**Advocacy, Law and American Independence:**

**Thomas Erskine and the Transatlantic Public Sphere, 1775 – 1823**

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**Statement of Proposed Research**

By 1800 Thomas Erskine (1750-1823) was celebrated in Britain, America and by French *avocats* as the greatest legal advocate of his generation. He had served as Attorney General to the Prince of Wales (1783-92) until his dismissal for defending Thomas Paine’s *Rights of Man Part II.* In 1806 he was appointed Lord Chancellor by George III despite being a prominent member of the opposition Whig party and successfully defending radical reformers against charges of treason in the 1790s. He has been credited with shaping modern adversarial trial by jury, defending freedom of the press and taking ‘pride of place in the struggle to promote … justice and liberty’.[[1]](#endnote-1) What is less well known is that he also had substantial personal, family, financial and intellectual connections with legal and political elites in America during the Early Republic. Erskine was, moreover, a prolific writer and numerous editions of his famous trial speeches and political views were exported to, or re-published in, America. My research will fill a significant historical gap by examining the transatlantic impact and reception of his legal and political views, his oratory and the transmission and influence of his printed texts. It will also provide new insights into the transnational movement of lawyers, legal culture and ‘liberal’ ideas that impacted on the development of Anglo-American adversarial trial.

Early hagiographical biographies and a recent short legal biography of Erskine, barely address his American connections or impact, despite lauding his influence on Anglo-American law.[[2]](#endnote-2) To date, I have seen no mention of his letters to, or discussion of his work, in the correspondence of the Founding Fathers. In British historiography, legal and political histories have tended to run on parallel, but rarely intersecting lines, obscuring Erskine’s role as an ardent supporter of Charles James Fox, who also campaigned for electoral reform and supported both the American and French Revolutions. More recently, however, socio-legal and imperial historians have traced the broader intersection of law, culture and politics in Britain and the Anglophone world.[[3]](#endnote-3) Pue identified Erskine as an important figure in the development of links between lawyers, ‘political liberalism’ and forms of adversarial trial. Lemmings and Shoemaker have shown that widespread press coverage and publication of trials and lawyers’ speeches enabled the public to engage critically with issues of justice. Adapting Habermas’ formulation of a public sphere they construct a theoretical framework for analysing the role of lawyers in discussions of law and good governance. My intention is to expand this framework and the definition of law books to analyse a transatlantic public sphere of ‘legal’ literature, the dissemination of Erskine’s work and the impact of his advocacy in court.

As Halperin has argued, while legal historians have tended to focus on ‘great works’ written by famous jurists it is equally important to assess the impact of legal literature more broadly in different countries.[[4]](#endnote-4) One way to do this is to count the number of books and editions published and examine the relationship between authors, publishers and readers. Erskine sent many of his speeches to newspapers and worked with Whig bookseller John Stockdale (among others) to publish multiple editions of his works, serves as a useful case study. Stockdale’s transatlantic customers included John Adams and John Quincy Adams, Henry and John Laurens, Thomas Jefferson and George Washington. It has been argued that in early Virginia ‘law books and the legal profession were … equally inseparable from statecraft’; and that English lawyers and legal culture had an enduring influence even when state and federal laws were being reshaped. Letters from the *Founding Fathers online* and library inventories show that copies of Erskine’s defences of Thomas Paine and other radicals in the 1790s, his writing on freedom of the press and the *Causes and Consequences of the Present War with France* (1792) were collected and discussed by Washington, Jefferson, the Adams family and Alexander Hamilton among others. His defence of *The Rights of Man* and Paine’s letter to Erskine for example, were reprinted in Boston and New York. Erskine also wrote poetry and a utopian novel *Armata* (London and New York, 1817) which, alongside numerous literary allusions in his legal speeches, provide evidence of his engagement with literary culture. Before 1830, such knowledge was admired as important ‘training’ for law and citizenship by leading American lawyers like John Marshall and John Adams.[[5]](#endnote-5)

It was Erskine’s skill as an advocate, however, that lawyers and politicians admired most. Numerous articles praising his oratory and character were published in American Periodicals. Many American patriot lawyers (9 signed the Declaration of Independence) trained in Britain. Erskine too, has been described as a ‘patriot’ lawyer who believed in the Roman ideal of disinterested public service for the good of his country rather than private profit;[[6]](#endnote-6) a view shared by many colonial lawyers, for whom law was a foundation for, and part of, their political life. Eighteenth- and Nineteenth-century writers compared the oratorical skills of the finest American lawyers (such as Adams) to Erskine. Historians have also increasingly acknowledged the ways in which gender shaped ideals of political virtue and citizenship on both sides of the Atlantic. Although McCormack has included Erskine’s political performance in his analysis of manly independence, gendered analysis of lawyers in court is lacking.[[7]](#endnote-7) Despite criticism of his ‘theatrical’ advocacy Erskine, and Adams, shared a belief in the ‘manliness’ and virtue of their best legal performances as patriot citizens. Adams viewed Erskine’s speeches as ‘Models of Eloquence’ and advised his son Charles to read all the trials in 1794.[[8]](#endnote-8) Significantly, the question of whether we still need ‘great advocates’ like Erskine, and the debate over ‘form versus substance’, divides opinion in both countries today.[[9]](#endnote-9)

The third aspect of my proposed research will focus on Erskine’s personal, family and financial connections in America, which demonstrate both the depth of his ‘liberal’ ideals and facilitated the transmission of his legal and political views. Despite broad Scottish support for war against the American colonies, there was strong opposition amongst the Presbyterian, legal and elite intellectual communities in Edinburgh amongst whom Erskine and his brothers grew up. Erskine and his older brother the 11th Earl of Buchan (who admired and corresponded with Franklin) both ‘revered’ George Washington, whose Personal Secretary, Tobias Lear, stayed at Buchan’s Scottish seat in 1794.[[10]](#endnote-10) Yet both also maintained friendships with the British Royal family – Erskine with the Prince of Wales and his brothers, Buchan with George III, his wife and daughters.[[11]](#endnote-11) Nevertheless, distrust of government ‘corruption’ and destruction of English liberties persuaded Erskine to invest a significant proportion of his accumulated earnings in American funds and, in 1798, to send his eldest son, David Montague Erskine, to manage his investments and learn about politics. Erskine relied on Washington, Jefferson and Phineas Bond, (a lawyer and British consul to the Middle States)[[12]](#endnote-12) to create influential connections for his son, who became British Ambassador there 1807-09. In England, Erskine was criticised in the ministerial press for supporting American diplomats including Thomas Pinckney and William Pinkney. Much of Erskine’s (and Buchan’s) rare surviving correspondence therefore resides in American archives (including Harvard, New York, Philadelphia and Mount Vernon) and the Royal Archives at Windsor.

**Outputs and Plan of Research**

While I plan to have read and analysed many of Erskine’s key texts prior to travelling to Washington, the Library of Congress holds 52 books and pamphlets written by, to, or about Erskine between 1770 and 1830, including copies previously owned by Jefferson. Erskine was criticized by the British Press for his support for At the Library, I will therefore focus on issues of most concern to his American readers such as: freedom of the press and the jury’s rights to decide law as well as fact in seditious libel cases, Erskine’s championing of liberty in the treason trials and his opposition to war with France. A number of resources in the Law Library will also provide me with greater historical context on, for example, debates about the laws of seditious libel, an issue with which John Adams was particularly concerned. I would also benefit from access to the Library’s digital resources including *Founders Online*, which contains at least 182 references to Erskine and Buchan that I do not currently have full access to. Given Erskine’s verbal and symbolic association with Magna Carta, I would also appreciate the opportunity to discuss Erskine’s contribution and relevance to modern debates about law and liberty with other scholars.

I have already spent two very fruitful days in the Royal Archives at Windsor which holds 34 catalogued manuscript letters written by Erskine and Buchan, but I need longer access. The Georgian Papers Programme is constantly uncovering new material relating to George III’s view of American independence. I hope to find more references to Erskine’s opposition to the war and support for radical reform, as well as his official Royal legal duties and roles, the treason trials and both his defence and later prosecution of Paine’s work. As a member of the Kings Friends, I would particularly welcome the opportunity to present my research at seminars and engage with other British and American scholars whose research interests in America and law could offer new insights or perspectives for my work.

I am seeking funding because I am currently employed on a teaching only contract that does not allow time for the research or writing that I need to pursue in both American and British archives. The main output will be a substantial academic article for publication in an international journal, but this material will also be included in a book which, like my previous publication (*The Profligate Son*, OUP, Oxford & Basic Books, New York, 2013), I aim to publish in both America and Britain. This clearly defined project will provide an important new addition to historical knowledge of Erskine’s life and career as a barrister and politician; it will examine the significance of his political, family and financial relationships with America; assess his impact via a transatlantic public sphere of legal literature; and analyse the appeal of his dramatic oratory across both countries. In broader terms, it will shed important new light on transatlantic legal culture and political liberalism in the profession, and on the effectiveness of both rhetorical style and factual content in early Anglo-American adversarial trials.

1. Pue (1997). [↑](#endnote-ref-1)
2. Lovat (1932); Stryker (1947); Hostettler (2010). [↑](#endnote-ref-2)
3. Lemmings (2000), Pue (1997 & 2016), Ford (2010). [↑](#endnote-ref-3)
4. Halperin (2016). [↑](#endnote-ref-4)
5. LaCroix, (2012); O’Donnell Kaplan (2012). [↑](#endnote-ref-5)
6. Lemmings, (2000), p. 307. [↑](#endnote-ref-6)
7. Russell (2006); Wills (1984); McCormack (2005). [↑](#endnote-ref-7)
8. John Adams to Charles Adams, 16 December 1794. *Founders.Archives.gov* [↑](#endnote-ref-8)
9. Bindman (2015); Crawford and Morris (2011), pp. 29-36. [↑](#endnote-ref-9)
10. To Benjamin Franklin from the Earl of Buchan, 18 February 1783; To George Washington from Thomas Erskine, 15 March 1797, *Founders.Archives.gov* [↑](#endnote-ref-10)
11. Royal Archives, Windsor Castle, GEO MAIN collection, letters to and from Erskine and Buchan. [↑](#endnote-ref-11)
12. Loewe Neel (1968). [↑](#endnote-ref-12)