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INTRODUCTION: *STATE v. MANN* AND THOMAS RUFFIN IN HISTORY AND MEMORY

SALLY GREENE & ERIC L. MULLER

In one of his earliest opinions on the Supreme Court of North Carolina, Judge Thomas Ruffin¹ penned what is undoubtedly the coldest and starkest defense of the brutality of slavery ever to appear in an American judicial opinion. In the assault and battery prosecution *State v. Mann*,² Ruffin created for slave owners an absolute immunity from criminal liability for the physical punishment of their slaves, no matter how cruelly inflicted. “The power of the master must be absolute,” ruled Ruffin, “to render the submission of the slave perfect.”³

This notorious decision provided fodder for Harriet Beecher Stowe, who saw Ruffin as an honorable and decent man trapped in a culture of vicious racial subordination.⁴ The slender body of criticism that began with Stowe and other abolitionists⁵ has been embraced and expanded, more than a century later, by academic legal historians, for whom Ruffin has become emblematic of all that was wrong with the

1. Editor’s Note: In 1829, when Thomas Ruffin was elected by the General Assembly to the Supreme Court of North Carolina, the court was made up of three “Judges” and one “Chief Justice.” See Martin H. Brinkley, *Supreme Court of North Carolina: A Brief History*, <http://www.aoc.state.nc.us/www/copyright/sc/facts.html> (last visited Feb. 27, 2009). When the court heard the *State v. Mann* case, Ruffin was styled a Judge. In 1833, Ruffin’s peers elected him Chief Justice, a title he held until 1852. Six years later, he returned to serve one final year, again as Judge. For more information on the chronology of Ruffin’s time on the court, see generally Judge James A. Wynn, Jr., *State v. Mann: Judicial Choice or Judicial Duty?*, 87 N.C. L. REV. 991 (2009). During and since his lifetime, scholars and historians have referred to Ruffin using both the Judge and Chief Justice titles. For consistency and simplicity, and because Ruffin held the title of Judge at the time *State v. Mann* was decided, the articles in this Issue refer to Ruffin as “Judge,” unless specifically referring to Ruffin in his capacity as Chief Justice.

2. 13 N.C. (2 Dev.) 263 (1829).

3. *Id.* at 266.

4. See HARRIET BEECHER STOWE, *A KEY TO UNCLE TOM’S CABIN* 78 (1853) (“No one can read this decision, . . . so dreadful in its results, without feeling at once deep respect for the man and horror for the system.”).

5. See generally Laura H. Korobkin, *Appropriating Law in Harriet Beecher Stowe’s Dred*, 62 NINETEENTH-CENTURY LITERATURE 380 (2007) (contextualizing Stowe’s critiques of Ruffin and *State v. Mann* within a larger body of abolitionist criticism).

antebellum South. In 1996, for instance, Sanford Levinson raised the following provocative questions about Judge Ruffin:

Can one have, as apparently Harriet Beecher Stowe did, “deep respect for the man” Ruffin even as one despises the system that he served? Would we, for example, wish to honor him by placing his portrait in American law schools as a presumed inspiration to further generations of law students as to what it means to be a “distinguished” lawyer or judge, or does authorship of *State v. Mann* disqualify him from any such honor?⁶

Within the popular narratives of Ruffin’s place in North Carolina history, however, such questions have gone unasked. While Ruffin the judge has received the highest of praise for his overall contribution to the development of the law, his opinion in *State v. Mann* has been simply ignored. At the dedication of a heroic-scale bronze statue of Judge Ruffin at the entrance to the North Carolina Supreme Court building (now the Court of Appeals) in 1915, Governor Locke Craig called him “one of the greatest judges that our race has produced.”⁷ In 1922, a dormitory was named after him on the UNC-Chapel Hill campus.⁸ Roscoe Pound secured Ruffin’s reputation as one of the ten greatest judges of the golden age of the American common-law tradition,⁹ an honor proudly proclaimed in official histories of the Supreme Court of North Carolina from the early twentieth century¹⁰ to the present.¹¹ Even today, the official history of the Supreme Court of North Carolina praises Ruffin’s accomplishments without so much as mentioning the infamous *Mann* opinion.¹²

6. Sanford Levinson, *Allocating Honor and Acting Honorably: Some Reflections Provoked by the Cardozo Conference on Slavery*, 17 CARDOZO L. REV. 1969, 1969 (1996).

7. Locke Craig, *Acceptance*, in ADDRESSES AT THE UNVEILING AND PRESENTATION TO THE STATE OF THE STATUE OF THOMAS RUFFIN BY THE NORTH CAROLINA BAR ASSOCIATION: DELIVERED IN THE HALL OF THE HOUSE OF REPRESENTATIVES 26, 26 (1915).

8. The University of North Carolina at Chapel Hill Engineering Information Services, *Ruffin Residence Hall*, <http://www.planroom.unc.edu/bldg/detail.asp?id=117> (follow “Aliases & Notes” hyperlink) (last visited Feb. 6, 2009).

9. ROSCOE POUND, *THE FORMATIVE ERA OF AMERICAN LAW* 4, 30 n.2 (1938).

10. Hon. Robert W. Winston, *A Century of Law in North Carolina*, 176 N.C. 763, 786 (1919) (reprinting remarks from the Proceedings of the North Carolina Bar Association in celebration of the 100th anniversary of the establishment of the Supreme Court of North Carolina).

11. Brinkley, *supra* note 1.

12. *Id.*

On November 16, 2007, in the presence of a portrait of the judge commissioned in the 1840s for what is now jointly called the Dialectic and Philanthropic Societies at UNC-Chapel Hill, a symposium of legal scholars and historians was convened to reconsider the legacy of Thomas Ruffin in light of *State v. Mann*. This Issue of the *North Carolina Law Review* consists of papers developed from that symposium on “The Perils of Public Homage: *State v. Mann* and Thomas Ruffin in History and Memory.” The questions raised in the following pages could not be more timely. In the wake of the election of our first African American president, the essays in this Issue add new perspective to countless other conversations on race as we work our way toward putting contradictory pieces of history and memory together. For as the historian Ira Berlin has aptly written, “only by testing memory against history can a sense of a collective past be sustained.”¹³

As conveners of the symposium, we extend our thanks to all the participants, to all who attended and made the event a success, and especially to our sponsors, the UNC School of Law, the UNC Center for the Study of the American South, and the UNC Institute for the Arts and Humanities.

13. Ira Berlin, *American Slavery in History and Memory*, in *SLAVERY, RESISTANCE, FREEDOM* 1, 20 (Gabor Boritt & Scott Hancock eds., 2007).

