetary penalties under Section Four of the 1794 Act in the United States Circuit Court for the District of New York. This lawsuit was the first of its kind for the Society under the 1794 Act and expectations ran high that evidence could be produced that would be sufficient to prevail.³⁵ Witnesses were gathered, including Cesar Mumford, a black seaman who sailed from Rhode Island in the schooner *Chance*, who reported that he saw Captains Topham and Mayberry on the

970 (Case No. 4,622) (C.C.D.R.I. 1815) (Story, Cir. J.). After leaving Newport, Topham sailed the *Peggy* to Savannah where he picked up Mayberry, who accompanied Topham to Africa, probably serving as supercargo, in charge of trading for the slaves and managing them once on board. [Boston] *Russell's Gazette*, November 18, 1799, 4; [Savannah] *Georgia Gazette*, February 13, 1800, 3; April 3, 1800, 2.

32. N-YMS, 7:184; 9:55–56. Such an enormous and unexplained loss of life during the middle passage was roughly four times greater than the average loss of 11.9 percent of Africans embarking on ships across the Atlantic who did not survive. Trevor Graeme Burnard, "The Atlantic Slave Trade" in *The Routledge History of Slavery*, eds. Gad Heuman and Trevor Burnard (London and New York: Routledge, 2011), 88.

33. N-YMS, 7:186; 9:55–56; Memorial of Philip M. Topham to Thomas Jefferson, August 18, 1807, Pardon Case, No. 140, *Petitions For Pardons, 1789–1860*, Record Group 59, National Archives and Records Administration [Hereafter NARA], College Park, MD [Hereafter *Petitions For Pardons*]. Captain Topham arrived in New York without the *Peggy* which had been sold in Havana, as part of the original instructions to avoid forfeiture upon return to Newport. The account in *Fales* reporting that the *Peggy* was sold in St. Bartholomews is at odds with the records of the N-YMS, indicating the ship was sold in Havana. *Fales*, 8 Fed. Cas. 971; N-YMS, 7:184; 9:55–56. However, the location of the sale was immaterial to the *Fales* decision which established the legal principle that partners in the slave trade may not seek relief from the courts on any right or property growing out of their illicit transaction.

34. N-YMS, 7:186.

35. N-YMS, 9:56; *James Robertson, qui tam v. Philip M. Topham*, Law Case Files of the U.S. Circuit Court for the Southern District of New York, 1790–1846, Records of the District Courts of the United States, Record Group 21, NARA, M883, roll 38 [Hereafter *Law Case Files*].

coast of Africa with 67 slaves on board the *Peggy*.³⁶ John Fellows, likely the well-known New York City bookseller, publisher and close friend of Thomas Paine, had recently returned from St. Bartholomews and reported in August 1801 to the chairman of the standing committee that he saw Captain Topham in St. Bartholomews with more than eighty, but certainly not less than sixty slaves.³⁷ Nevertheless, the prosecution of the case stalled, probably out of concern about the sufficiency of the evidence and in August 1801, Captain Topham was released on \$20,000 bail posted by John Thurston, a Newport merchant with family ties to the slave trade, and John Champlin, a Bristol, RI slave ship captain.³⁸

THE TRIAL

It took the Manumission Society another two years to gather the necessary evidence, including testimony from witnesses residing in Rhode Island, to prepare the case for trial. These preparations included dispatching one of the Society's members, John Duer, from New York to Providence to obtain crucial evidence.³⁹

In late March 1805, the Manumission Society finally moved the case against Captain Topham to trial in New York, engaging Thomas Addis Emmet and his co-counsel, Egbert Benson and Rudolph Bunner, to prosecute the case on its behalf and appointing a special committee to attend the trial, procure the necessary witnesses, and raise by subscription the needed

36. *N-YMS*, 7:189–190. The standing committee decided not to pursue a similar Slave Trade Act case against the captain of the *Chance*, Sandford Brown, due to insufficient evidence. *N-YMS*, 7:191.

37. *N-YMS*, 7:197; 9:66. Why Fellows was in St. Bartholomews in 1800–1801 is unclear. He might have recognized Topham because Topham was a frequent visitor to New York City during 1799 transporting sugar, rice, and other goods from Havanna and Charleston to New York. *New-York Gazette*, June 15, 1799, 2; [New York] *Daily Advertiser*, April 3, 1799, S2. Upon his return to New York City in August 1801, Fellows was appointed to the much sought-after position of official Auctioneer for New York City and in 1806, he became a member of the N-YMS. [New York] *Daily Advertiser*, August 31, 1801, 2; Isaac T. Hopper, *List of Members of the New York Manumission Society, 1787–1827*; Franklin B. Dexter, *Biographical Sketches of the Graduates of Yale College* (New York: Henry Holt & Co., 1907), 4:265–268.

38. *N-YMS*, 7:197; *N-YMS*, 9:66; *Petitions For Pardons*; Coughtry, *Notorious Triangle*, 45–49, 263, 269, 277, 279, 283; *Newport Mercury*, May 18, 1802, 4. The reluctance to actively pursue the Topham case to trial, at that time, may have been influenced by the Society's highly publicized failed attempt in the courts to free roughly twenty slaves in the household of the widow Drouillard de Volunbrun. Martha S. Jones, "Time, Space, and Jurisdiction in Atlantic World Slavery: The Volunbrun Household in Gradual Emancipation New York," *Law and History Review* 29 (Nov. 2011): 1031, 1046–1056.

39. *N-YMS*, 9:101; *N-YMS*, 7:307 (authorizing repayment of \$20.43 for expenses relating to obtaining testimony in the *Topham* case); 7:339 (John Duer was reimbursed \$50 for his expenses).

funds to defray the trial expenses.⁴⁰ Judge Benson, as he was known, was one of the Manumission Society's Counsellors and had served as New York State's first Attorney General, an office which Emmet would later hold.⁴¹ The third member of the plaintiff's team was Rudolph Bunner, also an active member of the N-YMS. Emmet was not yet admitted to the Circuit Court in New York and so was promptly admitted on April 1, 1805.⁴²

When Emmet was admitted to practice before this court, the Supreme Court justice assigned to the Circuit Court for New York was William Paterson, who was born in County Antrim, Ireland and immigrated to this country at the age of two. Presiding alone due to the recent death of his fellow judge, the case was tried in a courtroom located within the original Federal Hall at the corner of Nassau and Wall Streets in New York.⁴³ Following jury selection, the trial began on April 3, 1805. The court minutes show counsel for the defendant was Mr. Colden and Mr. Radcliff.⁴⁴ The plaintiff called four witnesses—Benjamin A. Egbert, William T. Slocum, Archibald Whitney, and John Fellows. No record of their testimony was preserved. However, Slocum, a member of the Society's standing committee, likely testified to the role the standing committee played in Topham's arrest. Whitney was probably the noted wholesale grocer and Egbert the fine wine merchant, both with businesses located at the waterfront in Lower Manhattan, where they likely heard Topham in February 1801 recounting the voyage of the *Peggy* and subsequently tipped off the standing committee to Topham's presence in New York City.⁴⁵ As he

40. N-YMS, 7:276–278.

41. Counsellors of the N-YMS served without compensation. Moseley, *History*, 55. Emmet was appointed New York State Attorney General in August 1812 but was removed from office in February 1813 when the opposing Federalist Party secured a majority on the Council of Appointment. *Military Minutes of the Council of Appointment of the State of New York, 1783–1821* (Albany, N.Y.: J.B. Lyon, 1901), 2:1419.

42. Minutes, Trial Notes and Rolls of Attorneys of the U.S. Circuit Court for the Southern District of New York, 1790–1841 in Records of the District Courts of the United States, Record Group 21, NARA, M854 roll 3 [Hereafter *Minutes*].

43. Judge John Sloss Hobart served on the district court until his death on February 4, 1805. His successor, Matthias B. Tallmadge, was not appointed until June 12, 1805. H. Paul Burak, *History of the United States District Court for the Southern District of New York* (New York: Federal Bar Association of New York, New Jersey and Connecticut, 1962), 2.

44. The *Minutes* probably refer to Cadwallader D. Colden, who twice served as mayor of the City of New York and Peter W. Radcliff, who later served as a judge and was a well-respected member of the Bar. Charles Edwards, *Pleasantries About Courts and Lawyers of the State of New York* (New York: Richardson & Company, 1867), 117–118, 440–441.

45. N-YMS, 7:184, 278; Stephen Whitney Phoenix, *The Whitney Family of Connecticut* (New York: Bradstreet Press, 1878), I:123; [New York] *Merchantile Advertiser*, December 4, 1801, 3.

reported to the standing committee chairman in August 1801, Fellows undoubtedly testified at trial that he saw Topham in St. Bartholomews with at least sixty, but possibly as many as eighty slaves.⁴⁶ The deposition of William Ellery, the Collector of the District of Newport, taken before a Newport judge shortly before the trial, on March 20, 1805 was also admitted into evidence. Ellery's deposition was crucial because it allowed into evidence the manifest for the brig *Peggy* dated January 21, 1800, which showed Philip M. Topham as the ship's sole owner and master and the *Peggy* bound for Africa laden with cargo presumptively (although not conclusively) associated with the slave trade, namely, over 6,100 gallons of rum of the first proof and other spirits valued at over \$6,500. This evidence, when coupled with the testimony of the four witnesses, amounted to strong proof of Topham's violation of Section Four of the 1794 Act.⁴⁷ Counsel for Topham called no witnesses and the judge charged the jury and adjourned proceedings until the following day.⁴⁸

On April 4, the jury returned a verdict for the plaintiff in the amount of \$16,000. On the following day, counsel for Topham sought to have the verdict set aside on the grounds that the action should have been brought in Rhode Island and not New York and on other technical grounds. Justice Paterson overruled each of the objections and ordered judgment to be entered for the plaintiff.⁴⁹

Emmet and his fellow trial counsel for the plaintiff received high praise from the Society "for their very zealous able and ingenious management of this complicated and severely contested Suit,"⁵⁰ in what was likely the first substantial judgment under Section Four of the 1794 Slave Trade Act in New York and in what has been acknowledged as the most dramatic and most difficult case the Society prosecuted during its sixty-five year history.⁵¹ Meanwhile, a judgment was docketed against Topham for the sum of \$16,000, the statutory penalty for transporting eighty slaves to a foreign

46. For Fellows' background, see note 37 above.

47. *Law Case Files*.

48. *Minutes*, April 3, 1805.

49. *Minutes*, April 5, 1805.

50. *N-YMS*, 7:278–279; *N-YMS*, 9:131, 137–138. Emmet was immediately proposed for membership in the Society, elected a member on July 23, 1805 and in January 1806 was elected one of its Counsellors, an office which he held continuously until his death. *N-YMS*, 9:141, 153–358 *passim*. *New-York Gazette*, February 6, 1806, 2; Alice Dana Adams, *The Neglected Period of Anti-slavery in America (1808–1831)* (Boston: Ginn & Company, 1908), 255.

51. Moseley, *Manumission Society*, 39–40, 166–168.

place, plus \$124.44 for costs of the suit.⁵² Without means to pay the judgment, Topham was committed to prison and an appeal was never taken due to the difficulty of procuring an appeal bond for so large a sum.

The campaign by Philip Topham's supporters to obtain a presidential pardon for him began immediately following the trial when Joseph Stanton, Jr., a member of the House of Representatives from Rhode Island and a former senator from that state, wrote to President Jefferson to urge him to pardon Philip Topham, citing the service of his father, Colonel Topham, during the American War of Independence.⁵³ President Jefferson rejected Stanton's appeal stating that since Topham was unable to pay the judgment, a pardon would result in his going "clear of all punishment" and therefore the only substitute for a payment "is a due term of imprisonment."⁵⁴

From 1805 through 1807, Topham himself repeatedly, but unsuccessfully, petitioned Jefferson for a pardon and separately petitioned the Society to be relieved from the portion of the judgment owed to it. Not surprisingly, the Society rejected Topham's petitions.⁵⁵ Renewed pressure was applied by Topham's supporters for a presidential pardon in early 1808 and on February 28, 1808, President Jefferson directed that "in consideration of the punishment already inflicted, and of the change in the state of the law on this subject, let a pardon issue."⁵⁶

52. Pardon of Philip M. Topham, April 25, 1808, *Presidential Pardons and Remissions, 1794–1893*, Records Group 59, NARA, T967 roll 1, 148–149 [Hereafter *Pardons*].

53. Joseph Stanton to Thomas Jefferson May 9, 1805, *The Thomas Jefferson Papers*, Series 1, General Correspondence, 1651–1827 (Image 428 of 947) [Hereafter *Jefferson Papers*], accessed May 6, 2014, <http://hdl.loc.gov/loc.mss/mtj.mtjbib014680>.

54. Thomas Jefferson to [Joseph] Stanton, January 15, 1806, in *Thomas Jefferson Correspondence, Printed from the Originals in the Collections of William K. Bixby* (Boston: 1916) 127. Almost three years earlier, Jefferson similarly refused to pardon another Newport slave trade captain, Nathaniel Ingraham, who was imprisoned for failure to pay a judgment of \$14,000 in Newport under the 1794 Act, advising Senator Christopher Ellery from Rhode Island that a pardon would not be considered until Ingraham had served at least two years in prison, "as a terror to others meditating the same crime." Thomas Jefferson to Christopher Ellery, May 9, 1803, in *Historical Magazine* (1867) I (Second Series):168–169. By improbable coincidence, Ingraham and Topham, the only Rhode Islanders to be imprisoned for violating the federal slave trade laws, both cleared Newport for Africa on the same day, albeit on different vessels. *Newport Mercury*, January 28, 1800, 3; Coughtry, *Notorious Triangle*, 222–223. Jefferson ultimately issued the pardon to Ingraham on February 24, 1804.

55. *N-YMS*, 7:287, 7:289, 9:144 (Emmet was present at this meeting), 9:156, 9:163 and 9:173.

56. Order of Thomas Jefferson (February 28, 1808), *Petitions For Pardons*. In citing a change in the state of the law, the president was referring to the maximum imprisonment of two years under the 1800 Act. At the time of his release, Topham had served approximately thirty months in prison. Caesar A. Rodney to Thomas Jefferson, February 22, 1808, in *Jefferson Papers* (Image 1167 of 1330) accessed May 6, 2014, <http://hdl.loc.gov/loc.mss/mtj.mtjbib018277>.

On March 1, 1808, President Jefferson signed the pardon remitting the fines and costs against Philip Topham, his only pardon of a slave trader other than Captain Ingraham.⁵⁷ However, when Topham sought his release, United States Supreme Court Justice Brockholst Livingston, sitting as a circuit judge in New York, rejected the pardon as improper, agreeing with the arguments of counsel for the Manumission Society and the Marshal for the District that the pardon stated, incorrectly, that the Topham prosecution was predicated on the 1800 Act.⁵⁸ When this error was discovered, Topham's supporters once again appealed to the president for Topham's release.⁵⁹ A new pardon warrant was signed by the president on April 25 correctly predicated on the 1794 Act and Topham was released.⁶⁰ In a May 2, 1808 letter of thanks to the president, Philip Topham stated "may God forget me when I again trample on my Country's laws."⁶¹ Following his release, Topham returned to Newport and during the War of 1812, served in the U.S. Navy from July 27, 1813 to 1815.⁶² Shortly after his discharge, he died at sea on December 29, 1816 in the Caicos Islands.⁶³

The *Topham* case shows the complexity of the relationship between the law and slavery at the turn of the nineteenth century and how difficult it was to use the law to battle slavery. A successful attack on the slave trade required a committed prosecutor, cooperating witnesses, some of whom had to have viewed the defendant in actual possession of slaves in foreign lands, the financial resources to commence and continue a suit, skilled counsel to present the case, and a Judge and jury willing to enforce the law. Even a successful prosecution such as *Topham* could have the result undone by persistent, well-placed, and well-financed supporters of the defen-

57. *Pardons*, 146.

58. Philip M. Topham to Thomas Jefferson, April 28, 1808, in Missouri History Museum, Thomas Jefferson Collection [Hereafter *Missouri*], Box 7, f. 25; James Main to James Madison, April 18, 1808, in *The James Madison Papers*, Series 1, General Correspondence and Related Items, 1723–1859 (Image 232 of 1161) accessed May 6, 2014, <http://memory.loc.gov/master/mss/mjm/10/0200/0232d.jpg>.

59. James Main to Thomas Jefferson, April 9, 1808 in *Jefferson Papers* (Image 321 of 1370) accessed May 6, 2014, <http://hdl.loc.gov/loc.mss/mtj.mtjbib015692>.

60. *Pardons*, 148–149.

61. Philip M. Topham to Thomas Jefferson (May 2, 1808) in *Missouri*, Box 7, f. 26.

62. National Historical Center, *Officers of the Continental and U.S. Navy and Marine Corps., 1775–1900* accessed May 6, 2014, <http://www.history.navy.mil/books/callahan/reg-usn-t.htm>. At least one report indicated Topham distinguished himself during the war. "Capture of British Privateer Dart," [Providence] *Rhode-Island American*, October 8, 1813, 2.

63. A transcription of the headstone located in Newport's Common Burying Ground commemorating Topham's death can be found in *Newport Historical Magazine* 3 (Oct. 1882): 93.

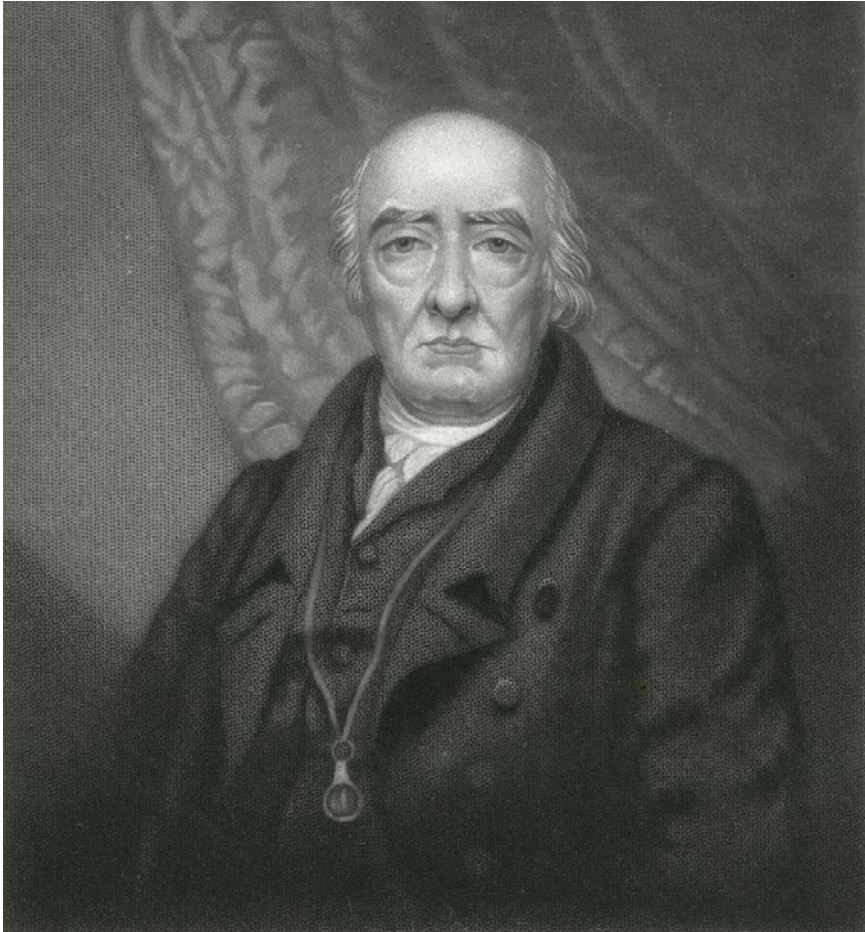


Figure 1. Thomas Addis Emmet (1764–1827), engraved by W.G. Jackman. Collection of The New-York Historical Society, 61167.

dant. The financial and public relations risks if the prosecution failed also weighed heavily in the balance and made any successful legal action against the slave trade all the more remarkable.

THE FUGITIVE SLAVE CASE

It would appear that Macneven's earliest account of Emmet's first case as involving a prosecution against slavery on behalf of the Manumission

Society has strong support in the historical record. Macneven knew Emmet as an intimate friend of thirty years.⁶⁴ Macneven arrived in New York from Ireland in July 1805, a mere three months after the *Topham* case was decided and the Emmet and Macneven families were intertwined; Thomas Emmet's third son, Thomas, Jr., was married to Macneven's stepdaughter, Anna Thom. Therefore, it is very likely that Macneven's account originated from a person with first-hand knowledge. Moreover, the likelihood that Emmet defended in a New York court fugitive slaves from a neighboring state prior to his appearance in the *Topham* case on April 1, 1805, would seem more remote.⁶⁵

Under the United States Constitution, Article IV, all fugitive slaves were required to be surrendered to their rightful owners. Under the Fugitive Slave Act of 1793, slave owners and their agents were free to seize the runaway and to have him or her taken before any judge of a United States Circuit or District Court or any local magistrate. If the judge or magistrate found, based on either oral testimony or affidavit and without a jury trial, that the person was a fugitive slave, a certificate would be issued permitting the removal of the person to the state from which he or she fled.⁶⁶ During the early 1800s, the New York courts and law enforcement zealously enforced the Fugitive Slave Act.⁶⁷ For example, the Manumission Society's standing committee reported in January 1805 that a Virginian slave catcher had seized and imprisoned an African-American man to keep him from running away before the requisite certificate of custody allowing removal to Richmond could be obtained. The Manumission Society intervened before the local magistrate, the Recorder of the City of New York, but when the Virginian was unable to prove the man was a slave, the Recorder, instead of granting the man his freedom, remanded him to Bridewell prison until the claimant could substantiate his legal right to him. The black man lingered in prison for over seven months. The Manumission Society's

64. See discussion of their friendship in Robert R. Madden, *The United Irishmen, Their Lives and Times* (Dublin: James Duffy, 1846), 3: 21–27, 69–85.

65. Emmet would have had to have conducted the defense in the fugitive slave case sometime between mid-February and mid-March, since Emmet was preparing for the *Topham* trial in late March 1805. *N-YMS*, 7:276; [Albany, NY] *The Centinel*, February 12, 1805, 3 (announcing Emmet's bar admission to the New York Supreme Court).

66. "An Act respecting fugitives from justice, and persons escaping from the service of their masters," February 12, 1793, *Statutes at Large*, 2nd Cong., 2nd Sess., 1:302.

67. Harris, *In the Shadow of Slavery*, 207.

intervention in fugitive slave cases such as this was deemed so hopeless, that its standing committee lamented that it did not even include those cases on the minutes of open matters it was following.⁶⁸ Due to the difficulty of successfully intervening in fugitive slave cases, at the turn of the nineteenth century, the N-YMS was generally more concerned with using the courts to prevent attempts by New York slave owners to salvage their imminent losses by selling their slaves thereby evading the 1799 law prohibiting such sales, than with the status of fugitive slaves, at least until full emancipation of New York slaves was achieved in 1827.⁶⁹ It is therefore not surprising that there is no mention of Emmet defending fugitive slaves in the records of the New York Court of General Sessions or local Police Court and nothing in the Manumission Society minutes to indicate that it, or its lawyers, participated in court proceeding involving the successful defense of fugitive slaves, during the months of February or March 1805.⁷⁰ Such an important case in 1805 would have likely been referred to the N-YMS's Counsellors and had it been successful, would have undoubtedly been reported in the Society's minutes, as was the case in 1819 when Emmet defended several African-Americans from New Jersey, whose master sought to establish his ownership over them, and assisted in securing their liberty.

On November 2, 1818, William Raburgh purchased Jane Wilson, a black woman, and several black men in New Jersey and planned to return with them to his native Alabama. At that time the laws of the State of New Jersey permitted the transportation of slaves outside of the state. Three days later, however, New Jersey enacted a law prohibiting the exportation of slaves out of state, the violation of which was a misdemeanor and the person intended to be exported became free. When Raburgh entered New York City with Jane Wilson and one or more of the black men and attempted to transport them back to New Jersey and then to Alabama, the sloop they were on was seized by a custom house officer and a captain of the watch held Raburgh and the black men and women overnight in the watch house. The following morning they were all discharged by a police

68. N-YMS, Vol. 5, Standing Committee, Jan. 9, 1805; 7:270–271. The standing committee expressed outrage at the practice of slave catchers imprisoning suspected fugitives in the City's jails until certificates of custody could be obtained, and unsuccessfully sought to put an end to the City's complicity in a process that often resulted in free blacks being kidnapped into slavery. *Ibid.*

69. Harris, *In the Shadow of Slavery*, 207–208.

70. Emmet applied for admission to the local Mayor's Court on April 7, 1805, only after the conclusion of the *Topham* trial. Emmet, *Memoir*, I: 395–400.

justice, whereupon the slaves escaped but were quickly recaptured and imprisoned pending their removal to Alabama. Raburgh had Jane Wilson and at least one black man brought before Justice Brockholst Livingston, sitting in the United States Circuit Court in New York, in order to obtain the requisite certificate authorizing him to remove them to New Jersey, and then to Alabama, as provided under the Fugitive Slave Act. Thomas Addis Emmet and Peter A. Jay appeared before Justice Livingston for the Manumission Society on behalf of Jane Wilson and the black man. Raburgh, through his lawyer, contended that he had a right to take them out of New York State under the old law of New Jersey, since he complied with the regulations under the old law for taking them out before the passage of the new law prohibiting exportation. Justice Livingston decided in favor of Raburgh and issued a certificate validating Raburgh's claim to Wilson. However, before Raburgh could leave the city, the Manumission Society applied to the mayor, Cadwallader Colden, who issued a writ of habeas corpus directing Raburgh to bring Jane Wilson before his court. Emmet did not represent Jane Wilson in that proceeding, perhaps due to his extensive and conflicting professional commitments in Albany during March. Instead, she was represented by two other Counsellors of the Manumission Society and George Griffin, a noted trial lawyer and one of the founders of the American Bible Society. Following a lengthy proceeding before the New York Court of General Sessions, the mayor, as the presiding judge of that court, held that the certificate issued by Justice Livingston was not conclusive on her personal liberty and did not preclude her discharge pursuant to the state habeas corpus act. Therefore Raburgh stood in no better position than Wilson's former owner, who after the law was passed, could not transport her out of state. Since Raburgh had transported Wilson from the State of New Jersey after the act prohibiting exportation was passed, she became free and was entitled to her freedom.⁷¹

71. *New-York City—Hall Recorder* 4 (April, 1819): 47; *N-YMS*, 11: 45–46; *New-York Daily Advertiser*, June 3, 1819, 2; "Obligation of Contracts," *Niles' Weekly Register* 16 (June 12, 1819):269. By an interesting twist of fate, Mayor Colden was also at that time the president of the New-York Manumission Society, a fact which he held, interestingly, did not disqualify him from hearing the *Wilson* case since the Society was not a party to the proceeding.

EMMET'S OTHER SLAVE CASES

Emmet's antislavery beliefs, formed in insurgent Ireland and transplanted to America, found expression principally in his voluntary legal services to the New-York Manumission Society. Three months after he arrived in New York, Emmet began advocating in the courts the antislavery program of the Manumission Society. He continued counseling and representing the Society, without pay, until his death in 1827. Through his association with the Society, Emmet publicly professed his opposition to slavery in America.⁷² Two years after his arrival in New York, Emmet continued to describe Ireland as "an enslaved Country," as he peremptorily declined an invitation from an old friend to visit Ireland. He wrote: "Besides my good friend, I am too proud, when vanquished to assist by my presence, in gracing the triumph of the victor; And with what feelings should I tread on Irish ground? As if I were walking over graves—and those the graves of my nearest Relatives and my dearest friends. No, I can never wish to be in Ireland, except in such a way, as none of my old friends connected with the Government, could wish to see me placed in. As to my Children, I hope they will learn here to love liberty too much, ever to fix a voluntary residence in an enslaved Country."⁷³

Emmet's antislavery activities were most visible during his early years in America, ebbed during his busy mid-career and then re-emerged in 1819 during the Missouri Compromise era through in his final years. During 1808 and 1809, Emmet was involved in three cases, each of which resulted in the freedom of slaves. In one case, a New Jersey master manumitted his slave woman, who then without knowing she was free, bound herself for twelve years to the plaintiff, who paid £80 to the former master. The judge concluded that the manumission, payment, and binding out were sham transactions contrived to evade the statutory prohibition on the importation of slaves into New York. Since, due to the fraudulent nature of the transaction, the woman was still a slave in New Jersey, the court held that

72. Following the annual election of officers each year, the Society was careful to publish the results in local newspapers, as a skillful public relations effort. For an example, see *New-York Gazette*, February 6, 1806, 2. Emmet lent his good name and reputation to the Manumission Society by his association with that group. With Thomas Emmet, John Jay, Alexander Hamilton, and other well known names on the roster of its officers, the public was less likely to misjudge or misrepresent the Society's motives. Moseley, *Manumission Society*, 268–269.

73. Thomas Addis Emmet to Peter Burrowes, November 19, 1806 in Miller, *Irish Immigrants*, 613.

she became free the moment she arrived in New York as mandated by the New York statute prohibiting the importation of slaves and directed that she walk out of court a free woman.⁷⁴

In the second case, Emmet successfully voided a contract for the sale of a young slave boy for life because the buyer was unaware that the seller had agreed in writing to manumit the slave in eight years.⁷⁵

The third case was much more complex. In August 1807 the keeper of the City Jail alerted a member of the Manumission Society that three people of color belonging to Maria Martha Eitlinger, were in prison for the purpose of being transported by ship out of state. The attempt to transport the three was prevented by the Society serving a writ *de homine replegiando* and by three N-YMS members posting a bond in the amount of \$1,500, guaranteeing either to prosecute the case to the freedom of the three individuals or to return them. Unfortunately the members of the subcommittee of the standing committee assigned to prepare the case for their trial counsel, grossly mismanaged the case and so when the case was called for trial without key witnesses, Emmet and his co-counsel were forced to introduce rather shaky evidence of the attempted transportation, which the New York Supreme Court trial judge refused to admit before the jury and the case was dismissed. Meanwhile the blacks, once free on bond, absconded on their own to the West Indies, leaving the N-YMS with a judgment to pay on behalf of Mrs. Eitlinger in the amount of \$1,700.⁷⁶

Any attempt to deduce from an individual's actions why they do what they do is, of course, fraught with peril. In the case of attorneys, this is doubly so. Lawyers sometimes represent clients whose actions run counter to the attorney's personal beliefs. Indeed, most people understand that representing the person or issue does not equate with the attorney condoning or endorsing the conduct of a particular client.⁷⁷ But in Emmet's case, we know that he volunteered his legal services on behalf of the N-YMS at the

74. *Dubois v. Allen*, Ant. N.P. Cas. 94, Anth. N.P. (2d Ed.) 128 (N.Y. Sup. Ct. 1809).

75. *Kettletas v. Fleet*, Ant. N.P. Cas. 36, Anth. N.P. (2d Ed.) 52 (N.Y. Sup. Ct. 1808), *aff'd*, 7 Johns. 324 (1811).

76. *Aza, Daure and Zelia v. Eitlinger*, Ant. N.P. Cas. 73, Anth. N.P. (2d Ed.) 99 (N.Y. Sup. Ct. 1808); N-YMS 9:248–254; Moseley, *Manumission Society*, 63–64.

77. This principle was as true in Emmet's time as it is today. The current American Bar Association Model Rules of Professional Conduct (ABA, 2013), Rule 1.2(b) provides that a lawyer's representation of a client "does not constitute an endorsement of the client's political, economic, social or moral views or activities."

very least in the *Topham*, *Wilson*, and *Eitlinger* cases and that he counseled the N-YMS without compensation from virtually the first day he stepped foot in New York until the time of his death. Given this record, it would appear that Emmet's antislavery actions in New York were, over twenty years, consistent with his antislavery beliefs transplanted from Ireland.

This is not to say, however, that trying to divine Emmet's mindset on slavery in America is not without its challenges. In 1820, Emmet served as defense counsel in two federal prosecutions arising out of an effort by the federal government to suppress the slave trade by establishing a squadron on the west coast of Africa to search for slavers and return the vessels and crew to America for prosecution and any slaves to newly established colonies in Africa for repatriation.⁷⁸ The sloop-of-war *Cyane*, commanded by Captain Edward Trenchard, was the first ship of the African Squadron to be sent to Africa and engaged a group of suspected slave vessels on April 10, 1820 capturing six schooners and one brig.⁷⁹ While no slaves were on board, evidence implicated five of the vessels in the slave trade and Captain Trenchard sent four of the schooners to New York and the brig to Boston for forfeiture of the vessels and prosecution of the crew.⁸⁰ Once in New York, each of the four schooners was condemned and the captain of the *Endymion*, Alexander McKim Andrews, who happened at the time of his capture to be a midshipman in the United States Navy on furlough, was prosecuted under the Act of 1819 in the Circuit Court for the Southern District of New York and Emmet defended Andrews. The trial ended in a mistrial at the conclusion of the case due to the illness of a juror.⁸¹

The government also indicted Eugene Malebran for his participation in the equipping and fitting out the schooner *Science* before it cleared the Port of New York for Puerto Rico and then Africa. Emmet succeeded in

78. In 1819, Congress passed another slave trade act authorizing the president to send armed vessels to the coast of Africa to interdict slave vessels. "An Act in addition to the Acts prohibiting the slave trade," March 3, 1819, *Statutes at Large*, 15th Congress—2nd Session, 3:532.

79. For a detailed description of the capture by the *Cyane*, see Edgar Stanton Maclay, *Reminiscence of the Old Navy: From the Journals and Private Papers of Captain Edward Trenchard, and Rear-Admiral Stephen Decatur Trenchard* (New York: The Knickerbocker Press, 1898), 8–18.

80. The captured vessels were the schooners *Endymion*, *Science*, *Esperanza*, and *Plattsburgh* and the brig *Alexander*. Smith Thompson to Joseph Hemphill, February 7, 1821 in U.S. Congress, House, *Report of Committee in Suppression of Slave Trade to House of Representatives, April 12, 1822*, 15, 17th Cong., 1st Session, 1822.

81. *United States v. Andrews*, 24 F. Cas. 815 (C.C.S.D.N.Y. 1820) (No. 14, 454); *Niles' Weekly Register* 19 (September 23, 1820):64. The record is silent as to whether Andrews was retried.

convincing the jury to acquit Malebran because the indictment was fatally flawed due to lack of specificity of the charge.⁸²

Emmet's role in the defense of both of these cases might appear puzzling and, at worst, paradoxical in light of the evidence that he opposed slavery. However, nothing during this time indicated a reversal in Emmet's beliefs against slavery. On the contrary, several months prior to his taking on the defense of these slave trade prosecutions, Emmet publicly reaffirmed his personal opposition to slavery as a political and moral evil and actively supported measures to urge Congress to prohibit slavery in any new states or territories that may thereafter be admitted into the Union, during the national debate over what later resulted in the Missouri Compromise.⁸³ In addition, Emmet continued to serve as a Counsellor of the Manumission Society during this time and up until his death, providing legal advice to the Society and espousing the cause of emancipation.⁸⁴ For example, only several months before Emmet's death, the standing committee of the N-YMS sought Emmet's advice whether to bring a test case on behalf of a black man named Gilbert Horton for damages for wrongful imprisonment to the United States Supreme Court to challenge the laws of Virginia and the District of Columbia providing that if a free man of color should be apprehended as a runaway, although proven to be a free man, he was still liable for jail costs and upon failure to pay those costs, could be sold as a slave. Thomas Emmet and Peter A. Jay, a fellow N-YMS Counsellor, advised the members that while they had no doubt those laws were unconstitutional, due to the fact that Horton had been earlier set free through political intervention, coupled with the high costs and the four or five years that would be involved in bringing such a challenge to the Supreme Court and the difficulty of striking down a state law in a local Southern court, the Counsellors recommended against commencing legal challenge at that time.⁸⁵ It is improbable that the Manumission Society would have contin-

82. *United States v. Malebran*, 26 F. Cas. 1145 (C.C.S.D.N.Y. 1820) (No. 15, 711). Malebran eventually resolved the matter with the payment of a fine. The ship's master, Adolph Lacoste, of the *Science* was separately tried and convicted in Boston under the Act of 1818 for violation of the slave trade laws. *Niles' Weekly Register* 19 (November 18, 1820):191.

83. "Meeting to Oppose Slavery," [New York] *Evening Post*, November 17, 1819, 2.

84. The Counsellors were subject to annual re-election by the Society and served without pay. Moseley, *Manumission Society*, 55. Emmet was first elected Counsellor in 1806 and was re-elected at the Annual Meetings of the Manumission Society for each subsequent year until his death in 1827. See note 50.

85. *N-YMS*, 11:156, 161–162. For a description of Gilbert Horton, one of the free men whose imprisonment and impending sale in the District of Columbia, prompted the Manumission Society's inquiry of

ued to re-elect and to seek and rely on the advice of someone who was not at least sympathetic to its founding purpose. That it was a paradox at all may be in fact only in its appearance to us at the beginning of the twenty-first century, not to him over two hundred years ago.⁸⁶ Emmet was probably simply carrying out his professional duty to provide a defense in such important and ground-breaking prosecutions.⁸⁷

ATTITUDES TOWARDS SLAVERY AMONG THE FORMER UNITED IRISH IN AMERICA

From the founding of the Society of United Irishmen, most of its members opposed slavery in all of its forms but that attitude was tested among those who had been United Irishmen and who carried their anti-slavery principles with them to the United States. Once on American soil, few remained committed to the immediate abolition of slavery and many gradually turned more conservative on the issue of slavery, as they strove to become part of the fabric of white America. As these former United Irishmen rose to prominence in America as lawyers, editors, publishers, and politicians, some began the long journey away from the strict abolitionist sentiment that had been an important ideological element to the movement in Ireland, changing their previous assumptions about opposing slavery along a spectrum of attitudes—ranging from grudging acquiescence of slavery as an evil to be tolerated, to the outright acceptance of the institution.⁸⁸ The discussion among historians of the failure of these former

Emmet, see Bayard Tuckerman, *William Jay and the Constitutional Movement for the Abolition of Slavery* (New York: Dodd, Mead & Company, 1893), 29–38.

86. John D. Gordan III, “Egbert Benson: A Nationalist in Congress, 1789–1793,” in *Neither Separate Nor Equal: Congress in the 1790s*, eds. Kenneth R. Bowling & Donald R. Kennon (Athens, Ohio: Ohio University Press, 2000), 87.

87. Nor was this the first time that Emmet defended a client who stood accused of conduct which Emmet personally opposed. In *United States v. William S. Smith*, Emmet, a staunch Republican, defended a well-known member of the Federalist Party accused of attempting an illegal military expedition against the Spanish in Venezuela. At the trial, Emmet’s adversary attacked Emmet’s motive for serving as defense counsel, charging him with publicity seeking. Emmet assured the court that his motive in providing a defense was purely professional, pointing out that his personal affiliation with the Republican Party would not prevent the zealous representation of his client, stating “no sentiment of private respect or public feeling can be permitted to interfere with the discharge of my professional duty.” *The Trials of William S. Smith and Samuel G. Ogden*, ed. Thomas Lloyd (New York: I. Riley and Co., 1807), 55. Emmet’s client was acquitted.

88. Wilson, *United Irishmen*, 134–140; Durey, *Transatlantic Radicals*, 282–283. For a discussion questioning the breadth of antislavery sentiment among all United Irishmen in Ireland, see Rodgers, *Ireland, Slavery*, 195–196.

United Irishmen to adhere to bedrock antislavery principles following their transatlantic passage, has tended to either group all newcomers together as like-minded apologists for slavery or to focus on an explanation of the dramatic split among their ranks on the question of slavery between those who continued to oppose slavery and those whose sentiments softened.⁸⁹ Those Irish immigrants who had been United Irishmen and who arrived in the third wave of émigrés between 1802 and 1806 after the Franco-United Irishmen alliance collapsed and who remained decidedly more faithful in America to the United Irish antislavery principles, have received comparably less attention.⁹⁰

One of those Irish immigrants was William Macneven who was born in Ireland in 1763, was educated in medicine in Vienna, and subsequently became a close associate with Emmet in the United Irishmen. When he was released from Fort George in 1802, he continued to pursue diplomatic efforts on behalf of the United Irish in France and subsequently arrived in the United States in 1805. He rose to the highest ranks in New York's medical profession and was active in Irish American issues and supported antislavery politics. One scholar has recently stated, "Of all the major United Irish leaders who became Americans, after his closest friend, Thomas Addis Emmet, Macneven was arguably the most opposed to slavery."⁹¹

A second such immigrant was William Sampson, who was born in Derry in 1764, studied law at Trinity College in Dublin, and became one of the United Irishmen's most celebrated advocates before the Irish bar. In 1798, he was charged with high treason for his involvement in the United Irish, imprisoned, disbarred, and banished from Ireland. After eight difficult years of political exile in Europe, he was allowed to enter the United States in 1806 where he continued to promote the principles of the United Irish, including advocating the antislavery cause.⁹² He became a member of the New-York Manumission Society in July 1808 and subsequently

89. Wilson, *United Irishmen*, 134–139; Twomey, *Jacobins and Jeffersonians*, 104–106; Durey, *Transatlantic Radicals*, 282–288.

90. For discussion of the United Irishmen's attempts after 1803 to obtain French assistance in the rebellion against English rule in Ireland, see Marianne Elliott, *Partners in Revolution: The United Irishmen and France* (London: Yale University Press, 1982), 323–364.

91. George Randolph Ingham, *William James Macneven and the Rise of American Democracy* (PhD diss., Brandeis University, 2012), 180 and on Macneven's support of the abolitionist cause, see xvii, 177–184.

92. William Sampson, *Memoirs of William Sampson* (London: Whittaker, Treacher and Arnot, 1832).

served as one of its Counsellors from 1813–1823.⁹³ In 1809, Sampson, on behalf of the Manumission Society, served as co-counsel for the district attorney in the trial of Amos Broad and his wife who were accused of assaulting and beating their female slave and her three-year-old child. The case against Broad and his wife was so overwhelmingly against them that at the summation, in an attempt to mitigate the punishment, the defense attorney on behalf of the Broads voluntarily manumitted the two victims and a third slave. Both defendants were convicted and fined and Broad was sentenced to four months in prison. Because of her pregnancy, Mrs. Broad was not jailed. The three slaves were freed.⁹⁴

Emmet, Sampson, and Macneven's shared commitment to the antislavery cause in New York might well be explained by their close personal relationship, which was described by one of Macneven's daughters as "no ordinary friendship, it was more like the tender attachment of brothers."⁹⁵ That friendship began in the early 1790s, was forged through years of imprisonment in the same prisons, and lasted until their deaths. However, it is difficult to explain this group's shared opposition to slavery solely by their close friendship. That sentiment might better be understood by considering the circumstances which permitted the radical ideology of the later third wave of United Irishmen to flourish.

The first such circumstance involved the occupations assumed in America by the former United Irishman. Some of the earlier leading United Irish émigrés, who relaxed their initial opposition to slavery and who left a long paper trail behind them were editors, publishers, and writers who adopted a more pragmatic and accepting approach towards slavery in order to conform to the social and political attitudes of their readership and the prevailing northern sentiment to preserve the union.⁹⁶

93. Adams, *Neglected Period of Anti-slavery*, 258. [New York] *Commercial Advertiser*, January 22, 1813, 3; *N-YMS*, 5: Minutes of Annual Meeting, January 15, 1822. For Sampson's broad commitment as a human rights lawyer, see Walter J. Walsh, "William Sampson, a Republican Constitution, and the Conundrum of Orangeism on American Soil, 1824–1831," *Radharc: A Journal of Irish and Irish-American Studies* 5–7 (2004–2006): 1.

94. "Amos Broad," [New York] *American Citizen*, March 13, 1809, 2; Harris, *Shadow of Slavery*, 105–108; Gellman, *Emancipating New York*, 205. Sampson served as counsel in at least one case in which his client took a proslavery position. *Mason v. Matilda*, 25 U.S. 590 (1827). Sampson, like Emmet, seemed to be able to reconcile his personal opposition to slavery with his professional responsibilities.

95. Richard R. Madden, *The United Irishmen, Their Lives and Times* (London: J. Madden & Co., 1843), 2:223; Twomey, *Jacobins and Jeffersonians*, 76.

96. Some of the United Irishmen in America more frequently identified as those whose antislavery views softened becoming more muted or radically Americanized include John Daly Burk (writer),

Emmet, Sampson, and Macneven, as lawyers and doctors, were under no similar compulsion and instead enjoyed sufficient political, economic, and professional independence to allow them to adhere to their social beliefs. For example, when the country became torn over the extension of slavery into the territories, former United Irishman John Binns' *Democratic Press* opposed any effort to prohibit slavery in any new states, while Emmet actively supported Congressional measures to block admission to any new slave state or territory.⁹⁷

The second circumstance separating the newly-arrived United Irishmen was environmental. Emmet, Macneven, and Sampson settled in New York where the society and culture was more tolerant, if not supportive, of their stronger antislavery attitudes. By contrast, some United Irishmen put down roots in the South or regions which actively embraced slavery as part of the way of local life.⁹⁸ Besides McCormick and Hugh Wilson, who was a successful merchant in Charleston and New Orleans, the remaining United Irishmen who were imprisoned with Macneven and Emmet in Fort George and who emigrated to the United States during 1802–1806, settled in either New York or Philadelphia and continued to pursue occupations which they practiced in Ireland, the nature of which did not lend themselves to the expression of their personal opinions on slavery.⁹⁹

Mathew Carey (editor/publisher), Denis Driscoll (editor), William Duane (editor/publisher), Harman Blennerhassett and John Binns (editor/publisher). Of this group, only Blennerhassett actually owned slaves. While Duane assumed racist sentiments, at least during the War of 1812, the balance of this group continued to view slavery as an evil, but adopted a more tolerant attitude towards it. Wilson, *United Irishmen*, 9, 135–140. See generally, Durey, *Transatlantic Radicals*, 284–286. For the general inter-relationship in New York between the Irish and African-Americans, see Marion R. Casey, "The Limits of Equality, Racial and Ethnic Tensions in the New Republic, 1789–1836" in *Race and Ethnicity in America*, ed. Ronald H. Baylor (New York: Columbia University Press, 2003), 41.

97. "The Missouri Question," [Philadelphia] *Democratic Press*, December 23, 1820, 2; "Meeting to Oppose Slavery," [New York] *Evening Post*, November 17, 1819, 2; Noel Ignatiev, *How the Irish Became White* (New York: Routledge, 1995), 74.

98. For example, Joseph McCormick, upon his release from Fort George, bought an estate and slaves in Georgia and Harman Blennerhassett became a slave owner in Ohio and then in the Mississippi Territory. Madden, *United Irishmen* (1843), 2:193; Wilson, *United Irishmen*, 135. For Macneven's avoidance of the South for antislavery reasons, see Ingham, *William James Macneven*, 130, 180; for the same about Emmet, see text and note 10 above. For earlier émigrés adapting to slavery, see Durey, *Transatlantic Radicals*, 283–284.

99. John Chambers (stationer), Samuel Neilson (died shortly after arrival), Edward Hudson (dentist), George Cumming (city inspector), Joseph Cuthbert (tailor). [New York] *Spectator*, February 10, 1837, 2; Miller, *Irish Immigrants*, 589, n.13, 635 n.14 and 641 n.55 and n.58; Burton L. Thorpe, "Edward Hudson" in *The Dental Review* 16 (June 15, 1902): 586–592. Of this group, George Cumming, on at least one occasion, gave an antislavery toast at a Hibernian Provident Society Fourth of July celebration. "Celebration of the Fourth of July, by the Hibernian Provident Society," [New York] *Public Advertiser*, July 7, 1810, 2.

The final circumstance which separated Emmet and his colleagues from those former United Irishmen, who drifted towards a greater accommodation of slavery, was the timing of emigration. Those former United Irishmen who arrived in America in the second wave following imprisonment and hardship in Ireland had a head start on the process of Americanization. Once Emmet and Macneven were released from their prolonged imprisonment, they continued their radical efforts on the continent in an effort to achieve an Irish republic. This third wave of Irish immigrants, who had been United Irishmen and who arrived in New York between 1802 and 1806, were less willing to tolerate slavery and relinquish the political and social principles of the United Irish movement as part of the process of becoming American. Through their antislavery activities in New York, Emmet, Macneven, and Sampson provided moral leadership to the newly-arrived Irish community in New York as slavery was gradually, then statutorily, abolished in the years leading up to July 4, 1827. As the legal historian Walter Walsh notes, this group of émigrés especially found a second chance in the early republic to achieve the political and social goals that they had failed to realize in Ireland.¹⁰⁰ Among those goals was a society free from slavery.

CONCLUSION

If Macneven's account of Emmet's first legal matter in America as involving "a suit against negro slavery," with Emmet serving "as counsel for the Manumission Society," is correct, and it has the support of the historically reliable evidence, then we can better appreciate how Emmet's private opposition to slavery, forged in revolutionary Ireland, could have remained unchanged after the transatlantic passage, in the midst of changing attitudes among some of his fellow émigrés. The earliest expression in America of Emmet's transplanted antislavery belief included his energetic participation in the *Topham* prosecution and continued with his service as Counsellor to the Manumission Society from 1806 until his death, seeking the liberty of slaves through the courts, providing strategic legal advice to the Manumission Society in its battle against slavery and in support of

100. Walter J. Walsh, *Religion, Ethnicity, and History—Clues to the Cultural Construction of Law*, in *The New York Irish*, eds. Ronald H. Bayor and Timothy J. Meagher (Baltimore: Johns Hopkins University Press, 1996), 69.

gradual, but universal, emancipation, and publicly opposing the expansion of slavery within the United States. Through their antislavery activities, Emmet, Sampson, and Macneven engaged their energies in, and perhaps even helped shape, the single most important political, social, and economic issue in the early nineteenth-century United States. For Emmet, these activities punctuated his legal career in New York; a career which concluded, much as it started—doing the public good.

In his last case, Emmet represented the Trustees of the Sailors' Snug Harbor, a charitable organization which was opposing an attempt to set aside the will which had established it. During a recess in the trial in New York, Emmet suffered a stroke and died shortly after at his home on November 14, 1827. It is perhaps emblematic of his career that at the time of this fatal event, Emmet was engaged *pro bono* in his professional duties before the Circuit Court of the United States, the same court where he tried his first antislavery case in the United States some twenty-two years earlier.¹⁰¹

101. Robinson, *Life of Emmet*, 405–406. The first African-American owned and operated newspaper published in the United States, observed that Emmet's death "has produced universal mourning, and left in the intellect and character, of the New-York bar, a chasm that will not be soon or easily filled." "Death of Mr. Emmet," [New York] *Freedom's Journal*, November 23, 1827, 3, reprinting from the *National Advocate*, November 16, 1827, 2.