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Edward H Durell, New Orleans Civic Reformer and Reconstruction Judge

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Edward H. Durell,

New Orleans Civic Reformer and Reconstruction Judge

BY

Sean C. Perry

BA, University of New Hampshire. 2003

THESIS

Submitted to the University of New Hampshire
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Gregory McMahon, Ph.D, Associate Professor of History
To Mara, Aeneas, and Lilija Perry
Acknowledgments

Professor J. William Harris warned me in 2011 that New Orleans during Reconstruction was a labyrinth of factions, violence and confusion. I agreed with his assessment, but later discovered just how much I had underestimated his description. Professor Harris’ knowledge of the American south, and American history, during the eras covered in this thesis proved invaluable. More importantly, his patience and editing have transformed this research into a readable narrative. Without Professor Harris’ assistance, I doubt I ever would have finished.

I also would like to thank Professors Jason Sokol and Gregory McMahon. Their editing skills proved crucial, of course, but they provided me far more than that. Professor Sokol’s colloquium covering the Civil Rights Era of the Twentieth Century provided a context researching Reconstruction that informed my writing and understanding of the tactics of Reconstruction-era Democrats. For two years no one listened to me ramble on more about Edward Durell than Professor McMahon. In fact, this project never would have began if he had not responded with “well, that sounds interesting,” when I told him there was a former Mayor of New Orleans buried in Dover, New Hampshire.

Speaking of Judge Durell’s grave, I must thank his wife, Mary, who was responsible for the massive tombstone, located in Pine Hill cemetery in Dover. I feel confident in saying that Judge Durell would have been absolutely mortified to know how extravagant his stone is, and he never would have approved of it while
living. Without that prominent stone I never would have noticed it while taking a short cut to the bus stop in 1991. Twenty years later, I suddenly remembered it.

I also must thank Judge Durell’s sister, Elizabeth, who saved most, if not all, of the letters she received from Edward between 1834 and 1875. A large percentage of the new information contained in this thesis comes from those letters.

The entire staff at the New York Historical Society deserves mention. A vast majority of the letters in the E. H. Durell papers were untouched since first archived. Folded and then taped inside notebooks, the letters are extremely fragile. They allowed me unlimited photography, and trusted me to handle documents I didn’t trust myself to touch. Their genuine excitement that someone was actually looking at the papers proved contagious.

I confess that over the course of research and writing I grew to admire Judge Durell. This was due, in large part, to my parents Frank and Eleanor Perry. Like Judge Durell, they taught me, and have lived by, a strong belief that the ends never justify the means, two wrongs never make a right, and that working hard and doing the right thing is reward enough, even if no one else recognizes your actions.

During the writing our family dog, Lucy, died. It wasn’t until the old, stray beagle/basset mix from North Carolina was gone that I recognized how often she was my sounding board in research and writing. The last eight weeks of this project were more difficult without her.
Without my beautiful wife Mara's support, I would still be laboring at a profession I disliked. Her love for her career motivated me to return to Graduate school, and her proficiency at her career gave us the financial flexibility to do so. Her patience during some trying and stressful times is beyond description. I love her for this and a myriad of other reasons.

I must also thank my children, Aeneas, now six, and Lilija, now four. Both have displayed an astounding patience with my schedule, my stress and my need for writing time. Both have somehow maintained a very active and sincere interest in Judge Durell. They are now quite the young experts on my subject, and they have passed this on to their friends in kindergarten and pre-school. Aeneas, sensitive to unfair treatment as only a six year old can be, remains incensed at Judge Durell's historical treatment. Lilija, especially, has elicited sympathy for Judge Durell, whose father, she gravely informs her young friends, "was not very nice." I hope their interest in my work continues.

Lastly, I need to thank Judge Edward Henry Durell, for being the man he was.
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Abstract

EDWARD H. DURELL,
NEW ORLEANS CIVIC REFORMER AND
RECONSTRUCTION JUDGE

By

Sean C. Perry

University of New Hampshire, September, 2013

Judge Edward Henry Durell has faded from the historiography of New Orleans, the Civil War, and Reconstruction. When he does appear, the long held belief that he was a drunkard, corrupt and feeble man sometimes remain. This Thesis utilizes his virtually untouched personal papers to reveal a far different picture.

Edward Durell exerted great effort to never be corrupt, despite numerous opportunities to enrich himself at the public expense. He was a brilliant man, who played an important role in modernizing the infrastructure and government of New Orleans in the years 1850 through 1856. He served in his many public roles during the Civil War and Reconstruction at times unwillingly. He distrusted and dislike politicians of both sides of Reconstruction, and resisted numerous attempts by politicians to abuse his power as a Federal Judge to advance partisan agendas. His ruling on the Louisiana state election of 1872 has long stood as evidence of either his incompetence or corruption. This thesis reveals his motivations were noble and, he felt, entirely legal. It was the actions of others, both Democrat and Republican, to scapegoat him for their own political ends that
has resulted in a distorted and unfair representation of what actually occurred, and why.
Introduction

. . . To die misrepresented and misunderstood, cheated of fair fame, with another's crime fastened upon us — to die taken in the toils of an enemy, who usurps our purposes, and gives to history a lie growing with each new teller of the story — this is terrible. . . When will History listen to the defense which has not been heard? - Edward Henry Durell, 1852

Edward Henry Durell was born in Dover, New Hampshire in 1810. His mother was the daughter of John Wentworth, Jr., a signer of the Articles of Confederation, a prominent lawyer and one of New Hampshire's respected revolutionary statesmen. His father, Daniel Meserve Durell, was a self made man, rising from poverty to attain wealth, power and entry into the highest social spheres in the growing mill town of Dover. After attending Harvard and Harvard Law, Edward served under his father, then the United States District Attorney for New Hampshire, before passing the bar. During this period he grew disillusioned with the political, business and social machinations of his father. Defying Daniel's plans for his future, Edward fled New Hampshire to create a life lived on his own terms.

By 1837 Edward settled in New Orleans, working as a private attorney and publishing fiction using the pen name Henry Didimus. He was intent on leading a

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private life, avoiding politics altogether, but this proved impossible when the first rumblings of secession began in 1850. By 1856, Edward had privately, of his own initiative, undertaken the task of rebuilding New Orlean’s derelict Carondelet Canal, hoping to effectively double the trade capacity between the city and Lake Ponchartrain. Simultaneously, as a member of the Board of Aldermen, he wrote, “alone, unaided and without counsel” an entirely new city charter for New Orleans. The goal of the charter was to stabilize, then grow, the city treasury via a new tax system, to prevent corruption from elected officers via numerous new checks and balances, and most of all to redistrict the city, in order “to break up the old municipality lines and divisions of population which have so long operated as a clog on the prosperity of the city.”

An ardent Unionist, Durell retired from public life after secession, but he remained in New Orleans. This was likely because his only investments were in real estate, and leaving the South would result in utter destitution. Upon the capture of New Orleans by Union forces, Durell was quickly tasked by General Benjamin Butler with creating an entirely new city government structure. His success, not only in creating the government, but also in serving as its top civilian member as the Chairman of the Bureau of Finance, led to an 1863 recess appointment by President Lincoln to the Federal bench, as District Judge for the Eastern District of Louisiana. During 1864, Durell served as Federal Judge, Chairman of the New Orleans Bureau of Finance, briefly as city Mayor, and President of the Louisiana State Constitutional Convention. His role as president

of the 1864 convention was controversial, and blame for the riot that ensued when an attempt took place to reconvene the convention of 1864 against Durell’s wishes, was initially placed at his feet by some Radical Republican newspapers.³ While on the bench Durell became involved in the famous *Slaughterhouse* cases, but the downfall of his career and historical reputation took place with the state election of 1872. Placed in the middle of an election with evidence of massive voter fraud, intimidation and instances of violence perpetuated by both “Fusionists”, led by sitting Governor Henry Warmoth, and Radical Republican contender William Kellog, Durell issued what historians have termed his “midnight order”. In order to prevent Governor Warmoth from blatantly violating an order from the court by swearing in those who, Warmoth claimed, had won election, Durell sent a contingent of U.S. Marshals to seize the state house until the case could be decided. Durell desired time to examine the ballots and affidavits from freedmen testifying that their voting rights had been infringed, and to begin a review of ballots. He also desperately desired to avoid a repeat of the 1866 riots, in which many blacks were massacred. Durell felt the Fourteenth and Fifteenth Amendments, combined with the Enforcement Act of 1871, gave him the power and the legal responsibility to seize the state house. This action has been often interpreted as intentionally giving the election to the Radical Republicans. By 1874, the political fallout of this case, where it was often claimed that a Federal Judge had interfered with a state election to protect the Republican Party, caused many members of that party in Washington to search

for a scapegoat, and Durell fit the bill. After a lengthy House investigation, during which every accusation against Durell, even those of a personal nature, were reported as fact by Democratic and Republican press alike, the House committee voted by a one-vote margin to begin an impeachment trial in the Senate. With that body now controlled by Democrats, Durell likely thought the result of such a spectacle was preordained. He resigned on Christmas Eve, 1874.

Ostracized by both Democrats and Republicans, Durell was forced to leave the city he deeply loved in 1875. He married a woman from a powerful upstate New York family and retired there until his death in 1888. After 1874, he removed himself entirely from public life and, while not a broken man, he must have reflected how the great effort he exerted to help fulfill the "magnificent destiny" of New Orleans ended largely in failure.4

The historical reputation of Judge Edward Henry Durell travels a winding course, not unlike that of Reconstruction and Civil War historiography. Historian Eric Foner brilliantly summarized the evolution of historical interpretations of Reconstruction in his Preface to *Reconstruction: America's Unfinished Revolution, 1863-1877*. He discussed the arguments of William Fitzgerald Dunning and his followers, who believed this period was the "darkest page in the saga of American history." The Dunning School eventually fell due to the work of the "revisionists," who often came to the opposite conclusion for every facet of Dunning's interpretations. Last was the work of the "post-revisionists," who have attempted to discredit "the more optimistic findings" of the revisionists, arguing

that the majority of Republicans were quite conservative, hardly radicals as the Revisionists believed.⁵ Throughout these changing interpretations, many names have been “rehabilitated.” Governors William Kellogg and Henry Clay Warmoth serve as examples. Kellogg, condemned by the Dunning school, often is regarded as a champion for freedmen today. Warmoth, formerly praised by some in the Dunning School for his abandonment of Radical Republican politics via his creation of a “Fusionist” program that attempted to embrace Democrats, is now generally discredited as an opportunistic rogue. Meanwhile Edward Durell, a primary target of Dunning school historians, and typically dismissed as “corrupt”, “drunk” or “feeble” has almost entirely disappeared from the narrative of Reconstruction.⁶ Some modern “post-revisionists” works attempt to shed new light on Durell, one noting he “was a man of uncommon talent and education.” yet even in this post-revisionist work, Durell’s actions and overall impact remain misunderstood.⁷


⁶ Ella Lonn, History of Reconstruction in Louisiana from 1868, (New York: The Knickerbocker Press, 1918),194; Louisiana State Museum, Carpet-bag Misrule in Louisiana: The Tragedy of the Reconstruction Era Following the War Between the States. Louisiana’s Part in Maintaining White Supremacy in the South (New Orleans: T.J. Moran’s Sons Press,1938), 34. These works provide examples of Dunning school interpretations. Ted Tunnell includes Durell in his revisionist work Crucible of Reconstruction, but places him within the “Radical Republican” party of A.P Dostie and Thomas Durant (who, evidence suggests, did not like each other at all, with Dostie publishing a lengthy letter damning Durant as a Confederate turned political opportunist after New Orleans fell). While Durell shared some of their sentiments, especially on the subject of equal rights, he did not share their belief that circumstances allowed for illegal actions. He felt it morally wrong and was convinced it would only strengthen opposition and promote violence. This is best seen in Durell’s insistence on not reconvening the 1864 State Constitutional Convention, despite Durant’s and Dostie’s and many others insistence. See Ted Tunnell, Crucible of Reconstruction: War, Radicalism, and Race in Louisiana, 1862-1877 (Baton Rouge: Louisiana State University Press, 1992), 53.

Edward Durell never desired a public life. The first rumblings of secession in 1850, combined with what he considered the incompetence and corruption of New Orleans city government, inspired him to change course. His ardent Unionism led him to gladly serve in the numerous roles he held during the Civil War and Reconstruction. However, he clashed publicly and privately early and often with the likes of Republican Generals Benjamin Butler, Nathaniel Banks, and Philip Sheridan and with social reformers such as A.P. Dostie and Thomas Durant. The published papers of President Andrew Johnson contain a scathing letter accusing Durell of being a “Copperhead”, stating “God help us Loyal men in Louisiana, from the Judge on the Bench of the U.S. Court to the lowest level [of judicial appointments] there is leaning to traitors, Copperheads, and infidels to our govt.” Actual Copperheads (antiwar Democrats) testified to Congress that they preferred to, “die rather than be taken to New Orleans before that brute Durell.”

Many of Durell’s actions were baffling to his contemporaries and equally to historians. Evidence suggests that looking deeply into Durell’s early life reveals the influences that spawned an obtuse but rigidly held sense of honor, an unyielding belief in the rule of law over political opportunism, and a life long desire to keep his beliefs, even true personality, hidden from all but the most deeply trusted friends (usually women).

This conclusion was reached while first researching Durell’s actions as the President of the 1864 Louisiana Constitutional Convention. The historians who

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have truly examined this failed document were baffled by some of Durell’s actions. John Rose Ficklen wrote in 1910, that near the end of the Convention, Durell caused a “strange scene.” In 1922 John Kendall, wrote that the manner in which the convention closed left open opportunities for “serious and sinister consequences.” Curious about these vague accounts, I followed the research trail backwards to the 1850s, then back to his father’s life. There was the answer.

On July 13, 1850, Durell wrote a lengthy letter to his friend “Oran”, a woman attempting to create an independent life for herself in San Francisco. He warned of rampant and irrational greed wrought by the ongoing gold rush, declaring that if he had his way, he would see “..all the gold of California tossed into the Pacific.” While expressing disgust about tales coming out of San Francisco, he also pitied “the common mass and herd, who have no hope beyond the present.” He continued on this theme, writing.

We must strive for more than that; we must aim at something more than that; in ourselves; not letting the world about us know it; not letting the world about us know of our striving and our aims. We must be in the world, not of it. We must laugh outwardly, with those who laugh; we must be frivolous with those who are frivolous, still keeping inwardly, at all times and in all places, onward towards our great aim; and when we reach it, when we attain it, be assured our glory will be

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Here, Durell was revealing to Oran something deeply personal. Evidence strongly suggests that Durell in this letter revealed the fundamental philosophy that guided his entire adult life. Never exposing his motivations or his goals, avoiding all accolades for his victories, and never publicly (and rarely privately) defending himself against false accusations, Durell made it easy for historians to miss his importance in the history of New Orleans. As the Revisionists labored to overturn the racist conclusions of the Dunning school, they discovered a judge they thought not worth rehabilitating. Even when impeached by a tie-breaking vote cast by Radical Republican Benjamin Butler, Durell never publicly attempted to defend himself from the charges against him. By the time of the post-revisionists, Durell, already so faded from view, became a nameless federal judge who had used his federal authority to hand the 1872 state election over to the Radicals.\\footnote{Charles Lane, \textit{The Day Freedom Died: The Colfax Massacre, the Supreme Court, and the Betrayal of Reconstruction} (New York: Macmillan Press, 2010), Kindle Edition, Introduction (Kindle Locations 279-280). Justin Nystrom, \textit{New Orleans After the Civil War} (Baltimore: Johns Hopkins University Press, 2010), 132.}

The reality is quite different and far more complex. Edward Durell never wanted a public or political life. He expended great effort to avoid being thought of as a man like his father. Judge Daniel Durell, in the rare instances he appears

\\footnote{Edward Henry Durell to “Oran” July 13, 1850. E.H. Durell Papers. Durell’s papers include letters to “Oran”, who likely was a woman named Frances Cook. In 1858 she married Dr. Fessenden Nott Otis, whose father’s first name was “Oran.” With Durell’s encouragement and editorial assistance her series of letters regarding her journey to, and time in, California were originally published anonymously in the \textit{New Orleans Picayune}. These stories eventually were rewritten to form a cohesive narrative and published by \textit{Harper’s Magazine} serially in 1859 using the Nom De Plume “Oran”. There appears to be no other published material using that pen name.}
in New Hampshire history, seems a most corrupt, haughty and perhaps even cruel man. He considered the law, government and religion mere tools for accumulation of power, wealth and status. Edward fled New Hampshire to escape the expectations of his father that he should build upon this dubious legacy. In this thesis I hope to reveal a man the press often correctly labeled “eccentric,” but who was also intensely honorable and devoutly religious, and who abhorred corruption. He felt slavery morally wrong before the Civil War, believed freedmen deserved full equal rights, and was among the first to treat freedmen equally. However, up until 1868, he continued to believe in the “reconciliation” goals of President Lincoln regarding Reconstruction. Much later in life, and after much reflection, Durell wrote in a personal notebook, regarding his famous Harvard classmate, “[Charles] Sumner was right.” Durell, by then, fully understood the complete failure of the attempts at reconciliation with the rebellious states.\textsuperscript{12}

Evidence of Durell’s ambitions, goals and personality can be found in his virtually untouched personal papers, housed at the New York Historical Society.\textsuperscript{13} These include hundreds of letters, written primarily to his sisters between 1834 and 1875, two letter books of correspondence between Durell and the mysterious “Oran”, and several personal notebooks. Although there exist only two principle sets of correspondents in this collection, they reveal two sides of Durell. The familiarity and relaxed, even joking manner he uses with his sisters (unfailingly

\begin{itemize}
\item \textsuperscript{12} “General Orders” Note Book, E.H. Durell Papers.
\item \textsuperscript{13} Charles Lane, “Edward Henry Durell, A Study in Reputation,” \textit{Green Bag Journal}, 3 (December, 2010). This article is apparently the only other published work that references any of Durell’s papers.
\end{itemize}
calling his sister Elizabeth "fat" for example) contrasts with the far more formal
Victorian style used with Oran. Durell's notebooks provide some crucial
information on his Civil War years, for he amassed this information before leaving
New Orleans in 1875 with the intent of writing a book, later abandoned. Another
important source of evidence comes from Durell's published works under the pen
name Henry Didimus. While most of these works are fiction, examination of other
primary sources reveal Durell wrote intensely personal fiction. While there are
risks for historians in interpreting fictional works too literally, I found these very
useful, especially when bolstered with additional evidence.

Durell was commercially successful as an author. Harper Brothers told
him, according to a letter to his sisters in 1846, "that anything I might write, they
would gladly publish for that anything I might write they could not possibly lose
upon."14 Durell evidently could not create fiction that was not vividly personal and
sentimental, which is why some pieces prove so helpful to understanding his
personality. Durell rarely, if ever, confided in anyone outside of Oran and his
sisters. It is apparent that to some degree Durell hashed out his ideas, his goals,
even his dreams through his pen. His fiction was his confidante, shielded behind
a pen name few during the 1850's knew was Edward Durell.

My approach here is similar to that of Linda Przybyszewski in her
biography of Justice John Marshall Harlan. Regarding judicial biography, she
argued "... that the usual purpose... is to prove that a judge was great and that

is... more important than... the judge's life.”15 Throughout her work she revealed that many of the factors that shaped Justice Harlan’s legal mind took place when he was a much younger man, and these experiences fundamentally shaped his professional life. Here, I have sought to reveal how Durell’s life shaped the decisions he made, both on the bench and as politician. Durell made many mistakes, and he also achieved remarkable victories. At times, he was his own worst enemy. His intense guarding of his core beliefs, of his personality even, caused many to misunderstand and distrust him, and nearly always underestimate his abilities. In the cases of New Orleans City Treasurer W.H. Garland, General Benjamin Butler and General Nathaniel Banks this underestimation caused Durell varying levels of personal anguish. While it is not a goal of this thesis to portray Edward Durell as a “hero,” research in hundreds of letters, congressional testimony, and dozens of secondary sources reveal that Durell was neither a drunkard nor corrupt. He had innumerable opportunities to enrich himself at the public expense for over twenty years in New Orleans public life, yet he never did. The mistakes he made (and he confessed he made some) were made honestly. The action he took in sending Federal troops to seize the Louisiana State House was not part of a Radical plot. This thesis shows Durell consistently, from a young age, refused to place party politics over his personal honor or the rule of law. Durell, acting within the limits of the Enforcement Act of April 1871, hoped to save the lives of both Democrats and Republicans in 1872, for he felt certain a repeat of the New Orleans Riot of 1866 would take place if he

did not. The political backlash to his action caused Republican congressmen to make him the scapegoat for following a law they wrote.

One could argue Durell may not have been the best of judges, but he was one of the most honest of men. At his funeral, the presiding minister opened his eulogy saying “we can say, without flattery, that he had a high ideal of what an honorable man ought to be.” The minister concluded by saying “he never defended a cause he believed wrong, neither did he seek popular praise. Doing at the time what seemed right, even though his act placed him in a minority, he left his work to be justified by the unbiased judgment of the future.”\(^{16}\) This thesis is a first step toward that goal.

Chapter 1

Flight from the Family Legacy

The miser loved his daughter with his whole soul; he loved gold with more than his whole soul - gold, his first love - and the daughter held a divided and an inferior empire in his affections...He loved her, as the heir to his vast estates, as himself renewed, to bear his labor onward, to accumulate through still another span of life; and he showed her to the world..as a new title to his possessions, which was to carry them with himself, even beyond the grave. - Edward Henry Durell, 1852.17

Joseph Duda survived being “carried off by Indians” during both the 17th and 18th centuries, first when an infant, and then again during adolescence. During the second attack, his mother was killed and two of his young sisters disappeared to Canada, never to return. Deciding that the frontier town of Arundell, Maine presented risks best avoided, he settled in Durham, New Hampshire and became the village blacksmith. Combined, his five children received an inheritance of a “sledge-hammer, anvil, . . . and 35 acres of homestead land” called “Duda’s Swamp.” His second son Nicholas, born in 1730, wanted more than that. Duda was an Irish surname descended from the ancient

“O’Dubhda, signifying dark complexioned.” Nicholas, in 1754, changed his last name from Duda to Durell. The new name staked a claim to a new history of high birth: connection to a bloodline of French Huguenots from the Isle of Jersey. This plan appears to have achieved the desired result, financially, politically and socially. In 1764 Nicholas Durell sold property near the Squamscott River in Newfields, New Hampshire for “5000 pounds old tenor,” to Captain Samuel Baker. In 1766, he was one of three men to lead the effort to form the town of Lee, formerly a part of Durham. Some time before 1769, Nicholas married his second wife, Abigail Meserve, whose family was prominent in colonial New Hampshire. In the summer of 1776, Nicholas died of unknown causes, leaving six children. His legacy surpassed that of his father; he left land of approximately 195 acres along the Lamprey River in Lee. His probate inventory declared the value of the entire estate at nearly 1,000 pounds. Of his progeny, one in

18 Mary P. Thompson, “Landmarks of Ancient Dover and the Towns Which Have Sprung Therefrom”, The Granite Monthly, 1888, 372. Thompson adds this original Irish surname, “was commonly changed to Duda, “Dooey, Dowd or O’Dowd.”; Everett S. Stackpole, and Winthrop S. Meserve, History of the Town of Durham, New Hampshire (Oyster River Plantation) with Genealogical Notes (Durham: Published by Vote of the Town, Durham, NH, 1912), 137.

19 Thompson, “Landmarks of Ancient Dover,” 373. Thompson writes, “Nothing appears in the early records to justify the assertion that the Duda family came from the Isle of Jersey, much less it was of Norman extraction.”

20 James Hill Fitts, History of Newfields, New Hampshire, 1638-1911 (Concord: The Rumford Press, 1912), 428. According to Fitts the area in which this land stood was vital, as it was the location of first a ferry and later a toll bridge that connected Exeter to Newmarket and Durham. Evidence suggests that before selling the land Nicholas attempted to secure rights for a bridge, but after meeting failure sold the land to Baker. This spot was the focus of much controversy regarding the ferry and bridge as early as 1721 and was not fully resolved until after 1792.

21 James Creighton Odiorne, Genealogy of the Odiorne Family: With Notices of Other Families Connected Therewith (Boston: Rand, Avery, and Company, 1875), 32; Eleanor Francis Davis Crosby, and Idolene Snow Hooper Crosby, A Biographical Sketch of Eight Generations of Hoopers in America, William Hooper 1635 to Idolene Snow (Hooper) Crosby 1883 (compiled by Mrs. William Sumner Crosby), (Boston: Printed for Private Circulation, 1906), 37.

22 Probate Court Records of Strafford County, Dover, New Hampshire, August 3, 1841.
particular inherited a determination to improve the family name and legacy; this was the fifth child, Daniel Meserve Durell, born in 1769.23

More than his father, Daniel lusted after money, power and entry into blue blooded society. In August, 1790, Daniel, only weeks away from entering Dartmouth College as a first-year student, was ordered with his five siblings to appear in the Strafford County Probate Court of Judge Joseph Badger. Required to swear in as Daniel Duda, a surname he never publicly used, he and his siblings agreed to a bond of 4,000 pounds, provided by family friends, to be forfeit if the full debts of their long-dead father were not paid in full.24 This inauspicious event as Daniel entered adulthood perhaps spurred a determination to never again be powerless or poor.

After graduating from Dartmouth in 1794, Daniel prepared to enter the bar. Despite a public accusation in 1796 that he had attempted to steal ownership of "Patent Metallic Substances" by "unwarily" inducing Exeter, New Hampshire


24 Probate Court Records of Strafford County, Dover, New Hampshire, August 19, 1790. The mystery of how Nicholas managed to accumulate such a great amount of debt, although many possible explanatory factors exist, such as currency devaluation after the Revolution, remains. What is certain is that the inventory of his estate and the approval of his will by the court in 1778 reveal no outstanding debts. That it took fourteen years for the case to reach the court is also curious. Receiving loans by deception was not unknown in Lee during this period. Perhaps it is not mere coincidence that a farm less than two miles away from Durell's was the home of one of colonial New England's most notorious criminals, Henry Tufts (1748-1831). Described as the "first thorough and unimpeachable member of that fraternity (criminal) recorded amid our staid New England society", Tufts spent his life stealing by deception (posing as an upper class clergyman or doctor) and he claimed to be the first American counterfeiter of Continental currency. See Thomas Wentworth Higginson, Travelers and Outlaws, Episodes in American History, (New York: Lee and Shepherd, 1889), page 88ff. Daniel's use of the name Duda in public records outside of the court of probate is yet to be discovered. He is consistently named Durell in the documents currently reviewed from Phillips Exeter Academy and Dartmouth College.
resident Elisha Perkins to sign over his rights to the invention, he became a member of the bar in 1797 and opened a law practice in Dover, New Hampshire. 25 Three years later he entered into the highest of social circles by marrying Elizabeth Wentworth. Her father, John Wentworth, Junior, was a signer of the Articles of Confederation and served in many other early New Hampshire political offices. More importantly, Daniel and Elizabeth's children could legitimately claim direct descent from "Elder William Wentworth," thereby sharing "an ancestor in common with King Edward VI of England, and with Sir Thomas Wentworth, Earl of Strafford," and even to "the illustrious family of Montmorency of France." 26 In 1803 Daniel was listed among the initial Board of Directors of "the first bank in Dover," the Strafford National Bank. 27 After joining the Democratic-Republicans in 1805, Daniel served in Washington as a New Hampshire Representative in the Tenth Congress (1807-1809). While Congressman he ardently argued for war with the British to protect America's, especially Dover's, shipping interests, which caused him to become very unpopular within his own party. 28

25 "To the Public", New Hampshire Gazette, December 10, 1796, 3.


Service in Congress is evidence of Daniel's quick rise in the political and social realm. In 1808 Daniel entered the highest tier of Dover society with the purchase of one quarter of the "first church pew" of the First Parish Church of Dover, for the price of $28.86. Founded in 1633, this Congregationalist flock was the oldest and most prestigious church in the state. "The pews were large square boxes with seats on three sides;... his pew was undoubtedly in the most fashionable location in the house." 29

Professionally, the years 1808 and 1809 saw Daniel's congressional career flounder. One editorial, written by a fellow Democratic-Republican, complained that Durell's support for the "Embargo Laws" was "a very great mistake." Another declared that party members would "speak out" since Daniel's actions as Representative apparently had not "been conclusive evidence of their feelings." One lengthy editorial went so far as to claim that Durell had used secret negotiations to manipulate the party caucus system to gain entry on the ticket and therefore achieve his office. The anonymous author bluntly wrote, "Mr. Durell was tricked into Congress without being the choice of any twenty men in the state. - Yes, I will venture to say, ...that if any voter ... had been put upon oath ... to select who should be the men of his choice ... Mr. Durell would not have received twenty votes." Although he initially was placed on the ticket for reelection in 1809, the backlash by the party rank and file was so great that

eventually he was quietly dropped.\textsuperscript{30} If Daniel ever was a loyal Democratic-Republican, and there is little evidence his constituents felt so, this action by the party likely played a role in his lack of political loyalty later in life.

Shortly after he was dropped from the ticket, Daniel celebrated the birth of healthy fraternal twins. On July 14, 1810, inside the “Governor Wentworth house” in Portsmouth, surrounded by “the family portraits by Copley and his master, Blackburn, and other valuable historical mementos of colonial and of royal state,” Elizabeth Durell bore Margaret and Edward, the third boy and third girl of their parents. At forty one years old, Daniel appeared to have achieved much, both through hard effort and a bit of luck. As young Edward grew up, it became apparent Daniel felt differently. Satisfaction, defined by Daniel, required complete domination of the social, political, legal and business sectors of Dover. The consequences of his later actions for both his children and his personal legacy, Daniel likely never understood.\textsuperscript{31}

Edward Durell witnessed the transformation of Dover from a small town focused on shipping and lumber into a bustling manufacturing hub, the first in the Seacoast area of New Hampshire. It was not mere coincidence that the wealth and power of his father grew in direct correspondence. By Edward’s eighteenth birthday, in 1828, his father had helped found a second bank, two aqueduct companies, and Dover’s first insurance company and first hotel. He also had launched and was first president of the Newmarket Manufacturing Company,


\textsuperscript{31} “Honorable Edward H. Durell,” 117.
whose mills soon rivaled those of neighboring Dover in size and profit. Daniel Meserve Durell was one of the richest men in Dover and perhaps the entire state.\textsuperscript{32} After several failed attempts at running for national and state wide offices, evidence suggests Daniel developed a new tactic. Using his wealth and force of will, he would make his interests prosper by working behind the scenes in the Democratic-Republican party.\textsuperscript{33} Now that he was free from the restraints required of an elected official, his wealth and control over Dover continued to grow. In 1816 Durell played a prominent role, as a member of the Board of Trustees, in efforts by the state of New Hampshire to take control of his alma mater, Dartmouth College. This caused a rift in his friendship with Daniel Webster, who ardently, successfully and famously defended the college.\textsuperscript{34}

With his wealth, Daniel Durell firmly grasped the title of Dover's first citizen. When President James Monroe visited the city on July 17, 1817, Daniel Durell was appointed grand marshal and was the first to greet him at the city line, presenting a welcoming speech even though he held no elected office. In 1825, amidst great excitement, a vast number of Dover citizens amassed to witness General Lafayette be officially greeted by “Chief Marshal” Daniel Durell, who...


\textsuperscript{33} “For the Oracle”, \textit{Portsmouth Oracle}, August 20, 1808.

\textsuperscript{34} Frederick Chase, and John King Lord, \textit{A History of Dartmouth College and the Town of Hanover, New Hampshire, Volume 2} (Concord: The Rumford Press, 1913), 85-86, 94-99,111, 682. Daniel Durell’s law partner in Dover was Daniel Christie, also an alumnus of Dartmouth. The Durell family owned a large portrait of Christie because they held him in such high regard. After Edward’s death, his wife donated the portrait to the Woodman Institute Museum in Dover, where it hangs on permanent display.
again provided a lengthy speech before “the procession was then formed and the General escorted into town” with a 13-cannon salute. Young Edward presumably witnessed both these events.

After a private education in the elite school run by Polly Reade, followed by four years at Philips Exeter Academy, Edward entered Harvard College in 1827. His class at one time was referred to as “Harvard’s Banner class.” Fellow students included abolitionist Wendell Phillips, historian and diplomat John Lothrop Motley, attorney and diplomat Charles Eames, future Harvard Medical School Dean, Dr. George Shattuck. One year ahead of this group was future Senator Charles Sumner.

Despite his unpopularity within the rank and file of his own party, Daniel Durell did serve the public; perhaps as a reward for his role in the Dartmouth case, he was appointed the Chief Justice of the New Hampshire Court of Common Pleas in 1816, serving until he resigned in 1821. This court heard the majority of civil cases in the state and required Durell to travel to the various counties to hear them. Evidence does reveal that Judge D.M Durell was quite unpopular even with fellow members of the bar during his term; they considered him arrogant, pompous, and extremely vain about his personal appearance. Ira Perley, one of the lawyers who traveled the circuit and shared lodgings with Judge Durell, wrote that Daniel’s obsession with the “polite arts of the toilet,” utilizing a large collection of brushes “for the hair, the flesh, the clothes, the nails,

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36 “Honorable Edward Henry Durell,” 118.
and what not” caused “infinite annoyance with the squirting and the sputtering he kept up an hour at a time.” Finally, Perley and fellow lawyer Amasa Copp “gathered up the vexatious utensils and threw them out the window!” Still, Daniel Durell in 1828 played a heretofore unacknowledged role in the creation of the New Hampshire Jacksonian Democratic party.

Historian Donald Cole has explained how the Jacksonian Democrats evolved from the fading remnants of the Democratic-Republicans. Isaac Hill and Levi Woodbury, Cole claimed, were at the core of this evolution in New Hampshire, but evidence suggests that at the birth of the party Daniel Durell attempted to insert himself into a leadership role. On March 31, 1828 Durell took the first step in the process, surrendering his share of the first pew in Dover’s First Congregational Church and leading a mass exodus to a new Unitarian church, which he helped found. This reflected the anti-Congregationalist stance of many New Hampshire Democrats, especially Isaac Hill. Durell’s exodus included “much of the wealth and influence of Dover,” such as the some of the management staff of the Dover mills, the top Dover merchants, five physicians, virtually all the lawyers and “the editors and proprietors of both the newspapers of the town.” This nearly destroyed the First Congregational Church. Less than one month later, it was Durell, not Isaac Hill as Cole claimed, who called for the first “Statewide Convention” to create a pro-Andrew Jackson party. This call was


38 Alonzo H. Quint, The First Parish in Dover, New Hampshire, On the Two Hundred and Fiftieth Anniversary, October 28, 1883 (Dover: Printed by the Parish, 1884), 48-49.
printed in every prominent New Hampshire newspaper, and signed by Daniel Meserve Durell.\footnote{"Jackson Meeting", \textit{New Hampshire Patriot and State Gazette}, April 14, 1828.; Donald B. Cole, \textit{Jacksonian Democracy in New Hampshire, 1800-1851} (Cambridge: Harvard University Press, 1970), 86-89.} Not all fellow Democrats were pleased with Durell’s actions. Hill’s paper, the \textit{New Hampshire Patriot and State Gazette}, had published a lengthy letter two months earlier, complaining that Daniel Durell had organized and chaired a secret meeting to select eight Democratic delegates to a meeting to choose a Senatorial candidate. The anonymous author first questioned the legality of this action, then noted angrily that the delegates included a majority of “dyed in the wool Federalists.” The author recounted with horror his witnessing Federalists “in every part of the room.” What Hill apparently soon realized, and Cole missed, is that Durell had plotted to get the majority of the wealthiest men in the booming industrial town to join the Jacksonian cause. The formerly Federalist attendees included J. B. H. Odiorne and Hosea Sawyer, both wealthy merchants heavily involved in Dover’s mill industry (both also joined Durell in abandoning Congregationalism). The addition of prominent former Federalists who might also influence large numbers of employees, or otherwise served as the lynchpins for Dover’s prosperity, could greatly assist the new party in gaining control of the state. Dover stood as a potential key prize for the Jacksonian Democrats, for it had long been a bastion of Federalists and then National Republicans.\footnote{“Mr. Hill,” \textit{New Hampshire Patriot and State Gazette}, February 4, 1828.}

Judge Durell’s political maneuverings paid off. After Jackson’s victory, he was appointed U.S. District Attorney of New Hampshire, but not without controversy. Durell preferred to be appointed Federal District Judge and was
accused by portions of both political parties of using his influence to have the appointment letter intended, for Judge Harvey, the eventual appointee, “hidden” for a month “while he pressed his claims” for the judgeship. The District Attorney’s job served as his consolation prize. It was while the elder Durell served in this role that Edward worked as his clerk, before passing the Bar. The failure to win the District Judgeship, and his continued inability to achieve higher office, offended Daniel Durell. By 1834 he began a new round of political maneuverings that culminated in his leading a second mass exodus of the wealthy commercial class to a new party, this time the Whigs. During this time, with his son as clerk, Daniel Durell provided one clue as to how he regarded his son, briefly but bluntly stating that Edward “is intended for the ministry.” The entry lacks context, so we are left to interpret for ourselves, but it seems unlikely Daniel intended this remark as a compliment.

Daniel Durell made his rebellion against the Democrats known publicly in January 1835, shortly before he surrendered his role as U.S. District Attorney to his law partner’s protégé, John P. Hale. The reaction from the newspaper of staunch Democrat and New Hampshire Senator and Governor, Isaac Hill was quick and severe. In an editorial, perhaps authored by Hill himself, the writer ranted against the “federal lawyers,” and Daniel Durell in particular, who had “pressed themselves into the front ranks of the party” in 1828.


42 Diary of Daniel Durell, E.H. Durell Papers. The diary is actually more an accounts book, and little personal information of any sort is present. As this was the height of Durell’s political machinations, and Edward soon would flee his father’s influence, it remains doubtful Daniel felt any pride receiving criticism from a moralistic child.
There was Daniel M. Durell, who boasted of being the father of the Jackson Convention in 1828. He has been a candidate for every office that became vacant, during the time he acted or pretended to act with the democratic party. He was a candidate and was appointed District Attorney by Gen. Jackson. But that office did not satisfy his ambition. Although one of the wealthiest, most overbearing and miserly men in the State, he wanted an office that would give him more money - the darling object of his soul.43

It remains unknown how Edward reacted to this vitriolic attack on his father. By the time this editorial was published, Edward already had, quite literally, run away from home.

One can only guess Daniel Durell's reaction when he first read Edward's letter dated “Washington D.C April 28, 1834.” Noting he had already passed the city of Philadelphia, “which you appear to have fixed as the western boundary of my travels,” Edward informed his father, “When I shall return to N. Hampshire heaven alone knows, a goodly number of years must in all probability have pulled away before that pleasure will be granted me.”44 The remainder of the letter served as a lengthy justification for Edward's unexpected flight. He told his father that he had asked advice of numerous members of Congress, including Senators Clement Clay of Alabama, William Plumer of Mississippi, and Samuel Bell of New Hampshire, as well as Representative James Polk of Tennessee, among others.

43 “Federal Office Seekers”, New Hampshire Patriot and State Gazette, January 26, 1835, 2. All emphasis from original source.

Edward also told his father of a meeting with Henry Clay, who advised that "New England is not now the place for young men. So says Mr. Clay."45

Edward wrote that he was surprised when informed by Senator Bell that his father would not seek another appointment for District Attorney. Perhaps trying to placate his father by damning his enemies, Edward noted he met with key New Hampshire Democrats Isaac Hill and Levi Woodbury. He called Hill "a miserable fellow" and declared Woodbury drunk and that his "mouth flowed with Jackson blagardism." Edward also described a meeting with President Jackson that devolved into such an incident he concluded that Jackson "can not be reelected."

I was introduced to the Pres....The Pres. motioned me to sit and immediately commenced talking about the "Monster" establishment that I was about at Powelton. This threw the old gentleman into a great state... He addressed himself to me for about five minutes, heaping abuse of every kind upon the Bank heads too, and the Senate. The audience chamber had in the meantime become filled and a dozen individuals stood staring and gaping at the Chief Magistrate launching forth a philippic addressed to a boy from N.H. . . [He] ended with shaking his finger in my face observing "They say that Caesar destroyed the Roman Government but History tells us if we read it aright that it was an error of the Senate."46

45 Ibid. It is interesting that Edward went out of his way to make clear Henry Clay referred to himself in the third person.

While this tale may have reenforced Daniel's decision to move to the Whigs, Edward clearly only intended to cool his father's wrath.\textsuperscript{47} Edward himself remained a Democrat until the Civil War. There were, however, aspects of Jacksonian Democracy that Edward abhorred, especially political patronage. By the time he became politically active himself, in 1854, he endeavored to limit, if not eradicate, its use.

However, it did not take long for the issue of political patronage to enter into Edward's new life. Less than one month after the letter dated April 28, Edward again wrote his father. Noting that several men in Washington, and a Judge Burnett in Cincinnati, had implored him to settle in Chicago, he politely declined. Edward felt that the "law, as practiced in the North Western states, has been so simplified, that one can hardly be justified in settling in any one of them at this early state of their progress."\textsuperscript{48} While Durell felt Chicago not ready for his talents, it is perhaps no coincidence that two years later his first cousin, "Long" John Wentworth, fled New Hampshire to begin a new, and quite successful, life in that city.\textsuperscript{49} Instead, Durell took the advice of future President James Polk and traveled to Polk's home town of Columbia, Tennessee. It appeared a promising place to make a start as an independent attorney. On arriving there, however,

\textsuperscript{47} E.H. Durell to his sisters, "Dear Sisters", April 29, 1834, E.H. Durell Papers. In this letter Edward apparently notes his elder brother Dr. Charles Durell, about whom little is known, also harbored hopes of fleeing from Daniel's influence. Edward states that Charles traveled with him as far as Philadelphia. When Edward continued, Charles dared not. Edward still was "Hoping that he too would soon follow in my steps." Charles died in 1840 of unknown causes, still living in Dover, NH.

\textsuperscript{48} E.H. Durell to Daniel M. Durell, "Dear Father", May 18, 1834, E.H. Durell Papers.

Durell's mood soon changed. Informed that Mr. Polk required “a portion” of any profits to “counteract the influence of the lawyers” of the opposite political party, Edward flatly refused. “That”, he declared, “I could not do for I had determined to sacrifice politics to my profession.” Durell also received offers from Senator Clement Clay of Alabama “to establish a paper at Tuscaloosa advocating the interests of the “Jacksonian Party”. Of course this, too, came with a price, for Clay was now a candidate for Governor, which, Edward wryly noted, served as “a clue to his desire of my editorial assistance.” Daniel Durell, one who expected, even relied upon patronage for his political rise, perhaps fumed at the rejection of these two opportunities. If he did not, the closing paragraph likely caused anger. Confessing he may have “taken too long a stride,” Edward requested a loan of $1,000. He closed the letter both begging and chiding, saying “I hope you will not deny me that sum upon my commencing my labours as a professional man, which you would willingly grant to establish me in the business of a merchant... I will promise never again to call upon you for the means of subsistence.”50

It remains unknown if Edward received the loan. In fact, much of the next ten years of Edward Durell’s life remains a mystery. It is known he worked as an attorney in Pittsburg, Mississippi, then visited New Orleans during 1835, where he wrote the first version of his novel New Orleans As I Found It. There are clues however, that after a failed attempt at reconciliation with his father in 1836, Edward felt somewhat lost in life. According to a brief biography published in 1888, Durell flirted with conversion to Catholicism, even traveling to Rome and

studying divinity “in the Propaganda before he subsequently changed his mind and returned to New Hampshire.”51 In any case, Durell remained a devout Christian his entire life, respecting all variations of Christianity.52

By 1837, Durell was permanently living in New Orleans. Something appears to have led to a complete break from his family back in New Hampshire. One incident may have been the death in Texas of his youngest brother George in June 1838. Edward compiled a brief diary of his travels deep into Texas to investigate the death. Durell traveled to Houston, Washington on the Brazos, and San Antonio searching for details about his brother’s purported murder. He met at length with Sam Houston regarding the fate of George and his companion, also from Dover, Charles Ela. Houston believed they had been killed by Comanche Indians, but did not rule out that they “might have been murdered by white men.” After his lengthy investigation, questioning dozens of people, Durell concluded that everyone in the area was convinced George and his companions were murdered after an unexpected encounter with a group of Comanches.53

It appears that Edward’s investigation was funded by his father, Daniel, since it seems unlikely Edward had the funds to leave for the Texas frontier for several weeks in 1839. Edward’s account ended up in New Hampshire, copied


52 “Personal", Boston Evening Transcript, March 28, 1907. Edward’d wife, Mary, bequeathed the funds to construct and operate the “Durell Memorial Church”, still active in Bethlehem, New Hampshire. However this appears to have been desired by Edward, but knowing his wife would likely far outlive him, he wanted her to bequeath the funds after her own passing. Her will stated the church must be “as nonsectarian as practical”. In his letters, Edward often wrote of his love for the White Mountains, but the lack of churches he found alarming, which is why the church was built so far from his birthplace.

53 Edward H. Durell, Account of a Journey to Texas Made by Edward Durell in 1839. Courtesy of the William Clements Library at the University of Michigan, Ann Arbor, Michigan.
by Artioch Wentworth, a cousin to the Durells and brother-in-law to Charles Ela. The diary strongly suggests that George had followed Edward’s path in running away from home, and from Daniel’s influence. George and Ela were attempting to get a start in business by purchasing a few mules in San Antonio to sell farther north. As a relatively small operation, full of danger, with little profit, this was probably not the type of business venture Daniel Durell was interested in for his youngest son. Perhaps Edward’s investigation, and the cause for it be performed, played a significant role in the final split between father and son.

Forty-six years after Artioch Wentworth copied this diary, Edward stated bluntly what he only alluded to in 1839. “I believed in 1839, and I believe now, that my brother George and his companions. . . were murdered by the four [white] men who joined their party on leaving San Antonio. . . Texas was at that time the refuge of scoundrels of every degree.” If these men believed that George was carrying a great amount of United States and Texas bank notes, they were gravely disappointed; the party was virtually penniless.54

After this, Edward Durell’s personal papers remain silent through the early years of the 1840s. His last living brother, Dr. Charles Durell, died of unknown circumstances in 1840. His father died the next year. In 1841 Daniel’s estate was estimated, by Edward’s cousin, John S. Durell, the executor, to be worth nearly $35,000. While certainly a large sum for the time, most of the estate consisted of stocks in the many companies Daniel helped found and others in which he invested. These grew in value over time, as the will of Edward’s sister Elizabeth

54 Durell, Account of a Journey to Texas Made by Edward Durell in 1839.
later revealed. The three surviving daughters received shares of this wealth. Edward, the last surviving son, received a single payment of $181.40 as his share.\textsuperscript{55} Whatever the reason for the split, Edward’s papers include no records of communication with his sisters until 1846. When he finally desired to write them, he did not know where they lived, their marriage status or their financial situation.\textsuperscript{56}

\textsuperscript{55} Probate Court Records of Strafford County, Dover, New Hampshire. Unfortunately, the physical will authored by Daniel Durell is lost, and only those records regarding inventory and dispersement of funds by the Executor remain. The will of Edward’s sister Elizabeth survives, and her detailed inventory reveals that ownership of much of the real estate and stocks remained in her possession until her death in 1884. Her total estate was inventoried to be worth over $71,000.

\textsuperscript{56} E.H. Durell to his sisters, “My Dear Sisters”, April 6, 1846. E.H. Durell Papers. Edward noted that he received their addresses from Benjamin Flanders, a fellow New Hampshire native and Dartmouth graduate, who also had moved to New Orleans. Flanders also played a significant role in New Orleans during the Civil War and Reconstruction, but Flanders close relationship with Benjamin Butler suggests any friendship between Flanders and Durell in the 1840s ceased to exist after 1863.
Chapter 2

A Fateful Decision to "Save" New Orleans

New Orleans has fallen backward at least ten years, and I have small hope of seeing it... recover again... why should you desire to return to N. Orleans? What is this miserable city to the growing giant of the West? You will find in San Francisco all... that the East has ever known, while we, of the Gulf and marshes will still linger on the confines of a semi-barbaric civilization. No, stay where you are and be content. -Edward Durell, December 25, 1854

In 1845 the *United States Magazine and Democratic Review* published a review of the latest novel published by Harper Brothers of New York City. The reviewer eviscerated nearly every aspect of the book, writing, "[If] Mr. Didimus has not written much, it is very evident he has read much, though it is not apparent that he has read to any very good purpose." Declaring the writing full of "absurdity, obscenity and rigmarole," he equally criticized the publisher for "giving circulation" to this novel fit for "chambermaids and stable boys". One brief

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1 E.H. Durell to C., "Letter to C", December 25, 1854. Edward H. Durell Papers. The recipient of this letter, and others during the 1850s, remains unknown. She was a woman who apparently was raised in New Orleans and assisted in helping Durell recover from the Yellow Fever in 1853. It appears as payment he supplied her the funds required to move to San Francisco, where she first lived with "Oran", the other woman included in the same transcribed letter books. These letters were transcribed with great effort placed in ensuring names were never used. In some cases entire paragraphs are excluded, only a series of lines to indicate where a paragraph was not transcribed, for reasons unknown. That there are two versions of this letter book, one clearly older in Edward's hand (which seems to point to the gaps being no accident), and a second book, easier to read, written later (possibly by his wife Mary, for the similarity in handwriting seen in her own diary) remains a complete mystery. Edward's range of emotions regarding his business and political activity in this decade are, however, well represented.
paragraph praised "a chapter on the rascalities of Law in Louisiana, which deserves to be placed in better company. . ."  

2 Edgar Allan Poe felt differently about the novel. In a review he stated the novel was "one of the freshest, most piquant, and altogether most agreeable volumes which have been written by an American. . . The book is that of a thoughtful, polished, and well-informed man."  

The author of this novel, titled *New Orleans As I Found It*, was Edward Henry Durell, using the pen name Henry Didimus.  

This novel, published in 1845, is a greatly expanded revision of an unpublished version Durell wrote in 1836. The Dedication of the revised novel, still dated 1836, promised to provide a "Second Part" where Durell planned to "add other compartments to an unfinished picture." While either a new book, or an addendum is implied, a close reading reveals instead a narrative greatly revised since the 1836 draft. Durell becomes two characters in the 1845 version. The original first-person narrator, the Durell who wrote based on a lengthy visit in 1835 remains, while a new character is added, that of a young, but experienced, attorney working in the greatly expanded New Orleans courts of the 1840s. This character is especially important in a chapter on the "rascalities of Law" praised in the first review. Reading quotes within this context reveals *New Orleans As I

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*Found It* to be Durell’s outline for many of the reforms he attempted, privately during the 1840s, and publicly in the 1850s.⁴

Durell’s utilizes a series of vignettes featuring the narrator, Henry Didimus, that takes him into every section of the city. He encounters those living in crushing poverty in the Spanish, Irish, and white native sections. He boards amongst recent middle class arrivals hoping to make their fortune in New Orleans. He befriends the aforementioned young attorney, who brings him to the courts and introduces him to how the law functions in the city. This leads to an introduction to an orphaned, formerly wealthy, young man named “Oceanus.” The remainder of the novel serves as a tale of spiritual and personal redemption for both Oceanus and his lone surviving relative, a pompous and miserly Uncle who had cast him aside.

*New Orleans As I Found It* contains numerous scenes that display great compassion for the poor and oppressed; slave, native white, Irish, Spanish, Italian, men, women and children. The social ills of New Orleans, including poverty, crime, corruption in business and government, and disease Durell presents with a frankness that borders on scandalous considering the era. For example, an Irish immigrant, dying as the result of a drunken brawl, confesses disturbingly that he murdered his lover and infant son to avoid the burden of supporting a family. This scene, and others like it, likely led the first reviewer to use the term “obscenity” in his review. Yet the text describing New Orleans also

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overflows with awe and excitement: “The bosom of an American heaves with honest pride as he looks upon the city and this. . .the work of only thirty years!”

This fascination with the exotic, cosmopolitan, and international nature of New Orleans reveals deep love for the city, despite, or perhaps partly because of, the mix of good and bad described throughout.

Durell spent the ante-bellum years practicing law, publishing fiction as H. Didimus, and gradually entering into public service. After nearly a decade spent in the courts, Durell, articulated his severe dislike for the legal system of Louisiana, especially as practiced in New Orleans. Starting in 1843, as a private citizen, he drafted several state laws, the most significant being an attempt to thwart personal corruption via frivolous lawsuits made possible by flawed inheritance and bankruptcy statutes. These laws, Durell wrote in his novel, were corrupted by their foundation in the Civil Law, used by the French and Spanish colonists before statehood and American immigration. The nameless character of the young lawyer argued that the entire Louisiana legal system existed as a confusing “patchwork of laws and opinions drawn from opposite sources, and imbued with principles both of liberty and despotism.” The result of this arrangement was a “mongrel state of things” which rendered “law uncertain, and its administration unsatisfactory.” This problem was unique to Louisiana, most especially New Orleans. Historian Cecil Morgan has noted that Louisiana’s first Constitution caused confusion with the introduction of “the unaccustomed rights

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5 Ibid, 28.
6 “Hon. Edward Henry Durell,” 120.
7 Durell, New Orleans As I Found It, 62.
of *habeas corpus*" while leaving intact "the private law of French and Spanish origins, based upon the civil-legal system rather than on the English common law." Durell believed this "mongrel" system required radical change. The character of the young, Northern-born lawyer declared, "...the administration of justice should be speedy, certain and cheap; and the last requisite is not the least important of the three...when we find the tax upon justice to have become so great as to be almost tantamount to its denial it is time to...reconstruct the edifice anew...I hope to see the time when our codes...shall be themselves proscribed by a legislative clause as sweeping as is that which has driven from our courts a body of laws...unknown to our Constitution, and breathing a spirit hostile to its genius." No evidence exists Durell intended this remark from a fictional character as foreshadowing actions over ten years later, but they did.

By early 1846, Edward had learned that his twin, Margaret, and elder sister, Elizabeth, remained unmarried, each living in rented hotel suites and supported from the inheritance provided by their father. Edward considered this lifestyle likely, "not very pleasurable." He wrote to them, declaring, "I very much desire to change my mode of life," of living in boarding houses. He proposed they move to New Orleans, where "we three might keep house...with much

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9 Durell, *New Orleans As I Found It*, 66. In a footnote detailing an 1843 law Durell also asks "In what way is the poor debtor or suitor benefited by the above enactment? The same monstrous tax remains...and the state has reserved for itself the lion’s share!" Also notable is Durell’s positive portrayal and praise for an unnamed lawyer who is obviously Christian Roselius, often considered the preeminent attorney of this era in New Orleans (including by Durell). In 1871 Roselius would be a lead signer of a bi-partisan letter, signed by twenty three Democrats and nine Republicans that praised Durell’s performance as Federal Judge, and declared that Durell was "incorruptible". "Honorable Edward Durell", 124.
happiness to ourselves.” The letter also reveals perhaps some ambivalence regarding aristocratic airs his sisters maintained, for he promised his twin that, if she did move to New Orleans, it would be in a neighborhood befitting “your class.” Edward’s proposal appears to be a response to an idea from Elizabeth to invest in New Orleans real estate, with Edward advising on the best plots available.  

By May 1846, Edward had invested additional funds from Elizabeth to purchase property on Magazine Street in Lafayette, at the time a growing town, later incorporated into the city of New Orleans. This location, he predicted, would soon be the residence of “the elite of New Orleans.” He qualified that statement by noting he was not known for being “very smart for business,” which he defined as, “handy in money getting, a quality I must sadly lack.” He also revealed a fear that he would be called to military service in the recently launched war with Mexico, because he held the “appointment of paymaster to one of the La. Militia Regiments.” However, he did not end up serving outside of New Orleans, and it remains unknown when his service as paymaster ended.  

Elizabeth, as she would continue to do for the next decade, apparently chided Edward for wasting his abilities. He responded, “You write as if you thought me a gay young man about town; and pretty old at that. My dinners are

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10 E.H. Durell to Margaret Durell, “To my Dear Margaret”, February 18, 1846. E.H. Durell Papers. In the letter Edward informs his sisters that with the $1,750 sent from Elizabeth he purchased, in her name, land in Lafayette, which would not be incorporated into New Orleans until 1852. He also informed his family he already owned land “worth $2,000” in the vicinity. That Edward used the term “your class” instead of “our” is not an accident. Later quoted letters show a growing distaste for the aristocratic worldview his sisters may have inherited from their father.

plain enough and my amusement are just no amusements at all. I have attended
the opera this winter. . . that is the long and the breadth of my dissipations.” He
concluded by revealing his continued refusal to engage in political patronage:

Our judicial system has been completely reorganized, and a batch
of judges are to be appointed. If the governor is wise enough to
give me a seat upon the Bench I will be last to know it. Some of my
friends want me to go there, and I should like the matter very well
myself, but I have given over asking for office and would not make
a formal application for twice the power.\textsuperscript{12}

Durell referred to the recently passed Louisiana State Constitution of 1845.
According to historian W. Lee Hargrave, this document greatly expanded the
franchise by removing all property qualification requirements, among similar
initiatives that resulted in the electorate being “enlarged by about one third.”
Additionally, the new Constitution set new term limits on District Judges, whereas
earlier all state judges had received lifetime appointments. After adoption of the
new Constitution, the Governor was allowed to appoint an entirely new slate of
judges to meet the new requirements.\textsuperscript{13} While Edward never explicitly offered an
opinion on the merits of the new Constitution, historians such as Hargrave
regarded it as a product of the Democratic Party, of which Durell was a member.
After he refused to formally inform the Governor of his desire to serve, he was
not appointed to the bench.

Edward's attempt to have sisters Margaret and Elizabeth move to New
Orleans ended in disappointment. While Edward visited New Hampshire in the


summer of 1847 in order to personally escort his siblings south, Elizabeth apparently got cold feet. In a letter to Margaret, sent from Portsmouth to Dover, New Hampshire, he complained that Elizabeth had told him, “she does not want you to go” either. He concluded, “Liz is so fat she can hardly breath (sic), and is always groaning under a pretense of loss of flesh on my account, being about as a great a hum bug as yourself.”14 This episode of familial strife passed, and both women apparently accompanied Edward to New Orleans for a visit. The visit, however, did not meet any of the Durell’s expectations. In late November, after his sisters had returned to Dover, Edward wrote Margaret, “Happiness is the end and object of life and we must seek it in the way that best comports with our dispositions. . . when we run counter to them we run that far out of the way. The idea of our ever living together was a. . . dream so let it pass.”15

Unfortunately Edward included no details about what caused him to jokingly “release” his sisters from “any and every obligation” to live with him “during our natural lives.” One issue, implied through several letters, is Elizabeth’s possible involvement in the temperance movement. In *New Orleans As I Found It*, Durell, himself, was taken aback at the liberal use of alcohol in the city. The character of Henry Didimus is reproached upon refusing a second brandy-toddy during lunch with, “You are new to the city sir! We all drink; must do

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it." Qua possibly a larger issue was the overwhelming presence of slavery. Margaret and Elizabeth both were friends of newly elected New Hampshire Senator John Parker Hale. His campaign had featured a very ardent anti-slavery stance, and Hale’s victory revealed the growing power of abolitionists in New Hampshire.

In his November letter to Margaret, Edward also expressed concern about her stated plans to winter in Washington “in the train of Mrs. JPH.” Instead he desired her to be “acquainted with Mrs. W.” While Edward, frustratingly so, nearly always used initials when referring to mutual friends, in this case it seems certain he referred to the wife of the aforementioned Senator John Parker Hale. “Mrs. W.” could indicate the wife of Illinois Congressman “Long” John Wentworth, also an abolitionist and a first cousin to the Durell family. It’s possible Edward had spent a great deal of time with Hale while he clerked under his father, starting in 1830, for Hale’s mentor was Daniel Durell’s law partner. Their relationship travels back even further, for both were members of the Dover First Congregationalist Church as children. In 1843, Hale had revealed publicly his anti-slavery stance, and despite the efforts of future President Franklin Pierce, he won election in New Hampshire to the United States Senate for a term starting in March of 1847. Margaret, invited to winter with the Hales in Washington, likely did not share, or at least express, a fondness for slavery in that company.17

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16 Durell, *New Orleans As I Found It*, 25. The strongest evidence of Elizabeth’s aversion to alcohol comes in a letter from Edward. She was angry upon learning he had visited a tavern in Portsmouth, NH. Edward remarked “I now find myself in the Lower House, and in very good company.”

Durell’s dream of living in New Orleans as a family was dashed. In the next few years, he wrote many letters to New Hampshire about his everyday life. His law practice was focused on business law, never the criminal, as far as these letters reveal. He served some very wealthy clients who later became good friends, including both prominent Creoles, such as the Miltenbergers, and immigrants from the east, such as Lucius Chittenden (1794 - 1868). The most important was Chittenden, a Connecticut native and part-time New Orleans resident. He was apparently an enormously wealthy merchant who several times invited Durell to stay at his massive estate in Manhattan, which stood on ground that is today Fort Tyron Park, the highest point on the island.  

In early 1849, Chittenden offered Durell an opportunity in California that proved to be the pivotal cause for Durell’s sudden leap into public life. After considering the move, Durell realized he loved New Orleans more than the opportunity for riches. He also came to believe that an honorable man should not live on the sidelines in a quickly changing United States.

“Mr. Chittenden has written me from New York proposing... that I should go [to California]... That he would put in place something for our mutual advantage.” Durell wrote to Elizabeth on February 5, 1849. He continued, “I said that I should go...,” but “am sick of talking of California.” Edward already had expressed to Oran his disgust regarding the rampant greed for gold evident in

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New Orleans, and also by his sisters in New Hampshire, desiring to see “all the
gold of California tossed into the Pacific.”  

He wrote, “I do not wish to be rich. I
have got beyond that. I wish to be comfortable and secure; as then the world
would leave me alone.” The positive he saw in California was not gold metal.

The gold of Calafornia [sic] is but the mother power, which is to
bring a larger wealth there and into this country generally, than the
product of all its mines. It is to turn the commerce of the East on to
a different track round the world. It is to build the rail roads and the
Steam Ships which are to effort the change - and there a large city
will grow up suddenly enough upon our western coast and China
and Japan will be compelled to open themselves to our
enterprises....that is what I go to aid in accomplishing.... Another
thing is certain - that of all the gatherers of the metal small indeed
will be the number who will hold it for any length of time. Those who
live by their wits, the merchant, the manufacturer, the grower of
grain, will make the final harvest; here as well as in Calaifornia
[sic]... It is not necessary that the manufacturer of New England,
the merchant of New York, Chicago to [travel to] that distant country
to seize upon its precious ores--they will come to him.

Over the next eight months Durell prepared for his move. He especially feared
placing his library on the auction block. Instead, he appears to have arranged
shipment to New Hampshire, where either his sisters or cousin John S. Durell
arranged space for storage. By October he had sufficiently closed his affairs in
New Orleans to allow for an extended stay in the North. Durell visited New York
City, Saratoga Springs, Newport, and New Hampshire. On October 10, 1849,
Durell wrote his sisters with startling news. After writing at length concerning the
transfer of his sisters’ stocks, which he previously managed, to “Ray Thompkins,
broker, Wall St N York,” he declared the experience so distasteful that he “would

not give Cousin John’s soul for all of Wall St., and Broadway to boot.” After providing news of some mutual acquaintances, Durell, without any warning or context, began a new paragraph by declaring, “I wish I were in New Orleans - I feel amazingly homesick. I wish I were in my office.”  

Edward’s decision was made. He never traveled to California, but instead returned to New Orleans, this time, he believed, for good. He felt upon returning that many in New Orleans remained foolishly dismissive of the potential competitive threats from young cities on the Mississippi such as Chicago, and St. Louis, and also from expanding seaports such as Baltimore, Charleston, and Philadelphia. Durell realized that if the New Orleans he loved were to survive, he could not allow “the world to leave him alone.” New Orleans, too, could not leave the world alone if it were to compete. Starting in 1850, Durell gradually entered public life intending to bring about the changes he felt required for the future prosperity of New Orleans.  

Earlier that year, on May 23, from the jungles of Panama Durell’s friend “Oran” closed her latest letter with an admonition that perhaps influenced Durell’s decision to remain in New Orleans. She wrote, “I know your power, and that you do yourself injustice by letting it sleep. You, yourself feel it, when you contrast yourself with others; and I have read in your manner the contempt which they inspired. . . do honor to the powers which God has given you.” On July 13, 1850 Durell replied to “Oran,” now in San Francisco, “It is indeed a great sorrow

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22 Ibid.
that the question of California and the territories was not settled before Taylor’s
death. The Lord protect us.”24 This year marked the beginning of a period of
turmoil in the United States and New Orleans. The rise of a southern
secessionist movement greatly alarmed Durell.

The evolution of the Compromise of 1850 consumed almost the entire
year. Called by David M. Potter, “A triumvirate of old men, relics of a golden age”,
Daniel Webster, John C. Calhoun, and Henry Clay were at the center.25 The
political conflict produced a convention with delegates from nine southern states
meeting in Nashville on June 3, 1850, where secession was debated. Although
Louisiana was one of six Southern states not represented, many of its citizens
were fearful, including Durell. After President Taylor’s death on July 9, Durell
revealed this fear in a letter of July 13, feeling that “Washington, with the great
national interests, internal, are now wholly at sea.”26 Eventual passage of the
Compromise in September did not end the controversy in the South. On
November 11, less than one month after Durell’s return to New Orleans, the
Nashville Convention reconvened. Although attended by only seven states, and
with fewer attendees, simultaneous efforts by the Governors of Georgia,
Mississippi, and South Carolina to convene state conventions, “made it clear that
they expected their respective states to secede.”27


27 Potter, The Impending Crisis, 125.
Durell became involved in organizing a pro-Union movement. His election to the Committee of Arrangements for a Unionist meeting occurred on November 12, the day after the Nashville convention assembled. The advertisement indicated a certain level of bi-partisanship that rarely existed in the New Orleans of 1850. Durell, a life-long Democrat, appeared with Whig W.H. Garland, treasurer of the First Municipality of the New Orleans city government, which was dominated by the American commercial class. The fathers of both Durell and Garland served one year in Congress together back in 1809, both as Democratic-Republicans, providing a degree of common ground. The attempts at bi-partisanship increased, especially with Durell, over the next two years. Durell's reasons for joining the committee are found in a letter from Reverdy Johnson, co-signed by Durell, published in the New Orleans Daily Picayune on November 28, 1850.

The Constitution as it is, the Union as it is, is the true and surest guarantee of Southern rights. Destroy them, break up into withered and shattered fragments. ... and our history...will be at an end, and all, all -South and North- be not only in danger but in ruin. An ardent imagination... may fancy some proud Southern republic to rise out of the ashes. Vain hope, and especially vain if looked to as security for that peculiar Southern interest, the cause of the present sensation. Almost each revolving year would be found breaking up such a confederacy. ... I can imagine no event so full of calamity to men as the destruction of our Union; beyond its existence I see nothing even to hope for.

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28 "Letters of Wm. H. Garland and Samuel M. Garland, Students at William and Mary College, 1823-1824", William and Mary Quarterly, April, 1931, 136, footnote 1.


30 The New Orleans Daily Picayune, November 28, 1850, 8.
Johnson's letter presented a more thorough argument than Durell's own letter to "Oran" on November 13, 1850. In response to her gentle criticism of his lengthy reflections on virtually every topic, he vented, "call this philosophy, call it Platoism, call it what you will, it is a passion truer than the blind heat and rage which afflicts the common herd with folly and with madness."\textsuperscript{31}

Durell, deeply religious and a voracious reader of history, law, and philosophy from American and European sources felt conflicting emotions about the "peculiar Southern interest" of slavery.\textsuperscript{32} On July 29, 1850, Durell wrote to "Oran," then embarking on a new life in San Francisco, "With prejudices have nothing to do; prejudices of birth, prejudices of country, of skin, of manner, of outward form and make; they blind the soul as sand blinds sight."\textsuperscript{33} In 1852, Durell published a short story titled "Paqueta" in Graham's Magazine. The narrator and main characters are Henry Didimus and a young slave girl in New Orleans named Paqueta, whose mistress intentionally grants her emancipation by bringing her to France, where slavery was banned. Didimus, many years later, finds her in Paris, married to a prominent Socialist. While Paqueta loves her husband, she reveals regret that her husband has forced her to become an atheist, and she prays only in secret. Durell's main argument in the tale is that Paqueta did not achieve true liberty, just a milder form of slavery. Yet Durell revealed his views on slavery; for example, early in the story he recounted with

\textsuperscript{31} E. H. Durell to "Oran" November 13, 1850, E.H. Durell Papers.

\textsuperscript{32} E.H. Durell Papers. Durell, fluent in French and Spanish (and possibly German) spent the 1840's engrossed in scholastic pursuits. Many letters in the collection at the New York Historical Society focus almost entirely on matters relating to philosophy, writing, culture and literature.

\textsuperscript{33} E. H. Durell to "Oran," July 29, 1850. (Emphasis added).
horror the realization that even slave children understood their condition. "Buy her! And so she knew that she was a thing of barter - a thing to be bought and sold!" Yet in the same paragraph Durell compared slavery with the plight of humanity generally, saying, "the poor are bought daily, under every sum that civilizations acknowledge; and the rich, when in want of other purchasers, sell themselves to their own vices." Durell in the early 1850s was no abolitionist. Likely influenced by his father, an ardent opponent of New Hampshire abolitionists, Durell held a paternalistic view of slavery, similar to his views on the immigrant working class that he expressed in *New Orleans As I Found It*, and later during his public life. Although in 1864, Durell, as President of the 1864 Louisiana Constitutional Convention, would support Emancipation "with my whole soul!", in 1850 he was fearful of civil war and the willingness of the fire-eaters to use the slavery issue to make war a reality. Durell likely also felt that New Orleans faced far greater and imminent challenges maintaining its stranglehold on trade as the dominant city of the Mississippi River.

One of the first challenges Durell, along with many other Whigs and Democrats, felt must be addressed was the structure of the New Orleans city government. Durell no longer agreed with what he had written in the 1830s, "No event has, of late years, so much advanced the prosperity of New Orleans as its

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34 Durell (H. Didimus), "Paqueta", *Graham’s American Monthly Magazine*, 72.

35 Theodore Dwight Weld., *American Slavery, As It Is: Testimony of a Thousand Witnesses* (New York: American Anti-Slavery Association, 1839), 131. Weld includes a tale of Judge Daniel Durell forcibly disrupting and ending, alone, a meeting at the Congregational House in Dover, NH in 1837 upon discovery, "abolition was going on in there (original emphasis).

36 Albert Bennet (Reporter), *Debates in the Convention for the Amendment of the State Constitution of Louisiana*, (New Orleans: W.R.Fish, 1864), 224.
division into three municipalities, giving to each a separate municipal
government, with all its attendant powers."37 Continuing confrontations in city
business and government between American, Creole and Immigrant districts had
culminated in a compromise in 1836. New Orleans was divided into three distinct
municipalities, each with an elected government, and responsible for its own
taxation and services including schools, infrastructure, sanitation, police, and fire
protection. Overseeing this government-in-triplicate were a Mayor and General
Council, both virtually powerless by design. Of this system, historian Robert
Reinders wrote, "Unquestionably, this was the most curious, and the clumsiest
municipal organization in the varied history of American cities."38 This system
eventually dragged the city to the verge of bankruptcy. A local editor lamented
that, "Unless the city could obtain a suitable credit status, it would be unable to
engage in programs of internal improvements."39

Internal improvements in other regions were already affecting New
Orleans. The opening of the Erie Canal, and the expansion of railroads to New
York from the west, threatened New Orleans along with other, older, cities like
Philadelphia. The rise of Baltimore as eastern end point of major railroads
epecially proved a matter of concern, according to historian Frank Towers, the
railroads had made "large scale industry . . . dominant," in Baltimore40

37 Durell, New Orleans As I Found It, 21.
51.
39 Ibid, 52.
40 Frank Towers, The Urban South and the Coming of the Civil War (Charlottesville: University of
The newest, and fastest growing, threat to New Orleans, however, was the flourishing frontier city of Chicago. A primary leader of this growth was Durell's first cousin, New Hampshire native “Long” John Wentworth. Although no evidence is known of great friendship between the two, some of Durell’s letters from this period suggest he kept tabs on his cousin’s career.41 “Long” John, so named due to his height (6'6") and girth (possibly over 300 pounds) traveled a different path from his cousin to political prominence. With others, he envisioned Chicago as the bridge between the frontier west and the booming industries of the east. Wentworth purchased the *Chicago Democrat* newspaper, and served as Congressman from Illinois from 1843-51, and 1853-55. In 1857 he would set the precedent for the concept of the domineering Chicago Mayor. Wentworth played a key role in generating public support and investment in the construction of the Illinois and Michigan (I+M) Canal, completed in 1848, and also argued for vast investment in railroads.42 As Chicago developed, “New Orleans’ once-monopolistic control of Mississippi River shipping traffic,” diminished.43

Durell believed that, with investments in public projects similar to those developed by his cousin, New Orleans would maintain its status as the greatest

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41 Durell’s letters to his sisters quite often contain inquiries or statements directed to “Cousin John”. This, however, is John S.Durell, a former New Orleans cotton merchant, who, by the 1840s, had become prominent in Dover, New Hampshire city affairs and its growing mill industry. Some letters exist that perhaps reference Wentworth, but the veracity of this can not be fully confirmed.

42 Fehrenbacher, *Chicago Giant*, 13. Although Fehrenbacher notes Wentworth was briefly expelled from Dartmouth College in 1836, there is no mention that Edward Durell’s father, Judge Daniel Meserve Durell, was a former member of the Board of Trustees and possibly played a role in Wentworth’s reinstatement.

city of the South. Unfortunately, the wealthy commercial class of New Orleans trained its focus "on short term opportunities" and resisted public investments. The majority of city's elite lived by the creed of "traditional river transportation as salvation." This resistance to public expenditure did not lack a legitimate cause. New Orleans, due to the corruption and inefficiency inherent in the three-municipality City Charter of 1836, maintained a staggering level of debt.

These concerns inspired Durell's involvement in local, public affairs, as they did for a growing number of Whigs and Democrats alike. In 1852, Durell recognized an opportunity to improve the city's commercial capacity, attack the horrid sanitary conditions, and simultaneously perform a large scale beautification project in the Creole District of the city. The Carondelet Canal, once a critical pathway between Lake Ponchartrain and New Orleans, had become an open cesspool, a menace to the public health and incapable of supporting trade. Recognizing the city could not fund such a labor, Durell hoped that, by utilizing private capital, he would also enrich himself. While Durell plotted, the spirit of begrudging and hesitant bi-partisanship begun in the Compromise of 1850 resulted in an amended state constitution and new City Charter in 1852.

As historian John Sacher has noted, the Whig dominance in the election of state constitution convention delegates in 1852 began a great shift in Democratic ideals towards the Whig platform. The Whigs "advocated government aid to banks, railroads, and other internal improvement projects," and also

44 Ibid. Chapter 1.
“stressed the rule of law and the danger of licentiousness.” These ideals coincided with Durell’s statements. Durell, for example, was disgusted that the criminal courts possessed the “strange anomaly of a single judge, who holds in his hands the honour, the liberties and the lives of his fellow citizens, without appeal even in matters of the law!” Although Durell ran, and lost, in the Democratic election for delegates, the resulting Constitution served Durell well, at first, in his first significant attempt at city improvement. This shift in party ideology, Sacher noted, was acknowledged by the top of the Democratic Party structure when, “Democrat John Slidell admitted that ‘popular will is in favor of a cooperation on the part of the state in public improvement’ and that his party ‘will carry it out in a proper spirit.’”

While a convention was called to change the state constitution, a local movement for a new city charter was also growing. The main difficulty in consolidating the city into a single government arose from the Third municipality, home to the largest share of the immigrant population. The reluctance was also sparked by a proposal to also annex the city of Lafayette into New Orleans. “It was felt that the addition of Lafayette would shift the political and economical balance in the city above Canal Street [American district] and jeopardize the already shaky economy of the Third Municipality.” However, the new charter

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required passage from the Louisiana State government to be valid, and Whig and Democratic support for the changes in all other parts of the state insured the reservations voiced in the lone Third municipality had little effect.

The new city government, created separately from the new Louisiana State Constitution, consisted of a bicameral City Council, the Board of Aldermen functioning much like the U.S. Senate and the Board of Assistant Aldermen like the House of Representatives. The office of Mayor held the power to veto and to order Council meetings, but otherwise held few executive powers. Perhaps due to coincidence, perhaps not, the implementation of the new charter "corresponded with an upturn in the economy and the antagonism toward re-unification nearly disappeared."49

Coinciding with the political developments was Durell's first significant foray into public view, which began in earnest on June 23, 1852 when a paid notice appeared in the *New Orleans Picayune* courtesy of the Orleans Navigation Company. The subject was state legislation declaring the charter of said company to be "null and void" and calling for the property of the company, the Carondelet Canal, to be sold at auction. The notice said, in part:

This is no place to discuss the merits of the decision of the court; its consequences will be found hard upon others than the corporation thus sought to be destroyed. Capitalists in this city have associated for the purpose of carrying out the views of the Legislature....These gentlemen would do well to pause and reflect upon the consequences to them...for they are without remedy should the Orleans Navigation Company be restored to her original rights and privileges.50

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The Orleans Navigation Company had been awarded in 1805 the sole rights to rebuild, expand and maintain the Carondelet Canal, which ran through the Creole district. The canal had served as the sole waterway connecting New Orleans with Lake Ponchartrain since 1794 and transported people, goods, livestock and other materials from states such as Texas, Alabama, Mississippi and Florida. As far back as 1821 many residents felt the Company was failing in the duties defined in its charter. In 1838, frustrated in their dealings with the company, the American district (after 1852 defined as the First district) completed a new canal intended to serve that Municipality. The Carondelet fell into disrepair, and by 1852 was unusable due to silt accumulation. Earlier that month, the *Daily Picayune* editorialized, “the condition of the canal . . . the accumulation of mud at its mouth, and its general neglect have had the effect to diminish its commerce until it has dwindled into insignificance . . . there can be no doubt that . . . the canal will, when properly improved, pay a large dividend.”51 The canal’s state of disrepair likely led to conditions where, as Robert Reinders noted, such man-made waterways appeared as “hardly more than ‘muddy ditches of stagnant and putrid water,’ draining the city’s waste into the swamp.”52

On June 24, 1852 a public auction for the rights to operate the Carondelet Canal took place and was won by a James Currie of New York. Less than six months later the Orleans Navigation Company was declared, “insolvent, and its

51 “City Intelligence”, *New Orleans Daily Picayune*, June 8, 1852, 1.

charter was judicially forfeited. The property was purchased by Currie and others, who organized the New Orleans Canal and Navigation Company and transferred the property to that corporation. While Kendall discussed this aspect in his work, he did not reveal the identity of the managing director, the man who had arranged the entire plan to seize control of the canal. It was Edward Henry Durell.

Writing to his sisters in New Hampshire on November 5, 1852, the normally modest Durell gloated,

> When will the swampland between the city and the lake be inhabited by “human beings”? Within twenty four months, if my scheme is carried out. What will it cost to make it so? One hundred fifty or two hundred thousand dollars. What do I contribute to the fund? My wit. Where do I get the money? A million, if I want it, from the North and England. This matter I have well imagined, fixed, settled and provided for. Not a single copper do I jeopardize of my own property, succeed or fail - nor would I jeopardize under any circumstances. I am too old, and love experience too much, to run into that choice . . . I do not wish what I may write to you upon these matters . . . detailed among your neighbors. I do not want the echo of what I say, and what I am doing, to come back to me from New Hampshire.

Durell's unwillingness to invest directly in the project reveals perhaps that he inherited the traits of his father, who held a strong reputation as a “close calculator.” His letters at times complain of his financial situation, but “Oran”

53 Kendall, History of New Orleans, 632.

54 W.H. Durell to his Sisters, “To my Dear Sisters”, November 5, 1852, E.H. Durell Papers. When placing “human beings” in quotes, Durell indicated the fear and distaste his sisters and others had of the areas north of the city where sections of the canal would travel through the shantytowns inhabited by those of the poorest immigrants who lived in horrific and diseased conditions.

and his sisters both accuse him of being "proud in your poverty." The letter also reveals Durell's realization that news of this project leaking early would lead to speculation on affected property that crossed the new path designed for the canal.

By December 11, 1852, one month later, the New Orleans Canal and Navigation Company was awarded, on a probationary basis, the rights to the property of the now defunct Orleans Navigation Company. The details, set by the Louisiana State Legislature stated that the company would:

organize themselves into a corporation under the laws of the state for the period of twenty-five years for the purpose of carrying out and effecting all the improvements detailed and described in the reports and plans,..., including the construction of a new basin at the junction of Canal Carondelet and Bayou St. John, of the depths and dimensions set forth in said reports,' and to actually complete them within the term of three years from the date of the charter of the corporation.

The Act of 1852, therefore, allowed the Corporation until February of 1856 to complete the entire project. Durell, writing to his sisters, appeared not to doubt success, instead detailing with some amusement:

I went to each of my particular friends here and advised them to make purchase of land in the quarter now languishing, if they desired to secure a pretty little fortune. - Each one questioned my judgement, and wanted to know how I lost my judgement so - On this point I had nothing to say; I said take my advice and follow it. Each one refused to do so - now they grumble - and so the world goes. I think I am on the high road to a large fortune - but fortune or no fortune - you must not trouble yourselves for my equanimity. The older I grow, the less I esteem the luxuries of this life.

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56 "Oran" to E.H. Durell, August 31, 1850, E.H. Durell Papers.


58 "To my Dear Sisters", December 11, 1852, E.H. Durell Papers.
Unable to resist the temptation to assist his friends to make a quick profit, Durell, via his silence on why the suggestion was offered, avoided a wholly unethical act. Within the context of antebellum New Orleans, Durell's actions, or lack thereof, appear noteworthy. As Kendall noted, many believed the system of public projects being performed by private companies was, "a source of vile depravity and corruption."59

Durell's first step in achieving his vision was to hold accountable the Company he believed most responsible for the failure of the canal; the New Orleans Draining Company. The purpose of the company was to drain the numerous swamps outside the city. To do so, the company used the Bayou St. John, the canal's endpoint at Lake Ponchartrain, as the outlet for the removed water. The steam powered pumps carried a great amount of sand and silt during the process. Eventually the silt level built up to such a degree as to make passage for all but the smallest of drafts impossible.60 The charter of the Draining company also invited corruption and promised disorganization and confusion.

The affairs of the Company were to be handled by a board of twelve directors, some to be appointed by the governor and some by the mayor, with the remainder to be elected by the stockholders. The Company was to prepare a plan of the lands to be drained and to divide that land into sections. The board was to decide in which order to drain the various sections and landowners were given certain rights of redemption once the lands had been drained. Lands not so redeemed could be purchased by the Company.61

59 Kendall, History of New Orleans, 184.
60 J.D. Rogers, "Development of the New Orleans Flood Protection System prior to Hurricane Katrina", Journal of Geotechnical and Geoenvironmental Engineering (May, 2008), 610.
The dangers in this charter involved the ability of the corporation to select areas for drainage at will, desired or not by the landowner, and that the charter contained no set cost for the service. The Company held the first right to purchase drained land where the owner would not, or could not, pay the potentially arbitrary charges, which opened the way for abuse. Especially dangerous was the presence of board members who served in public office and appointed others. With access to knowledge of swamp areas slated for public improvement, the temptation for abuse of this power was great. Durell indicated this in a June 1853 letter to Elizabeth. She apparently had received an unexpected bill from the Draining Company. Durell wryly remarked that while she thought she should pay something for the drainage of her land, if “not the extortionate amount of $5000,” she also wondered “that anyone should be so impertinent” as to drain her land “without asking leave.” Durell explained how the Draining company, created by the City and State legislatures, retained the right to do exactly this by “dictate.” He stated that the Draining Company charter indicated its purpose was for the “public good,” and was a non-profit corporation. He declared that the “extortionate” charges for the service, as experienced by Elizabeth, were illegal. The Draining Company, with its political influence, would prove a difficult foe in the race to complete the canal project by February, 1856.

Durell’s opening salvo involved organizing mass meetings. By 1853, instead of being merely an organizer, he was the main speaker at these
meetings. Joining him in addressing the people at the first such meeting was a man who would later become infamous; Phineas C. Wright.

According to historian Frank Klement, P.C. Wright "moved to New Orleans in 1850 and lived on the fringe of obscurity while trying to establish himself as an attorney." This appears to be inaccurate. The Daily True Delta of March 19, 1854 noted his status as elected member of the New Orleans Assistant Board of Aldermen. The editorial also revealed he acted as a manager for the "Bayou St. John Canal Company," and was involved in "bidding for city drainage contracts." Wright, working for a private enterprise in competition with a politically powerful public company, surely had a great deal of interest in assisting Durell. Later, Wright served in the Louisiana State legislature from 1854-1856.

Contemporaries described Wright as "a most imprudent and visionary man," one who, while speaking, "scarcely knew whether what he was saying was true or false." Durell appears to have shared these opinions, writing to his sisters in June 1853,

62 Frank Klement, Dark Lanterns: Secret Political Societies, Conspiracies, and Treason Trials in the Civil War (Baton Rouge: Louisiana State University Press, 1989), 64.

63 "Editorial", The Daily True Delta, March 19, 1854, 2.

64 Klement, Dark Lanterns, 64.
I always thought him impracticable, loud . . . and a talker of things which neither he, nor any body else, knew anything about. If he is not crazy it will be a wonder.65

In the winter of 1856 and 1857, Wright organized a theoretical secret organization named the “Order of American Knights (O.A.K.).” Wright moved to St. Louis, and eventually to New York, as an editor for the New York Daily News; during the Civil War he refined the goals of the O.A.K to assist the Confederacy and even to create a second Northwest Confederacy. As Klement shows, Wright was capable of pathological untruths when recruiting members early in the Civil War; his exaggerations of the scope and membership totals throughout the North, repeated by Wright and some of his followers upon their arrest, led the Union Army to write a detailed report on the Order.66

In the 1850s, Wright certainly had a personal motivation to join with Durell in opposing the Draining Company. Unlike Durell, who possessed little experience in speaking to the masses, Wright likely understood how to harangue a crowd in language easily understood. Inflammatory oratory for the common

65 E.H. Durell to his Sisters, “To my dear sisters”, June (date illegible), 1853, E.H. Durell Papers. Experience with the Durell papers reveals that his sister Elizabeth was the only member of the family to preserve letters received from Durell. This leads to situations such as this letter, where the person referenced is not stated by name, for it appears the subject was raised earlier, possibly in a letter to either his twin sister Margaret, or to their cousin, John S. Durell, to both of whom Durell sometimes wrote individually. While it remains a possibility Durell refers to someone else, this quote occurs immediately following the description of the Draining Company, and during the same month as the mass meetings. Therefore Wright is likely the subject.

66 Judge Advocate General Holt, Report of the Judge Advocate General on the “The Order of American Knights”, alias “the Sons of Liberty”, a Western Conspiracy in aid of the Southern Rebellion. (Washington D.C., United States Army, 1864), 3. After detailing the arms manufactured, the goals of assisting the Confederacy, creating their own North-West Confederacy and the estimated number of Order members, Judge Advocate General Holt wrote, “allowing for every exaggeration in the figures [O.A.K. members] reported, they may be deemed to represent...a tolerably faithful view...”. The number referenced was 500,000.
man likely was anathema to Durell. In 1850 he scolded "Oran," demanding "How could such a vulgarism . . . the slang phraseology of the day escape from your pen? . . . it is a wrong, not only against good taste, but against good breeding."

Her offense involved the use of the phrase "they shall do the greatest thing by us." Perhaps Durell played the straight-laced, eloquent orator of the law to Wright's angry common man, railing against his mistreatment.67

The Draining Company responded to these meetings and accusations with paid rebuttals in the press. One example, from the June 29, 1853 *New Orleans Picayune*, stated that Durell and Wright "have called public meetings, harangued them, raised subscriptions . . . for services to other property holders, and at last they have procured a petition to be laid before the [City] Council, praying for relief." The Notice also insinuated that both attempted to personally enrich themselves via "the property they bought . . . the cost between $160,000 and $200,000," although this value was likely the amount paid by the company for the property of the Orleans Navigation Company.68

With less than three years remaining for the project to be completed, a sense of urgency may have played a role in Durell's next decision, to run for the Board of Aldermen. The largest factor in this decision, however, was his experience, in the summer of 1853, with the worst Yellow Fever epidemic in New Orleans, and United States, history. The revelation of severe city government incompetence in reacting to the suffering angered Durell and spurred him to act.

67 E.H. Durell to "Oran", November 27, 1850, E.H. Durell Papers.

On July 5, 1853 an annoyed Durell wrote to his sisters, “poor New Orleans is and ever has been very much misrepresented abroad. Cousin John, it seems, gets news at a distance of 2000 miles, which I have not been able to pick up here. We have no more of yellow fever or of Cholera, among us then is equal of this season of the year.” Durell could not have been more wrong; however, his ignorance was based upon the reticence of the newspapers to disclose the truth. Reinders suggested “that such news would have an adverse effect on the city’s commercial development.” In fact, as late as July 27, twenty-two days after Durell’s letter, when “one hundred persons per day were dying, the New Orleans Common Council timidly announced that yellow fever ‘may spread and become epidemic.’” Durell’s letters from August through October, 1853, reveal his rising panic, lamentation, and frustration.

“In the deadly clutches of a fever epidemic, New Orleans mirrored the outskirts of Hades,” wrote historian Benjamin Trask. George Washington Cable later described the city scene during the end of July and the first week of August:

... the poisoning of vagrant dogs, had not been suspended, and their bloated carcasses lay in abundance, exposed in the streets and floated by the dozens... among the wharves. Gormley’s basin... was termed ‘a pestilential muck-and-mire pool of dead animals and filth of every kind’. The month of August set in. The weekly report of the 6th showed 187 deaths from other diseases... to which was added 947 victims of the fever... 71 bodies in a single cemetery were left unburied, ‘piled on the ground,

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69 E.H. Durell to his Sisters, “To my Dear Sisters”, July 5, 1853, E.H. Durell papers. Durell at times appears bothered by John S. Durell’s views on current events in New Orleans from his home in Dover, NH. John Durell resided in New Orleans from 1825 until sometime in the early 1840s.

70 Reinders, End of an Era, 96.

71 Benjamin Trask, Yellow Fever in New Orleans, 1796-1905, (Lafayette: Center for Louisiana Studies, University of Louisiana, Lafayette, 2005), 43.
swollen and bursting their coffins, and enveloped in swarms of flies.’ . . . [on] the 8th of August the deaths were 228.\textsuperscript{72}

On August 9, Durell wrote his worried sisters, acknowledging the epidemic, saying “two hundred people die a day” and lamenting that while “I should go out” it was unbearable to witness “death and disasters on every side.” Durell informed his family “the sickness is chiefly confined to the laboring classes, who are herded together in small rooms, filthy neighborhoods, and are themselves unwilling or incompetent to aid each other.” As the letter closed Durell declared that “if our miserable city government could adopt proper sanitary measures the city would be healthy enough.”\textsuperscript{73}

By August 18, Durell apparently decided that hiding in his quarters was hardly the action of a Christian, for he wrote to his sisters “I have done something towards taking care of and watching the sick. I never knew so gloomy a lesson.” Probably, Durell had become an auxiliary member of the Howard Association, a charitable organization founded in 1837 to combat Yellow Fever epidemics. These auxiliary members “visited the indigent sick . . . offered medicine and . . . in all too many cases they took care of funeral arrangements.”\textsuperscript{74} While Durell witnessed first hand the worst and most depressing sections of the immigrant districts, the city’s government “proved itself

\textsuperscript{72} George E. Waring, Jr., George W. Cable, \textit{History and Present Condition of New Orleans, Louisiana and a Report on the City of Austin, Texas} (Washington D.C., Department of the Interior, Government Printing Office, 1881), 57. Gormley’s Basin, referenced in the quote, was the decrepit terminus of the Carondelet Canal, which would be renamed the “Old Basin” after the reconstruction project initiated by Durell was completed, fixing this annual problem.

\textsuperscript{73} E.H. Durell to his Sisters, “To my Dear Sisters”, August 9, 1853, E.H. Durell Papers.

\textsuperscript{74} Reinders, \textit{End of an Era}, 98.
incompetent or absurd . . . the city fathers had cannon fired regularly and tar
burned in the streets in a vain attempt to disperse the evil spirits of the
disease. 75

By October, Durell declared the disease largely ended, and confessed,
after months of denial, that he had contracted and recovered from Yellow Fever.
He added "NOrlleans is on its legs again . . . I did my duty as far as I knew how -
and so did every other person - both bond and free." In the closing sentence he
stated firmly. "I hold a great faith in the destiny, a magnificent destiny, of our City
of this I feel assured." 76 He did not yet inform his family of his decision to run for
office. The November elections prompted a city-wide movement for reform, and a
new party appeared cloaked in this sentiment. This party, the Know Nothings,
would play a pivotal role in Durell's attempts to completely re-write the New
Orleans City Charter.

By 1853, the Whig party had collapsed completely, and the Democrats,
under the leadership of Senator John Slidell, "tightened their grip" via mob
violence at the polls, and more so through legislative acts. They amended the
city charter, taking the power of the police force away from the Whig Mayor and
instead creating a board, made up of the four district "recorders" (essentially
judges of the criminal courts) and the Mayor. This board format, historian Leon C.
Soulé argued, caused a fractured police force beholden to political parties. The
Democratic city council also removed provisions that elected officials must wait

75 Ibid, 97.
76 E.H. Durell to his Sisters, "To my Dear Sisters", October 3, 1853, E.H. Durell Papers. He wrote,
"I do rather suspect that my late attack was a touch of the fever . . . from which I escaped lightly."
for six months before running for a new position. Many Democrats were
disgusted by the blatant abuse of political advantage by their own party. Perhaps
none argued this dissatisfaction more ardently than Democratic Louisiana
politician and historian Charles Gayarré.

In the 1853 election for Congress, Gayarré ran as an “independent”
candidate in direct response to the “oligarchy” he argued the Democratic party
had become under the leadership of John and Thomas Slidell. When the
Democrats selected a former Whig who was virtually unknown in the New
Orleans bar as his opponent, he argued the fix was in. After Gayarré lost the
election on November 7, 1853, he published a lengthy speech against the
abuses of the party leaders, accusing the Democrats of placing their personal
interests over the interests of the people. Charging that the election returns
revealed up to four thousand fraudulent votes, based on the diminished
population after the recent epidemic due to death and flight, Gayarré declared,
“what is the use of going to the ballot box, when it opens or closes its mouth, only
according to the dictates of a Venetian oligarchy, and when a honest man has but
one vote and a rogue ten?... these few men are the not only the supreme
masters of New Orleans, but also of the State, without even incurring the
dangers which always attend open despotism.” Sentiments such as these
caused many Democrats to attend what was advertised as a “City Convention,”

77 Leon Cyprian Soulé, _The Know Nothing Party In New Orleans_ (Baton Rouge: Louisiana
Historical Association, 1961), 40.

78 Charles Gayarré, _Address of Charles Gayarré, to the People of the State: On the Late Frauds
Perpetrated at the Election Held on the 7th November, 1853, in New Orleans_, (New Orleans:
Sherman and Wharton, 1853), 14.
scheduled for March 16, 1854. The purpose was “nominating irrespective of Party some of our best and most capable citizens to fill the various charter offices.” Among the “approximately six hundred signers” were Democrats E.H. Durell and P.C. Wright.\(^7\)

This meeting cemented the organization of a new party, based in large part on the national movement called the “Know Nothings.”

The Know Nothings sprang from a number of Nativist and Anti-Catholic secret societies in northern cities such as New York and Philadelphia. While the earlier societies existed as charitable groups, the aim of the Know Nothings was “primarily political.” As a secret society, “it had the usual pass-words, grips and rituals” of other such groups. The name “Know Nothing” sprang from the refusal of any member to acknowledge the existence of the society, instead responding to any question regarding it with “I Know Nothing.” The party gained national prominence during the middle 1850s, and launched in New Orleans in 1854.\(^8\)

Shortly after this paid notice for the convention appeared, the *New Orleans Daily True Delta* published an exposé of virtually the entire secret operations of the Know Nothing party. The anti-immigrant, anti-Catholic agenda was detailed, along with all of the secret passwords and signs Know Nothings required when attending a meeting, or when in public. Even the Know Nothing “secret handshake” was revealed. While it is certain there were many members who were initially attracted to the party who later left due to disgust with the party

\(^7\) Soule, *The Know Nothing Party*, 48. Soule fails to mention that there must have been meetings beforehand of this “Reform” movement, which was the Know Nothing party, in order to attain nearly six hundred signatures for the advertisement.

platform, the *Daily True Delta*, an ardent opponent, seems to have had access to details of the Know Nothing party that only an active party member, if not a spy, would know.

The revelations of the Know Nothing party's platform, especially the virulent anti-immigrant and anti-Catholic agendas, caused some Democrats to immediately drop out, but Edward Durell did not.81 He was the only candidate who appeared simultaneously on the Know Nothing and Democratic tickets.82 Apparently no letters exist to Durell's family noting his candidacy, and certainly not his flirtation with the Know Nothings. The subject of even considering leaving the Democratic party appears to have been one he felt his family need not know. Durell was judgmental of others on the subject of betraying party loyalties in 1852. For example, when discussing his childhood church-mate U.S. Senator John P. Hale, Durell dismissed him as "politically dishonest", likely for leaving the Democratic Party for the Free Soil, and, later, the Republican parties.83 This sudden flirtation with party movement reveals the profound effect the recent epidemic, and the tactics of the "Venetian Oligarchy" built by the Slidells, had

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81 "Editorial", *The Daily True Delta*, March 31, 1854, 1. This editorial revealed that Democratic mayoral candidate John L. Lewis was one such man.

82 Several reviewed New Orleans newspapers contain no mention of this unique situation, or of Durell as a candidate. Newspapers reviewed for the entire month of March include the *New Orleans Bee*, *New Orleans Picayune*, *New Orleans Commercial Bulletin*, and the *Daily True Delta*.

83 "To my Dear Sisters", December 7, 1852, E.H. Durell Papers. It appears likely there was more than mere politics behind Durell's statements on the Hale family. John P. Hale replaced Durell's father as US District Attorney for New Hampshire in 1836, and Durell disapproved of the turmoil Hale brought upon the Democratic party in New Hampshire in his battle with Franklin Pierce. Durell also was skeptical in 1853 of Hale's sincerity in his abolitionist views as a member of the Free Soil Party. John Scales, *History of Strafford County, New Hampshire and Representative Citizens* (Chicago: Richmond-Arnold Publishing, 1914), 396.
upon Durell's views towards party loyalty. Less than eighteen months earlier, upon the election of fellow New Hampshire native Franklin Pierce as President of the United States, Durell opened a letter declaring “What a victory!!! New Hampshire is great, and the Democratic Party greater.” In the spring of 1854, Durell appeared to be unsure which path would lead to his desired goal of reform.

Election day, March 27, 1854, created, as Soule argued, “a pattern for much of the rest of the decade.” Violence erupted all over the city between Democrats and Know Nothings, who were publicly calling themselves the “Independent” party. As the Democrats utilized roving bands of Irish immigrants to vote in multiple wards, numerous stabbings took place, ballot boxes were broken open and tossed in the streets, even the chief of police was shot. Under these auspices, Durell was elected, receiving the most votes for Alderman from the Second district, just ahead of Democrat H.L. Peire. It is uncertain whether Durell’s appearance on the Know Nothing ticket helped significantly. The Second District was the bastion of the Democratic party due to the large presence of Creoles.

On May 16, 1854 Durell offered his first resolution as Alderman, one that initiated another public works project that would be Durell’s “pet” project for the next year. The resolution stated in part:

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84 E. H. Durell to Elizabeth Durell, “My Dear Loving Sis”, November 5, 1852, E.H. Durell Papers.

85 “Complete Election Returns”, The Daily True Delta, March 29, 1854, 2. Also notable in the election was that, despite being advertised only nine days earlier as a nominee of the Know Nothing party, P.C. Wright does not appear on the election returns.
That a special committee of three members be appointed by the Chair, to take into consideration and to report to the Board, the best and most feasible method of laying out . . . the public park on the Metairie Ridge. Messrs. Durell, Gordon and Irwin were appointed on said committee.86

The land, approximately 200 acres, was left to the cities of New Orleans and Baltimore in 1850 in the will of “eccentric philanthropist” John McDonogh. McDonogh arrived in New Orleans from Baltimore in 1800. The tale goes that, based on his refusal to become a Catholic, his beloved became a nun while he remained a life-long bachelor.87 Durell’s attempt to solidify McDonogh’s property as a city park in perpetuity suggests that Durell wanted to leave a public legacy in McDonogh’s honor while solidifying New Orleans’ use of the property before the city of Baltimore could stake any type of claim to their share.88

On May 25, 1854, only nine days after the committee formed, the Board of Alderman received a report from Durell:

. . . the ground appropriated for said Park is beautifully situated . . . it . . . has a superficial area of 194 and 1/4 acres . . . the tract is well supplied with live oak and other evergreen and [is] well calculated


87 Several Writers of the New Orleans Press, Historical Sketch Book and Guide to New Orleans and Environs: With Map. Illustrated with Many Original Engravings; and Containing Exhaustive Accounts of the Traditions, Historical Legends, and Remarkable Localities of the Creole City (New York: William Head Coleman, 1885), 323.

88 Ibid, 304. McDonogh is also noted as a correspondent with the “leading men of his day”, including New Hampshire native Daniel Webster. McDonogh’s will stated that the split of his property was to be used for the education of all classes and races of both cities, maintained in a trust. By 1885 these funds had built “nineteen magnificent schoolhouses, costing from $20,000 to $60,000 each.” The land for the park would be fought by Baltimore in the courts, and Durell’s legislation to secure the property as a park may have played a significant role in the eventual settlement. (Ibid., 234).
to promote the health and happiness of our citizens, and to awaken pleasing associations and home feelings, which will largely promote a common interest among all classes in the prosperity and moral elevation of our city.

That in the present state of finances . . . your committee have not thought it wise to recommend a larger expenditure upon said park [but it was felt necessary] to mark out some general plan for improvement which may be completed hereafter.

Durell's report then went into great detail about a "general plan for the ultimate improvement of said Park" in order to be in "accordance with liberal views as to what a park of such magnitude should be." The plan argued for the creation of a man-made lagoon via "excavating the bayou [Metairie]." The "earth taken from its bed" would be used "for filling the up the lower grounds," at that time a swamp. In addition, he planned for a "carriage way, or drive of fifty feet in width, and of an elliptical form" to be laid out 33 feet from either side of the lagoon. This would prove "to be the cheapest, the most attractive and most healthy of our city's recreations." Lastly, the committee desired "a path of thirty feet in width, of the same form and within the drive...for the accommodation for equestrians...[and there also should be] laid out a sufficient number of foot paths." 89

As Durell initially proposed the committee, it appears he may already had such designs at the ready, for clearly they were provided at no cost to the city. As Durell would soon find out, the state of city finances would not show sufficient improvement to institute these proposals for several decades. Instead the land would remain the premier spot for duels until 1898.90


90 Kendall, History of New Orleans, 684.
During this period Durell, with bi-partisan support from Know Nothing member Jesse Gilmore, proposed an ordinance that repealed all existing laws regarding cemeteries in the city, and, with only a few stated exceptions, declared that after March 1855 “no new tombs shall be erected in either of the existing cemeteries in the city of New Orleans.” Section 2 added that after January 1, 1856 “no dead shall be deposited in either of the existing cemeteries” in the city with the exception of family tombs already standing. The intent of the ordinance was based upon “a proper regard for the health of the citizens” for “large cities of Europe and America have, especially within a few years past, altogether prohibited intra mural internments; and it would appear that if any city in the world. . . should demand such a prohibition, ours imperiously demands it.”91 This ordinance passed unanimously, and according to the minutes published June 15, 1854 Durell was then appointed to a committee created “to inquire into the causes of the yellow fever and other diseases . . . and the best remedies for their prevention.”92 The Council also agreed to break for the summer. Likely based upon the horrors of the previous year, and able to rely upon the steady salary of his office, Durell gladly fled for New Hampshire. This would be a working vacation, as Durell dealt both with City issues and the Carondelet Canal.

Durell spent time in Cincinnati (examining steam fire engines, as per a resolution Durell offered in May of 1854), New York City, and Saratoga Springs. In July, Durell proposed to create, and was appointed to, a “committee of one”


charged to “visit and examine the construction and management of the Great Northern and Central Railroads, and report to the Council in regard to the same.”93 While in New Hampshire Durell traveled between Dover, Exeter, Mount Washington and Portsmouth, then on to Cambridge and Philadelphia.94

On September 20, Durell wrote Elizabeth from Philadelphia, gamely stating “I can not say that my current matters and interests in New Orleans look at this time alluring however, I shall strive harder to bring things out and if then this concern goes by the board, why I can not help it.”95 Durell was referring to the annual meeting of the Board of Directors of the New Orleans Canal and Navigation Company. The mood of the other Directors appears to have soured compared to 1853. Although details of the trouble are unknown, it appears possible financial issues were the cause. In 1853 several board members had visited New Orleans from May through June, to view progress on the canal works. They were so impressed with the speed and quality they declared a "unanimous and high approbation of the enterprise" performed thus far. They recommended "a loan be negotiated" to ensure the job would be "speedily carried out." The report, dated June 30, was completed just two weeks before the

93 "Common Council", New Orleans Picayune, June 24, 1854, 2.

94 Multiple letters to his sisters from August through October, 1854. E.H. Durell Papers. Also, "The Common Council", New Orleans Picayune, May 28, 1854. Durell traveled to Cambridge likely to confer with his brother-in-law, Rev. James Green, the first Mayor of that city. See, Samuel Atkins Eliot, A History of Cambridge, Massachusetts, 1630-1913 (Cambridge: Cambridge Tribune, 1913), 111. Green was the first Mayor of Cambridge. He was reelected in 1853. Atkins writes that under his leadership "Police and fire departments were organized, streets began to be paved.... [class and nationality] began to lose their sectional distinctions...in the place of three villages there was a united, busy, suburban city with many and diversified industries." Green, although rarely mentioned in Durell’s letters to his family likely provided advice and experience to Durell’s ambitions for New Orleans.

95 "To my Dear Lizzy", September 20, 1854, E.H. Durell Papers.
Yellow Fever epidemic erupted in full force. The disease, so devastating to the city, proved equally devastating to the project. Any loan negotiated before the full impact of the epidemic was known may have caused potential default. Before the arrival of the Yellow Fever, the committee believed the canal would produce profits immediately upon completion. Durell, as Managing Director, was forced to reveal the reality of the situation in a report submitted to the company:

The early appearance of the epidemic... compelled us to suspend the work of excavation at the upper and lower basins early in the month of July... operations... have been confined to laying down of the piers for the pass at the Lake and completing the Dredge Boat, and even these operations have been seriously retarded by the prevailing sickness which rendered it impossible to procure mechanics or laborers.

In a letter to his sisters, he provided a touch more elaboration on the subject.

"The miserable condition in which I found everything at Philadelphia held me there 2 weeks longer than I expected. And how I shall be able to bring them out now I can not at this time tell... I very much fear myself with them. At the last moment they have put everything into my hands, and expect me to move mountains. I shall do the best I can." One week later, now home in New Orleans, Durell presented a more positive tone, informing Elizabeth "With regard


97 Ibid, 35.

98 E.H. Durell to Elizabeth Durell, "To my Dear Lizzie", October 21, 1854, E.H. Durell Papers. Durell also reveals a certain disdain for the Know Nothing party. He relates a tale of experiencing a minor train collision, and how it is the third in a month at a cost of "over $100,000." Durell attributes this to the Railroad president dismissing all his experienced non-native engineers and replacing them with American born staff. Durell notes wryly this unnamed President is "a Whig and probably a Know Nothing".
to my interests re Canal matters - things look better and I begin to see daylight. I find citizens here willing to come to the rescue and Philadelphia has given me better mastery of a Center Hand to arrange matters. I think I shall be able to do it. The frequent letters over this period appear to have caused Elizabeth to worry about her brother's health. On October 31 he attempted to allay these fears, telling her that she "need not fear that adversity in many matters will uproot my equanimity. In striving for property there is purpose, and much, or more, happiness in the strife as in the winning. We take the chances, and if we fail, why we can't help it. It is an error to suffer then mental anxiety on account of my municipal matters... I rather think that I have studied life, its physical form and its religions too long and too well to be uprooted by a vision or a fall in the stocks." After Durell returned to New Orleans, the second half of his term as Aldermen began in earnest, and the volume of letters would drop precipitously.

The Common Council meeting of November 21, 1854 featured Durell more than any other Alderman. Based upon personal interviews and review of "the favorable reports of special committees appointed by the Common Council of the cities of New York, Philadelphia and Boston," he recommended "the purchase of one... steam fire engine for the use of the city of New Orleans." The attached resolution passed unanimously. This was the first modern piece of fire fighting equipment used in the city. Durell also offered a resolution "relative to

99 E.H. Durell to his Sisters, "To My Dear Sisters", October 28, 1854, E.H. Durell Papers. It appears Margaret minimally had returned from being away from Dover, as from this point forward the vast majority of letters are "To My Dear Sisters".

100 E.H. Durell to his Sisters, "To My Dear Sisters" October 31, 1854, E.H. Durell Papers.

the establishment of a general system of drainage and grading for the entire city of New Orleans." This resolution also passed unanimously and resulted in the appointment of three prominent engineers to a Board of Commissioners to "devise such a system of drainage and grading for the entire city" that would prove "most practicable, judicious and cheap."\textsuperscript{102} The issue of poor or non-existent drainage due to irregular grading throughout the city led to formations of vast pools of filth, which many believed served as a direct link to the spread of Yellow Fever.\textsuperscript{103}

The office of City Treasurer came into discussion during this meeting, based upon a resolution of the Board of Assistant Aldermen that declared "Whereas reports are circulating about town detrimental to the integrity of the treasurer of this city... it is due to the public and to that officer that an examination of the... Treasury should be made, and as the said City Treasurer has himself called for an investigation," the Board requested a committee of three Alderman and three Assistant Aldermen to execute this task. Durell was the first Alderman appointed, but only after the resolution was amended, "on motion of Mr. Durell by adding" the ability of committee to employ "one or more efficient accountants."\textsuperscript{104}

During the Council meeting of December 20, 1854 Durell offered the following resolution:

\textsuperscript{102} Ibid.

\textsuperscript{103} Trask, \textit{Fearful Ravages}, 53.

\textsuperscript{104} "Common Council", \textit{New Orleans Picayune}, December 14, 1854, 4.
That the committee appointed to examine the books of the Treasurer of the city be instructed to report to this Board, at its next sitting, by what authority treasury or cash warrants upon the treasury of the city are issued by said Treasurer to creditors of the city, and also what amount of said warrants have been issued and are outstanding at this date.

Durell possibly began to realize something was dreadfully amiss in the Treasurer's office. Five days later, on Christmas, he wrote to a friend in San Francisco that "New Orleans has fallen backward at least ten years, and I have small hope of seeing it... recover again." The city, he glumly stated, would "linger on the confines of a semi-barbaric civilization." Durell's committee proved unable to report to the board until the meeting held on January 23, 1855. Durell took the floor and stated that "no reliable report can be made as to the manner which the books of the office of the Treasury have been kept." Durell added that the resolution he would propose was "one of great magnitude and importance," and demanded $3,000 to pay for an independent accountant and assistants to seize the "assessment rolls... the books of the Comptroller and of the Treasurer, from a date commencing with the consolidation of the city... to the present time." The Resolution lost "due to lack of a legal majority," receiving 6 "Yeas" to 2 "Nays." Half of the Board of Aldermen were not in attendance, all of them Know Nothings. The two dissenting votes, P. Irwin and W. Alex Gordon, were also Know Nothings, and members of the Finance Committee. As the meeting progressed, two key votes were passed despite the departure of one

unnamed Alderman. These measures also received only 6 votes; the sole
dissenter in each was Durell. As the meeting neared its close, Durell suddenly
"offered his resignation as member of the committee... to examine the
Treasurer, which was accepted."¹⁰⁷

The meeting of January 23, evidence suggests, served as a watershed
moment for Durell. Perhaps personal worries and the race to complete the Canal
project, combined with a feeling that he had won some political victories in
forcing through the universal gradation of streets, the closing of burials in the city,
and his demonstrated ability to work with the Know Nothing party had led to a
feeling of true bi-partisanship among his fellow Aldermen. His three-week
opportunity to view the books of the Treasurer clearly alarmed him, and the
reaction of the Know Nothings to suppress his attempts at investigation
apparently caused his resignation; however it remains a possibility Durell actually
feared for his personal safety. Durell was familiar with City Treasurer W.H.
Garland, due to his flirtation with the Know Nothing party in 1854 and their time
served together on the Committee of Arrangements for the Union mass meetings
in 1850. Garland was considered by some a very dangerous man to confront.

The Daily True Delta, perhaps the most ardent opponent of the Know
Nothings (and apparently often the Democrats), wrote that Garland “arranged the
[Know Nothing] ticket [in 1854], selecting those whom he deemed most worthy
for places in the... government of New Orleans. He distributed the [offices] with
all the... forethought which characterize infamous... vagabonds.” Garland, the

¹⁰⁷ Ibid.
Delta argued, knew of, if he did not order, "scores of dastardly murders" performed with "impunity on its streets." Regardless of the reasons behind Durell's resignation, it appears he came to some form of realization during his inquiry into Garland's work as Treasurer, a realization that led to his decision to write a new City Charter on his own.

On March 14, 1855 Durell wrote his sisters for the first time in over three months, complaining, "I have been monstrously bothered in my affairs since my return from the North." He complained also of the state legislature's lack of support for navigation development; "The season here has been unusually unproductive of profit, and, in a monied point of view, disastrous to the City. We have been cut off by the lowering of the waters of our river." Durell, perhaps thinking of the upcoming election results, informed Lizzie "I cannot at this time say what will be the result of my affairs here; but at all events considered, they must be greatly reduced from former prospects."

The March election was apparently peaceful. The Know Nothings dominated and afterward completely controlled both the Board of Aldermen and Board of Assistant Aldermen. Soule noted "that there was no drinking, gasconading, crowding, jostling, or hustling at the polls," perhaps because of Durell's resolution to remove voting from bars into public buildings for the first

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110 Soule, Know Nothing Party in Louisiana, 64, Reinders, End of an Era, 59.
time. Regardless of the cause, Durell the Democrat quickly discovered that this new board placed him in the distinct minority. The experiences of occasional bi-partisanship were essentially over until circumstances brought about a revival.

At the first meeting of the new Board of Aldermen, the Know Nothings voted in favor of extraordinary impeachment powers that contained virtually no recourse for appeal or due process. The Board of Alderman served as Judge, and Jury once charges were filed by the Board of Assistant Aldermen. Durell moved to table the entire resolution and failed. When the final vote came, he was the only board member to vote "nay."\(^{112}\)

The Know Nothings on the board wasted little time in utilizing the powers provided in this resolution, bringing charges against the "two Democratic recorders, P. Seuzeneau and C. Ramos" for allowing "their subordinates to receive fees for Negro passes and bonds." The two Democrats were then replaced by Know Nothings, which placed the police board firmly in their hands, with only Mayor John L. Lewis representing Democratic interests. "At the first meeting under the new arrangement it was obvious to Mayor Lewis" how the Know Nothings planned to operate, and he abandoned his police board position.\(^{113}\) The Know Nothings appointed a replacement from their party and created a city police force whose loyalties represented their interests. The

\(^{111}\) Soulé, *Know Nothing Party in Louisiana*, 59. Soulé provides a very positive portrayal of the Know Nothings, incorrectly blaming the financial condition and high taxes of the city on the Democrats. Evidence suggests it was the theft and corruption of certain Know Nothings that ran the city into massive debt and forced the raised taxes the city later experienced.

\(^{112}\) "Common Council", *New Orleans Picayune*, April 17, 1855, 1, 4.

\(^{113}\) Soulé, *Know Nothing Party in Louisiana*, 64-65.
message to the opposition was clear. In only two council meetings, the Know Nothings had made it possible to dispose of anyone they felt was a threat or impediment to their goal of city domination. Durell, perhaps by coincidence, or perhaps because he possessed advance knowledge, did not take his seat until after the impeachment charges were brought at the meeting of April 24. Later he achieved a minor victory, having article 17 removed from the Impeachment Resolution, which stated that Aldermen who desired to question a witness could only do so by providing said question to the President in writing, to be asked by the President.

The investigation of city treasurer Garland disappeared, and the true financial condition of the city remained unknown. While Durell voted against resolutions he perceived as designed to give more political power for the Know Nothings, he focused his efforts on attempts to improve the commercial prospects of New Orleans. On May 28, 1855 he proposed that the Finance Committee “report the cost of keeping the wharves in repair, and also the amount of money received in levee fees.” Durell utilized the information received to successfully propose a system where the city wharves were rented “in sections, for a term of years, thereby converting a burden upon the city’s treasury into a source of large revenue.” The day of the meeting Durell wrote to his sisters for the first time in three months, complaining that “city business, Aldermanic duties

114 “Common Council”, *New Orleans Bee*, May 30, 1855, 1. In this meeting Durell also voted against a resolution “to prevent the introduction of foreign paupers and criminals into this country”.

115 “Honorable Edward Henry Durell”, *Granite Monthly*, 120.
do plague me very much,” and he regretted the impossibility of visiting New Hampshire in the summer.116

On the summer solstice of 1855 Durell responded to fears expressed by his family upon reading reports of another yellow fever epidemic, telling them that “N. York, Boston, Philadelphia, Baltimore and Charleston, our commercial rivals, seize upon every occasion to belittle and to injure us. But our grand geographical position will bring us out in the end.” This dismissal of outside reports, eerily similar to one written in 1853, proved equally incorrect; yellow fever had returned. Although the death toll from the fever in 1855 was just a third of 1853, the damage to city morale and commercial interests were acute.117 On August 26, Durell wrote, “No real abatement of the Epidemic yet - Yesterday the returns showed 200 deaths by the fever for the preceding 24 hours. It certainly must decrease soon for want of Material - the season will be memorable in the history of NOrleans.”118

Perhaps the most infamous moment of the year 1855 in New Orleans was election day in the fall. The Louisiana Democratic party was fractured into two camps, “one supporting John Slidell, the other Pierre Soulé - whose animosity toward each other was greater than toward the opposing political party.”119 Democratic Mayor John L. Lewis was described as a “Democratic Know

116 “To my Dear Sisters”, May 28, 1855, E.H. Durell Papers.
117 Trask, Fearful Ravages, 39.
118 “To my Dear Sisters”, August 26, 1855, E.H. Durell Papers.
119 Reinders, End of an Era, 57.
Nothing."120 In the "most riotous election" in city history, the Know Nothings dominated, in votes and in violence. As Leon Soulé wrote, "often the cry was heard, 'Clear the polls, you damned Dutch and Irish Sons of Bitches!' while "Bands of armed men, some in carriages, some on horseback" patrolled the city seeking to intimidate Democrats from voting. It was later reported "gangs of ruffians" were imported from Mobile, Alabama and Memphis, Tennessee to swell Know Nothing ranks.121 These gangs seized and destroyed numerous Democratic ballot boxes. In the race for sheriff, the dispute raged back and forth for so long that at one juncture both men claimed victory and for "two weeks New Orleans enjoyed the protection of two sheriffs."122

Robert Reinders has argued that "by the spring election of 1856 respectable individuals in the city began to realize they had created a monster.” The gangs of native born but impoverished ruffians gave every appearance of enjoying their work. “Even after the election, groups of thugs roamed the streets of New Orleans for days beating and stabbing immigrants."123 Evidence suggests these "respectable individuals," in fact came to this realization six months earlier, in November, 1855. Durell realized he had an opportunity to institute political and social reform, if argued correctly and with sufficient evidence. He began this effort

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120 Reinders, *End of an Era*, 57. Perhaps a better description for Lewis, and Durell, would be "disillusioned Democrat." The "strong-arm tactics” and vicious infighting of their own party proved jading to Durell, and likely to Lewis. The "reform" of the Know Nothings proved increasingly distasteful the more it gained power. Both appeared to have to made attempts at working with these factions as best as possible.


122 Ibid. 74-75.

with a lengthy report and presentation to the Board of Aldermen on November 6, 1855. Durell’s speech and statistical figures were later published as “Report upon the wealth, internal resources, and commercial prosperity of the city of New Orleans.”

Durell began by pointing out that:

The floating debt of the city . . . has been wholly canceled by payment; and that the treasury is now in a condition to satisfy all current claims . . . If this ability has been reached through a sale of the revenues of the city wharves, it . . . is the creation of this Council; and that the result . . . could not be better applied than to the redemption of a credit whose best interests it is our chief duty to forward and protect.124

Here Durell opened with a thinly veiled reminder that it was his idea to create the revenue that paid off the floating debt by renting the wharves. With this success fresh in the minds of his fellow Aldermen, Durell provided a “succinct review of the commercial statistics” of New Orleans for the years 1845-1855 in order to “justify the faith of . . . our fellow citizens who still believe in our city’s prosperity, and are willing to labor for its further advancement.” The remainder contained a “comparative statement of the wealth, internal resources, and indebtedness” of New Orleans and New York to illustrate the “financial capacity” of New Orleans to serve as the foundation for “suggestions for certain statute changes in our municipal organization,” suggestions Durell provided at the conclusion.125


125 Ibid.
With the exception of a statistically clear decline in trade with the North-West, Durell concluded the “commercial prosperity of New Orleans . . . highly satisfactory” and “stands in direct contradiction of the representations rife as to the the decline of our city.” Durell argued that evidence revealed the city had “steadily and healthfully” advanced despite the epidemic of 1853 and the low water level of the river in 1854.126

Durell utilized the statistical comparison with New York to drive home three main points. “New York taxes personal property;” while in New Orleans, “our taxation [was] based on assessment rolls” crafted by men “elected for their party predilections and who labor . . . without accountability.” He continued, “the feudal idea, that land and house, only, are property must be done away with.”127 Durell next pointed out that New Orleans “on a per ratio of population” brought in over 36 percent more in tax receipts than New York, despite only taxing real estate. This served to make “patent the monstrous injustice of our system of taxation.” New Orleans, he argued, must enlarge “our basis of taxation . . . distributing equally upon the shoulders of all a burden . . . now borne wholly by a few.”128

The last subject, the massive deficit of the city, was revealed to exceed that of New York “as per ratio of population” by 231 percent. Durell argued if his resolutions and advice were followed, this permanent debt could be paid off “within a few years.” For that to happen the “defective construction of our

126 Ibid, 7.
127 Ibid, 9.
128 Ibid,10. This argument surely met with approval from wealthy Know Nothings and Democrats alike, and it is likely not a coincidence Durell especially focused on this aspect of his report.
ordinances" required a "most thorough reform," along with addressing the "wholly inefficient executive execution, touching the matter, as we now possess."
Specifically Durell mentioned the province of revenue collection and licensing enforcement. These two functions were the responsibility of the City Treasurer. Durell's phrase "touching the matter" possibly served as a reminder that the investigation into W.H. Garland had been dropped and forgotten. The report closed with resolutions calling for two committees to be formed, the first to investigate "the cause of the decline in our commerce with the northwest," and the second "to draft an amended Charter for the City of New Orleans." Durell was the first man appointed to both committees.129

Durell's standing within city government clearly grew in the waning months of 1855 and into 1856. A review of the Council proceedings published in most newspapers reveal Durell introducing most ordinances passed. Also, on January 15, 1856 Durell was placed in the President's chair of the Board until the arrival of the appointed President, a strange situation for a Democrat on a Know-Nothing-dominated Board.130

On February 1, 1856 a special meeting of the Board of Aldermen was called to unveil Durell's report on what was still called an "amended" charter. Among the numerous fundamental changes proposed were a reduction by half in the number of Aldermen on both Boards. The Assistant Aldermen would have the sole power to create legislation regarding public works, levying taxes or spending

129 Ibid, 12.
public funds. "An entire change" in functions and powers of all executive offices would take place. The police board would be repealed, with the Mayor again having sole charge of the police force. A vast new system for "assessing property for the purpose of taxation so as to render taxation more equal" was provided for, with a uniform system of taxes, which expanded the definition of what was considered taxable property. The biggest changes of all involved the organization of city districts, and the control of its funds. The *Times Picayune* provided an overview included in the next day's edition:

> The committee, through its chairman, Mr. Durell, reported in favor of dividing the city into three districts, the boundaries of which shall not correspond with any of the district lines now existing. The object . . . is to break up the old municipality lines and divisions of population which have so long operated as a clog on the prosperity of the city.

> For the protection of the city treasury, new checks and safeguards are furnished.\(^{131}\)

After the overview session, the *Picayune* reported that the "report was unanimously adopted." Durell immediately produced a full draft of the Charter which was "taken up section by section and adopted," only being "amended in a few unimportant particulars . . . It will be submitted to the Legislature in a few days with a view to its adoption."\(^{132}\)

Conjecture seems required to explain how a Board of Aldermen made up almost entirely of Know Nothings would unanimously agree to a restructuring of the city with little debate. Why this full acceptance of a re-division of the city

\(^{131}\) "The City Council", *New Orleans Picayune*, February 2, 1856, 1.

\(^{132}\) Ibid, 1.
whose goal, clearly stated, was to shatter the idea of "American," "Creole," and "Immigrant" districts? Know Nothing mobs would also face a stiffer challenge in suppressing the immigrant vote, as before invading the Third District was usually the only requirement. With immigrants spread throughout all districts, logistical challenges followed. Perhaps, though, some Know Nothings believed diluting immigrant voting blocs would harm Democrats more than themselves. However, this plan can not be considered a boon for the Democratic party either. Long ensconced in the Creole district, they had come to power in 1853 by exhorting the immigrants of the Third District (and probably stuffing ballot boxes by allowing immigrants to vote who were not yet naturalized). With this change, their power base would be disrupted, and Americans (and Know Nothings) would live in their voting districts. Another possibility is that the Know Nothing Aldermen, realizing they had lost control of their mobs, in fact, desired to dilute the power of the nativist rank and file by redistricting the city.

Although Durell had the full support of his fellow Aldermen, any belief this would carry over to the press were quickly dashed. The proposed charter, claimed the Granite Monthly, was “Opposed by every newspaper in the city save one, the Orleanian, published in French.”133 This was overstated. The New Orleans Commercial Bulletin described the document as sweeping away “the clouds which have long and gloomily [blotted the sun] . . . to exhibit evidence that the golden light . . . is even now ready to break forth.”134 The New Orleans


Picayune, however, blasted the document as "radical" and "ponderous," and marveled that "in all respects a more useless, and in some respects a more mischievous document we apprehend has not lately sprung . . . from aldermanic or other brain." The Picayune did, however, approve of the removal of the police board. The Daily True Delta was astonished at this "unreasonably prolix document" that in print form "occupied . . . sixty-eight pages and purports - for we neither read nor counted them - to contain one hundred and thirty eight sections!" While confessing the charter "has, in some respects, incorporated our suggestions," they railed against the removal of the police board. By February 7, the New Orleans Picayune was attacking Durell more than the Charter. Calling him "that eccentric gentlemen, Alderman Durell," they noted he spoke of the proposed charter "assuming a special paternal guardianship" and that the Picayune was familiar with the "intense meanness" of Durell and did not "expect from him either justice or good manners." This particular editorial appears to have set the precedent for Durell's antagonistic relationship, not only with the New Orleans Picayune, but the majority of the press, Democrat and Republican, for the remainder of his career.

Throughout these events concerning New Orleans government of 1855 into 1856, Durell remained managing director of the Carondelet Canal project, overseeing every aspect of the effort. On February 2, 1856, the Engineer for the State of Louisiana, Louis Hebert, submitted a report to the state legislature titled

“Special report on the New Orleans Canal & Navigation Company.” Hebert reported that in January 1856 he had performed a “personal examination” of the entire canal project. He “found that the great work of straightening and enlarging the canal had been prosecuted with surprising success” and that the vast works at Lake Ponchartrain “had been carried on with a like vigor and result.” Informing the legislature that the “new channel is well planned,” he anticipated the Canal would “answer every requirement” of the legislative act of 1852. He declared his “full confidence in the ability . . . of the company to conform with . . . their charter” and felt there existed “good guarantees of perfect success.” Desiring to “do justice to my own convictions,” Hebert recommended the Legislature provide “whatever assistance . . . in its power to afford to the said Company.” In the closing paragraph Hebert reported, “with due deference,” that it would not “be within the limits of justice” to hold the Company to a “strict accountability . . . and under a continual risk of the forfeiture of the body thereof,” yet allow the New Orleans Draining Company to continue to “cause the formation of bars in Bayou St. John.” Hebert believed the Company deserved “protection from such obstacles.”

138 Durell, and the Company, however, were required to wait another three weeks to learn their fate from the legislature.

On March 1, 1856, the city Boards struck at city treasurer W.H. Garland. Around 11 o’clock in the morning Aldermen Bailey and Eager of the Finance Committee were seen “stealing a march on the Treasurer.” They seized all of “the

books, papers and cash on hand.” Emergency meetings for both Boards were called for that evening, which began in secret session. The Board of Assistant Aldermen finally addressed the press, revealing serious discrepancies in the reports of the Comptroller and Treasurer. Noting they had written Garland twice in the last six weeks and received no satisfactory reply, the investigation discovered that collections of “$50,000 were not being either reported to the Controller, or deposited in Bank [sic].” The Board then utilized the powers created when the Know Nothings took power the year previously, “impeaching Garland of high crimes and misdemeanors and gross malfeasance in office.” Newspaper accounts did not mention any role in these actions by Aldermen Edward H. Durell.\footnote{Ibid. Editions of the \textit{New Orleans Bee, New Orleans Picayune}, and the \textit{New Orleans Commercial Bulletin} contain similar accounts between March 2 and March 5, 1856, and none mention Durell’s name.}

The papers of March 3 and 4 revealed details of Garland’s attempt to flee the city and his eventual capture. \textit{The New Orleans Bee} reported that, during the night, Garland rushed to the docks to board his personal schooner, the \textit{Jane Elizabeth}, fitted for a lengthy voyage. A “steam tug sent from Belize” managed to intercept him. Upon return to the city he was thrown “in the parish prison in the same cell with James Patten, the murderer of Col. Walter Turnbull. [Where] he is said to look very haggard.”\footnote{“City Intelligence”, \textit{The New Orleans Bee} March 4 and 5, 1856, 1.} The \textit{Daily True Delta} provided the most detail. Garland has plundered the city directly himself . . . of at least one million dollars per anum but so powerfully was he . . . guarded at all

\footnote{“Great Financial Excitement! Reported Defalcation of the City Treasurer*, \textit{the Daily True Delta}, March 2, 1856, 2.}
points by the Common Council . . . hosts of friends, a newspaper owned by himself . . . and the marvelous ability which enables, out of a salary of three thousand dollars per anum, to build towns, purchase lots by the mile [while] he safely bid defiance to the few individuals who, from an unaccountable detestation of his crimes . . . could only hint his guilt, apprehensive of their safety from his vagabond retainers . . . it was dangerous to charge even him unscrupulous . . . owing to the facts . . . of being the great head and director of a powerful secret political organization in this city.  

Durell’s absence throughout the entire episode bears examining. As a member of the Finance Committee, he was missing from the reports, while the two Know Nothing members marched to the Treasurers office to seize the contents. The Assistant Board of Aldermen were given the first opportunity to provide details of the theft discovered; these men also were majority Know Nothings. The details of Garland’s theft reveal a level of either remarkable incompetence, or else his total confidence in his ability to act with impunity. Who had the most to gain from the revelations of Garland’s crimes? Without doubt it was Durell. Possibly he felt there was nothing to gain by public connection to the arrest and the following Council meeting (which he also did not attend, according to the published minutes). With long-standing charges against them of complicity in Garland’s crimes by the *Daily True Delta* and other Democratic newspapers, the Know Nothing members of the Finance Committee took the opportunity to refute the charge by seizing the contents of Garland’s office. The members of the Assistant Aldermen Board, given the chance to provide the first public details, were also provided their opportunity to display their legitimacy. What Durell desired was Charter approval. To achieve that, Durell required support from the press, not

142 “The Story’s Told”, *The Daily True Delta*, March 4, 1856, 1.
condemnation. It also can not be ruled out that Durell feared for his personal safety if he attempted to seize the lion's share of the credit.

Garland's arrest included the revelation that the City could not yet begin to estimate how much of the city treasury was missing. The intense worry this produced caused the Charter, with its entirely new system of taxation, vastly increased checks and balances, and modified and reduced powers for the Treasurer, to appear as sound measures.

On March 6, the *New Orleans Picayune* published a lengthy editorial on the subject. The editor discussed having "the most alarming apprehensions of the extent to which the defalcation may reach" and the potential damage on the "disordered affairs of the city." Of Garland they wrote, "He has . . . enjoyed . . . the strongest evidence of popularity," although he "had all the time bitter opponents," he "had succeeded invariably . . . in defeating them, and in extending his own influence as a man of . . . peculiar fitness for his post." But now, "his partial confession, . . . his attempted flight, and arrest, and imprisonment" revealed how "the confidence of his friends has been misplaced." The editorial concluded "what is of much more permanent interest, how insufficient is the . . . present city charter to produce that system of mutual checks and balances and accountability. The first lesson from this calamity will be, we trust, to revise the whole machinery so as to make it worth something for the protection of the . . . city . . . hereafter."143 The *Daily True Delta* remained skeptical of the new charter on grounds of principles, noting that for all their

143 "The Default in the Treasury", *New Orleans Picayune*, March 6, 1856, 1.
criticisms of the Know Nothings, in the Democratic party, the “worst recommendations of a man” to hold office was “good character, capacity, and sound principle,” and to succeed as a Democrat, one “had to sink his manhood, his honor” and bow down to a clique of “brazen-faced, audacious, unprincipled” politicians. In such circumstances the editors could not imagine “how to frame laws that will effectually compel a reformation.”

However, even the *Daily True Delta* no longer dismissed the Charter as it had less than three weeks earlier.

On March 16, the State Legislature sealed the fate of the New Orleans Canal and Navigation Company with the passage of Act 160. The lengthy law consisted of 21 sections that, in essence, created a new company named the Carondelet Canal and Navigation Company and awarded the “power, and authority to enter upon and take possession and control of the Canal Carondelet and Bayou St. John” if the New Orleans Canal and Navigation Company could not perform “all things required to be done and performed” by the Act of 1852. Rejecting the recommendations of the state engineer, the legislature would seize the property the next year, awarding the control of the canal to the new company. At the Louisiana State Supreme Court, Durell also lost his battle against the New Orleans Draining Company. The ruling stated, in part, that the company “could not complain of the system of drainage into the Bayou” and also declared the company never assumed “the rights of the old . . . when the property of the old

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145 Louisiana State Legislature, *Acts passed by the third legislature of the state of Louisiana, at its second sessions, held and begun in the town of Baton Rouge, on the 19th of January, 1857.*) 144.
was purchased.”

Evidence also suggests the New Orleans Canal and Navigation Company proved unable to raise additional funds and was nearly insolvent. The Carondelet Canal from this period until 1922 played a critical role in New Orleans trade, but Durell would not profit himself from its rehabilitation.

Outside the issue of the Canal, in the final days of the session of the Legislature, the press focused mostly on the proposed Charter. The *Daily True Delta* was still skeptical, noting there was not enough effort to block the continuation of “Garlandism,” while the *New Orleans Picayune* predicted that the “new charter for the city of New Orleans will not pass.” Three days later, however, the *Picayune* reported the Charter’s passage.

The Charter underwent changes during negotiations in the state legislature. Without a copy of the original version approved by the Board of Aldermen, it remains difficult to ascertain where and how modifications occurred. Durell does not provide us with any such detail in his personal papers. Certain major aspects of the Charter noted in the press appeared to

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148 *Acts passed by the third legislature*, 144-145.


150 “New City Charter”, the *New Orleans Picayune*, March 22, 1856, 1.

151 An examination of the minutes of this meeting at the New Orleans Public Library reveal that the secretary, also, did not transcribe the charter as passed by the Aldermen. A full copy of this document appears lost.
meet his desires, but his plan to redistrict the city in order to “break up the old municipal lines and divisions of population” had been removed. The introduction of detailed measures to improved sanitation passed, as well as sections dedicated to the proper maintenance and building of roads and bridges to help ensure proper drainage of the city. A complicated and lengthy system of checks and balances for elected officers was introduced, especially regarding the handling of the city treasury. The order and control of the police department also was placed solely in the hands of the Mayor, but under the financial control of the Common Council. Minute detail on the financial future of the city, via a system of taxation and oversight, baffled many in the press.

The Charter created and enforced tax rates “uniformly and equally throughout the four districts of the city.” The rate would never be higher than “$1.50 per $100 of valuation.” Those citizens who earned less than $1,000 per year and owned personal property worth less than $500 were exempt from all taxation.”\(^{152}\) To perform the assessments, the charter created two new Boards. The Board of Assessors consisted of the Mayor and twelve Assessors elected by both Boards of Aldermen. The second board served as a check on the first, named the Board of Supervisors of Assessments. The Board of Supervisors retained the power to revise assessments, a power previously in the hands of the state government.\(^{153}\)

\(^{152}\) *Taxation in the City*, *New Orleans Picayune*, March 25, 1856. Income was defined as not only that for services rendered but also revenues from stocks or dividends. Personal property included land, machinery, homes and other structures, but also slaves, furnishings, carriages and any other item with a salable value. Included in this definition were “debts due from solvent debtors, including mortgages” and otherwise “all property which is not real.

The *Daily True Delta* was pessimistic about whether the Charter would change anything.

What then, it may be asked, shall be adopted to attain this most desirable end [of true government reform]? . . . are we to fold our arms and stand tranquilly while our property is carried off in heaps before our eyes . . . [or] are we try some new method or novel expedient in the hope, fallacious perhaps, that something really good may accrue from it?\(^{154}\)

The *Daily True Delta* argued that without men of “tried integrity and intelligence” in office, all the “most admirable checks and balances” would prove meaningless. The editors of the *Daily True Delta* proved prescient in some respects regarding this matter.

One week prior to Charter passage, March 18, 1856, violence and chaos once again reigned in the streets of New Orleans, sparked by a public meeting called by the Know Nothing party to select municipal candidates. While political violence was common in antebellum New Orleans, this instance was unique. The wealthy leaders of the Know Nothing party, the same who had joined Durell and abandoned W.H. Garland, were attacked by a milling throng of working class “hecklers and toughs” from their own Know Nothing “slung-shot brigade.” What precipitated this violence that caused one city editor to bemoan that “ruffians” now felt empowered “to rule supreme in this city?”\(^{155}\) The timing may suggest that the overthrow of established party leadership occurred in direct response to the

\(^{154}\) “Property Qualification”, the *Daily True Delta*, March 25, 1856, 1. The Delta also claimed the city charter limited the right to vote, but I can find nothing in the City Charter that limits suffrage, only holding office in terms of length of residency in New Orleans. It remains unknown if Durell desired this or if it was added by the state legislature.

\(^{155}\) “The Bogus Meeting”, the *Daily True Delta*, March 20, 1856, 1.
new City Charter, unanimously approved by the Know-Nothing-controlled City Council and the arrest and impeachment of gang leader and city treasurer William H. Garland.

Durell's attempt to thoroughly reform the entire municipal government structure in order to end political patronage and government corruption, while simultaneously rescuing city finances from debt, succeeded in one aspect and failed in another. Durell's political changes were not what the native born working class wanted. When their party leaders unanimously endorsed this document, violence ensued for all to see. The tax changes increased revenue and created a system for predictable cash flow in order to accurately forecast a yearly city budget, surprisingly something New Orleans had never previously performed.156 The checks and balances and other articles intended to inhibit corruption had the opposite effect. Realizing the only way to combat these laws was to hold every elected office, the American Party (as the Know Nothings called themselves) made each subsequent election, according to Reinders, a "brutal farce" where "no man's life was safe."157 The result of every election up to the Civil War, according to Soulé, was a "complete Know Nothing victory. Every candidate of the party won."158

The metamorphosis of the Know Nothings into a powerful working class party of both native Americans and immigrants is unique to Louisiana, and especially New Orleans. Historians such as Reinders and Soulé argued this took

156 Kendall, History of New Orleans, 193.
157 Reinders, End of an Era, 59.
place in 1858, but one could argue instead that this had taken place two years earlier. The American party's populist message, its tactics involving secret societies, and its use of political violence resonated in Louisiana for decades afterward, as Edward Durell discovered first hand in 1864 and beyond. The unique series of events presented by the creation and passage of the 1856 New Orleans City Charter should be considered part of foundation for this facet of New Orleans historiography.

High prices and booming crops in the cotton industry, combined with the new tax code provided by the 1856 City Charter, provided a significant boost to the city's economy. Although not quantifiable, the increase in trade capacity by the now reopened Carondelet Canal certainly assisted in raising revenue. Kendall noted, "The tax rate for 1856 was lower than that of the preceding year; in the regular city tax, by 70 per cent; in the railroad tax, 32 per cent." After the passage of the Charter the city ended each year with a positive balance in the Treasury. This economic boon occurred despite a financial crash in 1857 and massive political violence in 1858.

We have no letters from Durell to his family during the last three years of the 1850s. The letter books Durell maintained between himself and "Oran" end in May 1858, with a note that declared, "Thus does another curtain close on my

159 Kendall, History of New Orleans, 193.

160 "General Orders and Miscellaneous Notebook", E.H. Durell Papers, New York Historical Society. In this notebook Durell apparently re-compiled virtually every aspect and record of city finances between 1859-1864. He corrects in several areas figures and calculations he deems improperly performed by the Comptroller and/or Treasurer. It seems likely Durell desired to defend not only the City Charter of 1856 but also to show that the Bureau System of Government he created in 1862 operated legally and fairly. Preliminary evidence indicates aspects of this work he may have intended to use this information to attack the performance of General Butler.
Had Durell's opinion of New Orleans changed since the letter written on Christmas Day, 1854 that bluntly asked “... why should you desire to return to N. Orleans? What is this miserable city to the growing giant of the West?” Durell's personal notebooks, detailing the financial successes of the city treasury along with a full copy of the City Charter, and the biography published shortly after his death in *The Granite Monthly*, indicate he took great pride in his Aldermanic achievements. This evidence is augmented by his later ardent and public defense of the charter in 1864. The failures of the document in stemming political violence were also quite evident. By the end of the decade, the former Know Nothings, now officially the American Party, had so successfully intimidated the populace through violence that many Democrats did not even attempt to vote.\footnote{162}{Reinders, *End of an Era*: 59-61.}

The state of New Orleans politics likely was not the sole concern of Durell in these years. While in the throes of getting the charter passed and the Carondelet Canal completed in 1856, newly elected Louisiana Governor Robert Wickliffe used his inaugural address that same year to predict the secession of Louisiana. When discussing the acts of Congress against slavery, he ominously declared, “Unless the progress of this insanity is checked, the Union will soon be a matter of history.”\footnote{163}{Charles Gayarre, *History of Louisiana: The American Domination* (New York: William J. Widdleton, Publisher, 1866), 680.} By January 1858, Governor Wickliffe railed against “... the sectional warfare, based upon hatred of the institution of slavery, [that] has been waged by the North upon the South.” Louisiana, he argued, must

\footnote{161}{“Personal Note, Letter book to ‘Oran”, E.H. Durell Papers.}
completely reorganize and greatly strengthen the militia in arms and men in order to "be independent, should the hour of trial come." The Governor desired Louisiana to "be put upon a war footing [and to] ... be prepared to meet any emergency." The fire-eaters, driving towards secession since 1850, used the election of President Lincoln to further enflame the passions of Southerners, and on January 7, 1861 the state of Louisiana voted to secede from the Union by a vote of 20,214 to 18,451. This margin the Governor "refused to make public [to avoid revealing] just how close the election had been."

On January 31, 1861, perhaps in an attempt to allay her fears along with his own, Edward wrote to his sister Elizabeth.

My Dear little Lizzie,

Louisiana is now out of the Union, and I think there is no prospect of her ever going back again. I am inclined to think that it is best for all parties that the Slave and Non-holding Slave States should separate and form independent nations. The question now to be solved is if the separation is to be a peaceful one. We must pray that it may be so. War would cover both sides with countless evils.

Edward resigned from the Democratic Party in protest and retired from public life.

But Durell's retirement did not last very long, and his reintroduction took place in ways he could never have imagined.

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167 "The Honorable Edward Henry Durell", 121.
Chapter 3

Civil War, Reconstruction, and Exile

"Let any man tell me that slavery exists, and I will tell him that Heaven and the light of day proves the assertion false. . . God's laws are certain. [The Freedman] stands as free as you or I do. Such is the law of God and you cannot change it."1 Edward Henry Durell, July 14, 1864

I wish, as you wish, that I had had nothing to do with the election of 1872....But I could not well help it, and what I did was, at least, done honestly.” Edward Henry Durell, July 17, 1874.2

Edward Durell was not the only ardent Unionist to remain in New Orleans after secession. His letters reveal his reasons were many. The most important was his love for the city. The emotions that had pulled him away from San Francisco remained, and arguably strengthened. The great effort of the 1850s in both commercial and public works tied him to New Orleans in a manner his earlier years had not. Another factor was financial. His few investments were based solely in real estate. Coinciding with this, his sisters still owned property in New Orleans, purchased on his recommendation. Fleeing for the North would have left him relatively destitute, and abandoning the interests of his family would

1 Albert Bennet (Reporter), Debates in the Convention for the Amendment of the State Constitution of Louisiana, (New Orleans: W.R.Fish, 1864), 543.

sully his personal honor. Initially Durell, as he often did, reflected philosophically on secession and apparently convinced himself that everything would work out for the best.

"The city was never more peaceful and safe." he wrote in a January 31, 1861 letter. He declared that should the "secession prove peaceful, [it] will enhance the value of our property. . . very much." Insulted by an apparent statement from Elizabeth that he had become too southern in his mindset to understand northern politics, he laid equal blame for secession on the radical republicans and southern fire-eaters. Perhaps in response to the organized refusal of many northern Congressmen two weeks earlier, especially those from New England, to attempt any compromise with the South, Edward wrote, "The North has made its bed, now it must lie in it." Still, Edward closed the letter holding out hope for peace.

Edward next wrote on April 3, 1861. The contents overflowed with optimism, declaring real estate prices in the city "so far from falling off, have risen." Earlier that week he received a visitor asking "to learn the price of your square on Canal St." Edward, however, advised Elizabeth to "keep it, if possible." He felt sure that when the railroad then being constructed nearby was finished, the land would begin "growing in value daily." Nine days after Durell wrote the letter, early in the morning of April 12, 1861, the Civil War began at Fort Sumter.

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With the onset of hostilities, Edward began rethinking his long-held views on the use of Federal power, on slavery, and on the South.5

A little over one year later, New Orleans, in Durell’s opinion, was liberated on April 25, 1862. The approach of [Union Admiral] Farragut’s fleet threw the town into a panic. . . By noon, civil order collapsed.6 Confederate General Mansfield Lovell abandoned the city, adding to the chaos. “The town looked deserted except for a growing gathering of Unionists who dared to cheer the reappearance of the forbidden national emblem.”7 Durell likely was in this group. Sometime before May 1, 1862, Durell, and a small group of “determined unionists” led by Dr. A.P. Dostie, had entered the Varieties Theater carrying American flags, accompanied by a band, demanding they be allowed to play a “national air.”8 On May 1, General Benjamin Butler arrived, and was placed in full control of Union occupied territory in Louisiana and headquartered in New Orleans.

“I have called upon General Butler, and also upon his wife,” wrote Edward to his sisters in early June of 1862. “I like him very much. He is a man of great firmness, as well as ability, and I think well selected for the position he now

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6 Chester G. Hearn, When the Devil Came Down to Dixie: Ben Butler in New Orleans (Baton Rouge: Louisiana State University Press, 1997), 65.

7 Ibid, 67.

8 Emily Hazen Reed, Life of A.P. Dostie (New York: William P. Tomlison, 1868), 59. Reed was Dostie’s daughter, and her accounts appear to have a great deal of bias towards her father. Her grouping of Durell with radicals like Dostie, Thomas Durant and Benjamin Flanders is not accurate.
Durell likely had little trouble gaining access to General Butler; in fact it appears possible Butler may have very much desired to meet him. Before leaving for New Orleans from Norfolk, Virginia, Butler had, for unknown reasons, left behind his law partner and Union Army paymaster, Nicholas St. John Green. Green also happened to be the nephew of Edward Durell. Before the war, Green served as Butler’s junior partner in their law firm, one that was quite successful in the areas of “criminal and personal injury cases.” It seems likely that Green provided Edward with a letter of introduction, and perhaps also informed Butler of Durell’s career in New Orleans politics.  

Initially Butler attempted a conciliatory approach, maintaining the existing city council. This, as he detailed later publicly, was exactly what Durell hoped would take place. But the obstinacy of most of the elected officials angered Butler, and the plan was abandoned by June 1862. Butler then tasked Edward Durell to create a city government to operate under the executive control of military authority. In response, Durell created what was called the “Bureau System,” which retained as much as possible the laws of his 1856 City Charter but supplanted elected positions with a system of appointed offices, separated into bureaus, to handle the everyday operations of the city. On July 1, 1862 Durell was appointed by Butler to chair the Bureau of Finance, arguably the most

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9 E.H. Durell to his Sisters, “My Dear Sisters”, Date illegible. E.H. Durell Papers. The context of the letter indicates the letter was written well before August of that year, and the date itself appears to be a single digit number.

10 Philip P. Wiener, “The Pragmatic Legal Philosophy of N. St. John Green, (1830-1876)”, Journal of the History of Ideas, 9 (1948), 73. Wiener, based on access to Green’s personal papers and interviews with Green’s son, Frederick, noted that Nicholas, “liked Butler in some, but not in all respects.”
important civilian position, for it gave him direct insight into many of Butler's financial doings as well as those of the city. What he saw of the latter, evidence suggests, he did not like.\textsuperscript{11}

According to historian Chester Hearn, "By midsummer New Orleans had never been cleaner," for Butler possessed, and used, the executive power required to enforce the laws regarding sanitation, maintenance of streets, and other ordinances aimed at improving public health. Despite the efforts of Durell and others in the 1850s, enforcement of such ordinances consistently had been a haphazard affair in New Orleans. A great many of the laws Butler enforced were written by Durell during his term as Alderman, and others were included in his city charter. By the time Butler had scrubbed the city, however, the Chairman of the Bureau of Finance likely had discovered Butler's dark side.\textsuperscript{12}

As Hearn has outlined, Butler, usually with his brother, Col. Andrew Butler, acting as his front man, involved himself in speculation of every sort. Butler nearly was caught several times, but always managed to argue his way out of all accusations. Hearn concluded that, "Andrew came to New Orleans with little money. The general's capital consisted of about $150,000. By 1868 Butler was worth $3 million. . . Butler's fortune could not have been amassed on a general's salary, dividends from stockholdings, legal fees, or his reentry into national politics. This leaves but one source to account for the swiftly amassed fortune - New Orleans."\textsuperscript{13}

\textsuperscript{11} Hearn, \textit{When the Devil Came Down to Dixie}, 178, and "Honorable Edward Henry Durell", 121.

\textsuperscript{12} Hearn, \textit{When the Devil Came Down to Dixie}, 178.

\textsuperscript{13} Hearn. \textit{When the Devil Came Down to Dixie}, 196.
As previously mentioned, Durell's position as chairman of the Bureau of Finance provided insight into these activities that few, if any, civilians possessed outside of Butler's inner circle of co-conspirators. Durell's notebooks reveal he was in charge of tax assessments and tax collecting. Butler, usually through his brother, used rigged auctions to purchase millions of dollars in confiscated rebel property at "absurdly low prices."14 If this property was located in New Orleans, Durell would have been aware of it. Durell also apparently investigated how much of these proceeds went, as intended, into the treasury of the United States. In at least one instance Durell glumly reported that "The net proceeds of property adjudged to [the] United States will be only $100,000. . . . Harpies who have done nothing but make money out of both parties during the war profit by confiscation; the government does not."15 This, apparently, was the most public insinuation of Durell against Butler. Privately, however, Durell first attempted to resign his position, a proposition Butler refused. Durell also, in a private notebook, complained of Butler's infamous General Order 28, which threatened to label New Orleans women who disrespected Union forces as common prostitutes. The order itself, Durell wrote, "was vile enough," but Butler's "letter of explanation was a miserable afterthought."16 It seems possible that once his resignation was refused, Durell may have begun to share information with those he felt had the power to have Butler stopped.

14 Ibid, 192.
16 "General Orders Notebook". E.H. Durell Papers.
One example of evidence that Durell possessed and preserved is a note added to his handwritten copies of New Orleans city finances and city treasury balances.

From July 1, 1862 to Sept. 22, 1862 I received... from the City Treasury the sum of $224,530.00 - in Confederate Notes... From July 19, 1862 to Oct. 13, 1862 I sold said Confederate Notes in parcels... receiving the sum of $128,272.05 in U.S. greenbacks, which I paid into the City Treasury... I sold these notes to Col. A.J. Butler, who subsequently told me that he had disposed of the same for a profit of $50,000.17

Durell may have shared this sort of information with Reverdy Johnson, with whom Durell had cosigned an ardent pro-Union letter back in 1850. According to Hearns, Johnson was, “an old enemy of Butler,” and the General was angered when Secretary of War Edwin M. Stanton sent Johnson to investigate Butler’s treatment of foreign consuls. Butler’s disdain for those foreign office holders, regardless of mother country, was the cause of numerous diplomatic complaints in Washington.18 After investigating in the city for a few weeks, Johnson returned to Washington, but, as Hearn wrote, he “waited for four months before airing his opinion publicly.” When he did, he did not mince words, declaring, “that the state of fraud and corruption in New Orleans was ‘without parallel in the past history of the country.’”19

17 “General Orders” Notebook, E.H. Durell Papers.
18 Hearn, When the Devil Came Down to Dixie, 29.
By November 1862, President Lincoln urged that an election be held to determine Representatives to Congress for Louisiana. This was an early sign of Lincoln's plans for Reconstruction. Hearn credits Butler for galvanizing the immigrant working class of the city and making the election a success. If so, however, this did not appease the Lincoln Administration; shortly after the election results were declared, the process to remove Butler from New Orleans began. Hearn argued the primary reason for Butler's removal was Lincoln's desire for a conciliatory policy regarding the re-admittance of seceded states back into the Union. Butler had severely damaged that goal, one shared by Edward Durell.

General Nathaniel Banks, Butler’s replacement, seemed a far better choice to achieve the goal of returning Louisiana to the Union. Summing up his personal opinion of Butler, Durell wrote, “It was a great mistake to make a Manager of one of the most infamous public characters . . . [especially] a specimen of Butler’s natural malice.” Butler seethed at those he perceived as his enemies in Washington. At the time, Durell was too insignificant to be considered a co-conspirator. Yet, over a decade later, when Butler, and Butler alone, held Durell’s fate in his hands, this “natural malice” perhaps played a role in Butler’s vote to endorse the impeachment of Durell in Congress.

By May 1863, the Lincoln administration decided to reopen the Federal District and Circuit courts in Louisiana. Edward Durell was selected by the

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20 Ficklen, History of Reconstruction in Louisiana, 42.

President as Judge of the District and Circuit Courts, first awarded as a recess appointment, but later confirmed by Congress.\textsuperscript{22} Durell worked as Federal Judge under the recess appointment, but refused to be paid until he was approved by Congress, perhaps because he felt that a recess appointment appeared too much like the political patronage system he abhorred. General Banks wrote to Lincoln regarding the appointment, saying, "In all respects... [Durell's] opinions are in concurrence with the policy of your administration." Top New Orleans attorney Christian Roselius, who late returned to the Democrats, also wrote the President regarding Durell. He stated that Durell was "... an honest man of unwavering moral courage, who has always clung to the cause of the Union with truth and sincerity."\textsuperscript{23} Letters like these, combined with a favorable impression made on those in Washington during his service running city finances, paid off. Over the next two years Durell would work himself to exhaustion in a variety of roles, including judge of two Federal courts, Chairman of the Bureau of Finance, briefly as Mayor of New Orleans, and finally President of the 1864 Louisiana Constitutional Convention.

Durell was excited to work with Banks, believing that they shared the same goal of returning New Orleans to full civilian control. As 1863 came to a close, two Union loyalist parties had organized an election for a convention to write a new Constitution in January 1864. One was conservative, made up

\textsuperscript{22} Lane, "Edward Henry Durell", p. 156.

“mostly of planters”; the other, named the Free State party, was more radical and fully supported Lincoln’s Emancipation Proclamation. Durell belonged to the Free State Party. The conservatives were “displeased” and the Free Staters “scandalized” when Banks unexpectedly usurped their plans entirely on January 8, 1864. Through a military edict, Banks declared an election for only seven executive offices. There would be no legislature nor state judges. Most frustrating to Durell, any action taken by elected civilians was subject to review and revocation by the military.24 Durell, for a third time, attempted to resign as the Chairman of the Bureau of Finance. He despised being “part and parcel of the military government.”25 Banks refused the resignation; Durell apparently performed his job too well to allow for that.

Durell publicly revealed his displeasure on two occasions, calling Banks to account for trampling on the rule of law and the United States Constitution. As Federal Judge, Durell felt he was not subject to the whims of military rule. The first confrontation came in November 1863. A private steamer named the Alabama (not the British-built sloop-of-war of the same name) was captured, and declared to be a blockade runner for the Confederacy. Banks ordered the ship refitted for military use. Durell, following the letter of the United States Confiscation Act of 1862, felt that the ship must first be adjudicated in his court. Feeling the law, and his court, were being illegally usurped, Durell sent U.S. Marshals to the docks to seize the ship until the case was decided. Instead, the

24 Ficklen, History of Reconstruction, 55.
25 Debates in the Convention, Page 481.
Army arrested and expelled the U.S. Marshals from the ship and seized the Alabama for a second time. With the “apparent approval of Durell,” U.S. District Attorney Rufus Waples and the U.S. Marshals then began seizing cotton throughout the city, including from the military, for adjudication in the court. Brigadier General Charles Stone believed that if such behavior continued, “these men will have to be arrested.” Instead, Durell and Banks apparently met privately and managed to smooth things out. Durell, however, did manage to force General Stone into court, where he chastised and lectured him at length for believing he possessed the power to “override the civil authority” granted the District Court by the U.S. Constitution.26

Durell, never one prone to execute publicity stunts, likely felt forced to bring public attention to the issue of military rule. Before the cases of the Alabama and the cotton, Durell privately had implored Banks to restore civilian rule in New Orleans. He had argued to Banks that “The city of New Orleans represents not itself . . . not Louisiana . . . but the whole Mississippi Valley. England France, Austria, Prussia and Russia know nothing of Louisiana . . . Kansas or the other States . . . they only know New Orleans.” He implored Banks to “bring back the city of New Orleans - restore it to its normal state. . . and it will tell more for our great cause than a great battle won upon a bloody field.”27 Durell did not doubt the Union would eventually prevail in the war, but the window for a


27 Debates in the Convention, 481. Emphasis added.
Reconstruction based upon reconciliation was closing the longer New Orleans remained under the absolute authority of Union Generals. Further, if New Orleans were brought back to a sense of normalcy within the Union, two benefits would result. The first, and principle among Lincoln’s hopes, was the possibility that other areas of the Confederacy with wavering loyalties would follow Louisiana’s lead. Second, if New Orleans returned to civilian control as part of the Union, the foreign nations mentioned by Durell might consider the Confederacy doomed. Yet despite his plea in early 1863 to “put a civilian in that chair,” Durell glumly reported that Banks “promised to do so, but never did.”

Neither men appear to have held a grudge over these conflicts. On April 6, 1864, the opening day of the Louisiana Constitutional Convention, Banks wrote to Durell from the field, saying “Something tells me you will be President of the Convention.” Banks proved correct, but just barely. Durell won election as President by only two votes over Judge Thomas Howell, a man who later proved to have far more radical ideas regarding freedmen than Durell or Banks, and likely Lincoln, held in 1864.

On May 4, 1864 Judge Durell proudly wrote to his two sisters in Dover, New Hampshire “I have so much to do that I can hardly turn a book . . . Herewith I send you a copy of the first days proceedings of our Convention. There you may read my words on taking the chair as President.” The speech, quite lengthy,

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28 Ibid.

indicates Durell had prepared an acceptance speech in an attempt to set the tone for the convention. One section read:

Gentlemen - You are all familiar with the rise and progress of the grand drama which is being enacted in these days upon the continent . . . With this knowledge you will accept the progress of ideas; . . . you will willingly exchange a dead past for a living future . . .

Gentlemen - The first, chief cause of the present rebellion is patent to all. You have been called together . . . not only for the purpose of restoring the State to the Union, but also for the equal purpose of removing that fatal cause of strife and rebellion from Louisiana forever. 30

Durell’s speech was full of ambiguity mixed with a touch of bluntness. Clearly, Durell thought that ending slavery, a “fatal cause of strife and rebellion,” was necessary. The other questions, such as suffrage for blacks, or public education for blacks, or compensation for “Loyal” Union slaveholders, hide in the text under “the progress of ideas.” These issues were on the minds of the Convention members. While the abolishment of slavery was easily accomplished, Durell declaring he supported it “with my whole soul!,” rancor generally trumped civility for the next 78 days.

A running narrative of the Convention debates would offer much evidence of the presence of some “corrupt men in that Assembly.” Secretary of the Treasury Salmon P. Chase preserved a letter he received regarding the convention, stating that “the Character . . . of the Delegates is not such as could be wished. There are a few excellent men elected, like Judge Durell, Judge Howell, Dr. Bonzano and Mr. Brott.” The next letter received by Chase from New

30 Debates in the Convention, 56.
Orleans, after the Convention had met several times, declared, "What fools they [members of the Convention] are making of themselves - is a very common remark, even among those who helped to elect them." Durell, as President, could do little to reign in the absurdity. He possessed the power to appoint any and all committees, but could not make proposals or vote except in the case of a tie, or via special request of the Delegates. Nothing prevented him from meeting with delegates outside of the meeting and requesting a proposal be submitted. Generally, Durell's role was to perform as the Parliamentary Procedure traffic cop for the proceedings. This function, from the start, proved far more exasperating than Durell likely anticipated.31

Historians such as LaWanda Cox and John Ficklen noted that President Lincoln privately stated his desire to codify in the state Constitution the right to vote for at least some blacks, based upon either service in the Union armed forces, or demonstrated education. Perhaps the most significant victory for African-Americans, and one greatly resisted by many in the convention, was the requirement for state-funded public education for all children regardless of race, and the intent of the article was to provide integrated schools.

Most historians have interpreted the 1864 Convention in the context of liberal versus conservative regarding slavery and race. Among the delegates, however, there were additional factions. Among the most vocal were the voices of the white working class, both immigrant and native. Many of these men

31 Ficklen, *History of Reconstruction in Louisiana*, 69. This page contains the excerpts from the Chase letters. Ficklen covers the entire convention thoroughly. An excellent modern interpretation of this convention is found in Cox, *Lincoln and Black Freedom*. 
probably previously belonged to the American Party, the same that had used such violence to suppress the anti-corruption aspects of the 1856 City Charter. In 1864, for example, they attempted to use the constitutional convention to nullify every aspect of the New Orleans city charter they disliked. Two incidents occurred that revealed much about Durell’s fierce devotion to the city and his deep convictions about her future, including a rare public showing of anger.

During the session of June 25, 1864, Durell left the president’s chair to address the convention, delivering a lengthy personal appeal in which he discussed New Orleans, the 1856 city charter, and his desire for an end to military rule in the city. He confessed that some in the convention may dismiss what he was about to say, for he was “part and parcel of the military government,” as chairman for the Bureau of Finance. This function, however, he served “much against my will,” noting that “three times I have tendered my resignation; three times that resignation has been refused.” The blatant attempts by the American Party faction to destroy the 1856 New Orleans City Charter during a Louisiana State Constitutional Convention disturbed him. “There are faults about that charter, no doubt,” he confessed, “but there are merits also.” What Durell felt required recognition from all delegates was that the Louisiana “constitution has nothing to do with it.”

Durell chafed under military rule, even though in his roles as Federal Judge and Chairman of the Bureau of Finance, only the Governor could be closer to the inner circle. He specifically mentioned the City Charter, and how it

32 *Debates in the Convention*, 467. See page 453 for a lengthy example of an argument against the city charter.
had "nothing to do" with the Constitution, and had "merits". The speech in its entirety makes clear Durell desired no changes to the Charter. Durell, in 1863, had implored Banks to have city elections held under the 1856 Charter, the Charter he had written "alone, unaided and without counsel.”

Durell never mentioned publically his authorship of the City Charter. One could argue this showed wisdom, for enemies certainly lurked amongst the delegates. To reveal a deep attachment to a legal document would do nothing but expose weakness. What happened next must have been, from his perspective, the worst-case scenario.

Two articles were proposed and passed which alarmed Durell greatly. Article 137 stated in part:

The General Assembly [Louisiana State Legislature] may create internal improvement districts . . . and may grant a right to the citizens to tax themselves to pay for their improvements . . . and the City of New Orleans shall be prohibited from . . . working on any public works.

The City Charter that Durell had worked so hard on was designed, in part, to consolidate "the public debt of the three municipalities incurred during the period of their municipal independence." It also had "fixed taxation, before ruinously unequal, at an equal percent throughout the city." Supporters of Articles 137 and 138 intended to use the Louisiana state constitution to override, indeed destroy, much of what Durell had created in the 1850s, to return to the model that had proved so financially damaging to New Orleans finances between 1836 and

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33 Hon. Edward Henry Durell,” 121.

34 Debates in the Convention, 595.
1852. Durell felt he had pushed the 1856 changes for good reasons, including unfair taxation, municipalities draining the city budget on fake projects, such as laying "miles of worthless plank roads through open fields," and the level of corruption such a system created. Article 138 would actually make illegal any effort of New Orleans to control whatsoever the municipalities' yearly budgets. Each parish would be able to maintain huge work forces for manual labor (and political power) instead of using a contract system, which Durell believed was responsible for erasing the massive debts of the city. The proposals made the New Orleans city government created by the 1856 charter not merely illegal, but unconstitutional at the state level. One can sense Durell slowly losing control as the Articles came to a vote. After the two articles passed, after a failed effort to table them via a rider, Durell announced, "I will say en passant that I cannot see how any gentlemen living in New Orleans could have voted to lay that rider on the table." When one delegate attempted to attach a rider to Article 140, which was unrelated to the city charter, and concerned the manner in which a State superintendent of public schools would be hired, Durell abruptly ordered the man arrested, adjourned the meeting and stormed off.

The next morning the New Orleans Times (and only the New Orleans Times) labeled Durell as "drunk" and a "damned fool" and stated the the session of the previous day degenerated into a brawl with "black eyes" and "broken

36 Debates in the Convention, 595.
37 Ibid. 597-598.
chairs," none of which was apparently true. 38 The man arrested, a Mr. Cutler, the
next day held aloft a copy of the paper and announced "that every word and
sentence . . . is a corrupt and base falsehood!" Durell, irate, labeled the article, "a
most infamous libel upon myself and this convention." 39 The leader of the
conservative faction, Judge Abell, who had fought Durell during every debate
regarding slavery, suffrage and mixed-race education, now became his most
ardent defender. Abell declared that he had walked the city and visited an art
gallery with Durell immediately after the episode, and he swore that Durell was
not drunk. Others passed a resolution to call the editor into the convention to
apologize. From there the situation degraded into a display that certainly
reflected poorly on Durell and especially the Convention. Delegates passed
resolution after resolution against the editor of the New Orleans Times,
eventually sending him to prison for ten days (although General Banks released
him the next day). Durell remained silent for the duration. On August 20, he wrote
to his sisters, informing them he could not "leave for the North before the
10th-15th of September" in order to determine if the people accepted the
Constitution. Before closing the letter with the standard salutations, he wrote "I
care little about the curses in murky newspapers as I have to do my duty and live
with slander in our lives." 40

The Constitution was ratified by those citizens who had taken the oath of
loyalty prescribed by Lincoln. The proposed constitution itself was a failure, and

38 Ficklen, History of Reconstruction in Louisiana, 73.
39 Debates in the Convention, 598.
40 “To my Dear Sisters” August 20, 1864. E.H. Durell Papers.
Louisiana was not allowed back in the Union. Regarded with contempt by both Democrats and Radical Republicans in Congress, the constitution never stood a chance of acceptance in Washington. It certainly did not help that, while the convention was in session, New Orleans resident, former slave owner, and self-professed Radical Republican Thomas Durant traveled to Washington to denigrate the delegates and the new constitution, for he felt “there was no place” set aside for him. Radical Republican Senator Charles Sumner declared it an “abortion.” President Lincoln approved, and let that be known, but Radical Republicans like Sumner and Thaddeus Stevens wanted to control the course of Reconstruction. After the war, returning Confederates “rejected the convention’s work as based on fraud and corruption.” Despite his hopes based on Butler’s early attempts to create civilian government, then those of Banks in early 1863, and finally with the passage of the 1864 state constitution, Louisiana, and New Orleans, remained under the control of military authorities far longer than he ever imagined when Union forces first took the city in 1862.

If Durell harbored ill feelings towards Senator Sumner and General Banks, the inundation into the city by defeated Confederates and the assassination of President Lincoln apparently changed his opinion. On October 18, 1865 Durell wrote his sisters that, a few days earlier while in Boston, he had passed a wonderful evening “in company with Gen. Banks, and Charles Sumner.” Now, he continued, “I leave for Washington this afternoon much against my will! I detest

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going there, but it is insisted upon by some of my friends here." He also noted that while in Boston, he, by chance, encountered General Butler on the street. Durell sarcastically stated Butler appeared “princely” and had told Durell that he supported Durell’s appointment to the Supreme Court. Durell bluntly informed his sisters, “I detest the idea.” Being forced to live in Washington, or travel the circuit to places such as Texas, was “craziness.” New Orleans, he believed, could be saved, despite ominous signs that harkened back to the antebellum years. One year later, Durell apparently began to reconsider his dislike for appointment to the Supreme Court, but in a case of bad timing, the opportunity was lost.

Durell had reason to worry. Historian Ted Tunnell described the discovery of an early Reconstruction secret political organization named the Southern Cross Association. To long-time New Orleans residents like Durell this, “presaged revival of the mob tactics,” used by the Know Nothings, and then the American Party, with brutal effectiveness. The legislature, already dominated by Democratic sympathizers, moved state elections up by three months, to January of 1866. Republican Governor Wells, who had been elected under the limited civilian government instituted by General Banks in 1863, vetoed the bill, but was overruled by President Andrew Johnson, who threatened to have General Philip Sheridan run the election instead. The election resulted in a Democratic sweep; many of those victorious, such as Mayor John Monroe, Tunnell noted, “were

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43 E.H. Durell to his Sisters, “My Dear Sisters”, October 18, 1865, E.H. Durell Papers. In the same letter Durell complained that Matthew Brady charged him $42 for his photograph, “more than my head is worth!”

44 Ibid.
veterans of the Know Nothing mobs of the 1850s." At this point, Tunnell argued, "Conciliation had failed."\footnote{Ted Tunnell, \textit{Crucible of Reconstruction: War, Radicalism and Race in Louisiana, 1862 - 1877}, (Baton Rouge: Louisiana State University Press, 1992), 103.}

In these changing political tides, Durell began to ally himself with the more Radical Republicans, including Dr. A.P. Dostie and a young native of Illinois named Henry Clay Warmoth. Together they declared support for President Johnson's amnesty plan, which allowed for former rebels, "falling below certain \cite{military} ranks and possessing less than $20,000$ worth of property," after "taking an oath of allegiance, to be restored to citizenship." However, they also wanted those leaders of the Confederacy of high military rank who possessed vast amounts of property to be permanently disenfranchised. Most controversial was their statement that "all loyal men (white and black) should be 'equal before the law.'"\footnote{Ficklen, \textit{History of Reconstruction in Louisiana}, 105, 112.} Durell turned his words into action, and insisted on the use of mixed-race juries in his court. This, as Durell surely expected, inflamed the racist passions of the opposition.\footnote{Lane, "Edward Henry Durell", 157.}

These actions of late 1865 and early 1866 often have cited as evidence that Durell was an ardent radical from this point forward. Other evidence suggests this was not the case. By this time he firmly believed in the full civil rights, citizenship, including suffrage, for all freedmen, but he refused to take part in actions he believed were unlawful to achieve these ends. Most especially, he
refused to take part in a scheme to reconvene the 1864 Constitutional Convention in order to force through changes he felt entirely illegal.

According to John Rose Ficklen, "In the spring of 1866, some 30 or more" of the 1864 Constitutional Convention delegates...had become so much exasperated" at seeing the state government seized by "ex-rebel" Democrats that they devised a plan to "reconvoke the convention of 1864." The goal was to revise the constitution in order to grant suffrage to freedmen and to disenfranchise a far greater number of ex-rebels. Their opportunity to concoct this plot in the first place was due to an article passed just before the 1864 convention disbanded.48

The last official motion put forth before lengthy, bi-partisian motions thanking Durell for his performance as President, was placed by Mr. Cutler, the same man Durell had ordered arrested earlier in the convention. The crucial opening sentence stated, "it shall be at the call of the President, whose duty it shall be to reconvoke the Convention for any cause." Mr. Cutler claimed his proposal would serve as a safeguard for the new Constitution in the event "its enemies should be likely to prove successful in defeating it."49 This was a remarkable grant of power to the President of the Convention. No evidence exists that reveals Durell desired, or possibly even instructed Cutler to make this proposal. Durell never mentioned it in his letters. When later testifying to a Louisiana Grand Jury, he was never asked about this power. But it certainly

48 *Debates in the Convention*, 625.

49 Ibid.
seems possible Durell, perhaps in conjunction with General Banks, wanted this power kept solely in his hands because of his deep distrust, shared by General Banks, of the Radical, Conservative, and American parties. He possibly feared some attempt to subvert the Constitution, and perhaps his 1856 City Charter.

Whatever the reasons behind this grant of power to Durell in 1864, he no longer desired it in 1866. Charles Smith, who was chairman of a committee of former delegates who hatched the plot, later testified regarding Durell's response when his group first proposed their idea. When Smith asked Durell if he would use his power to reconvene, he replied, "No, sir," quickly adding, "It will be as much as your life is worth to be there," if they attempted to execute their plan. Durell spent the next two months attempting to warn both ex-delegates and Federal authorities that bloodshed would result if any attempt was made to usurp his own power and reconvene the convention. No one listened. Durell, called to Washington by President Johnson, left New Orleans in early July.50

On July 30, 1866, at the Mechanic's Institute in New Orleans, less than half the number of delegates required to form a quorum met, removed Durell as President, and installed in his place Judge Thomas Howell, who now used the President's power to reconvene. Outside, "three or four hundred" convention supporters, "mostly black" gathered. They were offset by "perhaps as many fifteen hundred white civilians and police." When a parade of "about two hundred black Union veterans" marched into the square, brutal violence erupted. By the time General Absalom Baird even heard about the situation, several convention

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members were dead, including Dr. A.P. Dostie, and many severely wounded, including former Louisiana Governor Michael Hahn. The true viciousness, however, was reserved for the blacks, with “38 dead and 184 wounded,” although the true number was probably higher. General Sheridan later wrote, “It was no riot, it was an absolute massacre.”

Two days before the riot, Edward Durell had written to his sisters from New York. Unlike most of his letters since the war began, this one was light, happy and full of good news. He had arrived in the city from Washington, where, he informed them, “Congress has passed a Bill making me Judge over the whole state of Louisiana,” including a raise of $1,000 per year. “With this,” he said, “I am satisfied and shall get along very well.” Also, he stated, “I was received with a great deal of courtesy by the President and other officers of the Government.” He even teased his twin Margaret about seeing their mutual childhood friend, Secretary of the Treasury Hugh McCullogh, on whom she once had had a girlhood crush. He closed with a postscript that revealed a change in attitude regarding remaining in New Orleans. He mused that, “I should have been raised to the Sup. Bench if Johnson had had the sense to send my name,” before the session of Congress closed. Johnson, however “got wise too late - he would send it now. Thus we fall short just by a miss.”


52 “To my Dearest Sisters”, July 28, 1866, E.H. Durell Papers.
On August 5, 1866, Durell wrote to his sisters from New York about the massacre.

The terrible riot in New Orleans has covered me with deep sorrow. I did all I could to hinder the reconvening of the Convention of 1864. I told members of the Convention and others who pressed me sorely, for two months, to do so that it would result in riot and bloodshed and that I would have nothing to do with it, but they laughed at my warnings. Gen. Sheridan I hold much to blame... I told him that if the convention attempted to reconvene it would be attacked by an armed mob... Some of the writers say that I at one time favored the reconvening of the Convention, such is not the truth. I, at all times, discontinued the again coming together of that Body, and used all my formal influence to hinder it.53

Regarding the fallout from the attack by "at least a thousand of the pretended chivalry", Durell predicted that, "when Congress meets in December the Rebellious States will be handled with severity."54

Four days later Durell wrote again, feeling "much depressed" due to the "terrible crime" of the riot. He also was perplexed at the northern Radical papers, who "abused" him, "for what cause I cannot well tell." Durell insisted that he had fought for months to stop the "insane attempt to revolutionize Louisiana." "I was right," he added, "to have nothing to do with it." As the letter closed Durell revealed a looming sense of frustration and despair about the future of New Orleans. "I have got out of the way of the politicians," he wrote, "a class with

53 "To My Dear Sisters", August 5, 1866, E.H. Durell Papers.

54 Ibid.
whom I wish to have nothing to do. Both sides appear to me to be . . . striving for the sport alone. The mass of the people are alone honest.55

On December 28, 1866 Durell was called to testify to a special Congressional Committee created to investigate the cause of the riots. This testimony has led some historians to state that Durell had, “sounded Congress out on the plan,” to reconvene the convention, only to refuse to take part when he felt there was not enough support in Washington. However, the added context of Durell’s personal letters reveal his deep mistrust for those attempting to change the Constitution. Durell noted in his testimony that, when first approached, he was told, “protection would be afforded” to attendees. Durell knew this was either foolish hope or an outright lie. He asked General Sheridan whether, if the convention reassembled, Sheridan would “obey my orders?” The General responded clearly in the negative, promising to arrest both convention delegates and anyone who attacked them. This was the answer Durell anticipated. He was then told that members of Congress approved of the plan to reconvene. This, too, Durell felt was patently false, so he secretly sent a telegram to Senator William P. Fessenden, and Representatives Thaddeus Stevens and George S. Boutwell, asking if this were true. Durell testified, “I could get no reply whatever.” When he later had the opportunity to ask Stevens why no reply was made, he responded that, “they had nothing to say on the subject, and so said nothing.” Having exposed some of the untruths being espoused by those speaking with

him, Durell claimed that he had attempted to sway other potential attendees to refuse to take part in the reconvening the convention. 56

Durell was questioned mostly by Democratic Representative Benjamin Boyer of Pennsylvania. Durell clearly realized that leading questions were being asked to uncover a bias in favor of Radical Republicans. He answered only the question as asked, never offering additional comments. Durell did give away his feelings on two key points worth mentioning. He fully supported the Fourteenth Amendment, passed the previous June, because, “the civil rights bill [civil rights act of 1866] may be considered as a completion of the putting down of the rebellion . . . [but] I do not think it could be enforced [today] . . . ,except by the aid of military power...You cannot expect that people are going to change in one day.” The second was Durell’s statement, “As long as I have been in the city of New Orleans I know but very few people here. Personally I do not know, I suppose, more than a hundred people in this city [Washington].” Evidence of later events suggest Durell did not exaggerate in this statement, for when he needed friends, none were to be found.57

The massacre prompted by the 1866 meeting marked the end of President Johnson’s amnesty initiative to bring former Confederate states like Louisiana back into the Union. It also served as the basis for conspiracy theories from the time of the Dunning School, when some argued that the Radicals attempted to incite a riot, knowing it would end Johnson’s plans, and others


57 Ibid.
arguing that the former confederates desired to solidify a hatred of the
Republicans through racism. Historian Paul Bergeron considered the ensuing
division created by the riots within the Johnson Administration as a key
contributor to the President's political collapse.

In historians' accounts, Durell has at times been blamed, considered
cowardly, stated as an early supporter of Radical Reconstruction, or ignored
entirely. His letters to his family in the days after the riots combined with his later
congressional testimony reveal his numerous and failed efforts to stop a plot he
never supported from the first time it was suggested. For the next six years Durell
strived to keep his promise regarding politicians; they became a class with whom
he attempted to longer have "a thing to do."

Nevertheless, over the next few years the nature of his position as a
Federal Judge, and some public demand, sometimes threw Durell into the
limelight. In 1867 he traveled to Washington to personally request that President
Johnson suspend the use of the wartime Confiscation Acts, which were was
being used to seize property from former rebels. As early as 1863 Durell had
witnessed how "harpies on both sides" utilized confiscation to line their own
pockets, not to help the U.S. Treasury. This move met with approbation by many
ex-rebels, but Durell was not looking for accolades; in fact there is no evidence
any one knew it was his idea. It was during this same meeting that Durell later

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59 Paul H. Bergeron, *Andrew Johnson's Civil War and Reconstruction*, (Knoxville: University of
Tennessee Press, 2011), 118-120.
60 E.H. Durell to his Sisters, "To my Dear Sisters", August 14, 1866, E.H. Durell Papers.
wrote of what he considered the "greatest mistake of my life," when Secretary of State William H. Seward offered him the post of U.S. Ambassador to the Austro-Hungarian Empire.

I was sitting conversing with him in the state department . . . when he tendered me the position, and from a foolish delicacy touching my [Harvard] classmate, [Historian John Lothrop] Motley, the then minister with whom the administration was in a quarrel, declined it. That offer opened an easy and most honorable retreat from the sty of all unclean things which then existed and still exists in Louisiana.61

In 1868, Durell "was strongly advocated as the candidate for vice-president with General Grant" by some Southern Republicans, white and black. One editorial in the New Orleans Republican declared, "The loyal men of the South, with their seventy or eighty electoral votes, . . . may surely ask . . . that the vice-president be taken from their section of the Union . . . Judge Edward Henry Durell will make a vice-president of whom . . . Louisiana and the South . . . will be justly proud."62 As Charles Lane revealed, "Durell discouraged such talk," for he still held out hope for elevation to the Supreme Court, an idea he had earlier "detested."63

61 Honorable Edward Henry Durell, 123. (The Granite Monthly does not state to whom this letter was sent, but it is yet to be found in his papers at the New York Historical Society, and within the context of the writing, appears not very likely to have been to his sisters, who already knew Motley was Durell's Harvard classmate.

62 Honorable Edward Henry Durell, 124.

1868 also witnessed a first, a Louisiana Constitutional Convention comprised of a slight black majority.\textsuperscript{64} While Congress had forced recognition of black suffrage in elections for the convention, the result did not enhance party unity among Republicans. Well before the convention began, there already existed a split among the Louisiana Republicans between a "carpetbagger-led group" headed by future governor Henry Clay Warmoth and an African-American contingent loyal to Dr. Louis Roudanez, the editor of the \textit{New Orleans Tribune}. Many in what was called the "Pure Radical" faction believed Warmoth's "commitment to civil rights was suspect." They were later proven correct.\textsuperscript{65} 

To a long-time resident of New Orleans like Durell, this possibly appeared to be the same play with new actors. During his term as Alderman, the Democratic party had been split in two, one side ruled by Pierre Soulé, the other by John Slidell. This had left an opening for the Know Nothings to seize control through organized mob violence. Those tactics were well remembered by the ex-rebels; the \textit{New Orleans Times} conceded the current battle to the Radicals, but "assured their readers that whites would eventually prevail, either 'peacefully or with such drenching of the earth with the blood of the innocent as characterized the great revolution in France.'\textsuperscript{66} 

Another continuity with the 1850s Durell likely recognized was rampant corruption by the party in control. After his first year as Governor, Henry Warmoth


\textsuperscript{65} Ibid, Chapter 6.

\textsuperscript{66} Ibid, Chapter 6.
reluctantly admitted under oath that he had managed to increase his personal wealth by “far more than” $100,000 on his $8,000 Governor’s salary. By the end of his term, it is estimated he was worth over $1,000,000.67

Meanwhile, Durell’s court was swamped with cases, the great majority of which involved bankruptcies. Supreme Court Justice Salmon P. Chase was astounded at the amount of work Durell achieved, declaring it “without precedent” in the history of the nation.68 Bankruptcy cases exploded after Congress passed the Federal Bankruptcy Act of 1867. The Court became so inundated with such cases that Durell published a pamphlet, titled “Rules, Orders, and Regulations in Bankruptcy Adopted by the Hon. Edward Henry Durell.” Back in 1843, Durell’s first foray into public life had been crafting a statute that attempted to limit the corruption, perjury and collusion that existed in Louisiana’s bankruptcy and inheritance cases.69 Durell, long sensitive to these abuses, desired to make clear how the process for voluntary and involuntary bankruptcies would take place in his court.

Historian Elizabeth Lee Thompson has written a multi-faceted and fascinating account of the Federal Bankruptcy Act of 1867. She argued that this Act, despite a long-lived historiography indicating otherwise, was welcomed and heavily utilized by southerners, only later to be labeled “a scourge” when its usefulness had run its course. She notes that southerners of this period


69 “Honorable Edward Henry Durell,” 119.
considered the act "distinct from Reconstruction legislation," and initially supported the benefits provided. This resulted in many powerful white southerners utilizing the Federal Courts to alleviate pre-war debts. As Thompson showed, the long-held belief of southern mistrust, even hatred, of the federal courts was not entirely accurate. Indeed, Thompson argued the Bankruptcy Act of 1867, passed by arguably the most Radical Republican Congress, helped "entrench Southern society's class and race structure after the Civil War." \(^{70}\)

After this bill passed and began to go into effect, Durell testified to Congress that,

> I suppose that those who made themselves part and parcel of the rebellion are extremely anxious to regain their former positions as the commanders of the situation in politics and that in the State elections and city elections to take place they will be candidates, and that the people [who took part in the rebellion] will elect them. \(^{71}\)

Durell's court, inundated by bankruptcies, seems likely to have produced similar results shown by Thompson's research. While Durell left no direct evidence he was aware of the abuse of this law, it appears plausible he knew of it, and some of his procedures and rulings angered those attempting to regain their "former positions." They still awaited their opportunity to strike, but when it came, they joined with a Radical Republican from Durell's past to smear his character to great effect.

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\(^{71}\) *Report of the Select Committee on the New Orleans Riots*, 261.
By 1870, Durell witnessed a new tactic used by ex-rebels to reclaim their "former positions," the use of the Federal Court for other forms of lawsuits. Historians Ronald Labbé and Jonathan Lurie detailed this stratagem in their study of *The Slaughterhouse Cases*. They noted these attempts were hardly a conspiracy; the *New Orleans Bee* published an editorial stating this course of action would thwart the Civil Rights Act, and even the Fourteenth Amendment, by using "poison as an antidote to poison."\(^{72}\)

This case was based on a city law passed requiring butchers in New Orleans to work only at one large plant, paying rent for space, in order to reduce the filth in the city. For years butchers had operated where they liked, resulting in offal and waste from their trade being dumped in canals and streets, and generally contributing to the horrible odor and contamination in the city. While a similar law passed in Illinois was met with "great fanfare," in New Orleans the reaction was anger and protest, much of it to do with resentment against the Republican government and accusations of corruption regarding the private company created to host the butchers and, arguably, control the trade. A movement began to challenge the law as a violation of the white butchers' civil rights, as defined in the Fourteenth Amendment. This case became a famous Supreme Court case, but to get there it first traveled through Durell's District Court.

Durell's ruling was similar to the majority ruling written by Supreme Court Justice Samuel Miller in March, 1873. Durell dismissed the case in 1869, saying

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\(^{72}\) Ronald Labbé and Jonathan Lurie, *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment*, (Lawrence: University Press of Kansas, 2003), 143.
it was not a Federal Civil Rights issue, and the case belonged in the Louisiana State courts, because the Thirteenth through Fifteenth Amendments were not intended for such matters as the ability to conduct one’s trade as desired, but on far broader Constitutional rights. Miller’s opinion argued that Congress never intended the Fourteenth Amendment to "bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States." Miller believed “the right to slaughter animals freely . . . was beyond the protection of the national government.” While historian Xi Wang noted that Miller had “rejected [an 1871] interpretation” of federal “circuit court judge William B. Woods" that argued the opposite, it could have been that Miller did so because he agreed with Durell’s 1869 case dismissal. This limited interpretation of the power of the federal government to protect civil rights by the Supreme Court, however, would serve as the foundation for the systematic suppression of African-American civil rights by state governments for nearly a century.

The tactic of ex-rebels to use the Federal Courts to battle against Republican control apparently wearied Durell. As he acknowledged later in life, his efforts to find an “honorable” way out of Louisiana appeared bleak. Finally, in 1871 Durell began to consider resigning his post. This led to an unexpected result, an extremely rare and public bi-partisan effort, begging Durell to remain on as Judge. He received a letter from selected representatives of the New Orleans Bar, signed by twenty three Democrats and nine Republicans. Republican signers included U.S. District Attorney for Louisiana J.R. Beckwith and Governor Warmoth’s District Attorney Simeon Belden. Democrats who signed included
former U.S. Senator John B. Weller and, perhaps most influential, Christian
Roselius, whom Durell had portrayed as the pre-eminent New Orleans attorney
in his 1845 novel. The letter described the Judge as “tried, faithful, able, learned,
and incorruptible” and begged him, “for the good of the country, remain upon the
bench in the courts of the United States.” The letter, and editorials in Republican
newspapers, swayed Durell to remain in his post.73

As 1871 rolled into 1872, the political situation in New Orleans devolved
into near anarchy. An irreparable rift erupted within the Republican party starting
in August of 1871, when Governor Warmoth was “read out of the Republican
Party.” By the next year the state government was split, with the House barely in
the grasp of Warmoth, and the Senate in the hands of Radical Republicans
supported by Louisiana African-Americans. Warmoth even managed to shut the
Senate out of the Legislature, forcing them to meet in a room above the “Gem
saloon” on Royal Street. Both sides sent repeated messages, and even
degations, to Washington D.C., to plea with President Grant for resolution. This
was something Grant desperately desired to avoid for fear that Federal
intervention in a state legislature would greatly damage Republicans nation wide.
Under such auspices the state elections of 1872 loomed.74

In the summer of 1872 there existed three factions among Democrats and
Republicans, each hoping to nominate a slate of candidates. One, the “Liberal
Republican” party, supported by Warmoth and other republicans, rejected the

74 Charles L. Dufour, “The Age of Warmoth”, The Journal of the Louisiana Historical Association,
VI (1965), 354-359.
“corruption” of the Grant administration in Washington. A “Reform” party, including former Whigs and most Democrats cooperated in a second grouping. Last, a faction of mostly African-Americans split temporarily from the standard Republican party, but after recognizing the effect this had on their chances, they returned. Before these alliances were formed, Judge Durell found himself a popular figure. Shortly after the 1872 election he wrote that during that summer, men of both parties, rather than three parties, approached me with a tender of a possible nomination [for the office of Governor]. .. I felt neither pleased nor complimented; .. a close review of the then immediate past convinced me that the man all parties wanted was a man who would pander to their rascalities. Thus, .. I have never been covetous of political honors in Louisiana.

Durell rejected all these proposals.

By the time of the election Warmoth’s Liberal Republicans had joined forces with the Democratic party to create what was called the “Fusionist” party. The resulting election was “so shot through with fraud no one ever had any idea who had actually won. .. The election was dishonest, the count was dishonest, and there was no honest way in which the result could be decided.”

To ensure a Fusionist victory, Warmoth first attempted to replace a member of the election returning board, which had the power to decide disputed votes, with a hand-picked successor. This only resulted in a revolt by Secretary of

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75 *Uncivil War*, 91-92.
76 “Honorable Edward Henry Durell”, 126.
State Andrew Herron and State Senator John Lynch, who appointed two new members to their own returning board. Warmoth, crooked perhaps, but no fool, had anticipated such a maneuver. He “responded with a novel maneuver, creating yet a third returning board,” by using his power as Governor to sign a bill passed months earlier by the legislature, but that he had never signed. With the state legislature out of session, and the new one awaiting the results, there was no manner in which to stop this action, or so it appeared. Warmoth’s third board immediately declared the Fusionists victors, including new Governor John McEnery, an unrepentant rebel and viciously anti-black campaigner.78 “To solidify his grip on Louisiana government, Warmoth “ordered the new legislature. . . into extraordinary session on December 9, 1872, well in advance of the inauguration date of. . . January 13, 1873.”79

In response, the Republicans initiated their own flurry of activity. First, Col. James Casey, the brother-in-law of President Grant, appealed to him for succor from Warmoth’s machinations. On December 3, 1872, Grant’s attorney general, George Henry Williams, telegraphed U.S. Marshall Stephen B. Packard, ordering him to “enforce the mandate of the U.S. Courts, no matter by whom resisted.” Meanwhile, William Kellogg, the regular Republican candidate for Governor, applied to Durell’s Court. Kellogg charged massive violations of black voter rights, in violation of the 14th and 15th Amendments. Durell ordered a delay in any election counts in order to examine claims that there were thousands of

78 Hogue, *Uncivil War*, 96.
79 Ibid.
affidavits from affected voters, and a chance to review election returns. Warmoth declared that only he had the power to possess voting returns, and refused to hand them over. By December 6, Durell learned of information that he felt forced him to make a decision he knew would have grave national consequences.⁸⁰

The U.S. District Attorney for Louisiana, J.R. Beckwith, later testified to a Senate Committee investigating the election that Durell informed him that "he had satisfactory information" that Warmoth planned to use the state militia and city police to "garrison" the state house starting the next day. Durell told Beckwith "that he had made up his mind that to save bloodshed the only course left for him to pursue was to issue . . . an order of sequestration, based on the open and notorious contempt of his order that had been persisted in for a week before . . . so that he could maintain his jurisdiction and enforce his order without risk of bloodshed."⁸¹ Later that night, with troops provided by General William Emory, the U.S. Marshal seized the Mechanic's Institute, the same site of the 1866 riots, before Warmoth could install his own state troops there. At this moment events abandoned the legal realm and became purely political.

Durell's action quickly acquired the moniker the "Midnight Order," or "Great Fraud."⁸² Yet few have delved into the basis for Durell's action, which share aspects of his actions in 1866. Before the 1866 Massacre, he had inquired of

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⁸⁰ Hogue, *Uncivil War*, 97-98.


General Sheridan and Congressmen such as Thaddeus Stevens whether he would receive federal support in preventing the violence he expected would occur. The answer was no. In 1872 he appears to have done the same thing, likely through Grant's brother-in-law. This time he was told through the attorney general he had that support to prevent bloodshed, and, in the short term, he did.

Legally, Durell felt authorized to send the marshalls in order to protect the Fourteenth and Fifteenth amendment rights of African-Americans, hundreds, possibly thousands, of whom had filed affidavits declaring their suffrage rights were violated through violence and intimidation. If Warmoth were allowed to seize the state house through armed force, in direct violation of Durell's injunction, another bloody riot seemed sure to take place. His authority, Durell believed, came from the “Enforcement Acts” passed by Congress on April 20, 1871. The telegram sent to U.S. Marshall Packard from Attorney General George Henry Williams stated that Packard must “enforce the mandate of the U.S. Courts, no matter by whom resisted,” officially granting Durell authority under Section 3 of the act that stated,

\[ \ldots \text{it shall be lawful for the President, and it shall be his duty to take such measures, by the employment of the militia of the United States, or by other means, as he may deem necessary for the suppression of such \ldots domestic violence.} \]

In 1874, Durell said of sending federal troops that he “could not well help it,” and that “what I did was, at least, done honestly.” This possibly indicates he felt legally required to take this action under Section 6 of the same Act. This section declared,
That any person or persons, having knowledge that any of the wrongs conspired to be done . . . and having power to prevent or aid in preventing the same, shall neglect or refuse so to do, and such wrongful act be committed, such person or persons shall be liable.83

Durell, perhaps feeling a sense anger that his warnings prior to the riots of 1866 had been ignored, realized in this instance that he now had the authority to avert a similar, or worse, disaster. It was the boldest use of the Enforcement Acts, and one he did not use lightly. His experience from nearly 35 years of witnessing New Orleans politics gave him insight few others involved possessed.

The United States Senate launched an investigation of the Louisiana election in early 1873, through the Committee on Privileges and Elections, chaired by Senator Oliver Morton, a Radical Republican from Indiana. During the investigation, Warmoth had the opportunity to question Marshall Packard, where he attempted to tie Durell’s supposed ambitions for his friend E.E. Norton to become Louisiana Senator to his judicial decision. This resulted in a most spirited defense of Durell’s honor by Packard.

I believe now, and I think every man in the city of New Orleans who knows anything about the subject believes, that Judge Durell was not influenced by any such motives as some have ascribed to him. . . . The bar of New Orleans generally admitted it. . . . and those who are circulating this slander, if they knew anything about the truth or have regard for it, should stop it. He has not been guilty of the things charged against him in any shape or form.84

83 Xi Wang, The Trial of Democracy, Black Suffrage and Northern Republicans, 1860-1910 (Athens: University of Georgia Press, 1997), 288-291. Wang provides the full text of the Enforcement Act on these pages.

84 A Report of the Attorney General, 969. This testimony is noteworthy because Packard easily could have used Durell’s order to shield himself from the intense amount of blame and questioning he received for following the directive, yet he did not.
Warmoth’s faction, as Packard also pointed out in his testimony, “abandoned the case” brought by Kellogg regarding the violation of the Amendments. Warmoth did not dispute Packard’s statement in this regard. Warmoth also testified, and during one session he suggested that Judge Durell be subpoenaed. Senator Morton disagreed, and the subpoena was not issued. Perhaps Republican Senators did not want to hear from Durell, or possibly they felt they already had their scapegoat and did not wish to give Durell a chance to harm this goal.85

Later, Democrats, and some Republicans, accused Durell of blatantly abused his Federal powers to steal the state election. When Warmoth, McEnery and their allies went to the U.S. Supreme Court in 1873, the case was dismissed and Durell’s ruling stood. Congress contemplated holding another state election, but realized the only way in which a repeat of events in November 1872 could be avoided would be a massive presence of Federal troops throughout all of Louisiana. This was not palatable either to President Grant or to Congressional Republicans. Instead, Grant threw his support behind Kellogg and hoped the issue eventually would fade away. It did not.

Warmoth’s faction ignored the federal courts and installed their own state government. Dueling Governors McEnery and Kellogg each began making numerous official appointments for statewide offices. On March 5, 1873, under orders from “Governor” McEnery, a heavily armed, self-described state militia

85 Ibid, 867.
attempted to seize the state house by force, but they were repelled by federal troops. In Congress and the press, Democrats, with some Republican allies, began a movement to have Judge Durell impeached. To make matters worse for Durell, his “Midnight order” failed in the long run to prevent bloodshed. In 1873, an estimated 150 African-Americans were murdered in upstate Louisiana by an organized “militia” of whites, claiming legitimacy as appointments of “Governor” McEnery, in what became known as the “Colfax Massacre.”

This outrage did little to engender support for Durell. Although Representative John Bingham of Ohio attempted to delay the formation of an impeachment committee, it proved fruitless. Durell grimly told his sisters, “The charges against me are most vile and false. . . For performing a duty I could not avoid, the loser party seems capable of anything to destroy me.” Durell soon discovered it was not merely the “loser” party who proved capable of “anything.” His own party proved capable of the same, and the person who led the effort was none other than former General Benjamin Butler, now a Congressman from Massachusetts.

As the new Congress convened in January 1874, Butler was appointed chair of the House Finance Committee. Under these auspices he formed a committee to investigate Durell. The testimony of numerous witnesses were publicized in Democratic and Republican newspapers nation-wide, with little regard for the veracity of their statements. The investigators had no shortage of

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87 Lane, “Edward Henry Durell,” 164.
88 Ibid.
partisan witnesses willing to state anything regarding Durell's personal character that could prove damaging. This led to Durell's later reputation as a drunkard, often intoxicated on the bench, a reputation that has lasted into the 21st century. The investigation delved deeply into Durell's long history in the city for proof of corruption. Butler's committee appeared certain that no man in New Orleans who held Durell's numerous positions of power since the 1850s could possibly have not enriched himself through the abuse of their offices. To their chagrin, they found no evidence, for there was none to be had. They instead focused on the closest they could discover, Durell's relationship with Emery Ebenezer Norton, a Durell appointee as Register to his Bankruptcy court.

The numerous complaints from the wealthy ex-rebels about Norton were based on the "extortionate" fees he stood to win as the middle man in bankruptcy cases, between creditors and those seeking to void debts. Many claimed Norton had enriched himself immensely at the expense of both parties in these cases. This, they argued, was corruption at its worst. The committee, however, found no evidence that Durell profited personally. He was, after all, "almost a recluse," who kept, "no carriage, nor horse" and lived "in rented chambers" and had "no property, no money." In addition, as an anonymous journalist asked, why were

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91 *Observations on the Case of Judge Durell, of Louisiana* (New York, NY, Bibliolife Network, 2012), 24. Harvard University owns one of the surviving copies of this pamphlet, and no author or publisher is listed. If authored by a Louisiana journalist, anonymity may have been desired to protect their job, friendships, and perhaps even personal safety, for defending Durell was a very unpopular stance to take.
no other assignees publicly questioned to determine the “turpitude” of Norton? “Is it possible if he [Norton] had so grossly abused his trust as it is contended... that not one of the several hundred associates would have exposed him? *If they jointly abused the trust why are their names withheld?*”92 In fact, Norton was never criminally charged, and he continued in his bankruptcy role in both Louisiana and Mississippi long after his supposed corrupt relationship with Durell had ended.93

Durell never offered his own public defense, perhaps feeling that this would only make matters worse. He had learned first in 1856, when passing the City Charter, and again at the close of the 1864 Constitutional Convention, that publicly attacking the press only resulted in even more untruths being published. He also had very few public supporters, many fearing political or possibly even physical retribution. It was the African-Americans of New Orleans who most publicly came to his defense. At a large gathering in St. James chapel on March 23, 1874 African-American journalist Thomas Morris Chester spoke at length in praise of Durell. He reminded the audience to “remember from what a fearful calamity we have been rescued” through Durell’s preservation of the “sanctity of the ballot-box,” and to recognize Durell’s protection of African-American voting rights, by engraving “the name of E.H. Durell, the true patriot, the enlightened

92 Ibid, 23.

93 Remarkably little information is available on the life of E.E. Norton. Search of newspaper archives reveal no accounts of criminal charges or proceedings, and a brief biography on the Monroe County Historical Association website (http://www.monroehistorical.org/articles/files/100108_norton.html) states Norton still owned and used a mansion in New Orleans as a winter residence when he died in 1901, indicating he was not forced to flee the state like Durell when the Democrats returned to power in 1874.
statesman, and the just judge, above those of our much endeared legal champions.” He closed his speech by declaring “God bless!” and added for climax, “And if Heaven has any higher benediction with which it favors mortals, let it be conferred on Judge Durell!”94 Durell’s sisters, Elizabeth and Margaret, wrote to President Grant, imploring him to “not permit the great injustice which threatens to crush our brother. . . he is not guilty of the crimes of which he is accused.” Neither Grant, nor anyone else from his administration, ever replied.95

If Butler’s very public and humiliating investigation was intended to force Durell to resign quickly, he underestimated the Judge. Durell obstinately insisted on forcing the House to complete their task, for Durell knew the most scandalous charges were completely false. This was likely not what Butler had in mind when trying to scapegoat Durell’s action as not representative of Republicans, but instead a drunken and incompetent old man. More damaging to Republicans was the financial Panic of 1873 triggered an economic depression in America that had a devastating effect politically for Republicans, and Democrats gained control of the House in the 1874 election.”96

As the Congressional session came to a close, knowing his party had lost control of the next Congress, Butler’s committee voted on their findings. The vote of committee members split straight down party lines, five for impeachment, five

95 Lane, “Edward Henry Durell,” 166.
against. Butler held the final and deciding vote. While the committee unanimously declared Durell was no drunkard, and never had drunk while on the bench, Butler called Durell’s “midnight order” a gross abuse of power. Furthermore, he declared, that if “a judge, clearly outside all possible jurisdiction, interferes with the liberty of a single citizen, I will hold him impeachable.” Butler made this statement despite the fact that “Durell intended to preserve the liberty of many [African-American] citizens of Louisiana, and probably did.”

It is impossible to know how much of Butler’s decision was based on personal animosity or political expediency. Regardless, Durell understood the repercussions of the November, 1874 elections. He now would face trial in a Democratically dominated Senate. Rather than face such a biased tribunal, he resigned his post in a letter to President Grant. The man who refused to leave New Orleans in 1849, because of his love for the city, was now forced to leave carrying the unfair label of corrupt drunkard.

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Conclusion

Woe to that officer who is more honest than his creator: calumny, persecution, outrage of every kind, are the sure reward of an inconvenient virtue.¹
Edward Durell, 1872

If Durell had a desire to remain in New Orleans, it was impossible to realize. The U.S. Marshals had provided Durell with bodyguards since 1872, but he lost them after resigning. New Orleans would have been too unsafe a city in which to retire. Instead, he traveled to Schoharie, New York, a village outside of Albany where occasionally practiced law. There, he lived with his wife, Mary Gebhard. They wed on June 8, 1875 at “Trinity Chapel” in New York City.² She was 33 years his junior, and already a widow. If Durell was an utterly broken man from being forced from New Orleans, he hid this from his wife and sisters quite well. Mary’s diary from her wedding and honeymoon indicate a man at peace. She marveled at his unending curiosity, engaging in lengthy conversations with strangers of all classes. She grew frustrated at his quizzing of a Customs inspector entering Canada, for he wanted to know everything about the gentleman’s job, what contraband he encountered, and eventually asking for every aspect of his personal life. Durell did this again when encountering a young

¹ "Hon. Edward Henry Durell,” 126. The quote is from a letter to an unnamed friend.
² "Hon. Edward Henry Durell,” 127.
German tourist at a Montreal Cathedral. What both his sisters and his new wife appear to have wanted from him was to again write, but this time in the realm of non-fiction. They encouraged him to write his version of what took place in New Orleans, Elizabeth saying that it hopefully would educate the “asses North and South.”

Durell apparently left New Orleans with every intention of telling his side of the story. In the months leading up to his departure, he spent a great deal of time gathering documents. He personally copied by hand the financial records of the city from 1858 through 1863, apparently to show how the 1856 City Charter and his 1862 Bureau System of government had helped place New Orleans finances in the black. He also copied every military order delivered from the generals in charge of the Department of the Gulf, from Butler through Sheridan. Another notebook includes notes from the works of others, sometimes providing Durell’s thoughts on particular passages. Although Durell never wrote a book, in fact evidence suggests the idea was abandoned rather quickly, it is in these notebooks that some brief insight is given regarding his thoughts on Reconstruction.

During his Congressional testimony on the 1866 New Orleans riot, he stated his belief that the former rebels would be loyal to the United States, with one exception; “a distinction must be made in reference to the civil rights bill.” For virtually all former rebels, “their former relations with the blacks being

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3 Diary of Mary S. Durell, E.H. Durell Papers.
changed . . . many of those who considered themselves wealthy have been
made poor, and they feel the change to a very high degree.” He added that civil
rights for former slaves would be impossible, “except by the aid of military
power.”

This statement serves as a possible clue that Durell became aware that
the Federal Bankruptcy Act of 1867, as Elizabeth Lee Thompson demonstrated,
served as a tool to for these same ex-rebels that felt their pre-war political and
social status was lost to “entrench Southern society’s class and race structure
after the Civil War.” By using bankruptcy to retain their assets, some were able
to also regain their political power. This may explain why so much of the rancor
utilized against Durell during the impeachment investigation focused as much on
his role in bankruptcy cases as the 1872 election. Clearly there existed great
resentment against Durell from those “who considered themselves wealthy” but
who “had been made poor,” by the war.

Durell provided clues regarding his own changing beliefs during
Reconstruction in a criticism of President Johnson, contained in his notebook. He
wrote that Johnson erred in holding “to the Constitution as it existed before the
war,” stating that Johnson “could not comprehend that war legislates and
changes Constitutions.” Durell felt Johnson did not comprehend the

6 Thompson, *The Reconstruction of Southern Debtor’s*, 140.
“augmentation of the Central Power” of the Federal Government wrought by the Civil War. For Durell the Civil War was a revolution.⁸

Durell’s definition of this revolution, and his understanding of the “augmentation of the Central Power,” changed between 1862 and 1866. He, at first, greatly resented the presence of military authority, challenging it to various degrees, especially under General Banks. It was apparently the “civil rights bill” of 1866 that finally solidified his view regarding the necessity of military authority. In the Constitutional Convention of 1864 he said, “Nothing goes backward in times of revolution. . . Let any man tell me that slavery exists, and I will tell him that Heaven and the light of day proves the assertion false. . . But I have long since learned that those who hold on to the dead past go down with it, and sink forever. God’s laws are certain. He [the former slave] stands as free as you or I do. Such is the law of God and you cannot change it.”⁹ While evidence suggests he never anticipated the 1864 Constitution being rejected by Congress, by 1866 he appears to have been grateful for it. With the return of ex-rebels to the city and state, he became well aware that a military presence was required, and would remain required, for “God’s laws” to be enforced.

Durell’s own experiences clearly affected how he viewed events. During Reconstruction, he despised the role of the press in enflaming the worst emotions of the people on both sides. Regarding the role of newspapers, he declared that “the Press is the Mob of this Country.”¹⁰ He also revealed his

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⁸ “General Orders” notebook, E.H. Durell Papers.
⁹ Debates in the Convention, 543.
continuing distaste for party politics that abused the spirit and, sometimes, the letter of the law. While he came to respect Charles Sumner greatly for his role in Reconstruction, he strongly opposed Sumner's actions in attempting to impeach President Johnson. He felt Johnson's impeachment was a crude attempt to frame the President as "guilty until proven innocent." This, Durell believed, was nothing but politics, and no goal, no matter how just, was worth defiling the law. He concluded that the "Impeachment of Johnson has weakened our institutions - impeachment has become a party weapon."11 While he was not alone in this feeling regarding Johnson, Durell, in particular, felt a victim of impeachment used as a political weapon. Durell lost his job, but more damaging to him, his reputation, because of a concerted effort by members of both parties with different but converging political motivations in achieving Durell's ouster. Perhaps during his gathering of evidence Durell realized that writing a book from his perspective would only drag him back into the spotlight, a place he had never desired to be. His papers reveal it was while researching the year 1868 that all notes ceased, and no actual draft of an account of the earlier years exists.

While we have some of Durell's broad thoughts in his own hand, the evidence covered in this thesis also tells a story. Durell easily could have inherited a life in the public eye, with great wealth backing his long term political ambitions. Instead, he rejected this life completely, losing his inheritance as a result. He left New Hampshire in 1834 for a very uncertain future because he would not be known, and remembered, as another Judge Daniel Durell.

11 Ibid.
He refused offers from prominent men to advance his young career, even from future President James Polk. He never paid political fealty to any man or party, even working for free as Federal Judge for months while waiting for approval from Congress, for he disliked the political connotations implied by receiving a recess appointment. For all the travails he suffered, and despite some venting of anger in private letters, he loved New Orleans.

His public actions between 1850 and 1874 were never tainted by corruption. Benjamin Butler's own investigators concluded this, and no historical research since has discovered evidence to the contrary. Perhaps some may think Durell operated not of desire for money, but for power, or to help the Republican party. The evidence does not bear this out, either. Wary of politics and politicians, his associations with Radical Republicans ended during the events leading up the New Orleans Riot of 1866. The attempts of Dr. A.P. Dostie, Judge Thomas Howell, former Governor Michael Hahn, and their allies disgusted him by the very nature of their illegality. He felt he did everything possible to stop it. When his predicted result came to pass, he vented his anger at those Radical Republicans who had laughed at his warnings. Durell did not exaggerate when he told his sisters that politicians were a class "whom I wish to have nothing to do."

If there was any type of conspiracy hatched by Governor Kellogg during the state election of 1872, Durell was not part of it. There is no evidence he was friends with Kellogg, and certainly Kellogg did not exert any effort in defending Durell later. Even some Democrats felt Durell was not part of any plot, but was

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instead tricked into making his “midnight order.” The Democratic National Committee gleefully noted that afterward, “the drunken Durell” was quickly “deserted by the miscreants who had used him.”

The Democratic National Committee was not wholly incorrect. Durell was deserted by the Republican Party for following the Enforcement Act law that they had written. Durell was never called to testify during the Senate investigation because the primary author of that law, Senator Morton, was the chair of the committee. He likely knew Durell could explain how he had followed the law as written, even that he was legally required to do so. In 1873, *The New Orleans Republican* pointed out that Morton, as the primary author of the Act, should have understood “the effect of its enforcement,” adding, “if he merely intended...to frighten rebels,” he should have informed Durell and other Judges that the law actually “did not mean anything.” This was almost a year before Butler began the impeachment investigation.

Durell’s true motivations in his seizure of the state house revolved around protecting the voting rights of African Americans, and protecting the lives of Democrats and Republicans, whites and blacks. Durell saw Warmoth’s machinations, such as ignoring Durell’s court orders, and moving up the swearing in of Warmoth’s chosen election winners, when combined with the raised hackles of Republicans, possibly creating the perfect New Orleans cocktail for another murderous riot. He ought to have known, he had witnessed many

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14 “Honorable Edward Henry Durell,” 129.
such political riots since 1837. Durell's "midnight order" was, indeed, executed honestly and legally.

Edward Durell's contributions to New Orleans remain largely forgotten. This is partly because of Durell himself. He did not seek accolades or fame for his achievements. Although he privately seethed at the untruths written about him, other than his statement during the 1864 Convention, and a public rebuke of the New Orleans Picayune regarding the 1856 City Charter, he never publicly defended himself. His roles in the Carondelet Canal reconstruction, the initial ordinances and plans for New Orleans City Park, the 1856 New Orleans City Charter, and his literary career are antebellum subjects that have rarely been examined. His work as a Federal Judge also appears to deserve deeper research than attempted here. My own conclusion is that he was an honest and brilliant man who struggled with living a public life. He felt God had blessed with him great ability, and that to hide it would be a sin. Yet during all his public roles, he always wished he could regain the life of privacy he had abandoned in 1849, when he realized he loved New Orleans too much to leave.
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