Judge, Jury, and Executioner: The Gordon Trial
Providence, RI 1844

By Kara Maguire

The battered body of wealthy mill owner Amasa Sprague was discovered in Cranston, Rhode Island in the early evening of December 31, 1843.[1] Less than forty-eight hours later the Gordon family from Ireland—mother, three sons, and dog—had all been arrested for the murder.[2] There was little, if any, evidence against the Gordons, yet law enforcement, journalists, and the larger community had seized onto the persistent rumor that the poor, Irish family had been feuding with the wealthy and politically powerful Sprague family.[3] In the context of political conflict, economic tension, and prevailing anti-Irish sentiment, it was as though the outcome of the investigation and trial for the murder of Amasa Sprague had been predetermined: A Gordon was guilty.

John and William Gordon were tried together before the Rhode Island Supreme Court in March 1844.[4] The court reporters declared the murder to be "one of the most extraordinary murders ever committed in Rhode Island" primarily because of "[t]he profound mystery" surrounding Amasa's death.[5] The "profound mystery" was two-fold. First, who harbored that much rage against Amasa, and why?[6] The murderer or murders unleashed what appeared to be a furious beating on Amasa; the court reporter described the body as "shockingly disfigured" and

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[1] *See* CHARLES HOFFMAN & TESS HOFFMAN, BROTHERLY LOVE: MURDER AND THE POLITICS OF PREJUDICE IN NINETEENTH CENTURY RHODE ISLAND, at xiii, 1–3 (1993).

[2] *See id.* at 8–9 ("By 6:00 p.m. or thereabouts on Monday, January 1, 1844, Nicholas and John Gordon had been arrested on suspicion of murder, even though not one piece of physical evidence linking the Gordons to the crime had yet been discovered."). The mother and dog were eventually released. *See id.*

[3] *See id.* at 6–8 (discussing speculation in town as to Sprague-Gordon feud).

[4] Edward C. Larned & William Knowles, A Full Report of the Trial of John Gordon and William Gordon, Charged with the Murder of Amasa Sprague, Before the Supreme Court of Rhode Island, March Term, *1844* (1844) [hereinafter Transcript].

[5] *Id.* at 3.

[6] *Id.* ("[T]he timing of the murder and the severity of the blows seemed to suggest an angry confrontation and a vicious assault rather than a coldly planned, premeditated murder.").

friends were only able to identify Amasa's body by his clothing.[7] Second, no one witnessed the attack, which occurred before the sun had set on a well-traveled walking path.[8] Without eyewitnesses or forensic evidence to link the Gordons to the crime, the state built the case against the brothers with tenuous circumstantial evidence.[9] The evidence was especially weak against William, whom witnesses placed in another town on the day of the murder.[10] The jury accepted William Gordon's alibi and acquitted him, but convicted the other brother, John, on Wednesday, April 17, 1844.[11] John was sentenced to execution by hanging.

In many ways, the "profound mystery" was never solved. John was executed on February 14, 1845.[12] Yet doubts about the fairness and certainty of the conviction led the State General Assembly to ban the death penalty seven years later.[13] Whatever actually happened on New Year's Eve 1843, the record indicates that suspicion was quickly cast on the Gordons: Authorities arrested the Gordons hours after the murder and only later did anyone discover evidence, possibly ignoring other leads in the search for ways to incriminate the brothers.[14] Many viewed Amasa's murder as a manifestation of the growing tension in Rhode Island between the politically powerful and politically powerless, rich and poor, Yankee and Irish.

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[7] Transcript, *supra* note 5, at 3.
[8] *See* HOFFMAN, *supra* note 1, at 1–3.
[9] *See* PETER J. GETTLEMAN, THE TRANSFORMATION OF RHODE ISLAND 1790-1860, at 243 (1963) (describing evidence against Gordons as "flimsy and circumstantial" and trial generally as "a travesty of justice" according to many Rhode Islanders).
[10] *See* Transcript, *supra* note 5, at 31–34.
[11] *See* Transcript, *supra* note 5, at 48. The third brother, Nicholas, was tried separately. Nicholas stood trial twice, both times resulting in a mistrial. HOFFMAN, *supra* note 1, at 97–98, 128–29. Nicholas was released on bail April 18, 1845 and died eighteen months later. *Id.* at 130.
[12] *See* HOFFMAN, *supra* note 1, at 110–13 (recounting the hanging).
[13] *See* GETTLEMAN, *supra* note 9, at 243 (citing reaction to Gordon's execution, especially in the Irish community, as contribution to death penalty abolition movement); Hugo Adam Bedau & Michael L. Radelet, Miscarriages of Justice in Potentially Capital Cases, 40 Stan. L. Rev. 21, 76 (1987) ("No proof ever surfaced that conclusively established John's innocence, but doubts about his guilt flourished and helped to strengthen the case for abolition.").
[14] *See supra* note 2.

The brewing class conflict in Rhode Island revolved around how the law should or should not address developing segments of the population, specifically the poor, politically powerless immigrants and the labor of the growing industrial economy. The turmoil had recently erupted in the form of the Dorr Rebellion, a political battle between two state constitutions and two governments, both claiming to be the legitimate sovereign power in Rhode Island.[15] By the time of Amasa's murder, the so-called Landowners' Constitution—in other words, the status quo—had prevailed, leaving an open question as to how the law should operate in relation to these immigrants.

Historians suggest John Gordon was an innocent victim of intense religious and ethnic prejudice, and another man, perhaps Irish, perhaps not, was responsible for Amasa's death.[16] This Paper, however, does not seek to absolve John Gordon, but merely to identify how the dueling communities—and constitutional orders—played out in the courtroom. Part I will discuss the historical context of the murder trial including the Dorr Rebellion and the relationship between the native born Yankees and the Irish immigrants in Rhode Island in the 1840s. This Part will also detail the history of the Sprague family, their expanding business, and the economy that developed around them in Cranston, RI. Part II develops the events of the trial in relation to the Dorr War, Irish animosity, and industrial growth. It weaves together the trial and its historical context, demonstrating how the Rhode Island elite used criminal law to oppress and stifle the real political opposition: the Irish.

I. Context of the Gordon Trial: War, Discrimination, and a Mill Town in 1840s Rhode Island

A. Dorr War

[15] *See infra* Part I.A.
[16] *See* HOFFMAN, *supra* note 1, at xiv, 135–46 (positing that William Sprague, Amasa's brother, was the murderer).

John Gordon was not the only high profile criminal defendant in Rhode Island in spring 1844; Thomas W. Dorr had just returned from exile and faced a treason charge.[17] The two events, the Dorr Rebellion and Amasa's murder, were inevitably linked in the eyes of Rhode Islanders: Dorr and Gordon were housed in the same prison,[18] tried before the same judge,[19] prosecuted by the same state attorney,[20] and represented by the same defense counsel.[21] Moreover, the Rebellion was seen by the propertied elite as, at least in part, a class and race based movement. Realistically, the Dorrites were not seeking real equality.[22] But the opposition, the Law and Order party, used fear of an Irish upheaval to manipulate public sentiment against the new constitution.[23] The public must have connected Amasa's murder—the death of a prominent member of the ruling class at the hands of an Irish immigrant—to the fears they had harbored about Dorr's so-called People's Constitution.

The first priority of the Dorrites was not social equality, but adopting a state constitution. In 1842, Rhode Island still operated under its royal charter, the Charter of 1663.[24] Rhode Island was the only state in the union without its own constitution;[25] Connecticut was the last to adopt a constitution in 1818.[26] Critics pointed out four main problems with the Charter. First, the fixed

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[17] *See* MARVIN E. *GETTLEMAN*, THE DORR REBELLION: A STUDY IN RADICALISM, 1833–1849, at 160–165 (1973) (discussing Dorr's trial); see also Joseph S. Pitman, Report of the Trial of Thomas Wilson Dorr, for Treason Against the State of Rhode Island (1844) [hereinafter Dorr Transcript].
[18] *See* HOFFMAN, *supra* note 1, at 12.
[19] *See id.* at 34 (Chief Justice Job Durfee of the Rhode Island Supreme Judicial Court).
[20] *See* Dorr Transcript, *supra* note 17, at 100; *id.* at 31 (Attorney General Joseph M. Blake).
[21] *See* GETTLEMAN, *supra* note 17, at 161 n.82; HOFFMAN, *supra* note 1, at 32 (Samuel Atwell).
[22] See, e.g., GETTLEMAN, *supra* note 17, at xx (discussing limits of the Dorr Rebellion including "its unwillingness to delve deeply into social and economic issues, its racism, [and] its commitment to the sanctity of private property").
[23] *See infra* Part I.B. (growing animosity against the Irish during the Dorr War).
[24] *See* GETTLEMAN, *supra* note 17, at 3–5 (describing how Rhode Island "remained something of a political anachronism"). For the text of the Charter, see Rhode Island and Providence Plantations Royal Charter of 1663, available at http://www.sec.state.ri.us/pubinfo/rigomstatic/richarter.html/.
[25] MARY H. BLEWETT, CONSTANT TURMOIL: THE POLITICS OF INDUSTRIAL LIFE IN NINETEENTH-CENTURY NEW ENGLAND 58 (2000).
[26] GETTLEMAN, *supra* note 17, at 4–5.

system of apportioning representation disadvantaged those living in the growing urban centers. Second, it allowed for complete legislative dominance over a weak executive and judiciary. Third, and most important for the growing population of Irish immigrants, the Charter supported only extremely limited suffrage. Finally, it did not provide for an amendment procedure to address these deficiencies. [27]

The Charter used the term "freemen" to describe those participating in government, but did not explicitly set a property qualification.[28] The General Assembly, however, later defined freeman as a white man with property, and around the time of Amasa's murder, it would have been the case that only those who owned at least $134 of real estate could apply at a local town meeting to be a freeman.[29] Nicholas Gordon applied to the Cranston Town Council in August 1842 and was the only one of his family to be granted freeman status.[30]

In revolutionary times, about seventy-five percent of white men held property.[31] But the industrial revolution and immigration altered the makeup of the population and increased the percentage of disenfranchised.[32] For example, the 1790 census recorded 6,154 white men over the age of sixteen in Providence County, where Cranston is located.[33] By a historian's estimate, over 4,000 of those men would have been property holders and thus able to apply for freeman status.[34] By 1840, the demographic expanded to 14,338,[35] with probably little more than a third

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[27] *See id.* at 6 (explaining dissatisfaction with Charter and impossibility of amendment).
[28] *See id.*
[29] *See id.*
[30] *See* HOFFMAN, *supra* note 1, at 27.
[31] GETTLEMAN, *supra* note 17, at 6–7.
[32] *Id.* at 7 (describing growth of disenfranchised population).
[33] Bureau of the Census, Dep't of Commerce & Labor, Heads of Families at the First Census of the United States Taken in the Year 1790: Rhode Island 8 (1908).
[34] *See supra* note 31 and accompanying text (estimating seventy-five percent of adult men were landowners in the eighteenth century).
[35] Dep't of State, Compendium of the Enumeration of the Inhabitants and Statistics of the United States, as Obtained at the Department of State, from the Returns of the Sixth Census 12 (1841) [hereinafter 1840 Census].

of those men holding property.[36] The concentration of power was startling: about 5,000 people in a county of 58,073 were considered voting citizens.[37]

The Dorr Rebellion was preceded by a series of failed reform movements directed at the Charter government and by the 1840 election year it was clear the strategy had to change. [38] Reformers were certain that those in power would not abdicate power willingly, and they decided on a radical course of action: Drafting their own constitution.[39] The reform group, calling themselves the Rhode Island Suffrage Association, held a vote to elect delegates for the People's Constitutional Convention in August 1841.[40] Any male citizen who had been residing in Rhode Island for at least one year—including Irish immigrants like Nicholas Gordon—was eligible to vote.[41] And consistent with reformers' criticisms of the Charter, the delegate offices were apportioned in a way to give the urban centers representation according to their expanding populations.[42]

After drafting the constitution, the Suffrage Association bypassed the existing Rhode Island government and held an election to legitimize the new constitution.[43] The People's Constitution was ratified by a clear majority of the Charter's electorate and the newly created electorate.[44] Shortly thereafter, Thomas W. Dorr was elected governor and on May 3, 1842, the People's Legislature held its first session.[45]

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[36] *See* GETTLEMAN, *supra* note 17, at 7 n.10.
[37] 1840 Census, *supra* note 35, at 12–15.
[38] *See* GETTLEMAN, *supra* note 17, at 19–34 (chronicling efforts to achieve change in Rhode Island before the Dorr Rebellion by workingmen's reform groups and Rhode Island Constitutional Party).
[39] *See id.* at 41–43 (stating reformers' conclusion that they could "find no redress through the ballot box, from which by law, they are excluded" and that they should draft a new constitution).
[40] *See id.* at 43.
[41] *See id.*
[42] *See id.*
[43] *See id.* at 51–56 (describing ratification process).
[44] *See* id at 54.
[45] *See id.* at 101–02.

Unsurprisingly, the Charter government did not acquiesce. The response from those opposed to Dorr's government, also known as the Law and Order Party,[46] was three-fold: First, they drafted their own constitution, the Landowners' Constitution, which was defeated in a statewide election.[47] Second, the General Assembly passed the "Algerine Law," which prohibited serving office under the unauthorized constitution. Violators, such as Dorr, would be subject to life imprisonment.[48] Third, they called upon the federal government, which was ultimately reluctant to meddle in an issue of state government.[49] But the efforts from Law and Order were not enough to stop Dorr, and neither government would back down from its claim of legitimacy.

At this point in the stalemate, Dorr realized the Charter Government would not submit, and that it was necessary to use force to establish that the People's Government was Rhode Island's lawful government.[50] Dorr, with the support of about two hundred of the lower class among his followers, attacked a state-owned arsenal on May 18, 1842.[51] The assault was a

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[46] *See id.* at 78 n. The Charter government and the Law and Order party were virtually indistinguishable, *id.* at 82, and are used interchangeably throughout this Paper.
[47] *See id.* at 78–80 (observing that Landowners' Constitution was probably struck down because Charter government waived property qualification for election).
[48] *See id.* at 90–93 (describing Algerine law, its harsh penalties, and likelihood that Law and Order judges of Supreme Judicial Court would enforce).
[49] *See id.* at 107–12. Congress failed to take action and President Tyler encouraged conciliation. *Id.* Years later the issue reached the Supreme Court, which called the matter a political question. The case, *Luther v. Borden*, 48 U.S. 1 (1849), hinged on which government was the lawful "republican" government of Rhode Island during the time of the Dorr Rebellion. *See* RICHARD H FALLON, JR. ET AL., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 259–60 (5th ed. 2003). The Court, in an opinion by Chief Justice Taney, held the Guarantee Clause question a nonjusticiable issue for the legislature: "[W]hen the senators and representatives of a state are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of government, and could not be questioned in a judicial tribunal." *Id.* (quoting *Luther*, 48 U.S. at 42).
[50] *See* GETTLEMAN, *supra* note 17, at 118–19
[51] *See id.* at 120.

disaster, Dorr fled the state, and the People's Government disintegrated.[52] But the Dorr Rebellion made its mark; the Law and Order conservatives, perhaps fearing a revival, drafted a new constitution.[53] The new constitution enfranchised blacks, but still applied a property qualification to naturalized citizens.[54] A real estate requirement of $134 continued to be imposed on Irish immigrants, such as the Gordons.[55]

B. The Dorr Rebellion Increased Animosity Toward the Irish

The Irish did not organize the People's Constitution, though they were one of the primary beneficiaries.[56] The Law and Order group found extending the vote to the Irish to be the main infirmity of Dorr's platform, stating what was to the conservatives the ultimate insult: that they "would rather have the Negroes vote than the d[amn]d Irish."[57] Dorr and his cohorts were mostly affluent Protestant Yankees, but their political opponents characterized the movement as an Irish takeover.[58] Law and Order conservatives used Irish prejudice to delegitimize the movement, playing on nativist fears instead of addressing the widespread concerns about legislative apportionment, legislative dominance over the executive and judiciary, and of course, limited enfranchisement.[59]

The controversy between the two constitutions devolved into a debate about the proper place of the Irish Catholics in society—"Men were called upon not to vote for a constitution but

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[52] *See id.* at 121–24.
[53] *See id.* at 129.
[54] *See* GETTLEMAN, *supra* note 9, at 284–85, GETTLEMAN, *supra* note 17, at 146; see also *infra* note 57 and accompanying text.
[55] *See* GETTLEMAN, *supra* note 9, at 284–85, GETTLEMAN, *supra* note 17, at 146; see also *supra* notes 30–31 and accompanying text (describing how Gordon had to apply to Cranston Town Council to obtain voting rights). SCOTT MOLLOY, IRISH TITAN, IRISH TOILERS: JOSEPH BANINGAN AND NINETEENTH CENTURY NEW ENGLAND LABOR
[56] *See* 47 (2008) ("Dorr's blockbuster document did provide the ballot to poor, native-born, and naturalized immigrants males irrespective of affluence in most contests.").
[57] *Id.* at 48. The speaker of these words, Elisha Potter, was the brother of William Potter, one of the Gordon prosecutors. *See* HOFFMAN, *supra* note 1, at 33.
[58] *See* MOLLOY, *supra* note 56, at 48.
[59] *See id.*

to vote against Irishmen"—far from Dorr's original intent.[60] Ironically, few Irishmen voted in the election held to ratify the People's Constitution, and even fewer participated in any revolutionary efforts.[61] Catholic Church leaders warned Irish immigrants that if they participated they may bare the brunt of the Law and Order party's retaliation.[62] The Church's assessment was almost certainly accurate; out of hundreds of arrested Dorr supporters less than five were Irish, yet the *Providence Journal* described an impending Irish upheaval: "Rhode Island will no longer be Rhode Island when that is done. It will become a province of Ireland; St. Patrick will take the place of Rogers Williams and the shamrock will supercede [sic] the anchor and Hope [the state's motto]."[63]

Even more troublesome to the voters than a "province of Ireland," the Law and Order party described the acceptance of the People's Government as tantamount to establishing a Catholic state.[64] According to the theory, the People's Government would allow the Irish to vote, and the Irish would vote according to Rome's instructions. The conservatives claimed that the property requirement was necessary to weaken the Irish's potential political power as their numbers expanded.[65] If the government failed to restrain the Irish, it would be surrendering its "political power to an alien and sinister Catholic Church."[66]

C. Spragueville

Around the time Amasa Sprague was murdered, the Sprague brothers' partnership, A & W Sprague, employed 200 workers and produced $840,000 worth of goods annually.[67] Amasa

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[60] *Id.*
[61] *Id.*
[62] *See id.*
[63] *See id.*
[64] *See* GETTLEMAN, *supra* note 9, at 282; GETTLEMAN, *supra* note 17, at 146.
[65] *See* GETTLEMAN, *supra* note 17, at 146.
[66] *Id.*
[67] *See* GETTLEMAN, *supra* note 9, at 128 (statistics from 1850).

controlled the finishing aspects of the business—bleaching, dyeing, and printing—at what was known as the Cranston Print Works[68] located adjacent to the Sprague mansion in Spragueville, Cranston, Rhode Island[69]; while William was charged with the spinning and weaving segment[70] that was located in Natick, Rhode Island.[71] Spragueville, home to Amasa Sprague, Sprague Mansion, and the Cranston Print Works, was also home to a population of 500, mostly workers and their families who rented shoebox shaped tenement houses from the Spragues.[72]

The Spragues, William in particular, wielded their economic advantage—not always in honest ways—to secure state and national political power. William served as a state assemblyman, United States Representative, Rhode Island Governor, and at the time of Amasa's murder, he was a United States Senator.[73] Amasa represented Cranston in the Rhode Island General Assembly at the time of his death.[74] Some of the Spragues' electoral success must be attributed to their employees, whose political support Sprague counted "as one of the allegiances sealed in the labor contract."[75] The Spragues, like other mill owners of the time, were "resourceful election manipulators. They supervised the endorsement of their employees' ballots, a method nicely calculated to secure the election of Sprague candidates or, indeed, of the Spragues themselves."[76] There was no secret ballot, and employees knew that if they were caught voting for the wrong candidate, the Spragues could take away their jobs, and if they lived

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[68] *See id.* at 131.
[69] Interview with Lydia L. Rapoza, President, Cranston Historical Society, in Cranston, R.I. (Mar. 19, 2009) [hereinafter Rapoza Interview].
[70] GETTLEMAN, *supra* note 9, at 131. Though at the time of Amasa's death William was focused on his political career and his cousin, Emanuel Rice, was running the mills. *See* HOFFMAN, *supra* note 1, at 137.
[71] Rapoza Interview, *supra* note 69.
[72] *See* HOFFMAN, *supra* note 1, at 17–18. Sprague Mansion, Cranston Print Works, and the tenement houses still stand today in Cranston. *See* Appendix.
[73] *See* HOFFMAN, *supra* note 1, at 197 (discussing William's political career).
[74] *See id.* at 27.
[75] GETTLEMAN, *supra* note 9, at 244.
[76] *Id.* at 262.

in mill tenements, even their families' homes.[77] At a time when public assistance was conditioned on housing, with one wrong vote a worker could send his family into poverty.[78]

Interestingly, the Spragues' dominance over their employees meant that they were originally supportive of the Dorr movement.[79] Under the Charter government, most mill workers could not vote. They rented their homes from the Spragues and did not own any property.[80] If more of their workers were granted access to the ballot box, the Spragues reasoned, they would have more votes to control. It was only when Dorr crossed the line from reformer to revolutionary, taking the position as governor of an alternate constitutional regime, did the Spragues withdraw their support from the People's Constitution, fearing the violent turn of events.[81] In this way, the conflict between the two constitutions was much more complicated than a stark class, religious, occupational, racial, or political divide.

Even after the Spragues abdicated from the People's Government, they continued to advocate for extended enfranchisement. This could have been a political maneuver—if the Law and Order party, as the promoter of the status quo had come to be known, did not compromise on some issues they were sure to incense the revolutionaries even more. On the question of liberalizing suffrage, Senator William Sprague said "I know there are many on both sides opposed to an arrangement of this kind, but I fear we shall have no peace until we go as far as I've suggested."[82] In other words, Sprague believed universal male suffrage was necessary to

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[77] *See* HOFFMAN, *supra* note 1, at 16–18 (describing Spragues' dominance over their workers).
[78] *See* GETTLEMAN, *supra* note 9, at 231–32 (discussing paternalism in mill villages).
[79] *See* GETTLEMAN, *supra* note 17, at 53 n.7 ("A few other Rhode Island conservatives, including industrialist William Sprague (soon to become United States Senator) also cast ballots for the People's Constitution.").
[80] *See supra* note 77 (tenement living); see also *supra* notes 30–31 (property qualifications).
[81] *See* MOLLOY, *supra* note 56, at 51.
[82] GETTLEMAN, *supra* note 17, at 129.

draw support away from the radical groups. But it was also possible that Sprague was motivated by a more personal, selfish reason: his past success at voter manipulation.

II. The Trial: The New (Old) Regime Flexes Its Muscles

The political turmoil of the early 1840s influenced the tone, if not the outcome, of the Gordons' trial. Some of the marks of the Dorr War would be easily observable to Rhode Islanders at the time, for example, the political views each attorney and Chief Justice Durfee brought to the Gordons' trial. But it was not simply that the trial bore the indicia of the recent historical events; the Gordon trial was itself a reassertion of the Charter government's authority. The Charter government and the Law and Order party had fanned the anti-Irish hysteria flame in order to discredit the People's Government, and in 1844 the People's Government had been defeated and the Charter's legacy government was in power. The trial of an Irish immigrant for the death of one of the most prominent Yankee men in the state vindicated the warnings of the Law and Order party: the Irish were dangerous and they were after money and power. The Gordon trial demonstrated to the public the government role of protecting the propertied elite from the poor Irish immigrants, not extending suffrage to them.

A. The Mark of the Dorr War: The Legal Community and the Gordon Trial

The legal community took a leading role on both sides of the Dorr Rebellion, and the Gordon trial was a showcase of some of its most prominent players. At its core, the Dorr Rebellion was about constitutional reform, and therefore it is not surprising that lawyers were both the People's Constitutions' strongest supporters and detractors. The losers, the Dorrite lawyers, represented the losers in the trial—the Gordons. The Law and Order winners held onto

their government positions; they served as the judge and prosecution team dispensing the justice of the old regime.[83]

Local lawyers had formally supported the People's Constitution through writing the "Right of the People to Form a Constitution; Statement of Reasons," a pamphlet that came to be known as the "Nine Lawyers' Opinion."[84] Thomas Carpenter, Samuel Y. Atwell, and John P. Knowles—three out of the four members of Gordon's defense team[85]—helped to author the opinion.[86] The opinion addressed attacks on the People's Constitution, including the Supreme Judicial Court's *ex cathedra* opinion, which declared the statewide ratification of the People's Constitution nonbinding, and those participating in a the new government as traitors vulnerable to prosecution.[87] Chief Justice Durfee, presiding over the Gordon trial, was one of the three authors of the *ex cathedra* opinion.[88]

Dorr asked Carpenter to run for governor under the People's Constitution, but like most of the other Nine Lawyers, Carpenter backed away from the movement when it became clear that the Charter government would prosecute officeholders.[89] Knowles, also one of the Nine Lawyers on the defense team, withdrew from running as attorney general under the People's Government.[90] The third of the Nine Lawyers on the defense team, Atwell, was a member of the

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[83] *See* HOFFMAN, *supra* note , at 31–34.
[84] *See* GETTLEMAN, *supra* note 17, at 64 & n.46.
[85] *See* HOFFMAN, *supra* note 1, at 31–34.
[86] *See* GETTLEMAN, *supra* note 17, at 232. The "Nine Lawyers' Opinion" formed the backbone of the Dorrites arguments and served as the primary legal justification for the People's Government. *See id.* at 65. The lawyers drew upon enlightenment ideals from the American Revolution, specifically on the passage of sovereign power to the whole people of America, and more relevant, the whole people of Rhode Island. *See id.* at 65–66. The opposition, such as Chief Justice Durfee, distinguished the American Revolution as a singular event not actually carried out by the sovereign people, but by organized institutions. *See id.* at 74–76.
[87] *See id.* at 63.
[88] *See id.*
[89] *See id.* at 83 n.6.
[90] *See id.* at 83–84.

General Assembly during the Dorr Rebellion.[91] He urged the Charter government to act on its own to replace the Charter with a modern constitution, but was soundly defeated.[92] At the Landholders' Convention, foreseeing that the public would be forced to choose between "blind submission or open rebellion," Atwell proposed expanding the vote.[93] And after the People's Constitution was ratified, he sought to avoid conflict by proposing ways for the Charter government to peaceably pass power to the People's Government. [94] All of Atwell's proposals were defeated,[95] and like Carpenter and Knowles, Atwell eventually backed down from his Dorrite position.[96] For the Nine Lawyers, Dorr excluded, constitutional reform was not worth imprisonment.

Only two years after the Dorr Rebellion, the most fervent supporters and detractors of Dorr sat together in one courtroom for the Gordons' criminal trial. As the Hoffmans observed, despite their strongly held opposing political opinions, "these men were part of an interrelated network of Rhode Island lawyers and judges."[97] All and all, not much had changed for lawyers in Rhode Island, whether rebels or not. In fact Dorr, also a lawyer, would be pardoned shortly after his conviction by virtue of his legal connections.[98] It seemed that Rhode Islanders could easily get over some differences, but not others.

B. Prosecuting the Real Enemy

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[91] *See id.* at 42.
[92] *See id.*
[93] *See id.* at 50.
[94] *See id.* at 58. Atwell's suggestions were that "the legislature voluntarily disband itself on the day before the people's constitution was scheduled to go into force," "a formal inquiry by the General Assembly to see if the People's constitution had been legally ratified," and finally, "to resubmit the People's Constitution to the voters through an act of the General Assembly itself." *Id.*
[95] *See id.*
[96] *See id.* at 92 ("Even Samuel Y. Atwell, the Suffrage Party's gadfly in the General Assembly, disassociated himself from the radical cause after the passage of the Algerine Law.").
[97] HOFFMAN, *supra* note 1, at 33.
[98] *See* GETTLEMAN, *supra* note 17, at 168–73 (describing Dorr's liberation after twenty months imprisonment).

Though he did not work for the Spragues, John Gordon lived in Spragueville with his family, including his brothers Nicholas and William.[99] Nicholas Gordon operated a general store that catered to Sprague workers and their families. Nicholas opened the general store in 1836 after he arrived alone from Ireland[100] and it became fairly successful; in 1842 he purchased a piece of property worth two hundred dollars[101] and in 1843 he sent for the rest of his family.[102] A naturalized citizen owning real property worth more than $134, Gordon was one of the few Irishmen in Rhode Island eligible to vote.[103] Nicholas, however, did not ingratiate himself to the Spragues.

The relationship between Amasa and Nicholas grew hostile when the store began providing liquor to Cranston Print Works employees on their lunch hour. Mill owners and other elite, such as Amasa, blamed drinking for the "frenzies of hooliganism and petty rioting" among their workers, particularly the Irish.[104] Amasa forbid his employees from patronizing Nicholas's store, and successfully sought the revocation of his liquor license by petitioning the Cranston Town Council in the summer of 1843.[105] Just as William wielded his power for votes, Amasa wielded his power to mold the town as he desired.[106] The population relied upon the Spragues for their livelihood and the Spragues took advantage of that leverage, controlling local politics and dictating how workers should live their private lives.[107] Those who wanted to share in the Sprague prosperity did as Sprague instructed. Nicholas did not abide by the Spragues' wishes,

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[99] *See* HOFFMAN, *supra* note 1, at xv.
[100] *See* MOLLOY, *supra* note 56, at 51.
[101] *See* HOFFMAN, *supra* note 1, at 27.
[102] *See id.*
[103] *See supra* notes 30–31 and accompanying text.
[104] GETTLEMAN, *supra* note 9, at 247.
[105] *See* MOLLOY, *supra* note 56, at 51.
[106] *See* HOFFMAN, *supra* note 1, at 28 ("The council was completely dominated by Amasa Sprague's political allies, and although Amasa had chosen not to stand for reelection to the Rhode Island General Assembly in 1843; the political control he wielded in his own community remained strong.").
[107] *See supra* Part I.C (discussing Spragues' voter manipulation).

and as a result, lost his liquor profits and his customer base. And this economic loss, the prosecutors argued, motivated the Gordon brothers to murder Amasa.[108]

Many Spragueville residents knew that Nicholas resented Amasa, but Nicholas had an alibi—several people verified that he was in Providence the entire afternoon of the murder.[109] Instead of clearing Nicholas, however, his absence from town the day of the murder produced even more suspicion; some supposed Nicholas intentionally set up an alibi so that he could order his brothers to kill Amasa without implicating the most likely suspect—himself.[110] On March 27, 1844, a grand jury indicted John, William, and Nicholas Gordon for murder.[111] Taking into account Nicholas's alibi, the jury charged John and William as principals and Nicholas as an accessory before the fact. [112]

1. Conspiracy By Stereotype

The prosecution faced two hurdles. First, the defendant with the motive did not have the opportunity. Second, the defendants with the opportunity did not necessarily have the motive. The prosecution approached these problems by showing the Gordon brothers to be three men of one mind; if Nicholas hated Amasa enough to kill him, then surely John and William did too.[113] The prosecution produced testimony both related to Nicholas's motive and the physical evidence

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[108] *See* Transcript, *supra* note 4, at 31–34 (testimony as to William's whereabouts on the day of the murder).
[109] *See* HOFFMAN, *supra* note 1, at 11.
[110] *See id.*
[111] *See id.* at 29
[112] *See id.*
[113] *See* Transcript, *supra* note 4, at 28. The prosecutor argued:

> And what is more natural, gentlemen, than that these prisoners, whom he had sent for to come to this country, who had lived with Nicholas S. Gordon, he being, comparatively well off in the world, whose passage money he had probably paid, whom he had clothed, fed, and sheltered, one of whom at least at the very time of the murder depended on him for his daily support--should have sympathized with that brother in his feelings, in his partialities and his resentments; that they should have participated in his joys and sorrows, and his friendships and enemies.

Id.

supposedly linking John and William to the murder scene, seeking to transpose Nicholas's motive onto John and William. Curiously, the Gordons were not indicted for conspiracy to commit murder even though much of the prosecution's case rested on implying a conspiracy. At common law proving a conspiracy beyond a reasonable doubt was typically easier than proving murder beyond a reasonable doubt. The State needed only prove an agreement to commit an unlawful act, and did not need to prove an overt act in furtherance of the conspiracy.[114]

The conspiracy issue arose during trial when the prosecution tried to introduce statements made by Nicholas under the coconspirator exception to the hearsay rule.[115] The Attorney General averred that the defendants had been indicted for "something more" than conspiracy; that "in proving the greater crime" the state need not "prove the lesser" as well.[116] The defense attorney argued that Nicholas's statements could not be introduced unless the State first proved a conspiracy,[117] whereas the Attorney General took the position that the admission would be proper because the declarations themselves proved the conspiracy.[118] Chief Justice Durfee ruled that all of the statements made by Nicholas in the presence of John and William should be admitted, not under the coconspirator exception to hearsay, but because the statements, in fact, were not hearsay.[119] The statements by Nicholas, Chief Justice Durfee held, were not admitted for their truth, but to show "how far such threats may have affected the minds of the prisoners so

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[114] *See* State v. Disla, 874 A.2d 190 (R.I. 2005).
[115] *See* Transcript, *supra* note 4, at 21–24, 26–27.
[116] *Id.* at 22.
[117] *See id.* at 21–22 ("The fact that these threats were uttered in the presence of these prisoners makes no difference. If anything is to be presumed from it, it is that they did not sanction them—that they condemned them, since they did not approve them.").
[118] *See id.* at 22 ("Is it not competent for us to prove a conspiracy? If so, this is one step toward that proof.").
[119] Chief Justice Durfee did not allow statements made by Nicholas not in the presence of the defendants to be admitted. *See* Transcript at 27 ("You must prove the existence of a conspiracy by independent testimony before the declarations of a conspirator not on trial can be offered in evidence against the others.").

as to furnish them with a motive to commit this crime."[120] This ruling was undoubtedly one of the most important in the case, allowing the jury to hear how Nicholas Gordon made threats to kill Amasa.

The State likely did not include a conspiracy count because there was not evidence of an explicit or implicit agreement among the brothers to murder Amasa Sprague; no one overheard the brothers discuss their hatred for Amasa with each other, let alone plan his murder. Nor did the prosecution present any evidence from which a jury could infer an agreement—no actions the brothers took that would lead a jury to believe they had an unspoken agreement. The evidence tended to show that Nicholas hated Amasa, and perhaps wanted to harm him, that the brothers were aware of this hatred, and that possibly the brothers hated Amasa too. It is difficult to see how those facts could lead a judge or jury to find an agreement to murder Amasa. Yet with a case too weak to prove conspiracy, the prosecution proved murder by advancing the theory that John and William, without any agreement, would do Nicholas's bidding. The prosecutors may have reasonably concluded that if a jury deliberated on the evidence provided in support of a conspiracy conviction, it might have recognized the weakness of the prosecution's theory of the case.

In suggesting that two brothers would commit murder for another, the prosecution played upon the jury's stereotypes of the Irish,[121] even declaring in the closing argument that the "the tie of kindred is to an Irishman almost an indissoluble bond." [122] The prosecution relied on these stereotypes to prove its case. In the absence of establishing the influence of Nicholas on his

[120] *Id.* at 24.
[121] *See* HOFFMAN, *supra* note 1, at 7 ("Irish families were known to stick together: one brother's enemy would be the enemy of all the others.").
[122] *Id.* at 65.

brothers, the prosecution was only left with weak circumstantial evidence tying William and John to the scene.[123]

2. Law and Order Discrimination

Nor was the implied conspiracy the only time that the attorneys or the judge made distinctions based on the brothers' Irish identity. Chief Justice Durfee loaded his jury instructions with suggestions of Irish untrustworthiness. Discussing the validity of William Gordon's alibi, Chief Justice Durfee instructed:

> If you regard the facts on the part of the State, and on the part of William Gordon, in relation to his opportunity to be present at the murder, as supported by equal force, then, since it is contradictory, or at least conflicting, it can, when taken together, yield no legitimate inference—no safe conclusion. It will suggest an hypothesis or supposition consistent with his innocence, just as readily as one consistent with his guilt. From such evidence no interference can be drawn that will not be accompanied with its doubt. And on the ground that he is to be presumed innocent until he is proven guilty, it will be your duty to return a verdict of acquittal. You will understand me here as speaking in relation to the testimony of Barker and Spencer on the one hand, and of the *countrymen of William Gordon* on the other.[124]

Chief Justice Durfee did not instruct the jury to consider the testimony of the government's witnesses as weighed against the testimony of the defense's witnesses, but to consider the testimony of the government's witness against the testimony of the Irish. The Chief Justice reminded the jury that the defense witnesses were predominantly Irish and that according to the stereotype, they would rally around their brother. Despite Chief Justice Durfee's assurance that "[i]n making these remarks" he did "not mean to weigh the credibility of the witnesses,"[125] the phrase "countrymen of William Gordon" as well as the Chief Justice's later

[123] *See id.* at 37–46 (describing evidence offered during the prosecution's case).
[124] Transcript, *supra* note 4, at 42.
[125] *Id.*

instruction that a witness "is entitled to full credit . . . *who ever he may be*"[126] would have cued the jury, in the context of the anti-Irish feeling during the Dorr Rebellion, to a "distinction Durfee was a making between the Yankees, Barker and Spencer, and Irish witnesses such as Michael O'Brien and Joseph Cole."[127]

Concluding the instructions, Chief Justice Durfee "gave a word to weighing testimony." In doing so, he remarked that "[q]uestions of identity are often questions of belief."[128] To modern readers, Chief Justice Durfee's comments may seem innocuous, but "in the context of the trial as a whole and in specific context of his summation, Durfee could only mean whom do you believe—native-born Yankees or immigrant Irishmen; the citizens of the community and the authorities or the fellow countrymen and relatives of the accused?"[129] Perhaps Chief Justice Durfee's observation can shed light on life after the Dorr War for the rebel lawyers as contrasted with the Irish. Beliefs can be shed; Carpenter, Atwell, and Knowles could disassociate from the Dorrites and return to work.[130] The Irish had become the enemy in the Dorr War, and they had no ability disavow their identity.

Conclusion

The People's Constitution, which would have extended the right to vote to all white male naturalized citizens of the state, threatened the status quo of political and economic control in Rhode Island. But by the time of Amasa's murder, the established balance of power remained

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[126] *Id.*
[127] HOFFMAN, *supra* note 1, at 69–70.
[128] Transcript, *supra* note 4, at 43. Other instances of discrimination were much less subtle, for example, in the state's closing argument, the prosecution suggested that the Gordon brothers had com to America

> with the idea which is common to many of their countrymen, that the laws here, in this free country, are less severe, and may be more easily evaded, than the laws of their own country—that they would be less restrained in their indulgencies; and less liable to punishment here, than under the strict police of their own country.

HOFFMAN, *supra* note 1, at 65.
[129] HOFFMAN, *supra* note 1, at 71.
[130] *See supra* Part II.A.

largely in tact: The conservatives crushed Dorr's Rebellion and granted only few concessions to the reform movement. The conservative leaders who remained in power after the rebellion used the full force of the courts to punish Dorr. But the real wrath of the conservative core was directed at the Irish community, as evidenced by the speedy, but dubious, justice administered to John Gordon. A socially prominent and politically important Protestant Yankee had been murdered and the conservatives felt vindicated. The brutality of the crime committed against Amasa Sprague, part owner of A & W Sprague (a textile firm producing goods valued at over three quarters of a million dollars annually), meant that their fear of the Irish had been justified; extending the vote to the Irish would have meant disaster. The conservative community's effort to prosecute Gordon—or one of his other Irish immigrant family members—reached a frenzy that defied rationality and modern day notions of a fair trial: Only after John Gordon was arrested was any evidence discovered linking him to the crime. Similarly, all evidence that tended not to prove Gordon's guilt or that pointed to another suspect was ignored altogether. The trial transcript shows that Gordon suffered discrimination by the hands of his community, the prosecutors, Chief Justice Durfee of the Rhode Island Supreme Judicial Court, and even his own defense attorneys. Because of voting restrictions, no one on the jury was Irish or Catholic. The Yankee establishment was quite literally John Gordon's judge, jury, and executioner.