



# EDWARD HENRY DURELL

## A STUDY IN REPUTATION

*Charles Lane*

ON DECEMBER 1, 1874, Judge Edward Henry Durell of the U.S. District Court in New Orleans, Louisiana, took up a pen and wrote to his sisters in far away New Hampshire. “I know that in my judicial action at New Orleans I endeavored to do right,” he declared.<sup>1</sup> Yet, earlier that day, he had sent his resignation to President Ulysses S. Grant because too few people still believed that he had, indeed, conducted himself properly. He was facing certain impeachment – and the charges included drunkenness, corruption, and election-rigging. The *New York Sun*’s New Orleans correspondent called news of Durell’s resignation “a most acceptable piece of information to every honest man in this part of the country.”<sup>2</sup>

For years thereafter, scholars of Reconstruction scarcely questioned that view. A standard text on Louisiana said Durell was “intoxicated” on the bench. One historian called him “high-handed”; another, “old, infirm and probably alcoholic.”<sup>3</sup> Thus did he pass into

---

*Charles Lane is on the editorial board of the Washington Post, where he previously covered the Supreme Court. His most recent book is The Day Freedom Died: The Colfax Massacre, the Supreme Court, and the Betrayal of Reconstruction.*

<sup>1</sup> Edward Henry Durell to “My Dear Sisters,” E.H. Durell Papers, New York Historical Society, New York, New York.

<sup>2</sup> “Why Durell Resigned,” *Chicago Daily Tribune*, December 10, 1874, 2.

<sup>3</sup> Ella Lonn, *Reconstruction in Louisiana after 1868* (New York: Putnam, 1918), 194;

history – remembered, if at all, as one of the few federal judges ever forced out under threat of impeachment.

Yet Edward Henry Durell was actually a talented, honest man, one of the fathers of modern New Orleans and an outstanding member of the post-Civil War judiciary. The impeachment case was trumped up by white supremacists whose real complaint was that he prevented them from taking power in Louisiana and subjugating its emancipated black population. His own political party then betrayed and abandoned him.

Though the history of Reconstruction has been thoroughly revised in recent years, Durell's record has not. His fascinating, often courageous, career remains too little known and too little honored.

## I

The grandson of a signer of the Articles of Confederation and the son of a Congressman, Edward Henry Durell was born in Portsmouth, New Hampshire on July 14, 1810. He attended Exeter and Harvard.<sup>4</sup> After graduating college in 1831, he read law, then headed South. “In New Orleans,” he wrote, “a young lawyer may have clients; and it is not necessary that he should pass through a disheartening novitiate . . . before being thought capable of holding a brief.”<sup>5</sup>

Fluent in German, Spanish, and French, Durell loved the Crescent City's cultural diversity. “What a hubbub!” he wrote of its markets. “What an assemblage of strange faces of the representatives of distinct people!”<sup>6</sup> By 1837, Durell had his own law office. He later helped draft reforms to the state's inheritance laws and, as

---

William Gillette, *Retreat from Reconstruction, 1869-1879* (Baton Rouge: LSU Press, 1979), 111; Joe Gray Taylor, *Louisiana Reconstructed, 1863-1877* (Baton Rouge: LSU Press, 1974), 244.

<sup>4</sup> Unless otherwise noted, details of Durell's biography are derived from “Hon. Edward Henry Durell,” *The Granite Monthly*, vol. 1, no. 4, April 1988, 115-129 (hereinafter *Granite Monthly*).

<sup>5</sup> H. Didimus (pen name of Edward Henry Durell), *New Orleans as I Found It* (New York: Harper & Bros., 1845), 60.

<sup>6</sup> *Ibid.*, 29-30.

## *Edward Henry Durell*



the elected finance chairman of the New Orleans city council, reorganized the fire department and brought in the first steam fire engine. In 1856, he wrote a new city charter that overhauled taxation and provided for paved streets. In his spare time, he published essays and travelogues under a pen name, "H. Didimus."

Though fully adapted to the South, Durell was an ardent Union man, reflecting his New Hampshire roots and New Orleans' dependence on trade with the North. In 1860, he backed the pro-Union Northern Democrat, Stephen A. Douglas, for president.

But, when Louisiana seceded in January 1861, Durell quit the Democratic Party in protest.<sup>7</sup>

Upon reoccupying New Orleans on May 1, 1862, the U.S. Army chose Durell to run the city's finances. In May 1863, President Lincoln gave him a recess appointment as federal district judge for Louisiana. Durell continued to function as finance chief – and even, briefly, as interim mayor. He relinquished those extra duties, for which he refused compensation, only after Congress confirmed him to the court in February 1864.

Before the war, Durell owned one slave, a female domestic servant.<sup>8</sup> In 1845, he observed, ambiguously: “Slavery is a great leveler. Throughout the South there are but two classes, the black and the white.”<sup>9</sup> After Louisiana's secession ordinance, he wrote that it might be “best for all parties” if slave and non-slave states separated.<sup>10</sup>

Yet, like other Southern Unionists, Durell evolved on the issue of race after Fort Sumter. The war showed that slavery and Union were irreconcilable. In a letter just after the Emancipation Proclamation took effect in January 1863, Durell wrote approvingly that abolition was “making converts” in the South.<sup>11</sup> In 1864, he joined the Republican Party, serving as a Louisiana delegate to its national convention, which renominated President Lincoln and called for slavery's “utter and complete extirpation from the soil of the Republic.” That same year, Durell presided over Louisiana's state constitutional convention, arguing for equality of citizenship: “We are to work no distinction of races, no distinction of color,” he proclaimed.<sup>12</sup> The resulting document abolished slavery and authorized the state legislature to enfranchise some black men.

---

<sup>7</sup> “A Daily Lesson in History,” *Boston Daily Globe*, March 13, 1914, 12; Durell to “My Dear Sisters,” October 29, 1860, Durell Papers.

<sup>8</sup> 1850 U.S. Census, Slave Schedules, Orleans Parish, Louisiana.

<sup>9</sup> Didimus, 29.

<sup>10</sup> Durell to “My Dear Little Lizzie,” January 31, 1861, Durell Papers.

<sup>11</sup> Durell to “My Very Dear Sisters,” January 16, 1863, *ibid.*

<sup>12</sup> Ted Tunnell, *Crucible of Reconstruction: War, Radicalism, and Race in Louisiana 1862-1877* (Baton Rouge: LSU Press, 1984), 54.

## Edward Henry Durell

After the Civil War, Durell's renown grew. In 1867, Secretary of State William H. Seward offered to make him U.S. minister to the Austro-Hungarian Empire. Durell refused, in deference to the incumbent envoy – his Harvard classmate. In 1868, he was mentioned as a possible Republican vice-presidential nominee. Durell discouraged such talk, he wrote privately, because he preferred “elevation to the supreme bench,” which, he believed, he could get “if our party succeeds in the fall.”<sup>13</sup>

As Louisiana's sole federal judge, he firmly enforced the federal Civil Rights Act of 1866. Durell's was reputedly the first federal court in which former slaves sat as jurors alongside whites. On a personal level, he adopted a homeless black child and paid for his education.<sup>14</sup> “To the lately emancipated race ... he has been a true and tried friend,” the *New Orleans Republican* noted.<sup>15</sup>

In 1871, though, Durell openly considered resigning. Engaged for many years to a woman in New York, he had resolved to marry her at last and return North. In response, 32 members of the New Orleans bar – mostly ex-Confederates and Democrats who had come to respect the judge despite his party leanings – implored him to stay. Their petition called Durell “tried, faithful, able, learned and incorruptible.” Durell stayed, and his fiancée released him from their engagement.<sup>16</sup>

To be sure, Durell was also having misgivings about corruption and political violence in post-Civil War Louisiana. On July 30, 1866, a white mob attacked a biracial group that had assembled in New Orleans to discuss expanded voting rights for blacks. The massacre left 34 blacks and four whites dead. Klan-like groups rampaged across the countryside during the 1868 presidential election, killing, beating and intimidating hundreds of blacks.

In January 1872, Republican state and federal authorities narrowly averted a white supremacist attempt to take over the state

---

<sup>13</sup> Durell to “My Dear Sister,” March 20, 1868, Durell Papers.

<sup>14</sup> “Judge Durell of Louisiana,” *New York Times*, November 9, 1873, 3.

<sup>15</sup> *Granite Monthly*, 125.

<sup>16</sup> *Ibid.*, 124. Durell's engagement to Anne Louise Cheesman is the subject of many letters collected in his papers at the New York Historical Society.

government; but New Orleans remained mired in factional intrigue. As the November elections approached, three parties offered Durell their nominations for governor. He refused, writing a friend that they “wanted . . . a man who would pander to their ras-calities,” and “the governor who did not do so would soon find his chair hotter to sit on than was the gridiron upon which good St. Lawrence was roasted to death.”<sup>17</sup>

Still, Durell sympathized with the Republicans. “I do hope the people will today bury the old corrupt disloyal slavery-maintaining Democratic Party out of sight forever,” he wrote his sister on November 4, 1872.<sup>18</sup> Since most of the voting age population was black, he had reason to hope: a fair election would have produced a Republican governor and a Republican state legislature.

Durell failed to anticipate that Louisiana’s white supremacists would try to steal the election, spawning a legal battle that ended up in federal court – with fateful consequences for the country, the state, and the judge himself.

## II

The 1872 election defies succinct summary. Most Republicans backed President Grant, who favored continuing Reconstruction in the South and expanding rights for newly freed African Americans. But a significant minority, echoing white Northerners’ impatience with Reconstruction and alleged influence-peddling in Washington, formed a “Liberal Republican” Party. The Liberal Republicans joined the Democrats, the party of erstwhile Southern secession, under the banner of “reform.” In Louisiana, Republican governor Henry Clay Warmoth joined the Liberal Republicans and allied with local Democrats, mostly ex-Confederates who advocated a “white man’s government.”

Warmoth, who controlled the state’s electoral machinery, collaborated with the Democrats to suppress black voting and stuff ballot boxes. A five-man state returning board was supposed to check such abuses, but Warmoth purged it at its first meeting in

---

<sup>17</sup> *Ibid.*, 126.

<sup>18</sup> Durell to “My Dear Sister,” November 5, 1872, Durell Papers.

## Edward Henry Durell

New Orleans on November 14 – and installed a majority that supported the Liberal Republican-Democratic ticket. He was clearly preparing for electoral theft.<sup>19</sup>

On November 16, William Pitt Kellogg, the Republican candidate for governor, filed a lawsuit in Durell's court. Kellogg's claim was based on the federal Enforcement Act. Adopted by Congress and signed by President Grant in May 1870, the law targeted the violence and fraud with which ex-Confederates had often stripped blacks of the vote, newly guaranteed to them by the 15th Amendment. Kellogg cited one provision giving a defeated candidate the right to sue for his office in federal court if he lost due to racial discrimination against voters, and another provision creating federal jurisdiction over "all cases in law or equity" connected to such claims.

Kellogg asked for a permanent injunction against Warmoth's stacked returning board. Durell set oral argument for November 26, issuing a temporary restraining order to stop the vote count, and calling on Warmoth to deposit the election returns at his court.

Warmoth refused. On November 19, he went to state court, seeking validation of his returning board purge. When the state judge refused Warmoth's bribe and ruled against him, the governor tried a new ploy. He reached into his office safe and took out a bill that the state legislature had adopted months earlier – but which he had neither signed nor vetoed. The measure abolished the existing returning board and empowered the state senate to appoint a new one. On November 20, Warmoth signed the bill. Since the Senate was not in session, he filled the positions himself, producing a new

---

<sup>19</sup> On the 1872 election in Louisiana see U.S. Congress, *House Executive Documents*, 42nd Cong., 3rd Sess., no. 91, "Condition of Affairs in Louisiana"; James K. Hogue, *Uncivil War: Five New Orleans Street Battles and the Rise and Fall of Radical Reconstruction* (Baton Rouge: LSU Press, 2006), 91-115; Lonn, 166-229; Taylor, 235-252; Tunnell, 170-172; *Observations on the Case of Judge Durell of Louisiana*, anonymous published manuscript, undated (probably late 1873 or early 1874), Durell Papers; *The Struggle Between the Civilization of Slavery and that of Freedom, Recently and Now Going On in Louisiana: An Address Delivered by Edward C. Billings of New Orleans at Hatfield, Massachusetts, Oct. 20, 1873* (Northampton, MA: Gazette Co.'s Steam Press, 1873).

board controlled by his allies. Then, Warmoth sent an armed mob to oust the state judge who had previously ruled against him. A new judge, picked by Warmoth, took his place.

When arguments began in Durell's court on November 26, the ostensible issue was still Kellogg's plea for a permanent injunction. But the real question was far graver: whether the governor of a former Confederate state, in alliance with forces determined to reverse the political and social consequences of the Civil War, could defy the legal authority of the United States, steal a state election – and get away with it.

For days, Durell's high-ceilinged courtroom on the second floor of the New Orleans Custom House was packed with tense spectators, many of them armed. Bodyguards protected the judge.<sup>20</sup> Kellogg's lawyers introduced evidence that Warmoth's officials cheated up to 10,000 black men out of the franchise. They insisted that only Durell could protect their rights and salvage the election. Warmoth's counsel countered that state elections were state business, and duly constituted state authorities had made their decisions.

Meanwhile, Louisiana's Republican officials contacted the Grant Administration in Washington, seeking assurances that it would supply troops to back the federal court's authority if Durell ruled against Warmoth. The assurances came on December 3 – not a moment too soon. On December 4, Warmoth decreed electoral victory for his allies. They began planning an armed takeover of the statehouse, preparatory to installing a new Democrat-dominated legislature on December 6.

Durell was furious. The judge suspected that Warmoth's purpose was not only to assemble this "legislature," but also to seize and destroy the election records, which were still housed there. To be sure, Durell must have been influenced by his Republican sympathies. But he mainly feared a return to the bloodshed that had marked Louisiana's elections during Reconstruction.<sup>21</sup>

On the evening of December 5, Durell called the U.S. Marshal

---

<sup>20</sup> *Observations on the Case of Judge Durell of Louisiana*, 11.

<sup>21</sup> *Ibid.*, 12.



## *Edward Henry Durell*

and Kellogg's attorneys to his modest apartment. When they arrived, some time after 9 p.m., Durell dictated an order, styled as a writ to "prevent the further obstruction of the proceedings in this cause, and further to prevent a violation of the orders of this court, to the imminent danger of disturbing the public peace." Durell instructed the Marshal to seize the state house and to bar "unlawful assemblies" – the white supremacist "legislature" and its accompanying thugs. Aided by two companies of federal troops, one each for the House and Senate chambers, the Marshal secured the building at 2 a.m. on December 6.

Later that morning, Durell called court to order at the Custom House. Hundreds of spectators, most of them African Americans, packed the room. Warmoth was there, too. As the governor glared at him, Durell explained the true meaning of the case:

The first question is, are the acts constitutional? The object of the [15th] Amendment was to protect all citizens in their right to vote. Now, before the act of 1870, four millions of our present citizens were slaves. Slavery was a source of trouble, and culminated in civil war. The war made the slaves citizens. It was necessary to protect such citizens by the United States Government in their right to vote, against the prejudices of their former masters. The acts of Congress were passed for this object. They are wise.<sup>22</sup>

Thousands of black men had sworn affidavits attesting to the unlawful, racially motivated denial of their right to vote, Durell noted. Warmoth made a blanket denial in his answer to Kellogg's suit. But, the judge added archly: "His acts since the canvass commenced have shown that the denial is futile."<sup>23</sup> Durell ordered Warmoth to turn over the election records to the rightful returning board – which included the pro-Kellogg members he had ousted. When the governor refused, the legitimate board members met and compiled as many returns as they could, based on voter affidavits

---

<sup>22</sup> "Louisiana: Judge Durell's Decision and its Effect," *New York Times*, December 7, 1872, 1.

<sup>23</sup> *Ibid.*

and the reports of federal election supervisors.<sup>24</sup> They awarded the governorship to Kellogg, the lieutenant governorship to his African American running mate, and a majority of the legislature to the Republicans. On December 9, the legislature met in the state house, protected by federal troops. Its first act was to impeach Warmoth.

Louisiana Democrats erupted. Their newspapers called Durell a “dictator” and a “usurper.” “The returning board created by Judge Durell to canvass the election returns ... has illustrated the atrocity of this conspiracy,” the *New Orleans Times* fumed. “The installation of such a legislature, with Kellogg for governor and a venal negro [sic] for lieutenant governor, will be the death-knell of all reform and prosperity in this state.”<sup>25</sup> Northern Democratic papers, too, assailed Durell’s “midnight order.” The *New York World* called it “a conscious prostitution of his court to the services of one side in a vile partisan squabble.”<sup>26</sup>

Durell’s critics had half a point. By declaring Warmoth’s returning board illegal and the Republican-dominated board legal, Durell arguably exceeded his declared purpose of preserving the election records. However, Durell never dictated the result of the count. In any case, the board he upheld had a more legitimate state-law claim than the board Warmoth had conjured into being. The fact that Warmoth had sent a mob to oust a state judge who had ruled against him on that point was a powerful argument in favor of Durell’s action.

Durell was right that the 15th Amendment and the Enforcement Act reconfigured the federal role in state elections. The Constitution now provided that eligible citizens had an equal right to vote, regardless of race, and that this right trumped any state practice or law to the contrary. Federal statutes secured that right. Those statutes apparently gave Durell jurisdiction over a suit such as Kellogg’s, with the power to issue orders necessary to further its adjudication. If Warmoth’s gross abuse of power had prevailed, Louisi-

---

<sup>24</sup> Lonn, 201-202.

<sup>25</sup> “Hung Be the Heavens in Black,” *New Orleans Times*, December 8, 1872, 1.

<sup>26</sup> Lonn, 196.

## Edward Henry Durell

ana's government would have fallen under the control of a minority bent on restoring the black population to second-class citizenship – through violence if necessary. A new civil war, one that might have spread beyond Louisiana, could have ensued.

Durell called the verbal barrage against him “outrageous and vile,” but counted on eventual vindication: “As I know that I am right, I await the end, with a becoming patience,” he wrote his sisters. “So much for a judge being compelled to sit upon a political question.”<sup>27</sup>

Louisiana white supremacists continued their protests, staging an inauguration for their “governor” and meetings of their “legislature.” On March 5, 1873, two hundred armed whites, purporting to be the “state militia,” attacked police stations and the state arsenal. But they were repelled by militia loyal to Kellogg, and then disarmed – with the aid of federal troops. “I have gained the victory,” Durell wrote. “The president and his cabinet have stood manfully and rightly by me from the beginning. I knew that I was right. But the slander of the newspapers has been terrible. Still, God takes care of integrity.”<sup>28</sup>

The judge's celebration was premature.

### III

Unable to seize the state, Louisiana white supremacists turned to revenge against Durell, bombarding Congress and the press with accusations: he had exceeded his jurisdiction, issued an “*ex parte*” “midnight order,” and “usurped” authority. The pro-Democrat *Nation* summarized the campaign, which it supported: “[Grant] will continue his present course. But surely Judge Durell ought to be impeached.”<sup>29</sup>

Besieged by the Democratic press and desperate to pacify Louisiana, the House of Representatives authorized an impeachment investigation in January 1873. But Judiciary Committee chairman

---

<sup>27</sup> Durell to “Dear Sisters,” December 22, 1872, Durell Papers.

<sup>28</sup> Durell to “My Dear Sisters,” March 7, 1873, *ibid.*

<sup>29</sup> “The Week,” *The Nation*, March 6, 1873.

John Bingham of Ohio was a Republican, the principal author of the 14th Amendment – and no friend of the Louisiana Democrats. On March 3, he announced that there was insufficient evidence and Durell's case would be left to the next Congress, which, under the political calendar of the day, would not assemble until December 1873. By that time, Bingham no doubt hoped, the entire matter would have blown over.<sup>30</sup>

But a September 1873 financial panic on Wall Street triggered national crisis and threw the Republicans on the political defensive – especially over “corruption,” which many blamed for the economic disaster. When Congress reconvened, the cry to impeach Durell went up again. The confidence Durell had felt in March 1873 vanished. “The charges made against me are most vile and false,” he protested to his sisters. “Political hatreds are the most bitter hatreds. For performing a duty I could not avoid, the loser party seems capable of anything to destroy me.”<sup>31</sup>

He also knew his own party might sacrifice him to improve its image.<sup>32</sup> The Republican *Buffalo Commercial Advertiser* had advocated as much, calling the judge's impeachment “an effort in behalf of true reform, in spite of the interests and prejudices of partisanship.”<sup>33</sup> New York's Liberal Republicans “deeply deplor[ed] the lack of courage, sense of duty, patriotism and regard for public opinion” Congress showed by failing to impeach Durell.”<sup>34</sup> “Poor Durell!” the *New York Sun*, a Democratic organ, observed. “So they propose to make him the scapegoat of Grant by punishing the inconsiderable agent while the far more guilty principal is allowed to go free.”<sup>35</sup>

The new chairman of the House Judiciary Committee, Rep. Benjamin F. Butler of Massachusetts, seemed to prove the *Sun*'s

---

<sup>30</sup> U.S. Congress, House Reports, 42nd Cong., 3rd Sess., no. 96, “E.H. Durell,” 1.

<sup>31</sup> Durell to “My Dear Sisters,” December 21, 1873, Durell Papers.

<sup>32</sup> Durell to “My Dear Sisters,” July 2, 1874, *ibid.*

<sup>33</sup> “Weeding Out the Corrupt,” *Buffalo Commercial Advertiser*, editorial reprinted in *New York Times*, January 24, 1873.

<sup>34</sup> “Disaffected Republicans,” *New York Times*, March 7, 1873.

<sup>35</sup> Candace Stone, *Dana and the Sun* (New York: Dodd, Mead, 1938), 82.

## Edward Henry Durell

analysis. Butler had known Durell for years; as commander of Union forces in New Orleans back in 1862, he had entrusted Durell with the city's finances. Butler was a strong supporter of civil rights and a "radical" proponent of Reconstruction. In fact, Butler initially supported Durell, albeit indirectly and behind the scenes. In December 1872, when Warmoth asked the Supreme Court to overturn Durell's order, Butler gave William Pitt Kellogg legal advice in return for \$1,000. The Supreme Court unanimously dismissed the matter on procedural grounds.<sup>36</sup>

But now Butler turned on Durell. In January 1874, he sent two members of his committee to New Orleans to take testimony from Durell's white supremacist enemies. To the familiar complaint about the "midnight order," these witnesses added the claim that Durell was a habitual drunkard given to unseemly outbursts. This was untrue, as several of Durell's friends testified. His aversion to drink dated to his Harvard days, when he warned his brother to "beware of the dissipations of Cambridge."<sup>37</sup> Indeed, three of the lawyers who told of Durell's purported drinking had signed the 1871 petition calling him "faithful, able, learned and incorruptible."<sup>38</sup>

Slightly more substantively, witnesses protested Durell's handling of bankruptcy cases. He had turned them over to a special master, and, as was not uncommon in that era, arranged for the special master to be compensated from the debtors' liquidated assets. The special master was a friend of Durell's and had taken to charging exorbitant fees for his services – or so it was alleged. *Ergo*, the accusers said, he must have cut Durell in on the action. But they

---

<sup>36</sup> Butler claimed that he had aided Kellogg before he had any inkling that the Louisiana matter would come before Congress, whereupon he concluded that Durell had acted wrongfully. "Statement of General Butler in Reference to the Retainer," *New York Times*, September 30, 1874; *Ex parte Warmoth*, 84 U.S. 64 (1873).

<sup>37</sup> *Granite Monthly*, 119. See also Didimus, 39.

<sup>38</sup> *Granite Monthly*, 124; "The Louisiana Ermine," *Atlanta Constitution*, January 11, 1874, 7; "What the Durell Investigating Committee are Finding Out," *Georgia Weekly Telegraph*, November 3, 1874.

never produced hard proof.<sup>39</sup>

Scant as the evidence was, the Democratic press, North and South, repeated and embellished it. “Durell Drunk,” read a headline in the *Atlanta Constitution*.<sup>40</sup> The *Boston Daily Globe* wrote of the “un-adulterated history of [Durell’s] life and career in New Orleans.”<sup>41</sup> Distressed, Durell’s sisters appealed to President Grant, who was close to Butler. “We, sisters of E.H. Durell, beseech that you will not permit the great injustice which threatens to crush our brother,” they wrote on May 28, 1874. “Those who have known him from early youth to old age know that he is not guilty of the crimes of which he is accused. The accusation causes us unspeakable anguish.”<sup>42</sup>

But the president was either unwilling or unable to intervene. On June 17, 1874, Butler’s Judiciary Committee voted 6 to 5 for impeachment. Butler’s was the deciding vote.

The majority concluded that the bankruptcy special master was guilty, albeit of unspecified crimes, and that Durell was guilty by association with him. The special master’s offenses were so “notorious,” the committee wrote, “that Judge Durell must have been cognizant of them and therefore a corrupt party thereto, or that [*sic*] he was grossly negligent in the discharge of his official duties.”<sup>43</sup>

And the majority condemned Durell’s order securing the state house against the white supremacist mob. An honest account would have vindicated Durell, or at least acknowledged that he acted with good intentions amid difficult circumstances. Butler’s committee, however, depicted evidence of Warmoth’s fraud and intimidation as mere partisan Republican allegation. It called Warmoth’s making and unmaking of the returning board “immaterial,” because these were matters of state, not federal, law. The report omitted War-

---

<sup>39</sup> *Observations on the Case of Judge Durell of Louisiana*, 20-24; U.S. Congress, House Reports, 43rd Cong., 1st Sess., no. 732, “Judge E.H. Durell,” 13.

<sup>40</sup> “Durell Drunk,” *Atlanta Constitution*, December 21, 1872, 2.

<sup>41</sup> *Boston Daily Globe*, March 28, 1874.

<sup>42</sup> *The Papers of Ulysses S. Grant*, edited by John Y. Simon, vol. 26 (Carbondale, Ill.: Southern Illinois University Press, 1967), 59.

<sup>43</sup> U.S. Congress, “Judge E.H. Durell,” 8.

## Edward Henry Durell

moth's forcible ouster and fraudulent replacement of the state judge who resisted his plan. It did not even mention the 15th Amendment or the Enforcement Act by name, much less analyze their application to the Louisiana case. Instead, echoing the bombast of Durell's enemies, it accused him of "an attempt by a Federal judge to usurp the control and power of a sovereign state."<sup>44</sup>

The only charge the committee rejected, unanimously, was drinking on the bench. "Not sustained by the evidence," it observed – long after the press had already thoroughly smeared Durell as a drunkard.

Congress was not supposed to oust judges for their opinions, personal, political, or legal – even mistaken ones. This principle of judicial independence was established in 1805, when a Jeffersonian Senate acquitted Federalist Supreme Court Justice Samuel Chase of politically inspired charges. Impeaching Durell violated it, noted Rep. Luke Poland of Vermont, one of the five committee members, all Republicans, who voted against impeachment. "Because this judge made an order he had no legal jurisdiction to make," Poland said, "it by no means follows that he is amenable to impeachment, unless it can be established that the order was made corruptly or with a knowledge on his part – with a belief that he was exceeding his jurisdiction."<sup>45</sup>

But Butler insisted that Durell had committed too "gross an exercise of power." "While I will not hold a judge to be impeachable where he simply makes a mistake, yet if a judge, clearly outside of all possible jurisdiction, interferes with the liberty of a single citizen," he said, "I will hold him impeachable." No matter that Durell intended to preserve the liberty of many citizens in Louisiana, and probably did.<sup>46</sup>

Durell spent the summer of 1874 mired in anxiety. "I wish, as you wish, that I had had nothing to do with the election of 1872,"

---

<sup>44</sup> *Ibid.*, 12.

<sup>45</sup> Asher C. Hinds, *Hinds' Precedents of the House of Representatives*, vol. 3 (Washington, D.C.: Government Printing Office, 1907), 1016.

<sup>46</sup> *Ibid.*, 1015.

he lamented to his sisters. “But I could not well help it, and what I did was, at least, done honestly.”<sup>47</sup> His last hope died on Election Day, November 3, 1874, when Democrats won a huge majority of the House. He faced certain impeachment now, followed by trial in the Senate – where the Republicans who still controlled that body would be even more likely to sacrifice him. He sent President Grant his resignation. To a journalist, he called himself “a victim of party exigency.” To his sisters, he wrote: “I hope now that the parties will let me alone.”<sup>48</sup>

#### IV

Dejected and defeated, the 64-year-old Durell left his New Orleans home for New York City. On June 8, 1875, he married a widow, Mary Seitz Gebhart, at Trinity Church in Manhattan. Together with his new wife’s daughter, the couple moved to Schoharie, west of Albany.<sup>49</sup> Durell worked on a book about the history of the South between 1860 and 1877. But the project would never be finished. On March 29, 1887, Edward Henry Durell died, at the age of 76.

He rests in Pine Hill Cemetery at Dover, New Hampshire, beneath an immense granite monument bearing the seals of New Hampshire and Louisiana, and a bas-relief depicting the Goddess of Liberty unchaining a slave. The inscription “Liberty and Union 1864” referred to Durell’s role in framing the Louisiana Constitution of 1864, which abolished slavery.

At Durell’s funeral, a minister eulogized him as a judge who “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.”<sup>50</sup> Surely the time for that judgment has come.

---

<sup>47</sup> Durell to “My Dear Sisters,” July 17, 1874, Durell Papers.

<sup>48</sup> “Why Durell Resigned”; Durell to “My Dear Sisters,” December 9, 1874, Durell Papers.

<sup>49</sup> 1880 U.S. Census, Newburgh, Orange County, New York.

<sup>50</sup> *Granite Monthly*, 128.