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THE REPUBLICS OF LIBERTY AND LETTERS:
PROGRESS, UNION, AND
CONSTITUTIONALISM IN GRADUATION
ADDRESSES AT THE ANTEBELLUM
UNIVERSITY OF NORTH CAROLINA*

ALFRED L. BROPHY**

In the thirty years leading into Civil War, orators delivered hundreds of addresses to college literary societies throughout the United States. Those addresses—which were frequently given by lawyers, legally-trained politicians, and judges—condensed the orators’ ideas about law, history, economy, technology, and education together into a short compass. They provide an important and overlooked set of data for understanding how antebellum intellectuals saw law in relation to moral, technological, and economic progress.

This Article focuses on addresses given at the University of North Carolina from 1827 to 1860 to see how the orators dealt with ideas of Union, law, and constitutionalism, along with the ubiquitous, but vague trope of “progress.” The addresses reveal strong support for the Union, often framed in terms of support for the Constitution, and emphasize the positive role that speech has in shaping politics. They are more moderate in approach toward the era’s conflict over slavery and Union than addresses at neighboring schools. However, Whig and Democratic orators divided over their visions of the place of the educated, the importance of the rule of law, and the dangers posed by

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** Judge John J. Parker Distinguished Professor of Law, University of North Carolina. A shorter version of this was delivered at the Hutchins Lecture, March 16, 2010, at the University of North Carolina’s Center for the Study of the American South. I would like to thank my research assistants Anna Elizabeth Lineberger, Susannah Loumiet, and Jennifer Richelson; three extraordinary librarians, Donna Nixon, Nick Sexton, and Alia Wegner; and my colleagues Jack Boger, Mary S. Bilder, Daniel M. Filler, Brooks Graebner, Sally Greene, Jennifer W. Jiang, Sarah Nelson Roth, and Timothy J. Williams. Harry Watson’s kind invitation was the impetus for this paper and I am grateful to him for it.

increased democracy. The addresses, thus, reveal important points of convergence as well as division.

This Article is primarily about the content of political and legal ideas at UNC from the 1830s through the 1850s. It focuses attention on the important ideas in circulation on this campus. Yet, it has implications for cataloging constitutional ideas and then tracing how they relate to constitutional culture. It invites further work on ideas in literary addresses at other schools, along with work on addresses given by lawyers, politicians, and judges in other venues—like legislatures and courts. Those popular constitutional ideas can then be put together with “formal” constitutional law (law in the courts) and with legislative action, and in that way enrich our understanding of the sources and contours of constitutional history.

| | |
|---|------|
| INTRODUCTION | 1881 |
| I. “ORDER IS HEAVEN’S FIRST LAW”—WILLIAM GASTON’S ORATORY AND JURISPRUDENCE | 1886 |
| A. <i>The Princeton Address</i> | 1886 |
| B. <i>William Gaston as Lawyer and Judge</i> | 1889 |
| II. TO SPEAK IS TO ACT: THE PURPOSES AND REACH OF COLLEGE LITERARY ADDRESSES | 1898 |
| A. <i>The Power and Place of Oratory</i> | 1901 |
| B. <i>The College Literary Address</i> | 1905 |
| 1. The World of College Literary Societies | 1905 |
| 2. The Expectations of the College Literary Address... | 1907 |
| C. <i>The Stabilizing Function of Oratory</i> | 1909 |
| 1. The Anti-Transcendental Addresses: The Attack on Idealism | 1910 |
| 2. The Ideal in North Carolina Literary Addresses..... | 1913 |
| III. HISTORY, PROGRESS, DEMOCRACY, AND EDUCATION..... | 1914 |
| A. “[I]nfluence of the [C]ultivated [M]ind” | 1915 |
| B. <i>Progress and the “Spirit of the Age”</i> | 1916 |
| C. <i>The Utilitarian Age</i> | 1919 |
| D. <i>Romantic Images and the Past and Future of the Nation</i> | 1921 |
| E. <i>Political Ideology in the Addresses</i> | 1926 |
| 1. Whig Ideology in Addresses | 1929 |
| 2. Democratic Ideology in Addresses | 1933 |
| IV. LAW, CONSTITUTIONALISM, AND THE REPUBLIC OF LIBERTY | 1937 |

| | |
|---|------|
| A. <i>To See Law and Constitutionalism in Context</i> | 1940 |
| B. <i>"The Silken Cord that Unites"—The Constitution and the Case for Union</i> | 1945 |
| V. HEADING INTO SECTIONAL CRISIS | 1950 |
| VI. THE NORTH CAROLINA ADDRESSES IN CONTEXT | 1956 |
| CONCLUSION | 1960 |

INTRODUCTION

On June 20, 1832, Justice William Gaston of the Supreme Court of North Carolina appeared at Gerard Hall on the University of North Carolina's campus to deliver an address to a joint meeting of the Dialectic and Philanthropic Literary Societies. Gaston spoke of the duties of individuals—first to themselves to maintain diligence in their education and their business—and then to maintain their government from the evils of party conflict and disunion.¹ It was given in the midst of the age of Andrew Jackson, when Whigs like Gaston worried about the rise of political parties, the rise of democracy, and the declining influence of people of education, wealth, and status.² Gaston presented an eloquent case for the Whig vision of self-control and control of the nation through law. Such principles were, as Chief Justice John Marshall wrote in praise of the speech, the "true basis of the character to which statesmen in a republic ought to aspire."³

Gaston spoke of the power people wield over their destiny and of the powers of moral instinct, reason, and nature that guide people to correct decisions.⁴ He warned about the caprice of politics, for one might follow the demands of the voters rather than the legislator's own conscience. Such a trap would mean that it was "not the law of God, nor the rule of right, nor the public good" that governed the legislator, but pandering to the voter.⁵ Such thoughts about individual control and advancement were common themes in that era of geographic and social mobility, where traditional social hierarchy was eroding.

1. William Gaston, Address Delivered Before the Philanthropic and Dialectic Societies at Chapel Hill, N.C. 17, 20–22 (June 20, 1832) (Thomas W. White ed., 2d ed. 1832) [hereinafter *Gaston at Chapel Hill*].

2. See, e.g., LAWRENCE FREDERICK KOHL, THE POLITICS OF INDIVIDUALISM: PARTIES AND THE AMERICAN CHARACTER IN THE JACKSONIAN ERA 63–100 (2d ed. 1991).

3. Gaston at Chapel Hill, *supra* note 1, at 5.

4. *Id.* at 6–7.

5. *Id.* at 15.

Gaston's address moved outward, from prescriptions to individual young scholars to larger issues of politics. He spoke of the wickedness and madness of faction and of a most extraordinary problem: the end of slavery.⁶ Gaston was speaking in the wake of Nat Turner's rebellion, which took place in August 1831 just across the North Carolina-Virginia border.⁷ The fear of slave rebellions had reached as far as his state:

On you too, will devolve the duty which has been too long neglected, but which cannot with impunity be neglected much longer, of providing for the mitigation, and (is it too much to hope for in North Carolina?) for the ultimate extirpation of the worst evil that afflicts the Southern part of our Confederacy. Full well do you know to what I refer, for on this subject there is, with all of us, a morbid sensitiveness which gives warning even of an approach to it. Disguise the truth as we may, and throw the blame where we will, it is Slavery which, more than any other cause, keeps us back in the career of improvement. It stifles industry and represses enterprize—it is fatal to economy and providence—it discourages skill—impairs our strength as a community, and poisons morals at the fountain head—[h]ow this evil is to be encountered, how subdued, is indeed a difficult and delicate inquiry, which this is not the time to examine, nor the occasion to discuss. I felt, however, that I could not discharge my duty, without referring to this subject, as one which ought to engage the prudence, moderation and firmness of those who, sooner or later, must act decisively upon it.⁸

That was more than most Southerners were willing to say in public by 1832. The Virginia legislature's debates during the spring of 1832, on the efficacy of a gradual emancipation plan, were still echoing in the press.⁹ A few days after Gaston's address, Yale Professor Benjamin Silliman spoke in New Haven about a proposal

6. *Id.* at 19–20.

7. NAT TURNER: A SLAVE REBELLION IN HISTORY AND MEMORY, at xi (Kenneth S. Greenberg ed., 2003) [hereinafter NAT TURNER]; Robert N. Elliott, *The Nat Turner Slave Rebellion as Reported in the North Carolina Press*, 38 N.C. HIST. REV. 1, 1–18 (1961).

8. Gaston at Chapel Hill, *supra* note 1, at 19.

9. See, e.g., Jesse B. Harrison, *The Slavery Question in Virginia*, 12 AM. Q. REV. 379, 382 (1832) (reviewing a speech by Thomas Marshall made in the Virginia House of Delegates on January 20, 1832).

for a gradual abolition plan, which included transporting the freed slaves to Africa.¹⁰

Gaston was not the first speaker at UNC to criticize slavery. In fact, three years before, in June 1829, Professor William Hooper more sharply criticized the institution.¹¹ He worried about a slave rebellion, but also about the effects of slavery on the slaveholding community:

That slavery is a baneful parent of the vilest morals, every virtuous family in this southern country knows full well, and deplores that it holds within its own walls a fountain of moral poison, which, in spite of the most watchful care, is continually diffusing around its baleful influence and infecting the health of all the household¹²

Hooper longed for the day when “the collective wisdom and resources of the nation shall be put into action for the extirpation of the bitter root from our soil.”¹³

Gaston’s was the last UNC graduation address to criticize slavery. Gaston concluded with what appears a prescient observation and a call for unity. He feared that the end of Union would be the end of a vision of liberty and freedom.¹⁴ Gaston was speaking as the nullification crisis was going on in neighboring South Carolina. If some of the more agitated South Carolinians had their way, there might be disunion in the near term.¹⁵

In his speech, Gaston addressed the role of the educated individual in American society—and in particular about those who inhabited what was once called the “republic of letters,” as they moved from the world of letters to the world of the law. Over the next several decades, the UNC community—students, faculty, alumni, and the local community—heard from many speakers about the duties of the educated person in society. From those speeches we learn about the role of the educated person in the republic, and also the role of education, economics, law, and culture in holding the United States

10. Benjamin Silliman, *Some of the Causes of National Anxiety: An Address Delivered in the Centre Church in New Haven* 12 (July 4, 1832).

11. *See* William Hooper, *An Oration Delivered at Chapel Hill* 14–15 (June 24, 1829).

12. *Id.*

13. *Id.* at 15.

14. Gaston at Chapel Hill, *supra* note 1, at 20–21.

15. *See generally* WILLIAM FREEHLING, *PRELUDE TO CIVIL WAR: THE NULLIFICATION CONTROVERSY IN SOUTH CAROLINA 1816–1836* (1966) (discussing South Carolina’s involvement in the nullification crisis that preceded the Civil War).

together. The orators reveal their ideas about law, civilization, progress, and Union. And in that process, they reveal the connections between these topics.

This Article turns to the thirty-five addresses given at UNC and then published from 1828 through 1860, supplemented by speeches given at other North Carolina schools and at schools in neighboring states, to understand southern thought on constitutionalism and Union. The addresses expand our understanding of the number of intellectuals in the Old South; many of these addresses were given by now obscure people, who appear infrequently, if ever, in the standard works of southern intellectual history. Because many were given by judges and lawyers, they offer insight into the salient issues confronting southern jurisprudence. In a short compass (the addresses rarely stretch beyond a few dozen pages), orators explain their central ideas and how their intellectual world fit together. We see how they melded history's lessons about stability and democracy, the technological and moral progress surrounding them, and the way that education and the printing press contributed to democracy, as well as the dangers of party politics. The addresses illustrate ideas of popular constitutionalism—how ideas formulated by lawyers in legislative debate, by politicians making speeches to constituents, and by intellectuals speaking to their audiences—migrated into constitutional doctrine and then, ultimately, brought people into action. Because of the overlap between legal thought and political ideology, this Article pays particular attention to the political affiliations of the speakers (mostly Whigs and Democrats), as well as the points of convergence between speakers of all political orientations.¹⁶

This Article depicts the spectrum of ideas in the addresses, particularly as the addresses link talk of progress and education with the Constitution and the Union. The ideas in these addresses reveal how orators created and drew upon a national character, how intellectuals—many of whom were lawyers, politicians, and judges—blended their world of order and education with their fear of radicalism in the French Revolution and in the abolition movement.

16. In *FREE IN THE WORLD: AMERICAN SLAVERY AND CONSTITUTIONAL FAILURE* 179 (1998), Mark Brandon discusses the serious rethinking of constitutional ideas that circulated in the years leading up to Civil War. Particularly in that time, one can trace how ideas about state equality moved from John C. Calhoun's speeches in Congress to state courts, such as in *In re Perkins*, 2 Cal. 424, 424–58 (1852), and finally into formal constitutional law in *Dred Scott v. Sandford*, 60 U.S. (1 How.) 393, 480–81 (1857).

Through oratory, they celebrated and created a “republic of law” (one orator called it a “republic of liberty”),¹⁷ much as novelists and intellectuals created a republic of letters. Law was an independent variable in the multiple regression equation that helped explain American character and that helped create and preserve the Union. Law was also a dependent variable, as national identity shaped law.

This Article proceeds by first discussing Gaston’s jurisprudence, to suggest how Gaston’s address at UNC—and another address at Princeton several years later—help us understand his thought, and to show how one can connect ideas in addresses to a judge’s body of thought, such as his judicial opinions. Part II frames questions about the purposes of college oratory, in particular the ways that oratory established order and promulgated ideas of order, stability, and hierarchy. Part III turns to the diversity of ideas in the UNC graduation addresses, including their focus on the role of educated minds, technological and moral progress, utility, and romanticism. Some Whig orators focused on key Whig themes, like the duty of submission to law and the dangers of an excess democracy, while some Democratic orators focused on key Democratic themes, like the importance of wide diffusion of education. There was a particular division over the Whig and Democratic interpretations of the printing press; where Democrats found the printing press an unqualified good, some Whigs found the printing press the vehicle for the breakdown of authority, as well as the diffusion of knowledge. Part IV then turns to law and constitutionalism in the addresses and to what they say about the orators’ vision for law and constitutionalism: how the orators saw constitutional ideas binding the United States together into a republic of liberty and how the Constitution served as what one orator called “the silken cord that unites.”¹⁸ This is a part of an expanding sense of constitutional law, which moves from the Constitution as a written document to the ideas of constitution in the minds of Americans who saw shared values, religion, and interests as holding the country together. A final section of Part IV turns to the addresses in the 1850s, as tensions between North and South were increasingly difficult to cabin. While the UNC orators emphasized the value of the Union, even at the moderate UNC a few echoes of discontent with

17. Matt W. Ransom, Address Delivered Before the Dialectic and Philanthropic Societies of the University of North Carolina 21 (June 4, 1856).

18. Bartholomew F. Moore, An Address Delivered Before the Two Literary Societies of the University of North Carolina 14 (June 15, 1846) [hereinafter Bartholomew F. Moore].

Union appeared. By comparison with orators at other schools and with addresses given by the UNC orators in other contexts—such as political speeches—the graduation addresses appear as moderate statements that strove to instill respect for Union, education, and obedience to the rule of law.

I. “ORDER IS HEAVEN’S FIRST LAW”—WILLIAM GASTON’S
ORATORY AND JURISPRUDENCE

A. *The Princeton Address*

Perhaps because of the success of his 1832 speech, Gaston was invited to address a joint meeting of the Whig and Cliosophic Literary Societies at his alma mater, Princeton, in September 1835.¹⁹ The Princeton address began in a similar way to Gaston’s North Carolina address in dealing with the duties of individuals. Then he transitioned to focus on law and the need for order. This topic was brought on by the then-recent mob attacks on the Charleston convent and on African-Americans, as well as other episodes of vigilante justice and mobbing.²⁰

Gaston warned about the need for order and law:

Order is heaven’s first law, and there can be no order without subordination. A deliberate breach of law shows profligacy and folly, the ferocity of an untamed, or the ignorance of an uninformed nature; but a cheerful submission to wise rule is the highest evidence of that reasoning energy and decision of purpose which are among the noblest attributes of an intellectual being.²¹

Gaston saw a particular role for the educated citizen in supporting the law. “The character of our nation is deeply involved in the character of its public men,” he told the Princeton students.²² Gaston thought there should be a more civilized public debate and that the periodical press was the vehicle for that civilization. The press’s power to shape public opinion was critical, for “[e]nlightened

19. William Gaston, *An Address Delivered Before the American Whig and Cliosophic Societies of the College of New Jersey* (Sept. 29, 1835) [hereinafter *Gaston at Princeton*].

20. *Id.* at 27. Mob violence rose dramatically in the 1830s. See DANIEL WALKER HOWE, *WHAT HATH GOD WROUGHT? THE TRANSFORMATION OF AMERICA, 1815–1848*, at 431 (2007) (listing riots per year in the 1830s).

21. *Gaston at Princeton*, *supra* note 19, at 11.

22. *Id.* at 27–28.

public opinion is, next to religion, the great conservator of virtue and propriety.”²³

Yet, one needed to worry about public opinion. Gaston analogized the idea of freedom to that fearsome power of steam. He told students at Princeton in 1835 that freedom is “like that unseen agent which is daily operating such marvels amongst us, which drives the mighty steamer through the waters, and sends the fiery ear careering over the land.”²⁴ Freedom “must be effectually secured and skillfully regulated, or its explosions will spread havoc around.”²⁵

The preservation of public morals was one of Gaston’s goals. He also saw the promotion of freedom, particularly freedom of conscience, as another of the great goals of educated people. He lamented the harms to humans and to society from a lack of freedom:

Without freedom, man is a poor, miserable, abject thing, the sport and victim of his fellow man’s rage, caprice and cruelty, having neither vigour of thought, motive for exertion, nor rational hope to gratify. But there can be no freedom without law. Unrestrained liberty is anarchy; domination in the strong; slavery in the weak; outrage and plunder in the combined oppressors; helpless misery in the oppressed; insecurity, suspicion, distrust, and fear to all.²⁶

From there, Gaston solemnly concluded, “Law is the guardian of freedom.”²⁷ Gaston echoed a common theme in the nineteenth century: that law promoted freedom by restraining the passions of individuals, of tyrants, and of mobs. He gave a robust defense of law and the need to obey it, for law channeled disputes and created a union from the many diverse political and economic interests:

The law here demands our obedience, because we have pledged ourselves to obey it, and a breach of this engagement is perfidy. Rebellion against the law, against the expressed voice of the commonwealth, of the regularly declared will of the embodied people, the only recognised sovereign, is “*crimen laesae majestatis*,” is in the nature of treason. The law deserves our obedience, for that alone can reconcile the jarring interests of all, secure each against the rashness or malignity of others, and

23. *Id.* at 29.

24. *Id.* at 30.

25. *Id.*

26. *Id.* at 31.

27. *Id.*

blend into one harmonious union the discordant materials of which society is composed.²⁸

Law also promised protection of everyone and thus protected expectations and stabilized society:

The law throws its broad shield over the rights and the interests of the humblest, the proudest, the poorest, and the wealthiest in the land. It fences around what every individual has already gained, and it ensures to him the enjoyment of whatever his industry may acquire. It saves the merchant against ruinous hazards, provides security for the wages of the mechanic and the labourer, and enables the husbandman to reap his harvests without fear of plunder. . . . It makes every man's house his castle, and keeps watch and ward over his life, his name, his family, and his property. It travels with him by land and by sea; watches while he sleeps; and arrays, in the defense of him and of his, the physical strength of the entire state. Surely, then, it is worthy of our reverence, our gratitude, and our love. Surely obedience to its mandates is among the highest of our duties. Surely its service is not incompatible with perfect freedom.²⁹

Yet, Gaston saw around him the breakdown of law, from the mobbing of the Charleston convent to attacks on African-Americans to vigilante justice. And probably in the minds of his audience was the Whig critique of the Democratic Party, which was seen as particularly casual in its attitude towards the rule of law. From Andrew Jackson's flouting of the Marshall court's *Worcester v. Georgia*³⁰ opinion to the Kentucky legislature's attack on vested rights, to the declining significance of property holding for the franchise, Whigs worried about what they saw as the Democrats' attack on law and property. Gaston invoked the images of lawless mobs, then suggested that this would be how despotism might come to the United States: "From such evils, despotism itself is a refuge. The unlimited rule of one master is more tolerable than the unsparing domination of many and ever-changing sovereigns."³¹ Indeed, one needed only look around to see examples in the human experience.

The history of the world can scarcely be opened without meeting with the annals of the decline and fall of freedom. The

28. *Id.* at 32–33 (emphasis added).

29. *Id.* at 33.

30. 31 U.S. (6 Pet.) 515 (1832) (restricting Indian removal).

31. Gaston at Princeton, *supra* note 19, at 36.

summary is short. Liberty becomes licentious, and bursts the bounds of law. Factions rage and war against each other. The war of factions is succeeded by a confiscating and sanguinary anarchy. Anarchy is superseded by tyranny.³²

Thus, would end freedom.

Still, Gaston was an optimist. He placed hope in educated Americans to stop such scenes. Those speeches give us some sense of Gaston's mind—and the things he found important to tell to a student audience. Gaston's addresses assembled his intellectual universe in the compass of a few dozen pages.³³

B. William Gaston as Lawyer and Judge

Gaston was, indeed, different from the usual justice of his era. He was a Catholic, Princeton-educated, and a former Federalist. He was admitted to the bar in 1798.³⁴ Born in 1778, he was a representative of an earlier era—of Federalism, where concepts of virtue, republicanism, and order were central.³⁵ While practicing law, Gaston represented a number of Quakers in their efforts to establish trusts for the emancipation of their enslaved humans.³⁶ He went on to serve on the Supreme Court of North Carolina beginning in 1832 until his death in 1844, at age sixty-five.³⁷ During those sixteen years, Gaston wrote 474 opinions. More than 100 of those cases involved slavery in some way.³⁸ At the time of his talk, he was fifty-four, older than most orators at the time of their addresses.³⁹

32. *Id.*

33. See James C. Dobbin, Address Delivered Before the Two Literary Societies of the University of North Carolina 19 (June 5, 1850) (“[I]n the short compass of an Address, no power of condensation is adequate to the task of presenting more than the most meagre picture of the sources of either the enjoyment or influence of the cultivated mind.”).

34. Ronnie W. Faulkner, *William J. Gaston (1778–1844)*, N.C. HIST. PROJECT, <http://www.northcarolinahistory.org/commentary/45/entry> (last visited Aug. 26, 2011).

35. See STANLEY ELKINS & ERIC MCKITRICK, *THE AGE OF FEDERALISM* 21–25 (1993) (exploring Federalism as a social and political philosophy); LINDA J. KERBER, *FEDERALISTS IN DISSENT: IMAGERY AND IDEOLOGY IN JEFFERSONIAN AMERICA* 174 (1970) (discussing key themes of Federalists).

36. See Alfred L. Brophy, *Thomas Ruffin: Of Moral Philosophy and Monuments*, 87 N.C. L. REV. 799, 839 (2009).

37. Charles H. Bowman, Jr., *Gaston, William*, in 2 *DICTIONARY OF NORTH CAROLINA BIOGRAPHY* 283, 283 (William S. Powell ed., 1986) (noting that Gaston was born on September 19, 1778, and died on January 23, 1844).

38. Gaston employed the word “moral” in twenty-seven of his opinions (5.7%). By contrast, Chief Justice Thomas Ruffin wrote 1,443 opinions and used the word “moral” in seventy-five of them (5.2%). Some of Gaston's other revealing phrases were “unconstitutional,” “monstrous,” “fault,” and “consequence of negligence.” See, e.g.,

Gaston's opinions correlate with and complement the values he expressed in his addresses. He wrote elegant opinions, rich with the language of moral philosophy, duty, and trust. Gaston was perhaps best known in his time for an opinion that limited the power of slave owners over their enslaved human property, the 1834 case *State v. Negro Will*.⁴⁰ It involved the criminal prosecution of a slave, Will, who killed his overseer following a brief dispute with him.⁴¹ No one questioned that the slave had argued with the overseer and in the process of running away, the overseer shot and wounded him. The overseer pursued Will and overtook him, then they began fighting.⁴² Will cut the overseer on the thigh and then the arm, which caused the overseer to bleed to death.⁴³ The question was whether Will was guilty of murder or only a less serious charge of manslaughter.⁴⁴ This turned on whether the law recognized that Will was resisting the overseer or whether—as some might suspect—the overseer should expect absolute and uncontrolled obedience from Will at all times, even in the midst of a dispute. Gaston's decision in *Negro Will* recognized the process of change and harmonization of precedent involved in the common law.⁴⁵

Gaston emphasized two important values in his *Negro Will* opinion. First, the desire to limit violence, particularly violence over slaves. While he recognized that "[u]nconditional submission" was the "general duty of the slave," that power did not give the master "the right to slay his slave."⁴⁶ From that principle, he found some authority for Will's fleeing from the overseer and he found no authority for the overseer's shooting of Will. Second was Gaston's recognition of Will's humanity and of the natural, human response he

Dodson v. Mock, 20 N.C. (3 & 4 Dev. & Bat.) 282, 284–85 (1838). On Gaston's reputation, see Robert Strange, *Life and Character of Hon. Wm. Gaston: A Eulogy* (Nov. 11, 1844).

39. See *infra* Table 1 pp. 1962–63.

40. 18 N.C. (1 Dev. & Bat.) 121 (1834). For another example of Gaston's opinions limiting the power of slave owners, see *State v. Jarrott*, 23 N.C. (1 Ired.) 76, 81–85 (1840).

41. *Negro Will*, 18 N.C. (1 Dev. & Bat.) at 164.

42. *Id.*

43. *Id.* at 164–65.

44. *Id.* at 169 (asking if "the prisoner's guilt be alleviated into manslaughter?").

45. *Id.* at 168 ("When a case of homicide happens in which the *fact* of provocation occurs, and the legal character of that fact has been settled by precedents, the judicial duty is comparatively plain. But where the legal character of the fact has never before been settled, it then becomes one of vast responsibility, and often of no little difficulty. The *principle* to be extracted from former adjudications must then be diligently sought for, and prudently applied.").

46. *Id.* at 165 (emphasis omitted).

had to the attack by the overseer. Gaston explained the “strong impulses to action” that Will must have felt:

Suffering under the torture of a wound likely to terminate in death, and inflicted by a person, having indeed authority over him, but wielding power with the extravagance and madness of fury; chased in hot pursuit; baited and hemmed in like a crippled beast of prey that cannot run far; it became instinct, almost uncontrollable instinct, to fly; it was human infirmity to struggle; it was terror or resentment, the strongest of human passions, or both combined, which gave to the struggle its fatal result; and this terror, this resentment, could not but have been excited in any one who had the ordinary feelings and frailties of human nature.⁴⁷

Gaston concluded that there were insufficient precedents to hold a slave guilty of homicide in all cases where he kills a person who has dominion over him. Gaston invoked his religious sensibility to interpret the law. He asked, in essence, how the slave could be guilty of murder in this case:

Unless I see my way clear as a sunbeam, I cannot believe that this is the law of a civilised people and of a Christian land. I will not presume an arbitrary and inflexible rule so sanguinary in its character, and so repugnant to the spirit of those holy statutes which “rejoice the heart, enlighten the eyes, and are true and righteous altogether.” If the legislature should ever prescribe such a law—a supposition which can scarcely be made without disrespect—it will be for those who then sit in the judgment seat to administer it. But the appeal here is to the common law, which declares passion not transcending all reasonable limits, to be distinct from malice. The prisoner is a human being, degraded indeed by slavery, but yet having “organs, dimensions, senses, affections, passions,” like our own. The unfortunate man slain was for the time, indeed, his master, yet this dominion was not like that of a sovereign who can do no wrong.⁴⁸

Negro Will, written between the UNC and Princeton literary addresses, reveals Gaston’s concern with the subordination of everyone—master as well as slave—to the restraints of law.⁴⁹ It also

47. *Id.* at 167.

48. *Id.* at 171–72.

49. *Id.*

reveals his particular attention to human emotions. More than fifteen years later, in the United States Senate, North Carolina Senator George Badger turned to Gaston's opinion in *Negro Will*. During debate over the Compromise of 1850, Senator Isaac Pigeon Walker of Wisconsin⁵⁰ had invoked Justice Thomas Ruffin's discussion in *State v. Mann*, that the master of a slave had uncontrolled authority over the body of the slave, to show how southern law failed to protect slaves.⁵¹ In response, Badger discussed several opinions, including *Negro Will*, to demonstrate that slaves did have the right to resist their owners.⁵² Badger confessed that dicta in *State v. Mann* had gone too far. Although many abolitionists turned to Ruffin's opinion for a particularly stark statement of the brutal reality of slavery, Badger thought such use inappropriate.⁵³ Even Ruffin, Badger pointed out, had conceded limits on the owner's authority nearly a decade after *Mann*, in his 1839 opinion in *State v. Hoover*.⁵⁴ A few weeks later, Badger included in his speech supporting the Compromise of 1850 a quotation from Gaston's 1832 literary address on the dangers of disunion.⁵⁵

50. CONG. GLOBE, 31ST CONG., 1ST SESS. 285 (1850).

51. *Id.* at 281 ("This judge depicts in terms so bitter the institution of slavery, that if any northern man were to use similar words here, he would be called *fanatical*.").

52. *Id.* at 285–86.

53. *Id.* at 285.

54. *Id.* at 286 (citing *State v. Hoover*, 20 N.C. (3 & 4 Dev. & Bat.) 365 (1839)). Ruffin had backed away from his statement about the master's uncontrolled authority over the body of the slave when he found in *Hoover* that:

[T]he acts imputed to this unhappy [slave owner] do not belong to a state of civilization. They are barbarities which could only be prompted by a heart in which every humane feeling had long been stifled; and indeed, there can scarcely be a savage of the wilderness so ferocious as not to shudder at the recital of them.

Id. at 368.

55. CONG. GLOBE, 31ST CONG., 1ST SESS. 382–83 (1850). The difference in approach between Ruffin's *State v. Mann*, 13 N.C. (2 Dev.) 263 (1829), and Gaston's 1834 *State v. Negro Will*, 18 N.C. (1 Dev. & Bat.) 121 (1834), reveals the differing perspectives of Ruffin, a Democrat and a person who supported few if any constraints on the power of the master, and Gaston, who privately (and sometimes publicly) advocated antislavery measures. See, e.g., *supra* note 1 and accompanying text (discussing Gaston's antislavery advocacy in public and private); Brophy, *supra* note 36, at 813–28 (discussing Ruffin's proslavery thought). This may reveal the political-ideological divisions of the conflicts of humanity, law, and economy that historians have identified in southern approaches to slavery. See, e.g., Reuel E. Schiller, *Conflicting Obligations: Slave Law and the Late Antebellum North Carolina Supreme Court*, 78 VA. L. REV. 1207, 1207–51 (1992) (noting the conflicting obligations and inconsistencies in North Carolina's slave law).

Perhaps it was not so much that considerations of humanity sometimes trumped considerations of law; Gaston and Ruffin articulated different visions of the law's scope

Other opinions reveal Gaston's mind and the limitations of his emphasis on equal treatment by law. *State v. Manuel*,⁵⁶ for instance, upheld the constitutionality of a statute that provided that imprisoned free blacks should be hired out to pay for the costs of their imprisonment, but that did not impose a similar burden on white prisoners.⁵⁷ In one instance, Gaston upheld a trust for the emancipation and then transportation of enslaved people to Liberia, which was similar to the ones he drafted while in practice.⁵⁸ Gaston did not always find in favor of freedom, however. In *Bryan v. Wadsworth*,⁵⁹ Gaston rejected a slave's claim that he had been manumitted. The slave's owner received permission from a local court to emancipate him, but she sold him instead. Gaston concluded the emancipation had never been completed.⁶⁰

Gaston, like the majority of jurists of his age, respected the economic progress brought by railroads. In *Ellis v. Portsmouth & Roanoke Railroad*,⁶¹ for instance, he limited railroads' liability to

and the point where law ended, as well as the master's "authority over the body of the slave," as Ruffin phrased it. *Mann*, 13 N.C. (2 Dev.) at 263, 266. *Negro Will* arose in a different setting from *Mann*. See *id.* at 263–64. In the former, the court dealt with the question of the slave's scope of resistance to an abusive overseer, and in *Mann* it was the scope of the criminal law to punish an abusive owner (or possessor). *Id.* It is entirely possible that the law would recognize the authority of the owner to injure a slave while also recognizing that slaves might, as human beings, respond to an abusive overseer.

56. 20 N.C. (3 & 4 Dev. & Bat.) 20 (1838).

57. *Id.* at 38–39.

58. *Cameron v. Comm'rs of Raleigh*, 36 N.C. (1 Ired. Eq.) 436, 441 (1841); see also *Campbell v. Street*, 23 N.C. (1 Ired.) 109, 112 (1840) (upholding a will freeing people in Virginia and applying Virginia law). Gaston observed, "We have examined with attention all the Virginia decisions which have been referred to on both sides in the argument; but do not feel ourselves competent to remove the discrepancies between them, if such there be; or to deduce from them the full law on this subject." *Id.* Gaston—like other judges—saw one purpose in the rationalization of precedent and law through opinions.

But Gaston was not always so supportive of charitable trusts. See *Holland v. Peck*, 37 N.C. (2 Ired. Eq.) 255, 257–58 (1842). In interpreting a will that provided for a testator's widow and then, after her passing, left the property to certain individuals in the Methodist Episcopal Church, Gaston noted the importance of religion to the public good. *Id.* He found such a gift is "entitled to the highest favor, which, according to our system of jurisprudence, can be extended to a bequest for any public purpose, however beneficial." *Id.* at 259. Yet, because those particular people had died, Gaston refused to substitute other members of that religious denomination for beneficiaries—he explained at length how it was inappropriate for a court to substitute its judgment for that of the testator. *Id.* at 262. It was a formalist opinion, which required the testator to be more specific in intent. He was concerned over judges substituting their own judgment for that of the testator, even if it defeated the testator's general purpose. See *id.*

59. 18 N.C. (1 Dev. & Bat.) 384 (1835).

60. *Id.* at 389.

61. 24 N.C. (2 Ired.) 138 (1841).

cases where there was evidence of fault. Gaston confronted a jury verdict against a railroad for a spark that came off the railroad's locomotive and burned a neighboring fence. While some sought to hold railroads liable for any damage to neighbors, Gaston concluded that the railroad could only be liable if it was at fault in letting the sparks loose.⁶² "It is no doubt a principle of law, as it is of morals, that one should so use his own as not to injure his neighbor," Gaston began the opinion.⁶³ Such a rule "requires, that even in the legitimate enjoyment of property, such care shall be used as not to render it likely to impair their enjoyment of property by others."⁶⁴ However, Gaston went on to require fault⁶⁵: "[N]o man, unless he has engaged to become insurer, against unavoidable accidents, is responsible for damage sustained against his will and without his fault."⁶⁶ There needed to be evidence that the spark was the fault of the railroad.⁶⁷ This followed the general limitation of liability in the Supreme Court of North Carolina.⁶⁸ Yet, the opinion ultimately upheld the jury's verdict because there was a presumption in such cases that the railroad was negligent in letting the spark get loose. Gaston would not impose strict liability on a railroad—it could not be held liable without fault, but in this case there was sufficient, even if minimal, evidence of fault.⁶⁹

62. *Id.* at 140.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at 141.

68. *See, e.g.,* *Heathcock v. Pennington*, 33 N.C. (11 Ired.) 640 (1850) (limiting liability of a hirer for the death of a slave employed at a coal mine). Other courts also limited liability. *See, e.g.,* MORTON HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1780–1860*, at 67–78 (1977) (discussing limitations of damages and injunctions as part of the "subsidization of economic growth"); TIMOTHY S. HUEBNER, *THE SOUTHERN JUDICIAL TRADITION: STATE JUDGES AND SECTIONAL DISTINCTIVENESS, 1790–1890*, at 174–75 (1999) (discussing judicial limitations on strict liability). Still, others see a main current of pre-Civil War legal thought as emphasizing individualism and contract and thus a relatively limited role for courts to protect individuals. *See, e.g.,* Alfred S. Konefsky, *The Accidental Legal Historian: Herman Melville and the History of American Law*, 52 *BUFF. L. REV.* 1179, 1189–92 (2004) (depicting emergence of individual contract rights in the wake of a breakdown of traditional status-based relationships).

69. Gaston upheld the jury's verdict because he thought the plaintiff had made out a *prima facie* case, which the railroad had not adequately rebutted by showing they had exercised proper care.

But we hold, that when he shews damage, resulting from their act, which act with the exertion of proper care, does not ordinarily produce damage, he makes out a *prima facie* case of negligence, which cannot be repelled but by proof of care or of

Gaston wrote in one opinion about how he adapted the common law to the American situation. In dealing with the doctrine of “waste”—whether a person with a right to be on the property at present was misusing it and depriving a future owner of the property of her rights—Gaston knew that the English law might not fit the wild conditions in North Carolina. Where English law prohibited a current owner from clearing the land, Gaston thought that such a firm rule in North Carolina was inappropriate.

[A]s yet the usage is almost universal, of cultivating the cleared land until it is worn out, permitting it to rest, and grow up with pines and scrubby oaks, in order to shield it from the sun, and return by their straw and leaves a portion of the fertility it once possessed; and clearing new ground to supply the place of that given back to nature. While the tenant for life observes the usual course of husbandry of the country, and does no permanent injury to the estate of him in remainder, such tenant ought not to be deemed guilty of legal waste.⁷⁰

In 1834, shortly after ascending to the bench, Gaston explained the process by which common law rules changed. He recognized the relative freedom of judges to adopt rules based on reason when they were unrestrained by precedent. When constrained by precedent, judges were limited to changing rules only when there was a consensus that the rule needed changing:

[D]octrine leading to such results ought to be well considered before it is adopted, or if already adopted, should, if possible, be well guarded, lest it should be followed by the same

some extraordinary accident, which renders care useless.

Ellis, 24 N.C. (2 Ired.) at 141. In another case involving a dog that had been shot, Gaston found it unreasonable to expect that the dog would never be violent. *Dodson v. Mock*, 20 N.C. (3 & 4 Dev. & Bat.) 146, 158 (1838). This concession to the nature of an animal suggests Gaston’s attachment to take the world as it was. *See id.* at 148–49 (“It is not denied that a dog may be of such ferocious disposition or predatory habits as to render him a nuisance to the community, and such a dog, if permitted to go at large, may be destroyed by any person. But it would be monstrous to require exemption from all fault as a condition of existence.”).

70. *Shine v. Wilcox*, 21 N.C. (1 Dev. & Bat. Eq.) 631, 632–33 (1837); *see also Carr v. Carr*, 20 N.C. (3 & 4 Dev. & Bat.) 179, 179 (1838) (“It has been the aim of the courts of this State, in the decision of controversies between the heir and the widow on the subject of waste, to accommodate the principles of the common law to the condition of our country.”). Similarly, Gaston reasoned his way in property cases from the needs of a commercial society for freely alienable land, where people know what they are buying. *See Bridges v. Purcell*, 18 N.C. (1 Dev. & Bat.) 492, 497 (1836) (limiting licenses to enter land to make land more easily alienable).

consequences. But upon this question, the rules by which it is our duty to be guided are exceedingly different, accordingly, as the doctrine may or may not have been sanctioned by our predecessors. An adjudication by them is a precedent, which we are bound to regard as evidence of the law, unless it can be conclusively shown to be erroneous, and by which we must be guided even when so shown, if a departure from it occasions greater public inconvenience than the error itself. Where there is no such precedent, we then ascertain the true rule by the deductions of reason from settled principles. After several conferences, we are unable to agree upon this general question, and as a determination of it is unnecessary in the present case, we must leave it, reluctantly leave it, in the state in which we find it.⁷¹

While judges frequently spoke about the different conditions in the United States as the rationale for changes in or development of common law rules, the differences were frequently issues of economics and political ideology, rather than nature, as Gaston's explanation in *Negro Will* illustrates.⁷²

Though he wrote about how judges were often constrained in changing the common law, Gaston sometimes signaled that he was writing something more than just an opinion to decide the case in front of him. Many of his opinions begin with a broad statement of law, such as, "It is essential to the security of property and the repose of society, that the rules by which judicial sales are regulated, should be clearly defined and strictly observed."⁷³

71. *Johnson v. Cawthorn*, 21 N.C. (1 Dev. & Bat. Eq.) 32, 34-35 (1834).

72. See Alfred L. Brophy, *Reason and Sentiment: The Moral Worlds and Modes of Reasoning of Antebellum Jurists*, 79 B.U. L. REV. 1161, 1207-13 (1999) (reviewing PETER KARSTEN, *HEART VERSUS HEAD: JUDGE-MADE LAW IN NINETEENTH CENTURY AMERICA* (1997)) (interpreting judges' behavior in the pre-Civil War era as part of emergence of "middle class values," including economic efficiency and property rights).

73. *Tarkinton v. Alexander*, 19 N.C. (2 Dev. & Bat.) 87, 91 (1836). Gaston limited precedent when it was based on outmoded, feudal principles. See *Fox v. Horah*, 36 N.C. (1 Ired. Eq.) 358, 366-67 (1841) (limiting escheat because rules were based on feudal principles). Yet, he applied well-established precedent. *Adams v. Hayes*, 24 N.C. (1 Ired.) 361, 368 (1842) (applying property precedent based on feudal principles and acknowledging that "[w]hen rules of property are once settled, it is not necessary, before we yield them obedience, that we should perceive the reasons upon which they are established"). Often the changes were introduced through legislation, *Gardener v. Rowland*, 24 N.C. (1 Ired.) 247, 249 (1842), through expansion of principles, e.g., *State v. Davis*, 24 N.C. (1 Ired.) 153, 157 (1841), or by a combination of common law drift and legislation. *Fox*, 36 N.C. (1 Ired. Eq.) at 361. Similarly, the Revolution impelled some changes in property rules. See *State v. Manuel*, 20 N.C. (3 & 4 Dev. & Bat.) 20, 24 (1838); *Parrott v. Hartsfield*, 20 N.C. (3 & 4 Dev. & Bat.) 110, 112 (1838) ("It hath been always

Gaston was attuned to the difficulties of shifting precedent. In interpreting a devise in a will, for instance, Gaston faced conflicting precedent. He drew distinctions between the instances where a court was bound by an unbroken string of precedent, and the places where there was conflicting precedent, which required the court to revisit the issue to see which was correct.⁷⁴ One might assess, then, Gaston's opinions as careful works, which protect the commercial interests and expectations of his society.

In addition to his views on economic development, Gaston's opinions reflected the moderate Whig desire for control through law and also revealed his mild opposition to slavery. Perhaps Gaston's age and his experiences in the era of the Revolution influenced his ideas. Maybe he is better seen as a part of the age of Federalism than the age of Jackson, or of the age of Adams, Kent, and Story—a man who dreamed of the gradual termination of slavery and maintenance of the Union, while still maintaining the hierarchy and control so central to Whig thought.⁷⁵

Though he died owning about 160 people, Gaston acted and spoke against (or at least to limit) slavery in cases like *Negro Will* and in both of his literary addresses, while drafting trusts for Quakers to

taken for the law, and universal usage is high evidence of the law, that a sheep-stealing dog, found lurking about, or roaming over a man's premises where sheep are kept, incurs the penalty of death."); *O'Daniel v. Crawford*, 15 N.C. (4 Dev.) 197, 203–04 (1833). In granting relief from a deed given some decades before as security on a loan, Gaston observed that there was little evidence. *Kimborough v. Smith*, 17 N.C. (2 Dev. Eq.) 558, 561–62 (1834). However, he judged based on the amount of evidence one might expect: "But it would be unsuited to the exigencies of human society, if while it uniformly adhered to the same *principles*, it should require in all cases the same amount of *testimony* to satisfy its judgment." *Id.* at 562.

74. *Ward v. Stow*, 17 N.C. (2 Dev. Eq.) 509, 511–12 (1834) ("None can be more deeply convinced than we are of the necessity of a steady adherence to the decisions of our predecessors. Carelessness in this respect can scarcely fail to involve us in error and throw the law into confusion. So far as the decisions of these eminent judges concur with each other, they form a law for this Court, which nothing short of what we may reasonably hope cannot happen—a manifest breach of the law of the land—can warrant us to disregard. Where they are found to conflict, which from the imperfection of all human institutions must sometimes be the case, the latest will of course be presumed right, yet not so conclusively right as to forbid examination. In the present singular case, however, it is somewhat difficult to say which of the two opposing decisions has the better claims to be regarded as the precedent; for while the one is the more recent, the other has the advantage of having been unanimous; of having been decided upon argument, and of being a judgment in a case regularly and properly before the Court. Convinced that we ought not to rely authoritatively and exclusively on the last adjudication, we have deemed it an imperious duty deliberately to investigate the argument by which it is supposed to be established.").

75. See Faulkner, *supra* note 34 (discussing Gaston's political background).

free enslaved people. We can see how the ideas of order and law combined with Gaston's antislavery ideas to make a jurisprudence of slavery that was more flexible and less ardently proslavery than Ruffin's.⁷⁶ And we can see through Gaston's literary addresses and his opinions how ideas were put into action. *Negro Will* is a prime example of how Gaston's antislavery attitudes, as well as his desire for order, combined to limit the authority of a white person over an enslaved person. Though Gaston's star shines less brightly on the Supreme Court of North Carolina than his contemporary Thomas Ruffin, that is likely an unjustified verdict.⁷⁷

II. TO SPEAK IS TO ACT: THE PURPOSES AND REACH OF COLLEGE LITERARY ADDRESSES

Gaston's address was an immediate hit and a long-time favorite. In his 1850 address to the joint literary societies, James Dobbin, the Democratic speaker of the North Carolina House of Representatives and a member of the class of 1832, recalled the experience of hearing Gaston's address: "[the] restless throng of College youth . . . with buoyant hopes and eager expectation, sat as anxious listeners, and drank in with generous confidence and affectionate admiration, those moral lessons, those encouraging maxims, those warning admonitions, so eloquently, so impressively addressed to us."⁷⁸ Dobbin even thought that UNC students might know pieces of it by heart.⁷⁹ The address reached audiences over many decades because there was an initial print run of 5,000 copies and it was reprinted at least five times

76. See MARK V. TUSHNET, *SLAVE LAW IN THE AMERICAN SOUTH: STATE V. MANN IN HISTORY AND LITERATURE* 83–85, 91–92 (2003); Alfred L. Brophy, *Humanity, Utility, and Logic in Southern Legal Thought: Harriet Beecher Stowe's Interpretation of Southern Legal Thought in Dred: A Tale of the Great Dismal Swamp*, 78 B.U. L. REV. 1113, 1120–32 (1998) (discussing Ruffin's slavery jurisprudence); Brophy, *supra* note 36, at 813–28; cf. ROBERT M. COVER, *JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS* 77–79 (1975) (discussing northern antislavery judges' conflicts when working within a proslavery law and interpreting Ruffin as an example of a judge bound by "stern necessity").

77. See Eric Muller, *Judging Thomas Ruffin and the Hindsight Defense*, 87 N.C. L. REV. 757, 797 (2009) (examining Ruffin's private actions regarding slavery and concluding that he was ardently proslavery).

78. Dobbin, *supra* note 33, at 5.

79. See *id.* at 6; see also William H. Battle, *Judge Gaston as a Literary Man*, 10 N.C. U. MAG. 257, 257 (1860) (noting that Gaston was well-loved); Sally Greene, *State v. Mann Exhumed*, 87 N.C. L. REV. 701, 727–49 (2009) (comparing Ruffin's version of *Mann* with the trial record).

before the Civil War.⁸⁰ Among the other orators at UNC who spoke of Gaston's address was Reverend Thomas Davis, South Carolina's Episcopal Bishop, who recalled Gaston's eloquence in his 1845 address.⁸¹ In 1833, the year after Gaston's address, George E. Badger, then a Whig member of the North Carolina state legislature, spoke of it as an exception to the general rule of the lack of learning displayed in literary addresses.⁸²

Yet, Gaston's address was but one of hundreds given at colleges in the years leading into Civil War. In 1851, *Southern Quarterly Review*, a literary journal, discussed the importance of addresses in a review of several orations. Printed addresses were evidence of the southern intellect. They were key vehicles for the propagation of ideas and key markers of southern ideas:

Lectures, orations and addresses, in the South, are required to assert a higher rank than they are apt to do in other regions. They, in fact, constitute a great portion of the literature proper

80. See *Preface* to William Gaston, *Address Delivered Before the Dialectic and Philanthropic Societies in Chapel Hill* (June 20, 1832) (4th ed. 1849) (claiming five thousand initial print runs and noting a second edition in Richmond by Thomas W. White, and alleging another "second" edition at La Grange College in Alabama). A fifth edition appeared in 1858. William Gaston, *Address Delivered Before the Dialectic and Philanthropic Societies in Chapel Hill* (June 20, 1832) (5th ed. 1858). It was also reprinted in 1844 in the *North Carolina University Magazine*. See 1 KEMP PLUMMER BATTLE, *HISTORY OF THE UNIVERSITY OF NORTH CAROLINA* 344 (1907) (discussing various editions of Gaston's speech, including the *North Carolina University Magazine* edition).

81. Thomas F. Davis, *An Address Delivered Before the Two Literary Societies of the University of North Carolina in Gerard Hall 10* (June 1845). Representative Thomas Clingman of North Carolina spoke in favor of Gaston on December 20, 1847. See Thomas Clingman, *Speech On the Political Aspect of the Slave Question, Delivered in the House of Representatives* (Dec. 22, 1847), in *SELECTIONS FROM THE SPEECHES AND WRITINGS OF HON. THOMAS L. CLINGMAN* 197, 224 (1877) (using Gaston and John Marshall as models of morality from the slave-holding South).

82. George E. Badger, *Address Delivered Before the Philanthropic and Dialectic Societies at Chapel Hill, N.C.* 7 (June 26, 1833). Some years later, the *New York Review* remarked, in a notice on William Shepard's 1838 address:

Very few, if any, of the literary festivals of our country have called forth finer strains of eloquence, than have been heard at Chapel Hill, on the anniversary of the societies, addressed by Mr. Shepard. From among the many admirable orations upon that occasion, it would be invidious to select, but we may safely mention two, those of Judges Gaston and Badger, for all will be satisfied with the honor of being *pares*, in a class of which they are the *primi*.

William B. Shepard, *An Address, Delivered Before the Two Literary Societies of the University of North Carolina*, 4 N.Y. REV. 261, 261 (1838); see also *Gaston's and Badger's Addresses*, 4 AM. MONTHLY REV. 486, 486-99 (1833) (describing the Gaston and Badger addresses).

of our section, and we should be doing the greatest possible wrong to the native intellect, were we to pass it by as a thing simply of occasion and without permanent claims to our recognition and regards. In these performances lie the most ample proofs, of our giving, of our intellectual activity. Here must we look for the evidence of our politics and philosophy, our fancy and imagination. This is the only open medium by which the leading minds of the South may approach their people⁸³

Distinguished orators delivered speeches at ceremonies marking moments of transition and thus created communities of communication. They gave addresses at funerals of students⁸⁴ and even the much rarer re-interments.⁸⁵ Orations were also common at the laying of cornerstones and at dedications of buildings,⁸⁶ monuments,⁸⁷ and the dedication of cemeteries. For instance, Edward Everett, who had been Harvard's president and before that, Massachusetts's governor, delivered a lengthy speech on November 19, 1863, at the dedication of a national cemetery in a small town in Pennsylvania, where a battle had taken place a few months before.⁸⁸ In fact, nearly seventy cemetery dedication addresses were printed after Justice Joseph Story's 1831 dedication speech at Mount Auburn

83. *Popular Discourses and Orations*, 4 S.Q. REV. 318, 319 (1851) (discussing W.A. Owens's 1851 address to the people of Barnwell district on state secession). While it is unclear from the original document, it appears that William Gilmore Simms, one of the leading novelists of the Old South and editor of *Southern Quarterly Review*, authored this statement.

84. See, e.g., Shepard K. Kollock, A Sermon, Occasioned by the Death of Edmunds Mason, Student of the University of North Carolina (Aug. 8, 1824).

85. See, e.g., James H. Otey, A Funeral Oration at the Re-Interment of the Remains of Rev. Elisha Mitchell 57 (June 15, 1858).

86. See, e.g., Harvey P. Peet, Address Delivered in Commons Hall, at Raleigh, on the Occasion of Laying the Corner Stone of the North Carolina Institution for the Instruction of the Deaf and Dumb 7 (Apr. 14, 1848); William F. Stearns, Address at the Laying of the Corner Stone of the State University at Oxford, Miss. 17-21 (July 14, 1847); James H. Thornwell, A Sermon Preached at the Dedication of Church Erected in Charleston, S.C. 5 (1850).

87. Joseph R. Chandler, An Oration Delivered at the Laying of the Corner Stone of a Monument on Mount Zion, in Ephrata, Lancaster County, Pa. 3 (Sept. 11, 1845) (commemorating soldiers who were buried in the cemetery of wounds suffered at the Brandywine battle, which took place September 11, 1777); Charles Fraser, An Address Delivered Before the Citizens of Charleston and the Grand Lodge of South Carolina at the Laying of the Corner Stone of a New College Edifice (Jan. 12, 1828).

88. Edward Everett, Address at the Consecration of the National Cemetery at Gettysburg (Nov. 19, 1863).

Cemetery in Cambridge.⁸⁹ The cemetery addresses reflected on the direction of life and promoted the Whig desire for order and public instruction through private charitable acts.⁹⁰ College literary addresses offered a moment for reflection, particularly about the role of education and law in American society.

Orators spoke of the values underlying the Constitution—such as sentimental attachments towards Union. These are the cultural analogs to the constitutional arguments that were used to hold the Union together. Together these arguments give us a sense of the world they sought. It was a world challenged by democracy and the radical antislavery movement, and also challenged by the considerations of utility that everywhere asked, “Are ideas taught in college useful?”⁹¹

A. The Power and Place of Oratory

“To write is to act” was a popular saying.⁹² There were a series of similar phrases that connected the public mind to action, such as “thought controls life” and “thought is the prime mover of mankind.”⁹³ The Baptist minister James Lawrence Reynolds, from Richmond, Virginia, spent most of his speech to the Wake Forest literary societies, “The Men of Letters,” in 1849 explaining the role of the scholar in human society. Reynolds identified the role of writing in moving people:

89. See, e.g., J. L. Reynolds, *An Address Delivered Before the Literary Societies of Wake Forest College* 20 (June 14, 1849).

90. See, e.g., Daniel Barnard, *Address for the Albany Rural Cemetery Association* (Oct. 7, 1844); Joseph Story, *An Address Delivered on the Dedication of the Cemetery of Mount Auburn* 4 (Sept. 24, 1831); Alfred L. Brophy, “These Great and Beautiful Republics of the Dead”: Public Constitutionalism and the Antebellum Cemetery (Mar. 2011) (unpublished manuscript) (on file with author); see also Henry L. Pinckney, *Remarks Addressed to the Citizens of Charleston, on the Subject of Interments, and the Policy of Establishing a Public Cemetery* 3 (1839) (proposing burials outside of Charleston, partly for aesthetic, though mostly for health reasons).

91. Addresses, from Fourth of July to both local literary society addresses and state constitutional conventions, are increasingly the place that historians look to gauge ideas about constitutionalism. See, e.g., MARTHA S. JONES, *ALL BOUND UP TOGETHER: THE WOMAN QUESTION IN AMERICAN PUBLIC CULTURE, 1830–1900*, at 32–33 (2007) (discussing August 1 addresses); MICHAEL KAMMEN, *A MACHINE THAT WOULD GO OF ITSELF: THE CONSTITUTION IN AMERICAN CULTURE* 227 (1986); Paul Quigley, *Independence Day Dilemmas in the American South, 1848–1865*, 75 J.S. HIST. 235, 235–66 (2009).

92. See, e.g., Reynolds, *supra* note 89, at 20.

93. *Id.* at 19.

In the recent revolutions of Europe, the pen has proved a more efficient weapon than the sword. The tyrant whose throne is hedged with the bayonets of his myrmidons, trembles before the flash of a solitary pamphlet, for he knows that these "bullets of the brain" are more formidable than the fire of his artillery.⁹⁴

Another reason that writing was action was that it helped to create a culture. John Mason, the Secretary of the Navy and an 1818 graduate of UNC, spoke about this to UNC's alumni in 1847. Law alone could not bring us together. It was culture that brought the nation together:

The bonds which hold together our extended confederacy of States, are not those alone which are to be read in written constitutions and gathered from the enactment of legal codes; but those, rather, which are found in the interchange of social kindness; in the attractions of literary intercourse; and in the manifold associations which spring from the communions of religion and the pursuits of business. Every institution, therefore, which like our own Society, gathers its members at frequent periods from distant sections and different States, forms a new link in that most important chain of causes, upon which we must chiefly rely, under Providence, for the support and perpetuity of our republican system.⁹⁵

Writing was action, because, as Reynolds succinctly summed up, "it is thought that impels to action."⁹⁶

Orators also understood and spoke about the power of oratory. James Dobbin, for instance, spoke to the joint UNC literary societies in 1850 of the "charms of Eloquence, by the powers of which at one moment the terrors of bloody revolutions are roused, and the mild pursuits of peace and liberty secured at another."⁹⁷ Later, Dobbin asked, "How often has Eloquence checked the desolations of war—protected the blessings of peace—encouraged the arts, and touched the chords of a thousand hearts in the holy cause of religion and

94. *Id.* at 19–20.

95. John Y. Mason, Address Before the Alumni Association of the University of North Carolina, Delivered in Gerard Hall 6 (June 2, 1847).

96. Reynolds, *supra* note 89, at 20.

97. Dobbin, *supra* note 33, at 13; see also W. J. Sasnett, *The United States—Her Past and Her Future*, 12 DEBOW'S REV. 614, 623 (1852) ("There is a growing demagogism in our country that is destined to endanger our institutions. Men of the highest popular talent, especially in this day, in which public speaking is so common . . . can attain a controlling influence over the public mind.").

piety?"⁹⁸ A South Carolina College classics professor commemorated a new building for one of the school's literary societies with an address on "eloquence," which he defined as "the art of so delivering our sentiments, that others may think, feel and act, as we desire them to do."⁹⁹ That meant that eloquence was about "the understanding, the imagination, and the heart."¹⁰⁰ Schools, as a result, focused a great deal of attention on eloquence.

In democracies, speech held a special place, for it provided a means by which the people might be persuaded to act. Many orators emphasized the opportunities that America afforded for speakers, yet some were critical of the quality of oratory. Henry I. Toole had planned to tell the Wake Forest literary societies in June 1844 that "in all Republics [eloquence] is the great Lever of Ambition."¹⁰¹ He omitted those remarks when he found the student speakers before him "*decidedly clever*."¹⁰² Mr. Toole, a newspaper editor and 1828 graduate of UNC, recalled that his fellow students at UNC had not been so clever.¹⁰³

James Biddle Shepard, an 1834 graduate of UNC, delivered an address a decade later, in 1844.¹⁰⁴ By that point, he had served a couple of years in the North Carolina Senate as a Democrat, and his political star was rising.¹⁰⁵ The twenty-nine year-old Shepard proclaimed that "popular eloquence is the most powerful of all arts."¹⁰⁶ Eloquence was so powerful because in the United States the law and questions both great and small were discussed in public. In 1839, United States Senator Bedford Brown, another Democrat politician, who studied at UNC for a year in the early 1820s,¹⁰⁷

98. Dobbin, *supra* note 33, at 17.

99. Robert Henry, Address Delivered Before the Clariosophic Society of the South Carolina College, at the Dedication of Their New Hall 6 (Feb. 10, 1849).

100. Dobbin, *supra* note 33, at 17.

101. Henry I. Toole, An Address Delivered Before the Two Literary Societies of Wake Forest College 25 n.1 (June 20, 1844).

102. *Id.*

103. *Id.*

104. William S. Powell, *Shepard, James Biddle*, in 5 DICTIONARY OF NORTH CAROLINA BIOGRAPHY 328, 328 (William S. Powell ed., 1994).

105. *Id.* In 1846, he ran for governor. *Id.*

106. James B. Shepard, An Address Delivered Before the Two Literary Societies of the University of North Carolina in Gerard Hall 12 (June 5, 1844) [hereinafter Shepard at the University of North Carolina].

107. H.G. Jones, *Brown, Bedford*, in 1 DICTIONARY OF NORTH CAROLINA BIOGRAPHY 240, 240 (William S. Powell ed., 1979).

observed that eloquence has flourished most under popular government.¹⁰⁸

In fact, Shepard's address reached for eloquence. He put something of the poetic in the address. Shepard found, as did Walt Whitman a few years later in *Leaves of Grass*, poetry in the actions of Americans:

[T]he spirit of Poetry is every where in our Country. It is here a spirit of action and of eloquence. It flashes in the fires of the thundering locomotive; it lives with the steam-vessel upon the angry billows; it mounts up with the balloon towards the throne of the sun; and it borrows a language from the storms, and speaks from the hearts of our people in response to the stern strong eloquence of all our orators.¹⁰⁹

Thirty-six year-old lawyer James Dobbin spoke extensively in 1850 about the power of eloquence. Dobbin, who graduated from UNC in 1832, had already served a term in the United States House of Representatives as a Democrat.¹¹⁰ Dobbin noted that eloquence had the power to move humans. The printing press and telegraph extended the power of oratory and its power to influence and move people.

William Gaston was more positive on the combination between oratory and print in his 1835 address to the Princeton literary societies, for he found that print helped spread the message of oratory:

Orators now address not the assembled people, but magistrates and representatives selected from the people, responsible to the people, acting under the restraints of limited and delegated authority, deliberating under established rules, and according to dilatory forms of proceeding. Something, however, like an approach to the sway of the ancient orators is witnessed with us in the operations of the periodical press. The general distribution of this fugitive literature, and the rapid and

108. Bedford Brown, An Address Delivered Before the Two Literary Societies of the University of North Carolina in Gerard Hall 16 (June 1839); *see also id.* at 27–29 (noting the importance of and rewards for cultivating eloquence and using John C. Calhoun as a model of eloquence).

109. Shepard at the University of North Carolina, *supra* note 106, at 11.

110. *Dobbin, James Cochrane*, BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS 1774–2005, H.R. DOC. NO. 108-222, at 966 (2005). The year of his graduation address, he was elected Speaker of the North Carolina House and two years later served as President Franklin Pierce's Secretary of the Navy. *Id.*

universal inter-communication by the mails, enable the conductors of the press to address nearly at the same moment all their readers, however widely dispersed.¹¹¹

But orators also recognized that the nature of speech had changed. James Bruce, speaking to UNC alumni in 1841, observed that while ancient oratory had been directed to passions, modern oratory was aimed at “fact, argument, and reason.”¹¹² Much of that change was due to the nature of modern speeches, which were printed and thus read in private, rather than heard en masse in public as in ancient times. Hence, the orations were designed to appeal to cold calculations, rather than warm passions. Bruce thought:

Any effort to rouse the passions, or touch the heart, at once excites jealousy and distrust. Liberty and patriotism are no longer sentiments, at the bare mention of which, the heart vibrates along every chord, but things to be reasoned of, weighed, measured, and calculated, with the same coolness that we estimate the blessings of steam, or the value of the spinning jenny.¹¹³

B. The College Literary Address

1. The World of College Literary Societies

In that world of speaking and of print that communicated widely what had first been the spoken word, college literary societies occupied a large and special place. Literary societies were centers of thought; they had weekly debating sessions and well-stocked libraries. The literary societies were a critical part of the education at UNC, as well as in many other schools in the state and across the nation. The Whig lawyer Charles Manly told the alumni and senior class of UNC in 1838 that literary societies “have become great arteries in the system, indispensable to its vitality.”¹¹⁴

The two literary societies on UNC’s campus seem to have started inviting graduation speakers to their joint societies in the late 1820s,

111. Gaston at Princeton, *supra* note 19, at 23.

112. James C. Bruce, An Address Delivered Before the Alumni and Graduating Class of the University of North Carolina at Chapel Hill 15 (June 3, 1841) [hereinafter Bruce at the University of North Carolina].

113. *Id.*

114. Charles Manly, An Address Delivered Before the Alumni and Senior Class of the University of North Carolina in Gerard Hall 15 (June 1838).

and they alternated the privilege of inviting speakers.¹¹⁵ Graduation ceremonies lasted for several days and included the joint literary address, an alumni address, a sermon, and addresses by juniors and seniors.¹¹⁶ They included speeches by graduating students as well as outside speakers.¹¹⁷ Most often the addresses to the joint literary societies are the addresses that were published; however, occasionally the alumni addresses were published and in a few instances the baccalaureate addresses were published.¹¹⁸ Basic data on each of the addresses that was published appears in Table 1.¹¹⁹

The speakers were frequently UNC graduates. In fact, after Robert Strange's 1837 speech, all but three of the published speeches were given by UNC alumni. North Carolina politicians also predominated as speakers. The speakers were relatively young (with an average age of forty-three), and they were from both political parties, although a preponderance of affiliations were Whigs.¹²⁰

Just as Gaston spoke at UNC and Princeton, many orators spoke to societies at several different schools.¹²¹

115. Hon. Archibald D. Murphey, *An Oration Delivered in Person Hall, Chapel Hill 3 (June 27, 1827)*; see also Brown, *supra* note 108, at 3 (stating that he had been asked to give a graduation address before, but had been unable to accept the invitation); Letter from Thompson Byrd to Archibald D. Murphey (Oct. 28, 1826), in 1 *THE PAPERS OF ARCHIBALD D. MURPHEY* 342, 342 (William Henry Hoyt ed., 1914) (writing that the Philanthropic and Dialectic Societies had "entered into an agreement" to alternate the choosing of speakers); Manly, *supra* note 114, at 1 ("[A]n agreement has been lately entered into by the two Societies, for the purpose of electing a member annually, and alternately from each body, to deliver an address before the Senior Class and the Alumni of the University.").

116. See, e.g., 1 *BATTLE*, *supra* note 80, at 672-78 (describing speeches by students and outside guests at the 1857 commencement, which lasted several days).

117. James K. Polk recorded in his diary his return to UNC in 1847, at which time he heard several freshman and sophomore orations, as well as an address by his Secretary of the Navy, John Y. Mason. See 3 *THE DIARY OF JAMES K. POLK DURING HIS PRESIDENCY, 1845-1849*, at 45-48 (Milo Milton Quaife ed., 1910). A candid account of the variously dull, then chaotic graduation exercises at Erskine in 1856 appears in a letter from James Petigru, who gave an address there. See Letter from James Louis Petigru to Susan Petigru King (Aug. 18, 1856), in *LIFE, LETTERS, AND SPEECHES OF JAMES LOUIS PETIGRU* 317, 317-18 (James Petigru Carson ed., 1920).

118. See *infra* Table 1 pp. 1962-63.

119. See *infra* Table 1 pp. 1962-63. In 1859, the North Carolina University Magazine printed the commencement program. *Commencement Exercises*, 9 N.C. U. MAG. 59, 59-63, 105-20 (1859), available at <http://docsouth.unc.edu/true/commencement/menu.html>.

120. See *infra* Table 2 p. 1964.

121. For instance, James Bruce spoke to the University of Virginia alumni in 1840 and to the Danville Lyceum in 1853, in addition to UNC alumni in 1841. See James C. Bruce, *An Address Delivered Before the Society of Alumni of the University of Virginia 1 (1840)* [hereinafter *Bruce at University of Virginia*]; James C. Bruce, *Popular Knowledge and the*

2. The Expectations of the College Literary Address

Addresses to college literary societies featured questions about the role of the educated in American society. "Every subject has its appropriate place," began Presbyterian minister Simeon Colton in his graduation talk at Wake Forest in June 1842:

A political harangue would ill suit the quiet retreat of the Lyceum. A theological discussion would form a discordant sound mingled with the Lyre of Anacreon and Horace, nor would it comport well with the more lofty aspirations of Homer, or Virgil. While we regale ourselves in the grove of Arcadia, or walk on the banks of the Ilissus, our theme should be appropriate, and our service in accordance with the character of the place. We are on a spot consecrated to Minerva and Apollo, and in such a place, whatever relates to the cultivation of the human intellect, whatever marks the progress of genius, and whatever can serve to elevate the dignity of man, as destined to a high rank in the scale of creation, may here be taken as a fit subject for reflection.¹²²

The addresses by students and guests were an opportunity to demonstrate oratorical skills and learning, as illustrated by a scene in Augusta Jane Evans' 1859 novel, *Beulah*.¹²³ There, the orphan child Beulah Benton delivered an address on female heroines at her graduation from her academy. The school's administration was so

Necessity of Popular Government (Mar. 18, 1853), in 19 S. LITERARY MESSENGER, May 1853, at 292 [hereinafter Bruce at Danville Lyceum]; Bruce at the University of North Carolina, *supra* note 112.

122. Simeon Colton, An Address Delivered Before the Philomathesian & Euzelian Societies in Wake Forest College 3 (June 16, 1842). The *United States Law Magazine* wrote, in somewhat hyperbolic terms, about the significance of an invitation to deliver a literary address in a sketch of Justice Joseph H. Lumpkin in 1851:

In 1845, he was invited to deliver the annual commencement oration before the literary societies of his Alma Mater. Circumstances constrained him to decline this invitation. When it is remembered that this is one of the highest literary distinctions which that venerable institution can bestow, how wide is the field for selection, and how few of the really great men of the country have been invited to its acceptance, it is not too much to claim it as a tribute to elevated character and literary eminence. Had he appeared before the learned and polite audience which graced the occasion, he would have justified the wisdom of the selection, and vindicated his claim to the honor.

Memoir of Joseph Henry Lumpkin, Chief Justice of Georgia, U.S. L. MAG., July–Aug. 1851, at 34, 35.

123. AUGUSTA JANE EVANS, *BEULAH* 138–39 (Elizabeth Fox-Genovese ed., La. State Univ. Press 1992).

impressed that they offered her a job teaching there, which allowed her to claim independence from her benefactor (and later husband).¹²⁴

College literary society addresses followed, by and large, a model, which focused around the duties of the educated to themselves and to their society and how education offered to promote the United States' culture. This is as one would expect, because these addresses were given as part of the commencement exercises, where the norms of the age called for a celebration of education and a defense of its cost and utility.¹²⁵

It was not just that the audience listened to orators, though; literary society members inspired each other. As Hugh McQueen told UNC alumni in his address in June 1839:

The tie of association wields a creative power and influence by the continually circulated sympathies of its members—a reciprocity of Literary favors and benefits is established among the members of such a Society, which never would have existed under any other circumstances—a benevolent collision of intellectual powers is thus produced which arouses the torpid from their lethargy—which encourages the diffident to action—which attracts the secluded votary of letters from the cell of his retirement, to diffuse his intellectual resources over the land, for the good and glory of his country¹²⁶

Thus intellectuals spoke to one another and created a community—a republic of letters, or a republic of oratory.

In his 1847 speech to alumni, Secretary of the Navy John Mason spoke about the particular demands of college literary addresses. Such speeches were aimed at considerations of sympathy, rather than cold logic. That insight shows that the addresses may not be representative of the full scale of thinking on issues of law and nationalism. Mason told the alumni that “[i]t is a festival less of the

124. *Id.* at 139–41.

125. For instance, Bedford Brown, speaking in 1839, to the joint literary societies, told of the practices:

Each successive year, for a long period of time, has brought to this venerable seat of learning, under the summons of one or the other of your bodies, some one to render this annual homage to the cause of literature—some one to offer at its shrine the productions of cultivated taste and rich endowments.

Brown, *supra* note 108, at 3.

126. Hugh McQueen, An Address Delivered Before the Alumni and Graduating Class of the University of North Carolina 14–15 (June 26, 1839).

head than of the heart. It has more concern with generous impulses and warm affections, than with the cold deductions of reason, or the dry speculations of metaphysics."¹²⁷ The graduation addresses given at UNC create a picture of the issues of concern to legal thinkers, about education, progress, nationalism, and order.

Recent scholars focusing on oral and print culture in eighteenth and nineteenth century America have drawn a distinction similar to that which Mason saw between passion invoked by speech and reason appealed to by print. Sandra Gustafson calls this the distinction between Cicero and Kant.¹²⁸ Yet, as speech was increasingly committed to print and then circulated that way, oratory tended to converge with print. Oratory became more rational and less of an appeal to the heart.¹²⁹

C. *The Stabilizing Function of Oratory*

Archibald Murphey, the first of the speakers to the joint literary societies, observed in his 1827 address that in the seventeenth century the proprietors of the southern colonies refused to allow the colonists to have a printing press.¹³⁰ "Sir William Berkley, who was the superintendant of this colony in 1661, gave thanks to Heaven that there was not a Printing-Office in any of the Southern Provinces."¹³¹ By way of justification of the limited literature that Americans had produced, Murphey asked, "What improvement in literature could be expected among a people who were thus distracted by faction, destitute of books, and denied the use of the press?"¹³² Books and the knowledge they brought were scarce in the eighteenth and even early nineteenth century. Murphey recalled that it was not until he became a student at UNC in 1796 when he had access to ample books through the Dialectic Society library.¹³³

Printed works continued to offer the prospect of destabilizing respect for established order and values, as the most famous college literary address—Ralph Waldo Emerson's "American Scholar,"

127. Mason, *supra* note 95, at 5–6.

128. See Sandra M. Gustafson, *American Literature and the Public Sphere*, 20 AM. LITERARY HIST. 465, 471 (2008).

129. Bruce at the University of North Carolina, *supra* note 112, at 15.

130. Murphey, *supra* note 115, at 7.

131. *Id.*

132. *Id.*

133. *Id.* at 14–15.

delivered in 1837 to Harvard's Phi Beta Kappa Society—attests.¹³⁴ Emerson's address called for students to break free from established modes of thinking. And in some ways that call echoed what was happening in the Judiciary. Both the North and the South were in the process of abandoning outmoded precedent around this time.¹³⁵ Despite the radical potential of print, however, many in the pre-Civil War era employed print and orations to stabilize respect for traditional values, rather than destabilize them.¹³⁶

1. The Anti-Transcendental Addresses: The Attack on Idealism

Physician James Dickson, an 1823 graduate of UNC,¹³⁷ spoke to the alumni in 1853 at a literary society meeting. Dickson's medical career was spent mostly in Wilmington, where he participated in many community-building activities, including founding the Wilmington Library and supporting Henry Clay's campaign in 1844.¹³⁸ Dickson's wide-ranging address, which stretched from geology to philosophy, concluded with an appeal for studying the laws of morality. He quoted John Foster's essay that suggested that people were content knowing little about the workings of their minds, just as they knew little about the mechanisms of their watches, to recommend that people learn at least as much about how their minds

134. Ralph Waldo Emerson, *The American Scholar: An Oration Delivered Before Phi Beta Kappa Society, at Cambridge* (Aug. 31, 1837), in 1 COMPLETE WORKS OF RALPH WALDO EMERSON 79, 100–01 (1904) (“The office of the scholar is to cheer, to raise, and to guide men by showing them facts amidst appearances. . . . In the long period of his preparation he must betray often an ignorance and shiftlessness in popular arts, incurring the disdain of the able who shoulder him aside. . . . For the ease and pleasure of treading the old road, accepting the fashions, the education, the religion of society, he takes the cross of making his own, and, of course, the self-accusation, the faint heart, the frequent uncertainty and loss of time, which are the nettles and tangling vines in the way of the self-relying and self-directed; and the state of virtual hostility in which he seems to stand to society, and especially to educated society.”). See generally KENNETH SACKS, UNDERSTANDING EMERSON: THE AMERICAN SCHOLAR AND THE STRUGGLE FOR SELF-RELIANCE (2003) (describing how Emerson emphasized the acquisition of truth through intuition, rather than through books and traditional academic methods).

135. *Kent's Commentaries*, 2 S. REV., Aug.–Nov. 1828, at 72, 73–74 (reviewing JAMES KENT, COMMENTARIES ON AMERICAN LAW (1826)) (“[I]n politics and jurisprudence, the American people were compelled by the very novelty of their situation to think for themselves.”).

136. BERTRAM WYATT-BROWN, HONOR AND VIOLENCE IN THE OLD SOUTH, at viii (1986) (noting the ways that southern oratory policed the boundaries of order and hierarchy—and helped establish those boundaries as well).

137. Juanita Ann Sheppard, *Dickson, James Henderson*, in 2 DICTIONARY OF NORTH CAROLINA BIOGRAPHY 66, 66 (William S. Powell ed., 1986).

138. *Id.* at 67.

worked as about how their watches worked.¹³⁹ Dickson attributed the failure to inquire into such subjects to the spirit of transcendentalism, which he thought encouraged people to know about passions and conjecture, rather than reason:

Doubtless much of the prejudice which exists against such studies, has arisen from the wild vagaries and empty speculations of the mediæval schoolmen, and the transcendental abstractions of some of the more modern writers on such subjects, especially among the Germans, who, abandoning the track of legitimate investigation, and endeavoring to dive into the nature of efficient causes, and the mysterious laws of the universe, have bewildered themselves in the inextricable mazes of conjecture.¹⁴⁰

Dickson's themes were representative of other southern orators. Reverend T.V. Moore traveled from his pulpit in Richmond, Virginia to deliver a literary address to Washington College in western Pennsylvania in 1853, entitled "The Conservative Elements of American Civilization."¹⁴¹ This was something of a homecoming for Moore, who was born in western Pennsylvania—though the South became his home. Moore realized that Americans were transitioning from a "traditional past" and had "not yet reached the absolute future."¹⁴² Yet, he found that the sentiments of the democracy pushed Americans towards socialism, for democracy had already torn down monarchy and the church, and it was tending to take property as well.

As we moved to an unchartered future, we needed to be wary of the new. "Novelty, however, is not the only quality that should attract attention, nor are new discoveries the only subjects that should be submitted to investigation," Presbyterian minister Simeon Colton told students at Wake Forest in 1842.¹⁴³ "As in the metals, those that are most common are often most useful, so in intellectual things, topics

139. John Foster, *On a Man's Writing Memoirs of Himself*, in GEORGE COMBE, THE CONSTITUTION OF MAN I, 4 (1847).

140. James H. Dickson, An Address Delivered Before the Alumni Association of the University of North Carolina 42 (June 1853). Dickson continued that "[t]hus the writings of Coleridge are redolent of the philosophy of Kant and of Schelling, and much of the poetry of Pope is but the exponent of the philosophy of Lord Bolingbroke." *Id.*

141. T.V. Moore, The Conservative Elements of American Civilization: An Address Before the Philo and Franklin Societies of Jefferson College (Aug. 3, 1853) [hereinafter Moore at Jefferson College].

142. *Id.* at 6.

143. Colton, *supra* note 122, at 3.

with which we are most familiar, are often those which should most deeply occupy our thoughts."¹⁴⁴

Often the addresses were aimed at delivery of what George Badger—later in life a moderate Whig member of the United States Senate—referred to in his 1833 address as “ancient truths,” not new and untried ideas.¹⁴⁵ Badger spoke of the need for a united influence of the educated classes to establish eloquence over appeals to the masses.¹⁴⁶ Badger spoke in the wake of Nat Turner’s 1831 rebellion and in the wake of mob violence in New York, as well as growing abolition and nullification sentiments.¹⁴⁷ That led him to speak about the importance of law and to worry about its future. Badger, thus, urged students to “teach, both by your example and your precepts, a voluntary, steady, and universal submission to the laws.”¹⁴⁸ Badger’s moderation came across in his speech; he asked his audience to test their ideas against good sense. He explained further the power of precedent:

[W]hen questions arise upon the meaning of the fundamental law, that the sense put upon it from the commencement of its operation—a sense for years unquestioned—never questioned but by excited or interested portions of the people—and uniting in its support the clear and concurring judgment of the legislature, the executive, and the judiciary of the union—you will readily perceive, that this exposition (whatever it be) so sanctioned by opinion and practice, must be the true one, or else that all attempts at exposition are vain, and society must be dissolved.¹⁴⁹

Badger took the world as it was and in its context. He urged students to abandon speculative theory:

The jargon, indeed, by which it is attempted to transfer to politics the impracticable speculations of the most abstruse portions of metaphysics, can be only exceeded in folly, by the pompous political declamations, the solemn processions, and

144. *Id.*

145. Badger, *supra* note 82, at 4.

146. *Id.* at 8.

147. See, e.g., FREEHLING, *supra* note 15, at 83–84 (discussing South Carolina’s increasing opposition in 1832 to antislavery discussion); PAUL A. GILJE, THE ROAD TO MOBOCRACY: POPULAR DISORDER IN NEW YORK CITY, 1763–1834, at 151 (1987) (discussing the New York riot of 1832). See generally NAT TURNER, *supra* note 7 (discussing a number of aspects of the slave rebellion).

148. Badger, *supra* note 82, at 12.

149. *Id.* at 13–14.

the oratory of the human race, which marked the first French revolution; and from considering that era, you may learn a useful lesson—that, when the order of society is broken up, and men are forced out of that sphere of daily duties for which providence designed them, sententious morality, however lofty, is no security against crime; and that there is but one step, and that a short one, between theoretical absurdity and the practical cruelty of the mob.¹⁵⁰

A major function of the graduation addresses, thus, was to retrace the importance of moderation, to argue against fanaticism.

2. The Ideal in North Carolina Literary Addresses

There was one speaker, though, among all those who spoke in North Carolina before the war, who gave a surprisingly radical address. William B. Rodman, an 1836 graduate of UNC, invoked the Declaration of Independence during a speech at Wake Forest in 1846. He said the Declaration was Bacon's ideal applied to political theory.¹⁵¹ He celebrated the new organization of society:

[O]ld institutions, and modes of thought and action are fast passing away and giving place to new forms of government, and society animated by new aspirations and guided by new sentiments. The hoary civilization of the past has been wrapped in casements and laid away under the tomb of history; a new civilization, under the impulse of increasing knowledge, and with the enthusiasm of successful discovery, is beginning a new chapter in the annals of the world.¹⁵²

The speech may also be characteristic of the thoughts of a young person; he was only twenty-nine years-old at the time of the speech.¹⁵³ Rodman combined many of the heroes of progressive thinkers of his era. In five pages, he invoked Thomas Jefferson, Adam Smith, Jeremy Bentham, and Immanuel Kant and spoke of the power of print, constitutional government, and the zeal for discovery.¹⁵⁴

150. *Id.* at 14.

151. William B. Rodman, *An Address Delivered Before the Two Literary Societies of Wake Forest College* 19 (June 9, 1846).

152. *Id.* at 4.

153. John L. Bell, Jr., *Rodman, William Blount*, in 5 *DICTIONARY OF NORTH CAROLINA BIOGRAPHY* 243, 243–44 (William S. Powell ed., 1994) (noting that Rodman was born in 1817).

154. Rodman, *supra* note 151, at 15–20.

III. HISTORY, PROGRESS, DEMOCRACY, AND EDUCATION

The commencement address was a platform by which speech brought the community together. The ideas disseminated at these addresses included a core of important ideas. As North Carolina Governor William A. Graham told students in 1849, "[b]oth speaking and writing are but arts, designed to portray the productions of the mind."¹⁵⁵

There was a core group of ideas in these addresses. Perhaps the central idea was the role of educated people in society. That theme had a number of elements, including the role that educated people played in leading society, the need for broad public education, the need for continuing education after school, and how students might learn from "the world," as well as the reasons why classical studies were important. Many addresses also focused on the role of progress—especially on the mechanism by which progress took place, from the contributions of the printing press to that of Christianity. While the addresses are generally optimistic, some focused on the dangers, such as the threats to democracy from politics and the threats to the Union from fanaticism. Some addresses focused on considerations of utility, which was closely related to progress, for Americans sought the most efficient ways of making money and as they did so, economic and technological progress followed. But the respect for utility frequently led to displacement of other values. Sometimes those values appeared in the allusions to romantic imagery—from orators' visions of the beautiful landscape of the republic to the republic's future, which they saw unfolding in grand ways across generations.

Many of the addresses appealed for a national character, a national literature, and a commitment to the Union. Law played a central and complementary role to literature and national identity in creating support for the Union. Law also played a central role in holding the community together, in suppressing fanaticism and the dissonance caused by an excess of self-interest or a lack of self-control. And while the addresses often revolved around common themes, they also illustrated some of the conflicting political ideology

155. William A. Graham, Address Delivered Before the Two Literary Societies of the University of North Carolina 11 (June 6, 1849). Winfield Scott and Graham, the Whig nominees for president and vice-president, were defeated by Democrat Franklin Pierce. Max R. Williams, *Graham, William A.*, in 2 *DICTIONARY OF NORTH CAROLINA BIOGRAPHY* 337, 338 (William S. Powell ed., 1986).

of the Whigs and the Democrats. Whigs emphasized more the threats to law from excesses of democracy and the breakdown of authority. Democrats emphasized more the need for universal education and the wide diffusion of knowledge. Thus, while the addresses often emphasized common themes, they also illustrated points of tension between the political parties. Then, as the nation headed toward Civil War in the 1850s, the addresses turned even more overtly plaintive in favor of Union—and then, in one case, skeptical of it.

These addresses demonstrate again that Americans held a variety of ideas all at the same time. Those ideas often worked in conjunction with each other, sometimes amplifying one another. We see how ideas of scientific progress might be drawn over to political theory—like the suggestion that Jefferson’s Declaration of Independence was the application of Bacon’s scientific method to politics. Together they suggest how Southerners struggled to control and guide their world as they recognized that it was changing. Some, perhaps predominantly the Whigs, thought about how to maintain control of that world, to maintain respect for traditional values. Others, perhaps predominantly, though not exclusively the Democrats, celebrated the changes and looked forward to more. Together, though, their addresses celebrated a world of honor, of economic, technological, and moral progress, and of constitutionalism and order.

A. “[I]nfluence of the [C]ultivated [M]ind”¹⁵⁶

In 1841, James Biddle Shepard boasted to the Wake Forest literary societies about the power of education to shape culture: “Give me, said one, the direction of the education of a State, and I will convert a Republic into a Monarchy, in the course of thirty years.”¹⁵⁷ The addresses frequently dealt with the importance of the mind, which is, as one might expect, when an educational institution sought to justify itself. Archibald Alexander told students at Washington College in Lexington, Virginia, in 1843 that “[i]t is a truth as fully established by experience as any other, that the human mind is eminently susceptible of improvement by culture.”¹⁵⁸ And it was at this improvement of individuals and collections of individuals that the

156. Dobbin, *supra* note 33, at 19.

157. James B. Shepard, An Address Delivered Before the Two Literary Societies of Wake Forest College 7 (June 17, 1841) [hereinafter Shepard at Wake Forest].

158. Archibald Alexander, An Address Delivered Before the Alumni Association of Washington College 2 (June 19, 1843).

addresses frequently aimed. Particularly in the early 1830s, the addresses focused on what individuals might do to improve themselves. This was a theme of Gaston's in 1832 and of Badger's address in the year following.¹⁵⁹

Later, orators like James Dobbin focused on the "superior advantages . . . of the man of cultivated mind" over others.¹⁶⁰ The addresses were, by expectation, about the duties of the educated—especially about their individual duties to continued studies and towards individual ethics. But they also served as tools for expansion of political ideology—of republicanism, of broad public education, and of deference to the educated.

B. Progress and the "Spirit of the Age"

Henry L. Pinckney's 1836 address was called "The Spirit of the Age."¹⁶¹ Pinckney had a particular purpose in this talk, for he was sitting at a crossroads in southern history. He was born in 1794, graduated from South Carolina College (now the University of South Carolina) in 1812, then served in the South Carolina state legislature from 1816 to 1832 and founded the radical *Charleston Mercury* in 1819.¹⁶² He was a proponent of the South Carolina Nullification Movement¹⁶³ and served in the United States Congress from 1833 to 1837.¹⁶⁴

Pinckney's talk, which was read by UNC president David L. Swain because Pinckney was unable to make it to Chapel Hill, was politically focused, but it was less radical than one might expect given Pinckney's reputation. He identified the key elements of the age—it was a period when humans were moving from savagery to refinement. "Man is an active animal. He is not only an individual but a member of society."¹⁶⁵ Pinckney contrasted the present age with the dark ages—the present age was an age of science, elegant literature and art, general diffusion of education, exploration and discovery, civil

159. See Badger, *supra* note 82, at 4–14 (focusing on traits of hard work, ethics, and restraint that the students should seek to develop in themselves); Gaston at Chapel Hill, *supra* note 1, at 6–9 (advising students to develop positive habits of character).

160. Dobbin, *supra* note 33, at 8 (emphasis omitted).

161. Henry L. Pinckney, "The Spirit of the Age": An Address Delivered Before the Two Literary Societies of the University of North Carolina 1 (1836).

162. Pinckney, *Henry Laurens*, BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS 1774–2005, H.R. DOC. NO. 108-222, at 1740 (2005).

163. See *id.*

164. *Id.*

165. Pinckney, *supra* note 161, at 8.

and religious liberty, and active piety and enlarged benevolence: "Knowledge is now carried to the humble dwelling of the poor, as well as to the splendid mansion of the rich. Like the sun, it diffuses its light indiscriminately upon all, and all, in consequence, have become enlightened."¹⁶⁶ One expression of enlightened knowledge was the manner in which technical progress had conquered the land:

Unconquered steam not only rides, like a sea-god, on the bosom of the ocean, but moves with resistless power and rapidity over every obstacle on land. And who can prescribe the limit to its conquests? Who can designate the barrier that it shall not pass, or name the river or the wilderness, however desolate and solitary now, that it shall not cause to roll down gold¹⁶⁷

Such was the enthusiasm of Americans in the 1830s for progress. Yet, Pinckney was seen as an apostate of the Nullification Movement. In 1836, as South Carolinians were debating how to respond to the onslaught of antislavery literature appearing in the United States mails and to the antislavery petitions flooding Congress, Pinckney formulated the gag rule, which held in essence that Congress would not receive the petitions.¹⁶⁸ However, that was not enough for his constituents, for in the process of implementing the rule, Pinckney also acknowledged Congress' power over slavery—so he was considered an apostate in South Carolina and was defeated in the 1836 fall election by lawyer (and later United States Attorney General) Hugh S. Legare.¹⁶⁹ So we should read the "Spirit of the Age" as a work of an independent thinker, a southern partisan and a supporter of slavery, though one who also supported national power within certain limits. The address was prepared as he was going through the agony of the gag rule controversy and losing political power in South Carolina. Pinckney emphasized the need for widespread public education and opposed nullification: "Cultivate an ardent love of liberty and a deep and abiding attachment to the

166. *Id.* at 12.

167. *Id.*

168. FREEHLING, *supra* note 15, at 352–55 (discussing the gag rule).

169. *Id.* at 350–56 (discussing Pinckney's political career post gag rule); JEFFREY ROBERT YOUNG, DOMESTICATING SLAVERY: THE MASTER CLASS IN GEORGIA AND SOUTH CAROLINA, 1670–1837, at 222–23 (1999) (discussing Pinckney's demise following his brokering of the gag rule because he too readily accepted the power of Congress to legislate on slavery).

excellent Government under which we live," he told the students.¹⁷⁰ It was the appeal by a call for moderation, like many in this period, whose message was ultimately rejected.

Progress was a common theme for addresses in this era. In addition to incorporating it into their titles,¹⁷¹ the orators of the day focused on the virtues of progress, highlighting the examples of technological, moral, and legal progress—sometimes even in greater detail than Pinckney.

Sometimes the descriptions of progress were grand, even extreme. John Hill, who attended UNC, had served one term as a Democrat in the United States House of Representatives, from 1839 to 1841.¹⁷² He spoke in broad terms of the progress of the age in 1843:

From the Savage and the wilderness, they have won the loveliest domain that ever blest the industry of man, in soil fruitful as the gardens of the Hesperides, in climate varied as the universe. From a virgin soil, they have supplied the workshops and fed the poverty of Europe. They have fought the glorious battle of the Revolution, and again a war for national rights and honor. With Roads and Canals, the exemplars of the age, they have radiated and bound together their country, consulting at once the social convenience and political welfare of the people. They have set in motion a government, the marvel and admiration of the world, whose basis is the virtue and intelligence of the People, whose end [is] their happiness and improvement.¹⁷³

This extraordinary celebration of American progress appeared in the landscape art of the era as well.¹⁷⁴ Still, part of the problem was watching for too much change. While many orators spoke about progress, there was an apprehension about the amount of change among some orators. No one was quite sure where progress was

170. Pinckney, *supra* note 161, at 30.

171. Joel Parker, Progress, An Address Before the Phi Beta Kappa Society of Dartmouth College 1 (July 29, 1846).

172. Mattie Erma E. Parker, *Hill, John*, in 3 *DICTIONARY OF NORTH CAROLINA BIOGRAPHY* 136, 136 (William S. Powell ed., 1988).

173. John Hill, An Address Delivered Before the Two Literary Societies of the University of North Carolina 15 (June 1843).

174. See Alfred L. Brophy, *Property and Progress: Antebellum Landscape Art and Property Law*, 40 *MCGEORGE L. REV.* 603, 643–53 (2009) [hereinafter Brophy, *Property and Progress*] (discussing landscape art of the era, particularly Asher Brown Durand's 1853 landscape painting *Progress* and linking the art to legal doctrine promoting economic growth).

going, and it threatened to go too far.¹⁷⁵ In fact, some worried that the unrestrained progress of the age would follow the form of the French Revolution which, as Pinckney noted in 1836, had gone too far.¹⁷⁶ Several orators contrasted the moderation of the American Revolution, which stopped when it had taken down monarchy, with the French Revolution. Tennessee's Aaron Nicholson used Thomas Paine as a measure of what had gone wrong between the American and French Revolutions. Where Paine had been a hero here, his radicalism had gone over to atheism. The obvious danger of the ideas of the American Revolution was that they contained within them ideas that might go far afield and tear down more thrones than was appropriate.¹⁷⁷ While the people of the antebellum era were "progressives all," in Peter Carmichael's apt phrasing,¹⁷⁸ there was division over the meaning of progress and how far progress ought to go, and whether progress meant technological advances or something else.

C. The Utilitarian Age

Very closely related to the progressive spirit of the age was the utilitarian spirit. In fact, those two ideas were mutually reinforcing. Americans loved utility and sought out technological progress. As they witnessed progress and the bounties it produced, they sought out ideas and knowledge that would produce more progress. The seekers of utility at universities struggled against those more committed to the classical curriculum, which was under siege at many schools as students sought a scientific curriculum to replace Latin and Greek.¹⁷⁹ While many acknowledged the virtues of utility, they also lamented the ways that other considerations—like beauty—took a subordinate place. Students would find no "[r]epublic of letters" in public life and

175. Moore at Jefferson College, *supra* note 141, at 10–12 (discussing the relationship between religion and property law).

176. Pinckney, *supra* note 161, at 13.

177. A.O.P. Nicholson, Address Delivered Before the Two Literary Societies of the University of North Carolina 8 (June 1, 1853); *see also* James P. Holcombe, Sketches of the Political Issues and Controversies of the Revolution: A Discourse Delivered Before the Virginia Historical Society 39 (Jan. 17, 1856) (discussing the "melancholy aberrations from truth and virtue" occurring at the end of Thomas Paine's career as a pamphleteer).

178. PETER S. CARMICHAEL, *THE LAST GENERATION: YOUNG VIRGINIANS IN PEACE, WAR, AND REUNION* 19–34 (Gary W. Gallagher ed., 2005).

179. *See, e.g.*, Isaac W. Stuart, On the Classical Tongues and the Advantages of Their Study: An Inaugural Discourse Pronounced Before the Governor and Legislature of South Carolina 17–18 (Dec. 12, 1835) (discussing the need for training in Latin and Greek in order to understand the modern world).

the public cared little about what the Greek and Latin students had learned.¹⁸⁰ Others, like Gaston, defended the classical curriculum for its role in training the mind.

Baptist Minister James Lawrence Reynolds' 1849 talk at Wake Forest dealt with the implications of the age's favoritism for utility.¹⁸¹

The philosopher is no longer regarded with superstitious awe, as a being of another world; nor shunned with horror, as an accomplice of the Prince of darkness and a hierophant of infernal mysteries, but is hailed as a benefactor of the race, an almoner of the Divine beneficence to mankind. There is a sympathy between the man of science and the man of business. The philosopher addresses the people in the language of the people, and every man can read in his own tongue wherein he was born, the wonderful works of nature, and of man, the servant and interpreter of nature.¹⁸²

Similarly, James Bruce, one of the wealthiest men in the United States, returned to UNC in 1841 to speak to UNC alumni society. He worried that utility was preferred to beauty and that literature was neglected, even as science triumphed.¹⁸³ Yet, it was an age that celebrated useful discoveries and the ways we have conquered nature, through steam and the press.¹⁸⁴ William C. Richards's 1851 address at Erskine College, "*The Claims of Science*," summarized the ways that the utilitarian age had advanced, from Davy's lamp, to the telegraph, to the steam engine.¹⁸⁵ The technological change had brought rationality. It was no longer true, as it had been "[i]n remote ages," that "the popular mind was paralyzed by superstition."¹⁸⁶ Amidst all this technological change, there were still substantial challenges to order and control. Among Richards's concerns was the way German

180. Bruce at the University of North Carolina, *supra* note 112, at 5.

181. Reynolds, *supra* note 89, at 6.

182. *Id.* at 7.

183. Bruce at the University of North Carolina, *supra* note 112, at 6.

184. Abraham W. Venable, Speech of Hon. A. W. Venable Before the Two Societies at Wake Forest College 20 (June 8, 1853) [hereinafter Venable at Wake Forest] (noting that the present utilitarian age made use of previous discoveries); *id.* at 21 (employing a metaphor of a child who crawls up steps that a giant hewed out of a mountain); *see also* Abraham W. Venable, Address Delivered Before the American Whig and Clisosophic Societies of the College of New Jersey 11 (June 24, 1851) [hereinafter Venable at Princeton] (discussing printing and science).

185. William C. Richards, *The Claims of Science: An Address Delivered Before the Euphemian and Philomathean Societies of Erskine College* 26-35 (Aug. 13, 1851).

186. *Id.* at 35.

ideas of materialism—the core idea of which is that humans are controlled by their surroundings—were infecting American culture.¹⁸⁷

D. Romantic Images and the Past and Future of the Nation

Some of the addresses invoked the imagery of romanticism and landscape to illustrate the changes that had already taken place or that would take place in the future. They drew on romantic imagery in part to help create a national identity and affinity for Union, to create wonder at the Union and reverence for it. Dobbin in particular employed romantic imagery the most often and most effectively:

Poetic imagination is overtaken in the effort to picture its real grandeur—so changeful the scene, so rapid the transition, so wonderful its strides from infant weakness to giant manhood! Once a mighty wilderness, a continent of unquelled forests, the home of the fierce savage and the howling panther; now a beautiful land of cultivated fields, and filled with Statesmen, Orators, and Philosophers! Once a modest flag, adorned with thirteen stars, affixed to a flag-staff planted between the mountains of the Atlantic, waved over three millions of American freemen. Now a broad ensign, bearing on its ample folds, not thirteen, but thirty stars, nailed to a flag-staff, planted, not on the narrow confines between the mountains and the Atlantic, but on the mountains, on the valleys of the Atlantic and the Pacific, and the great Gulf of the south—affording protection not to three but to twenty millions of free citizens of an “Ocean-bound Republic!”¹⁸⁸

Dobbin sought to inculcate a spirit of patriotism, optimism, and republicanism.¹⁸⁹

But despite the talk of progress and the marveling of it, there were also fears of the future, the foreboding of disunion and party politics. William Biddle Shepard’s 1838 speech touched on worries about divisions and fanaticism.¹⁹⁰ William Shepard—not to be

187. *Id.* at 35–36; see also Henry W. Miller, Address Delivered Before the Philanthropic and Dialectic Societies of the University of North Carolina 17 (June 3, 1857) (lamenting the “moral condition of a people who discard the productions of the great masters of a Christian literature for the effusions of the propagandists of German materialism and French infidelity”).

188. Dobbin, *supra* note 33, at 21.

189. *Id.* at 10 (alluding to Sir Walter Scott’s novels).

190. William Shepard entered UNC in 1813 and served as a Whig in the United States Congress from 1829 to 1837. He had also been expelled from UNC for giving a political speech during the War of 1812 that criticized a UNC professor who was a British subject.

confused with the Democrat James Shepard—showed characteristic Whig concern for the future of the Republic, for he feared that the United States, like other countries, would decline:

They appear among us as those freaks of nature, the brilliant Northern Lights, shedding around their own paths a bright but transient splendour, but never becoming fixed stars in the firmament. No genius, however bright, no mental powers, however acute, can ever reach their due grade in this intellectual age, unless they are fully possessed of the recorded wisdom of those sages who have gone before them.¹⁹¹

This fear of the late 1830s was characteristic of Whig concerns for the decline of virtue and law during the later stages of the Age of Jackson.¹⁹²

The loss of [enlightened patriotism] is the sure precursor to her destruction. Look at the history of other republics. Behold the once proud fabric of the Roman empire. Once the acknowledged mistress of the world, in arts, and genius, and arms, Rome is now an inferior city, known only by the solemn ruins of its ancient splendor.¹⁹³

This appears in the landscape art of the period as well. Thomas Cole's 1837 series of five paintings, *Course of Empire*, conveys the characteristic concern over decline—for it depicts the growth of empire, from a savage to a pastoral state, then consummation, decline, and finally desolation.¹⁹⁴ Such portrayals fit well with Matt Ransom's 1856 address, which saw the "danger—a dark and gloomy danger—an appalling and overwhelming danger—which hovers in black clouds over our government and liberties, and casts a livid and frightful shade over this beautiful land."¹⁹⁵ Of course, by 1856 when Ransom spoke there was good cause for fear that the ship of state would flounder.

He ultimately graduated from the University of Pennsylvania. Marjo E. Rankin, *Shepard, William Biddle*, in 5 *DICTIONARY OF NORTH CAROLINA BIOGRAPHY* 329, 329 (William S. Powell ed., 1994).

191. William B. Shepard, *An Address Delivered Before the Two Literary Societies of the University of North Carolina* 9 (June 27, 1838) [hereinafter William B. Shepard].

192. Manly, *supra* note 114, at 8.

193. *Id.*

194. See ANGELA MILLER, *THE EMPIRE OF THE EYE: LANDSCAPE REPRESENTATION AND AMERICAN CULTURAL POLITICS, 1825–1875*, at 27–40 (1993).

195. Ransom, *supra* note 17, at 16.

That image of the cycle of nations was common, but it was not universal. When Supreme Court Justice Levi Woodbury, a Democrat, spoke to the Dartmouth Phi Beta Kappa Society in 1844, he referred to Cole's series.¹⁹⁶ But Woodbury predicted that the United States could break free of that cycle. Woodbury saw progress in individuals, as well as society. Woodbury celebrated modern society where "liberty and law, the arts and the securities of organized government, reign."¹⁹⁷ Woodbury cataloged some of the changes, including the spread of literacy, more humane behavior in war, and the end of serfdom. He linked Cole, a Whig, to his mission of democracy and progress in both individuals and society.¹⁹⁸ Yet, Woodbury thought there would be no desolation for the United States. He imagined the United States would continue to progress, onward and upward, forever.

Back in North Carolina, there were frequent invocations of the images of landscape in the addresses. In 1841, James Bruce spoke of the light and shade in the paintings at the Louvre.¹⁹⁹ Orators used the image of nature in several ways. Some made reference to the image of conquering wild nature, such as Aaron Brown's projection of the vista of United States' future, which he thought inspired the revolutionary generation as they framed the Constitution:

They looked far backward into the history of man, and scrutinized every form of government that had ever been established. They looked forward, also, into the distant future as far as mortal vision is allowed to penetrate. A long succession of ages passed in dim and shadowy review before

196. Levi Woodbury, *On Progress: An Oration Before the Phi Beta Kappa Society of Dartmouth College* (1844), in 3 WRITINGS OF LEVI WOODBURY 75, 77 (1852).

197. *Id.* at 78.

198. *See id.* at 77–78.

199. Bruce at the University of North Carolina, *supra* note 112, at 4. Bruce was referring to the world as seen by people who had once been students at UNC, but had also experienced life away from it:

What a wonderful and diversified mingling there would be, of light and shade! Still the objects painted are always the same, the difference of coloring depending altogether on the variant positions of each canvass. To the gloomy, the light would be as dark as that which steals through the stained glass of a Gothic window, to the light hearted and joyous, it would dance and dazzle as through a crystal prism, while to him who dwelt in the temperate zone of subdued and sober, yet glad some feeling, the world would appear, as it is, something to weep over and rejoice at, with hills of elevation and plains of depression, firm ground and morasses, arid prospects and enchanting views—in short neither all good nor all bad.

Id. at 4–5.

them. They saw the millions who were to be the future inhabitants of this vast Continent. They gazed with wonder on its lakes and bays and harbors—on its mountains and rivers and luxuriant vallies, until wrapped and inspired by the prophetic vision, they conceived the great design and plan of our present happy form of government. . . . It was then that man recovered his long lost birthright of self-government, and trampled beneath his feet the odious doctrine that the Kings of the earth had a divine right to govern him, and that it was rebellion against Heaven to resist their oppressions.²⁰⁰

At times orators spoke of the sublime beauty of nature. William Carey Richards spoke at Erskine College in South Carolina in 1851 on "The Claims of Science."²⁰¹ Richards combined scientific explanations of nature with imagery of its beauty. Thus he recalled how the sun's rays are bent and refracted by the earth's atmosphere. Then he explained how scientific processes lead to beauty:

The atmosphere is thus made the herald of the approaching King of Day, ushering him to his throne with pomp and splendour, and when his audience with the world closes, and he retires through the western gates of Heaven, like a faithful follower it holds up the skirt of his gold and purple robes, which fling back upon the gathering gloom of evening the soft and dream-like radiance of the twilight.²⁰²

Richards's address then linked technology to beauty, for he celebrated steam engines of all types as among "the sublimest results of Natural Science."²⁰³

200. Aaron V. Brown, Address Delivered Before the Two Literary Societies of the University of North Carolina 11 (May 31, 1854) [hereinafter Brown at the University of North Carolina].

201. Richards, *supra* note 185, at 17–18.

202. *Id.*

203. *Id.* at 30. Richards continued:

By its almost omnipotent power, time and space are annihilated, and the most distant parts of the world brought nigh. Before the magic power of Steam, even the ocean has dwindled from its once grand extent, and is now but another Frith of Forth, dividing us from our brethren of the old world. The operations of the Steam Engine are as diverse as they are magnificent and impressive. Mighty as it is in power, it spurns no labour whatsoever. It weaves our stockings and gloves, it makes our pins and needles, it digs our wells, saws our timber, hews our granite, refines our sugar, prepares our paper, moulds our type, prints our books, and makes our pens, cooks our food, washes our clothes, and, in short, performs for us, at once, the most imposing and the most trivial services.

None of the UNC addresses spent as much time on railroads as Richards's, but John Mason's 1847 address celebrated the growth of railroads: "Scarcely more than twenty years ago, [North Carolina] was without a single mile of railroad; in 1836, its iron engines traversed a completed track of sixteen hundred miles, and it has now more miles of railroad than, in the time of Washington, it had post routes."²⁰⁴

The romantic ideas of the pre-Civil War era celebrated history and often looked back fondly on the age of feudalism. Thus, Thomas Cole's 1838 series of artwork, *The Past* and *The Present* (that presaged Thomas Carlyle's 1843 book *Past and Present*) depicted the chivalry of the age of feudalism and the ruins of that age in the present.²⁰⁵ Yet, feudalism found no celebration among the Chapel Hill orators. To the contrary, orators emphasized the ways that the United States had improved over past societies. Secretary of the Navy John Mason²⁰⁶ noted that the monuments in America were not found in feudal remains. "No feudal castles, crumbling upon our hills, attest the ancient violence of robber-lords, and not for us, do the glorious relics of a noble ancestry bear witness, in buried columns and broken arches, to the degenerate spirits of their unworthy sons."²⁰⁷ Our monuments were found in the Constitution and our landmarks were businesses.²⁰⁸ "[T]he genius of our Republic goes forth in the dawn of morning, to meet and welcome the approach of day," Mason said.²⁰⁹

As Senator Bedford Brown explained, the people of the United States looked forward, with successful republican institutions serving as the monuments to their past, replacing blocks of granite and marble or feudal ruins:

Id.

204. Mason, *supra* note 95, at 19.

205. See THOMAS CARLYLE, *PAST AND PRESENT* (New York, William H. Colyer 1843), reprinted in THE NORMAN AND CHARLOTTE STROUSE EDITION OF THE WRITINGS OF THOMAS CARLYLE 1, 3 (Chris R. Vanden Bossche, Joel J. Brattin & D.J. Trela eds., Univ. of California Press 2005); Brophy, *Property and Progress*, *supra* note 174, at 640 (reprinting Cole's *Past and Present*). In Tuscaloosa, Alabama, Benjamin Porter, a Whig politician, delivered an address in 1845 responding to Carlyle. See Benjamin Faneuil Porter, *The Past and the Present: A Discourse Delivered Before the Erosophic Society of the University of Alabama* 8 (1845) (responding to Carlyle that "[m]an, the object of all revolution, constantly improves").

206. Mason, *John Young*, BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS 1774-2005, H.R. DOC. NO. 108-222, at 1513 (2005).

207. Mason, *supra* note 95, at 14.

208. *Id.* at 14-15.

209. *Id.* at 14.

If it be asked by foreign nations where are the monuments which a grateful country have raised to perpetuate his fame and illustrious services, America may proudly point them to a continent freed from foreign dominion: to republican institutions, successfully established: to the triumph of the arts of peace throughout all her borders: and to the unexampled happiness of her citizens, as the most enduring memorials to preserve through all time the great services of himself and his compatriots of the revolution.²¹⁰

Brown's mission of appeals to romantic imagery and sentiments of the heart was one of stirring sentiments for Union in an attempt to create a culture of constitutionalism.

E. Political Ideology in the Addresses

The addresses often emphasized unifying themes, such as the role of education in progress, the importance of Union, and the vague and therefore malleable concepts of freedom, equality, and constitutionalism. When the orators turned to topics in politics and constitutional law, they often emphasized Americans' common interests: the ways that the Revolutionary generation broke from the feudal and monarchical past, the sacrifices the Revolutionary generation made, and the need to sustain Revolutionary ideas. Those ideas contained a core of American identity, a sense of pride in independence. Senator John Bryan spoke of these ideas in 1830 at UNC²¹¹:

[T]he American revolution . . . was a scion of a more robust and hardy tree: its germ may be discovered in that uncompromising spirit that prompted Hampden to resist the payment of a trifling imposition, which he deemed arbitrary and illegal; in that fortitude and energy which conducted to these shores, men who preferred a dreary wilderness, and all its horrors, with civil and religious liberty, to all the comforts and joys of civilized life, without them.²¹²

Though Senator Bryan had been a supporter of Jackson, when he spoke in 1830, he appealed to Americans' united interests. He spoke of the Constitution and of the virtues of Chief Justice John

210. Brown, *supra* note 108, at 34.

211. Daniel M. McFarland, *Bryan, John Herritage*, in 1 *DICTIONARY OF NORTH CAROLINA BIOGRAPHY* 255, 255-56 (William S. Powell ed., 1979).

212. John H. Bryan, *An Oration, Delivered at Chapel Hill* 10 (June 23, 1830).

Marshall (a former Federalist).²¹³ Bryan observed that the Constitution came “recommended to us by everything that can command veneration, and confidence, and love. With reference to this great family compact, we may all exclaim, in the language of an illustrious patriot and statesman [Thomas Jefferson], ‘We are all federalists, we are all republicans.’”²¹⁴ Bryan was perhaps a relic of what is now referred to as the “Era of Good Feelings,” a man who appealed to common values expressed in the Constitution and to patriotism. Other addresses recognized that these commencement celebrations were a time to put away some of “the discords of professional strife.”²¹⁵

Yet, the addresses were not uniform in their themes, for there was a range of political ideology of the speakers. There was a disproportionate representation of Whigs among the speakers. Table 2 shows the thirty-four speakers who gave speeches at UNC between 1827 and 1860.²¹⁶ Of those, twenty-one were Whigs, ten were Democrats, and one, Henry L. Pinckney, was a nullifier.²¹⁷ There were also some differences in political affiliation based on the organization that invited the orators. Eight of the ten alumni and baccalaureate addresses for which political identification is known were given by Whigs.²¹⁸ This comes as no surprise because David L. Swain, who was the president of UNC during almost all of the time under study here (December 1835 to 1868), was a Whig.²¹⁹

Nearly two-thirds of the Dialectic addresses (nine of fourteen) were from Whigs.²²⁰ Six of the twelve Philanthropic addresses (fifty percent) were given by Whigs.²²¹ One might hypothesize a greater portion of Whig addresses from the Philanthropic society, whose members were drawn disproportionately from the eastern, Whig

213. *Id.* at 13–14; R. KENT NEWMYER, *JOHN MARSHALL AND THE HEROIC AGE OF THE SUPREME COURT*, at xiv (2001) (discussing Marshall as a Federalist).

214. Bryan, *supra* note 212, at 14.

215. Mason, *supra* note 95, at 5.

216. See *infra* Table 2 p. 1964. William Hooper spoke in both 1829 and 1859. *Infra* Table 1 pp. 1962–63.

217. Reliable data was not available for the other two speakers. *Id.*

218. *Id.*

219. WILLIAM D. SNIDER, *LIGHT ON THE HILL: A HISTORY OF THE UNIVERSITY OF NORTH CAROLINA* 54 (1992). The traditional story is that students from east of Orange County joined the Philanthropic Society and students from west of Orange County joined the Dialectic Society. Those in Orange County and from outside the state could choose their society. *Id.* at 31.

220. See *infra* Table 2 p. 1964.

221. *Id.*

sections of North Carolina.²²² By contrast, the Dialectic Society was drawn disproportionately from the western parts of North Carolina.²²³ Perhaps the small number of addresses makes meaningful comparison of political differences between the societies difficult.

Some of the addresses by Whigs seemed to emphasize more traditional Whig topics—like the influence of the educated and the problems with popular politics. Another prominent theme was the change from republicanism to democracy and with it party strife. Indeed, many of the addresses moved as Gaston's did, from individual virtue to the need for party virtue, and the role that educated people must play in sustaining public and party virtues.²²⁴ Then those public virtues, such as law, would be the mechanism of protecting, preserving, and transmitting society. This was the means by which the educated would exercise their influence. The Democratic addresses, on the other hand, sometimes emphasized the importance of universal education and the contributions of artisans.²²⁵ Among the addresses given by Democratic politicians, there was often a subtle emphasis on universal improvement instead of the rule of the well-educated. There was, nevertheless, substantial overlap with elements of Whig and Democratic ideology in many of the addresses, as well as convergence on such issues as public education.²²⁶

222. See MARC W. KRUMAN, *PARTIES AND POLITICS IN NORTH CAROLINA, 1836–1865*, at 94 (1983) (discussing party affiliations of eastern and western North Carolinians).

223. *Id.*

224. See, e.g., Gaston at Chapel Hill, *supra* note 1, at 20–22 (contrasting former times when people of different parties worked together for the public good with contemporary politics, where party conflict predominated).

225. KOHL, *supra* note 2, at 42–72; HARRY L. WATSON, *LIBERTY AND POWER: THE POLITICS OF JACKSONIAN AMERICA* 237–39 (Eric Foner ed., 1990). Rush Welter's *THE MIND OF AMERICA, 1820–1860*, at 9, 279–80 (1975) mines literary addresses extensively for evidence of Whig and Democrat ideology. This current project takes much of its form from Welter, though my focus is more narrowly on North Carolina and on the implications of the addresses for a constitutional culture. This constitutional culture—or maybe it is more precisely called cultural constitutional law, to emphasize the way that culture modifies constitutional law—has been discussed in many discrete studies. See *generally* DAVID E. KYVIG, *THE AGE OF IMPEACHMENT: AMERICAN CONSTITUTIONAL CULTURE SINCE 1960* (2008) (exploring the constitutional culture of impeachment).

226. This may be because many Whig themes were adopted by Democrats as well, particularly by Democratic lawyers. See William W. Fisher III, *Ideology, Religion, and the Constitutional Protection of Private Property: 1760–1860*, 39 EMORY L.J. 65, 112–20 (1990) (identifying key Whig property law concepts, which Democratic jurists also employed). Fisher, for instance, concludes that “judges during the second quarter of the nineteenth century employed with unusual frequency a distinctive analytical style whose components closely paralleled the cluster of beliefs advanced at the same time by the Whig party.” *Id.*

1. Whig Ideology in Addresses

Gaston's address was perhaps the most eloquent of all the UNC addresses on Whig themes of individual duty and the virtues of order through law,²²⁷ but others joined him. The next year, in 1833, Senator George Badger returned to those same themes. He spoke of order, of law, of individuals' duties, and of the influence of educated men. Badger worried that there were not enough people "to control public opinion."²²⁸ He grimly concluded in classic Whig fashion that "a spirit of insubordination is by some openly taught and recommended; and passion, and interest, and prejudice, are appealed to, in order to raise discontent, and produce opposition against the laws."²²⁹ Badger's solution was equally Whig—there needed to be more influence by the educated. It would take, for instance, the "united influence of the educated classes" to produce a change in literary taste.²³⁰

If public taste, much more public morals, require for their reformation, the exertions of the enlightened and virtuous, the delusions that have gone abroad must be met and dissipated; the press must be corrected; it must be transferred to the direction of able and upright men: and the people (though well meaning, yet easily misled), must be guarded against those artifices, by which it is sought to array them against their own peace and happiness, and to involve them in the stupendous guilt and folly of prostrating the last structure, which can be raised by man for the preservation of equal rights by republican institutions.²³¹

Reform required, in essence, "a voluntary, steady, and universal submission to the laws."²³² Education facilitated this submission to law. Presbyterian Minister Simeon Colton's 1842 speech at Wake Forest was explicit about how schools might contribute to the rule of law. Education had to fit students for submission because "[n]o government can be permanent where subordination is unknown. In

at 120. Then again, there appear to be consistent differences in judges' rhetorical approaches to vested rights, depending on their political ideology. See Alfred L. Brophy, "*Necessity Knows No Law*": *Vested Rights and the Styles of Reasoning in the Confederate Conscription Cases*, 69 MISS. L.J. 1123, 1177–78 (2000) [hereinafter Brophy, "*Necessity Knows No Law*"].

227. See *supra* notes 1–15 and accompanying text.

228. Badger, *supra* note 82, at 6.

229. *Id.* at 11.

230. *Id.* at 8.

231. *Id.* at 11–12.

232. *Id.* at 12.

arbitrary governments subordination may be the result of force, but in a free, compulsion can be used only in extreme cases of turbulent opposition, so distinctly marked that public sentiment justifies the interference of the strong arm of power.”²³³ Education, Colton thought, should “be so framed as to secure in the best possible manner a habit of subordination and submission to authority.”²³⁴

Order, of course, occupied an important place in the minds of Whig orators. Daniel Barringer said in 1840 that lawyers “have ever stood in the front rank of the advocates of public liberty, they have always been the friends of public order.”²³⁵ Barringer’s comments illustrated the Whigs’ belief in the influence of educated men. “The means that produce and control [public opinion] will, under proper influences, necessarily be . . . in the hands of the educated men of our country. Genius and talent will create, as well as direct, the atmosphere in which they live,” he said.²³⁶ Along with order, there was talk of ties that bound the society together, such as James Bruce’s discussion of the social chain.²³⁷ Bruce’s talk was a modern Whig approach, which advocated internal improvements and a modern constitutional doctrine.

For many orators, including Barringer, books were an important vehicle for progress. In the diffusion of knowledge and books, ideas were refined, and grown. Barringer aptly phrased this, stating, “[m]ind is brought into constant collision with mind.”²³⁸ He praised the ways that ideas, as brought to people through books, had reformed the world: “Her fetters have been broken, and knowledge walks abroad in her true dignity, upholding the banners of benevolence and philanthropy—asserting the dominion of man over

233. Colton, *supra* note 122, at 11.

234. *Id.* at 11; *see also* Richard Yeadon, Address on the Necessity of Subordination, in our Academies and Colleges, Civil and Military; Before the Calliopean and Polytechnic Societies of the Citadel Academy, Charleston, S.C. (Nov. 23, 1853) (stressing the importance of order and subordination).

235. Daniel M. Barringer, An Address Delivered Before the Alumni and Graduating Class of the University of North Carolina 15 (June 3, 1840); *see also* Thomas R. Hunter, *The Institutionalization of Legal Education in North Carolina, 1790–1920*, in 1 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES: COMMENTARIES AND PRIMARY SOURCES 406–85 (Steve Sheppard ed., 2007) (listing lawyers Gaston trained).

236. Barringer, *supra* note 235, at 14.

237. Bruce at the University of North Carolina, *supra* note 112, at 21 (“[E]very useful profession is fast rising to the same level; each being an indispensable link, in the social chain which binds individuals together.”).

238. Barringer, *supra* note 235, at 11, 19 (“[W]e have become a *reading* and a *thinking* people.”).

nature—looking to the feelings, the hopes, the wants, the substantial benefit of mankind”²³⁹

For Whigs, the wide diffusion of knowledge also came with some drawbacks. Just as eloquence could be misused, so might the press. Many thought that the printing press was one of the causes of the excesses of the French Revolution. Whig physician, James Dickson,²⁴⁰ offered an attack on the French Revolution and blamed literature for the propagation of the culture of the French Revolution:

The French revolution itself, the result, at least in the horrible atrocities which marked its progress, of the atheistic literature which immediately preceded and accompanied it, exercised a manifest and wide spread influence upon the intellect and literature of the age. How, indeed, could it be otherwise, with the world all in commotion around, the great deep of opinions broken up and in conflict . . . the struggle of mind with mind, should partake of the vehemence and energy which characterized the physical conflicts of the period.²⁴¹

In 1846, Bartholomew Moore, one of the leading lawyers of North Carolina and an 1830 graduate of UNC, addressed the UNC literary societies on the problems with print.²⁴² Two years after the speech, he was appointed Attorney General of North Carolina in 1848 by Whig Governor William Alexander Graham, a post he held until 1851.²⁴³ Moore’s arguments, which are preserved in the pages of the North Carolina Reports, express his concern for the equal application of law. One excellent example of this is his argument in defense of the enslaved person, Will, against a criminal prosecution for killing his owner.²⁴⁴ Moore asked for the Supreme Court of North Carolina to limit masters’ power over slaves and to “effect much in the formation of public opinion, and at this time they may exert the opportunities afforded by their situation in a most happy manner to impart fixedness and stability to those principles which form the true

239. *Id.* at 11.

240. Juanita Ann Sheppard, *Dickson, James Henderson*, in 2 *DICTIONARY OF NORTH CAROLINA BIOGRAPHY* 66, 67 (William S. Powell ed., 1986).

241. Dickson, *supra* note 140, at 27–28.

242. Bartholomew F. Moore, *supra* note 18, at 7.

243. Memory F. Mitchell, *Moore, Bartholomew Figures*, in 4 *DICTIONARY OF NORTH CAROLINA BIOGRAPHY* 294, 294–95 (William S. Powell ed., 1991).

244. *State v. Negro Will*, 18 N.C. (1 Dev. & Bat.) 121, 134 (1834) (listing Moore as counsel for prisoner).

basis of the policy.”²⁴⁵ Perhaps Moore undertook this representation for professional reasons, but maybe it was influenced by his interest in establishing the rule of law. Moore’s advocacy employed law as a tool, a technology, to gain human control over inhuman emotions. One of the functions of law, like the technology of railroads and steam, was to help control and improve upon nature.²⁴⁶

Like Gaston and Badger, Moore was concerned with the imposition of control and stability through law. Moore’s attitudes toward regulation through law—and the descent of thought from superior to everyone else—appear in his address. Moore understood the centrality of print to Americans’ thought. For “as certainly as reading trains the thought, thought will direct the conduct of life.”²⁴⁷ But while reading offered the opportunity for improvement, it also offered a vehicle for degeneracy. Moore attacked the sentimental literature of the age:

This species of reading, quickly becoming a passion, creates a dreamy existence, from which the victim awakes with the same restless feelings, as does the confirmed eater of opium; both, alike, find life intolerable, without the poison, which first imparted, and now, at once, continues the disease and furnishes a momentary comfort.²⁴⁸

Moore’s address illustrates other Whig themes as well. Moore spoke of the need for reason and the need to balance passion with it.

245. *Id.* at 141–42. We should interpret *Negro Will* in light of Moore’s advocacy, which may shed some light on how moderates used their role as legal professionals to mitigate slavery. There was a prominent current in southern writing to remake the institution of slavery to make it more humane. See, e.g., Thornwell, *supra* note 86, at 11. Moore’s advocacy invites a further inquiry into whether judicial restrictions on owners’ power over slaves added legitimacy to the institution of slavery—much as the emphasis on Christian duties of masters may have made slavery more palatable. This seems to have been Senator Badger’s usage of Gaston’s *Negro Will* opinion. See *supra* notes 50–55 and accompanying text.

246. College orators understood and celebrated this role of law and lawyers. See, e.g., Daniel Lord, On the Extra-Professional Influence of the Pulpit and the Bar: An Oration Delivered at New Haven Before the Phi Beta Kappa Society of Yale College 18–19 (July 30, 1851); John Belton O’Neill, An Address Delivered before the Eumenean Society of Davidson College, N.C. 10 (Aug. 8th, 1850). On law as technology, see Brophy, *Property and Progress*, *supra* note 174, at 652–54 & n.153; Stephen Duane Davis II & Alfred L. Brophy, “The Most Solemn Act of My Life”: Family, Property, Will, and Trust in the Antebellum South, 62 ALA. L. REV. 757, 761, 789–91 (2011) (interpreting trusts as a form of legal technology that assisted in the management and control of property, particularly property in humans).

247. Bartholomew F. Moore, *supra* note 18, at 9.

248. *Id.*

This was phrased as a critique of the people who were believed to be governed by passion—in his day, the Democrats. Moore observed that in Egypt, justice was depicted as a heart, but he thought it should be head and heart, a reference to the common trope which depicted the head as reason and the heart as sentiment.²⁴⁹

Moore's discussion of the cultivation of the mind through reason was a subtle reference to the Whigs' emphasis on moral philosophy. One of William Shepard's themes in 1838 was that education needed to develop the moral faculties, as well as the intellectual:

That great intellectual endowments cannot exist with great moral depravity, is a theory rather flattering to the vanity of man, than founded upon an accurate knowledge of his history. The object of education, then, should be to eradicate those vicious propensities, to form correct moral and religious principles, and to train the mind, by judicious cultivation, so as to apply those principles to the benefit of society.²⁵⁰

The Whig addresses, thus, focused on key themes such as control of passion through law.

2. Democratic Ideology in Addresses

In contrast to Whigs whose addresses emphasized themes like duty, control, and subordination to law, Democratic politicians focused on the wide diffusion of knowledge as a cause for uplift. They looked to changes made possible by people across a broad spectrum and to changes that grew from the common people upward. They marveled both at the improvements that were possible and at the improvements that had already taken place over the past several centuries.

Of the ten speakers who are reliably identified as Democrats, several were prominent national politicians. The first address to the joint literary societies by a Democrat was delivered in 1834 by James Iredell, Jr., the son of the famous Justice of the Supreme Court of the United States.²⁵¹ Three years later, in 1837, United States Senator Robert Strange delivered an idiosyncratic address on the imagination,

249. *Id.* at 15–16.

250. William B. Shepard, *supra* note 191, at 24.

251. Beth Crabtree, *Iredell, James, Jr.*, in 3 *DICTIONARY OF NORTH CAROLINA BIOGRAPHY* 255, 255 (William S. Powell ed., 1988).

revealing Strange as a follower of Scottish moral philosophy on sentiment and perception.²⁵²

The next address by a nationally prominent Democrat came in 1839 from Bedford Brown, who represented North Carolina in the United States Senate from 1829 to 1840.²⁵³ Brown's address has several hallmarks of Democratic ideology. He celebrated wide dispersion of knowledge and invoked Democratic themes like "popular Government" and "universal intelligence."²⁵⁴ His address celebrated the ways that the printing press put power in hands of the people.²⁵⁵ In fact, the image of the printing press provides one dividing line between Whigs and Democrats. Among all speakers a common explanation for progress was the printing press. Yet, among Whigs, the press contained potential for harm as well. Democrats, however, emphasized the positives of the printing press. John Hill, a Democratic politician who served North Carolina in the House of Representatives, speaking in 1843, singled out the printing press as a prime cause of progress:

The fetters of ignorance were broken. Books were multiplied and became the inmates of the humble cottage as well as of the lordly Palace. Prejudice, superstition and power were impotent longer to curb the unchained mind, and it sprung upward like the lark, to the very gates of Heaven, carolling its songs of joy and thankfulness.²⁵⁶

Hill took an optimistic approach to learning, emphasizing the need for universal education so that everyone could participate in self-government.²⁵⁷

While Whigs also celebrated books and spoke of the printing press, Brown—like other Democratic orators—displayed a subtle preference for the common people, as opposed to the well-educated.²⁵⁸ Where Gaston and Badger spoke of the duties of the

252. Robert Strange, *An Address Delivered Before the Two Literary Societies of the University of North Carolina* 14 (June 1837).

253. H. G. Jones, *Brown, Bedford*, in 1 *DICTIONARY OF NORTH CAROLINA BIOGRAPHY*, 240, 240–41 (William S. Powell ed., 1979).

254. Brown, *supra* note 108, at 9.

255. *Id.* at 19.

256. Hill, *supra* note 173, at 7.

257. *Id.* at 15 ("Since the days of Bacon, the inestimable truth is fixed, that all things are subject to reason and discussion. The people are the keepers of our political treasure, yea, the solvers of the great problem of the fitness of man for self-government. They must not lack cultivation.").

258. See Brown, *supra* note 108, at 29.

educated person, Senator Brown spoke of the duties of the common person:

It is not only the duty of every citizen to make himself acquainted with the principles and structure of the Government under which he lives, but more particularly is it the duty of those whose talents and educations may encourage them to aspire to places of high public trust and distinction, to investigate profoundly its nature and character.²⁵⁹

Brown, echoing other Democratic orators, also spoke of the “ascendency of mind.”²⁶⁰ Unlike Whigs who feared the press and spoke of the need for guiding public opinion, Brown, like his fellow Democrats, expressed confidence in both:

Learning, no longer confined to a favored class, as in the days of ignorance and superstition, who used it to enslave the rest of mankind and to promote their own schemes of aggrandizement and ambition, is penetrating every part of the land. Its rays are scattered as the light of heaven, falling alike on the humble inhabitant of the cottage and the wealthy occupant of the palace. . . . It is teaching ambition to moderate its pretensions, power to lessen its authority, and is enforcing a greater respect among those who govern, for the rights of the governed. This is the inevitable consequence of the progress of a more diffused intelligence, the very nature of which is to make war upon antiquated abuses, and to introduce systems more comfortable to the spirit of the age.²⁶¹

Brown spoke of “this great reform which gives to the present age so just a pre-eminence for the diffusion of knowledge throughout society, and as a consequence of increased intelligence, the more universal enjoyment throughout all its gradations of the comforts and refinements of modern times.”²⁶²

Another address by a national Democrat came in 1847 from John Y. Mason, Secretary of the Navy.²⁶³ The 1847 graduation ceremony

259. *Id.* at 29–30.

260. *Id.* at 20.

261. *Id.* at 19–20.

262. *Id.* at 7.

263. *Mason, John Young (1799–1859)*, BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS 1774–2005, H.R. DOC. NO. 108-222, at 1513 (2005). After graduating from UNC in 1816, Mason became a lawyer and served in the United States House of Representatives from 1831 to 1837, then as a federal judge in Virginia. *Id.* He was

was particularly important because President James K. Polk was personally in attendance.²⁶⁴

As Senator Brown did in his speech, Mason praised "enlightened culture" and the "diffusion of knowledge," as well as the printing press²⁶⁵:

Becoming thus the missionary as well as the schoolmaster of republicanism, it plants among other nations the seeds of freedom, which it has itself ripened upon our soil; and having first contributed to the glory of America at home, it crowns its labor of patriotism by making it better known, and therefore more honored, abroad.²⁶⁶

It was widely diffused learning that served "as the nurse of equality."²⁶⁷

Mason invoked that most democratic of phrases, *salus Reipublicae suprema lex*²⁶⁸—the good of the Republic is the supreme law—a phrase often heard in regulation of property.²⁶⁹ The idea was that private property rights should be subjected to the claims of the state. This was a position dividing Whigs, who supported broad constitutional protection of property, from Democrats, who often construed property rights more narrowly.²⁷⁰ This conflict between broad and narrow construction of grants was perhaps best illustrated by Democratic Chief Justice Roger Taney's 1837 decision in *Charles River Bridge v. Warren Bridge*, which narrowly construed one bridge's charter and led to Whig predictions of the collapse of the security of property.²⁷¹ While *Charles River Bridge* was perhaps the

Secretary of the Navy from 1844 to 1845, then Attorney General, then Secretary of the Navy again from 1846 to 1849. *Id.*

264. See *supra* note 117 (discussing Polk's visit to UNC and his thoughts about graduation).

265. Mason, *supra* note 95, at 9, 11.

266. *Id.* at 13.

267. *Id.* at 9.

268. *Id.* at 17.

269. See, e.g., WILLIAM J. NOVAK, *THE PEOPLE'S WELFARE: LAW AND REGULATION IN NINETEENTH CENTURY AMERICA* 235 (1996) (discussing the phrase "*salus populi*").

270. See Brophy, "*Necessity Knows No Law*," *supra* note 226, at 1139-46 (contrasting Democratic and Whig approaches to vested rights jurisprudence).

271. See *Charles River Bridge v. Warren Bridge*, 36 U.S. (11 Pet.) 420, 650 (1837). (involving a claim by one bridge company that it had an exclusive right across the Charles River and thus could enjoin a neighboring bridge); James Kent, *Supreme Court of the United States*, 2 N.Y. REV. 372, 385 (1838) (responding to *Charles River Bridge* and predicting dire results of failure to uphold contract rights).

most famous case of its kind, similar cases arose in the state courts and sometimes in the Supreme Court up to the Civil War.²⁷²

Mason celebrated, moreover, the multiple ways the common person participated in democracy, as a voter, juror, and elected official:

He wields the power of the elective franchise, and determines by his vote the choice alike of measures and of men; not only *who* shall rule him, but *what* shall rule him; he sits in the jury box, and the fortune, the fame, nay, the very life of his neighbor, rest upon his decision; he is called as a witness, and is sworn to give true testimony on questions involving the deepest interests and the most important results; or, by the suffrages of his fellow citizens, he is clothed with still greater trusts, and assumes responsibilities which belong only to the highest stations in the gift of the people. A sovereign in his own right, the symbols of his authority are thus constantly before his eyes, and from every new exercise of his power, the American citizen derives fresh excitement to his intellect, and increased dignities to his character.²⁷³

A Whig might recoil at such participation and seek instead the influence of educated men. Mason celebrated the Democratic ideals of widely diffused knowledge and democracy and saw many people—including those who graduated from common schools—as educated people. For “the genius of our institutions contemplates no such thing as an ignorant man.”²⁷⁴

IV. LAW, CONSTITUTIONALISM, AND THE REPUBLIC OF LIBERTY

With that geography of ideas in the addresses, we can now turn to what these addresses tell us about constitutionalism and law. The addresses invite such a use because the orators were so frequently legally-trained politicians, lawyers, or people with judicial experience.²⁷⁵ Moving beyond an understanding of doctrine in the Supreme Court toward a broader understanding of law, the addresses

272. See, e.g., *Slack v. Maysville & Lexington Rail Co.*, 52 Ky. (13 B. Mon. 1) 92 (1852) (interpreting the power of Kentucky to grant charters relieving railroads of tax burdens); *Young v. Harrison*, 6 Ga. 130, 146–47 (1849) (construing charter for ferry narrowly to permit a competing bridge).

273. Mason, *supra* note 95, at 15.

274. *Id.*

275. Twenty-three of the thirty-five orators had legal training. See *infra* Table 1 pp. 1962–63.

show how ideas in circulation were directed to mold public sentiment. Moreover, they gauge the meaning of Union, civil and religious liberty, democracy, equality, and order, and give some sense of how those conceptions shaped Americans' and Southerners' attitudes. They illustrate one of the ways that Americans created a Union; how they attempted to sustain it through appeals to history, sentiment, and utility; and then, tragically, how they lost the Union temporarily. The addresses put law into a context of history and of contemporary society, granting modern-day readers a window into society's viewpoint on the crises around the breakdown of order and respect for Union during that era. Within a fairly short compass, orators were able to express their intellectual world. The addresses demonstrate how the Constitution is a document that stretches out into culture, how it represents a whole worldview, and how what the Supreme Court does sits on an expansive set of ideas.

Larry D. Kramer's book, *The People Themselves: Popular Constitutionalism and Judicial Review*, has revitalized an interest in popular conceptions of constitutionalism.²⁷⁶ Kramer's focus is largely judicial review, but his work inspires more speculation on what one might call cultural constitutional law—the cultural values that surround the Constitution, that grew from it, and that support a host of political and social attitudes.²⁷⁷ Cultural constitutional law often links Supreme Court opinions to the larger ideas of political ideology—though it can also link them to ideas that go beyond party ideology,²⁷⁸ such as in this study which links Supreme Court opinions to the common well of cultural ideas about nationalism, law, and progress. Previous constitutional historians have identified the ways

276. See generally LARRY D. KRAMER, *THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW* (2004) (providing insight and an evolving context of constitutional law).

277. Larry D. Kramer, "The Interest of the Man": James Madison, *Popular Constitutionalism*, and the Theory of Deliberative Democracy, 41 VAL. U. L. REV. 697, 699 (2006) (explaining that in the Founding era, the authority to interpret the Constitution resided not solely in the Supreme Court, but in the community).

278. See, e.g., Doni Gewirtzman, *Glory Days: Popular Constitutionalism, Nostalgia, and the True Nature of Constitutional Culture*, 93 GEO. L.J. 897, 901 (2005) (asking how "the People relate to, engage with, and feel about constitutional culture"); Robert C. Post, *Foreword: Fashioning the Legal Constitution: Culture, Courts, and Law*, 117 HARV. L. REV. 4, 8 (2003) (employing constitutional "culture" to "refer to the beliefs and values of nonjudicial actors," as distinguished from "constitutional law," which refers to the "constitutional law as it is made from the perspective of the judiciary").

that ideas in the public are reflected in constitutional thought.²⁷⁹ A growing body of scholarship looks to such ideas in constitutional culture, particularly in the years from Revolution to Civil War. Some of it looks beyond the locus of who has the right to determine the constitutionality of action to ask how the Constitution frames the appropriate response to political questions.²⁸⁰ Often this literature looks to the ideals of the Constitution, as well as other norm-setting principles—like the duties of the legal profession—that helped define the appropriate responses to political issues ranging from social unrest to free speech.²⁸¹

Expanding the circle of attention somewhat, one might observe that Fourth of July orations have throughout American history allowed the orators themselves to define the meaning of independence. Mari J. Matsuda reminds us of an example from the middle of the twentieth century. Japanese-Americans interned during World War II used the Fourth of July celebration to articulate their own vision of the Declaration, which was at odds with how they were being treated at that very moment.²⁸² The constitutional culture might be expressed by people with views as different as southern representatives in Congress, a resident of Concord, Massachusetts,

279. See, e.g., JOHANN N. NEEM, *CREATING A NATION OF JOINERS: DEMOCRACY AND CIVIL SOCIETY IN EARLY NATIONAL MASSACHUSETTS* 2 (2008) (linking voluntary civic organizations to democracy in early nineteenth century Massachusetts). Similarly, Jason Mazzone hypothesizes that local community organizations helped create a constitutional culture, in part because they were organized around constitutions. See Jason Mazzone, *The Creation of a Constitutional Culture*, 40 *TULSA L. REV.* 671, 672 (2005) (hypothesizing that “civic associations emerged in the early decades of the Republic as an important, perhaps the most important, mechanism for creating the American constitutional culture”). One suspects that nationality sprang from very real interests, as well as civic organizations and the republic of letters (and the republic of oratory). Andrew Shankman, for instance, points out in *CRUCIBLE OF AMERICAN DEMOCRACY: THE STRUGGLE TO FUSE EGALITARIANISM AND CAPITALISM IN JEFFERSONIAN PENNSYLVANIA* 225–33 (2004), that interests co-existed with ideological commitments and cultural productions like addresses. These extended texts can illuminate both points of conjunction and points of disjunction in antebellum constitutional culture, and, to the extent we see disagreement, can help gauge those disagreements.

280. Saul Cornell & Gerry Leonard, *The Consolidation of the Early Federal System, 1791–1812*, in 1 *THE CAMBRIDGE HISTORY OF LAW IN AMERICA* 518, 518 (Michael Grossberg & Christopher Tomlins eds., 2008) (finding multiple constitutional traditions in early America).

281. See, e.g., Norman W. Spaulding, *The Discourse of Law in Time of War: Politics and Professionalism During the Civil War and Reconstruction*, 46 *WM. & MARY L. REV.* 2001, 2029–39 (2005) (explaining how lawyers engage “in matters of public concern” and defend the “rule of law [as a] professional responsibility”).

282. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 *HARV. C.R.-C.L. L. REV.* 323, 366–67 (1987).

escaped slaves beating a path for Canada, and soldiers on Cemetery Ridge in a small town in southern Pennsylvania on a hot summer day—right around July 4, 1863. This project of constitutional culture must seek to identify the areas of consensus as well as conflict around the constitutional ideal. Then it needs to tie those ideas together with actions that they inspired.

As it was depicted in the addresses, American society fulfilled the promise of Montesquieu's *Spirit of the Laws*,²⁸³ that the laws should reflect the character of the people who are governed by them. The recognition that law and the surrounding environment—from geography to society—are connected, promised to bring into harmony the people and their laws. Addresses aimed to create a culture of law and constitutionalism and critiqued those who failed to abide by that culture. They expanded constitutional thought off the pages of the written Constitution and the Supreme Court of the United States reports into the hearts and minds of the audience. These addresses sought to inspire their audience to create a culture structured along the lines explained in the Constitution, which would go beyond paper guarantees. The constant vigilance that they spoke about was part of breathing life into their constitutional ideas. Their sentiments of Union, their patriotism, their vigilance for the rights of the southern states were all part of the implementation of the Constitution. These addresses were not the places where fine constitutional theories were articulated, but they were the places where grand, general ideas were discussed and where the audience was driven to fulfill those ideas. There was no sense that mere words would solve a problem; it was a sense that the Constitution was something that provided principles, inspiration, and guidance for Americans to carry out. It reflected Americans' experiences in the natural world and in politics—their ancestors created a constitutional culture, fought the Revolutionary War for it, and the current generation had to exert a similar effort to maintain it.

A. *To See Law and Constitutionalism in Context*

College addresses give us a sense of how the common law and the Constitution are part of a larger tapestry that structures moral, legal, and political decisions. The New York Whig lawyer Daniel

283. See, e.g., BARON DE MONTESQUIEU, 1 *THE SPIRIT OF THE LAW* bk. 19 (Thomas Nugent trans., 1823) ("Of Laws in Relation to Principles Which Form the General Spirit.").

Barnard brought this together well in his 1845 address at the University of the City of New York, "*A Plea for Social and Popular Repose*":

Now we have in our time, and in our country, a few capital guides and landmarks, as well for our opinions, as for our conduct, in nearly all the affairs to which our domestic, social, political and religious obligations relate. We have the Bible, and the Reformation, and the American Revolution, and the Constitution of the United States. And in reference to what these import, and what they teach, we have the testimony, and the faith, and the example of good and great men who have gone before us.²⁸⁴

Barnard provided a succinct explanation of law in the context of other social constraints in antebellum America.

While it was important to look at law in its context, some addresses understood the centrality of law itself in setting the boundaries of acceptable behavior and in binding society together. South Carolina lawyer, James L. Pettigru, told the Phi Kappa and Demosthenian Societies at the University of Georgia in 1846 that law is "the very bond of society."²⁸⁵ He detailed the way law was connected to society and helped to structure it:

It has its origin in the moral relations of man, and its spirit and essence consist of the principles of natural equity and justice. In its form, it is modified by positive rules and regulations—the growth of custom, or the expression of the will of the supreme power of the State. These rules and regulations are varied according to the circumstances in which the community is placed, or the accidental will or temper of the law-giver. They are facts which reason does not dispute, but ascertain; and they give to the Law a certainty not to be found in other branches of moral science.²⁸⁶

Pettigru surveyed many areas of human knowledge—law, politics, morality—to see what changes had taken place and how they had come about. Those changes, which North Carolina orators also

284. Daniel D. Barnard, *A Plea for Social and Popular Repose*, An Address Delivered Before the Philomathean and Eucleian Societies of the University of the City of New York 7 (July 1, 1845).

285. J.L. Pettigru, *An Oration*, Delivered Before the Phi Kappa and Demosthenian Societies of the University of Georgia 12 (Aug. 6, 1846).

286. *Id.*

spotted, linked legal codes to public sentiment. James Bruce of Halifax, Virginia, observed in a lecture in 1852, a decade after his UNC address, that “[p]ublic sentiment rules the world.”²⁸⁷

The North Carolina orators dealt with similar questions. They operated at a high level—a very high level—of generality. John Y. Mason, speaking in 1847, suggested how the Constitution fit with the rest of American culture to form the United States:

The bonds which hold together our extended confederacy of States, are not those alone which are to be read in written constitutions and gathered from the enactment of legal codes; but those, rather, which are found in the interchange of social kindness; in the attractions of literary intercourse; and in the manifold associations which spring from the communions of religion and the pursuits of business.²⁸⁸

That context for law included surrounding technological and economic change. Mason understood that the market culture benefitted from technological progress, and he believed that benevolent sentiments were increasing at the same time as well.²⁸⁹

Alfred Osborn Pope Nicholson, an 1827 graduate of UNC, was admitted to the bar in 1831²⁹⁰ and was an active Democratic politician in Tennessee, where he served in the state legislature from 1833 to 1839, and served several times in the United States Senate.²⁹¹ He observed that public sentiment, moral philosophy, and law all worked together:

[P]ublic sentiment is our great social, political, and moral regulator. Statutes and constitutions bow to its dictation and yield to its power. It is our High Court of last resort; and by its adjudications our customs, our laws, and our constitutions stand or fall. . . . It overthrows monarchies and drives tyrants into

287. Bruce at Danville Lyceum, *supra* note 121, at 298. Bruce was an officer of the Colonization Society of Virginia in 1858. 34 AFR. REPOSITORY AND COLONIAL J. 97, 120 (1858). That suggests that he favored gradual termination of slavery, even though he supported slavery in his 1853 Danville Lyceum Address. Bruce at Danville Lyceum, *supra* note 121, at 295.

288. Mason, *supra* note 95, at 6.

289. *Id.* at 20–21; *see also* William L. Dayton, Address Delivered Before the American Whig and Clisophic Societies of the College of New Jersey 21–23 (Sept. 20, 1843) (discussing law as science and the connections of law to other disciplines, as well as the separate, internal logic of law).

290. *Osborn Pope Nicholson, Alfred*, BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS 1774–2005, H.R. DOC. NO. 108-222, at 1656 (2005).

291. *Id.*

exile, or sweeps away republics and erects upon their ruins unmitigated despotisms.²⁹²

Public sentiment might be channeled by lawyers. Nicholson spoke of the “power of mind over mind.”²⁹³ Yet, sentiment was also capricious and dangerous, because judges could not resist it. Nicholson feared the changes brewing in public sentiment. The “very corner-stone” of Christianity was being undermined “by the working of a disguised materialism.”²⁹⁴ And it was even worse than that:

The assaults of infidelity are not now made openly and boldly, as in the days of French atheism, but it may be well doubted whether they are less effective because covert and indirect. The amazing developments in the career of scientific research, which are constantly startling the public mind, seem to have unloosed it from its moorings, to have destroyed all limit to its credulity, and to have impressed it with the conviction that nothing is so absurd as not to command credence.²⁹⁵

Such observations illustrate why the orators were so concerned with the surrounding culture. They saw the feedback loop between law and culture, so they understood how law drew upon book culture, to Christianity, to education and commerce, as well as the ways it contributed to those other parts of culture.²⁹⁶

Robert M.T. Hunter, who was then serving as the Democratic Speaker of the House of Representatives,²⁹⁷ spoke to the University of Virginia alumni on July 4, 1839, about such feedback loops between law and culture.²⁹⁸ He focused on a series of positive relations, such as the value of press and education in preserving the republic. Hunter thought the Union was held together through pride, literature, appeals to historical sentiment, and appeals to contemporary economic utility.²⁹⁹ Moreover, it was law that made the

292. Nicholson, *supra* note 177, at 21.

293. *Id.* at 5.

294. *Id.* at 26.

295. *Id.*

296. Bruce at Danville Lyceum, *supra* note 121, at 298 (“Public sentiment rules the world, and in its estimate of a nation’s strength, schools are more valued than arsenals, scholars than soldiers.”).

297. Hunter, *Robert Mercer Taliaferro*, BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS 1774–2005, H.R. DOC. NO. 108-222, at 1304 (2005).

298. R.M.T. Hunter, Address Before the Society of Alumni of the University of Virginia 10–11 (July 4, 1839).

299. *Id.* at 3–5.

wilderness of America into a garden, and it was the American wilderness that gave a spirit of independence to Americans:

Of all situations in life, there has been none perhaps, which so promoted the growth of a spirit of self-reliance and independence, as that of our early pioneer. When he entered the wilderness he left the empire of law, to return to a state of nature, in which he felt that under Providence he had no reliance save in his own resources. But then he was free from all human restraint. He braved dangers which were the more terrible as they were clothed in silence and mystery, and pursued his game or his traffic amid the most appalling difficulties. Led on by the excitement of discovery, he wandered today through some land of promise, which the white man's foot had never trodden before, and to-morrow he stood upon the shore of some majestic river or inland sea, with the first tidings of which he was to return to the settlement he had left.³⁰⁰

Hunter's address parallels James Fenimore Cooper's interpretation of the way that experiences in America led to the lessened constraints of law. There was also a sense that America itself—the experience of living in a wilderness, without the usual constraints of law—combined with a natural tendency of Christianity to produce a sense of freedom and independence.³⁰¹ Americans faced with wild and untamed nature turned to technology, including law, to control that wilderness.³⁰²

300. *Id.* at 17.

301. See Moore at Jefferson College, *supra* note 141, at 22, 24 (attributing American independence to Christianity and rejection of irrational precedent, which was facilitated by distance from feudal law); J.S. Hook, An Address Before the Literary Societies of Oglethorpe University 11, 13 (1859) (linking Christianity to republicanism). Hook noted that "the great doctrine, that mankind, while repudiating the notion of mere human monarchy, which is but another name for tyranny, were at the same time to exercise in common the legitimate functions of earthly sovereignty in perfect and harmonious subordination to the will of God." *Id.* at 11. Hook went on to explain republicanism as a secular version of the Bible:

The Bible and the republican idea which is the only idea of human government in consonance with its sublime teaching and authority, have maintained a constant struggle against the many varied systems of oppression that have marred the peace and hindered the progress of man, from the days of Adam in the garden, to the days of the American Republic.

Id. at 13.

302. See, e.g., Davis & Brophy, *supra* note 246, at 761 (discussing types of technology used to gain dominion over the land).

B. "The Silken Cord that Unites"—The Constitution and the Case for Union

There were two places in particular where the public sentiment needed to be conditioned: faith in the Constitution and in the Union. As early as John Bryan's 1830 address, the need for Union appeared as an important theme.³⁰³ The preservation of the federal government was the theme of many. Though speakers in the early 1830s like Bryan and Gaston alluded to threats of disunion,³⁰⁴ they devoted more time to threats to the republic from corruption and the breakdown of the rule of law.³⁰⁵

It was Henry L. Pinckney—himself a veteran of the South Carolina nullification movement and rejected by the movement—who devoted the most space to the importance of Union and the Constitution in the 1830s. Pinckney recalled the great advances in constitutionalism and liberty made in the United States:

Man no longer dares to legislate for Heaven, or to regulate conscience by penal laws. In many other points, too, important advances have been made in enlarging the freedom of the British Constitution. A very numerous portion of the people, formerly denied all participation in the affairs of government, are now entitled to the exercise of the elective franchise, and the period is rapidly approaching when the odious principle, that one denomination of religionists shall be compelled to sustain another, will be finally abolished.³⁰⁶

Nearly a decade after Pinckney, James Bruce echoed his themes. Bruce spoke of the advances that the United States made in politics and how it achieved what had once been, at best, a dream.

The honor of first reducing to successful practice what was before deemed a Utopian dream, and of demonstrating that the people themselves are their best rulers, is all our own. We alone have carried out the great Church reform which Martin Luther commenced, by breaking up the unholy connexion between the priest and the politician—we alone have no aristocracy but what God and man's own merit have made—have no armed

303. Bryan, *supra* note 212, at 14 ("Even now it would seem that our Union is menaced.").

304. See, e.g., *id.* at 14–16; Gaston at Chapel Hill, *supra* note 1, at 20 ("[T]he public mind will soon be accustomed to the detestable suggestion of Disunion!").

305. See, e.g., Badger, *supra* note 82, at 12–14 (discussing threats of breakdown of the rule of law).

306. Pinckney, *supra* note 161, at 13.

soldiery to imbrue their hands in the blood of their brethren—
no sinecures—no bloated wealth—no squalid poverty.³⁰⁷

Bruce appealed for a dynamic constitutionalism, which judged the Constitution and modes of interpretation in light of contemporary issues. It was a forward-looking message, which sought to depart from the constitutional ideas of the eighteenth century and adopt ones better suited to the commercial 1840s.

It is high time that the South was giving up its old prejudices and antiquated modes of thinking—that it was breaking the ties which unite it to a departed age, and bind together the living and the dead. Our ancestors used the lights of *their* age, why should we reject the brighter ones of our own? They ran ahead of their times, why should we lag behind ours? They were dissatisfied with their condition, and improved it, let us do likewise; they were wise in their generation, let us be wise in ours.³⁰⁸

In 1846, Whig lawyer Bartholomew Moore presciently told his audience that their generation would have to struggle to preserve the Union and then sought their assistance in this task with a magical phrase, “the silken cord which unites into one, the states of our confederacy.”³⁰⁹

There was a pleading for Union, through sentimental appeals discussed above and through economic ones as well. In 1847, John Mason credited the alumni association at UNC with facilitating the sentiments of Union.³¹⁰ He thought the association, by gathering together people from distant places and bringing them together, “forms a new link in that most important chain of causes, upon which we must chiefly rely, under Providence, for the support and perpetuity of our republican system.”³¹¹ Those sentiments of Union would sustain the Union, though there were continuing threats to it.

[W]e will not despair of the Republic; always remembering that, if in the collisions of interest, the wickedness of fanaticism, or the frenzy of party, we recur to those feelings of fraternal affection, forbearance, and conciliation, and to those great principles of justice and respect for the rights of all, which

307. Bruce at the University of North Carolina, *supra* note 112, at 12.

308. *Id.* at 17–18.

309. Bartholomew F. Moore, *supra* note 18, at 14.

310. Mason, *supra* note 95, at 6.

311. *Id.*

animated our fathers, we will not fail to secure the perpetuity of our institutions.³¹²

Mason concluded with an appeal to continue America's goals: "Living under the only free government on earth, upon us are concentrated the dearest political hopes of man."³¹³ Such sentiments would prevent the Constitution from becoming a "rope of sand."³¹⁴

Calvin Wiley's address at Wake Forest brought home particularly well the ways that the Constitution was dependent on the stability of the community. It illustrated how the republic of letters created a sense of common nation in order to support the Constitution. The American nation was vast; much had been accomplished, but much might also be lost:

[O]ur Government, resting on the bare, cold approval of the people for its support, cannot weather many storms without a change. We must love and reverence our Constitution; it must be bound up with our holiest affections, consecrated by the memory of the past, regarded as inseparably connected with our individual happiness and individual glory; as an entailed family inheritance which we are to use and enjoy, and transmit unimpaired to those who follow us. . . . When our country and her Institutions have thus grown into our hearts; when we have become dwellers in the old ancestral halls, rich in the storied recollections of our race; worshipers in the temples where our fathers worshiped before us, surrounded by the green graves where their ashes repose; living under the sacred influences thus exerted, as if in the awful presence of departed worthies, whose indignant spirits would arise in clouds from every neighboring hill and valley to rebuke our profligacy; moving among scenes where we first saw the light of day, under the same laws that protected our infancy, and among these "triers of the vicinage" who witnessed our early innocence and patriotic views, and holding fast to our institutions, as to the precious *heir-looms*, attached for ages to our family estates, using and preserving them with pious care, and transmitting them in their pristine purity, with our last solemn injunction of *nolo mutare* to those who follow us; when we are thus attached to our glorious Constitution we may hope, proudly hope, that it

312. *Id.* at 23–24.

313. *Id.* at 24.

314. *Id.* at 23.

"is locked fast in a sort of family settlement—grasped in a mortmain forever."³¹⁵

The democratic nature of the Constitution led naturally to a spirit of equality. What exactly that equality entailed was the subject of some debate. Whigs thought that it meant equality of opportunity. Whig lawyer Daniel Barringer spoke in 1840 about the nature of American conceptions of equality. What he sought was the equality of opportunity, not some Jacksonian Democrat sense of equality of wealth.

Equality is the great feature of our social and political theory; not that absolute equality which confines to the same level the diversified gifts of men—annihilates the chances of time and fate—and blends into one mass of assimilation all the various conditions which are inevitable in every state of nature and structure of society; but that glorious equality of privilege and of right, which freely opens to all who may desire to enter the ways of honour, fortune, place and power; that unyielding equality which allows the same right, and subjects to the same law, the President of a great nation and the humble tenant of a cottage.³¹⁶

The meaning of terms like equality was uncertain; Whigs had a different design for it than Democrats. Therein lies some of the problems of using addresses to divine the core ideas of American jurisprudence—there was too little consensus on some key issues. But therein also lies the promise of these addresses. Viewed together, they show the conflicting interpretations lined up against one another.

Whatever the meaning a Whig like Barringer wanted to attach to "equality," keen observers conceded its importance in the United States' recognition of equality in the Constitution and in United States' culture more broadly in politics. The ethos of equality swept across American society and had its effect on leveling distinctions between people. James Bruce explained the effect of equality and how in the United States it required one seeking to raise his own level to raise the entire plain of society.

315. Calvin Wiley, *An Address Delivered Before the Two Literary Societies of Wake Forest College* 12–13 (June 12, 1845). "Self-defence should cause you, and all like you, to make common cause at least against that prevailing demagogueism that enslaves this country, and holds at the mercy of its capricious and undisputed power the fortunes, the reputations and the happiness of us all." *Id.* at 20.

316. Barringer, *supra* note 235, at 12–13.

European nations have their nobility, their gentry, their peasantry; their literary, their scientific, and their fashionable circles, each separate and distinct. Democracy breaks down all such dividing barriers. Society here, can not be represented by a pyramid or cone, but a plain, and before an individual can rise, he must first raise the plain on which the feet of the whole community are planted; for each bears the same relation to the whole mass, which a member of European society bears to his class.³¹⁷

The equalization of American society was a common theme—for some a cause for lament and for others a cause of celebration. James Biddle Shepard, speaking in 1844, linked the press to the decline of aristocracy. He agreed with the statement of French commentator Alexis de Tocqueville that “[t]he spell of royalty has been broken,” but Shepard took issue with Tocqueville’s follow-up that “the majesty of the laws” had declined.³¹⁸ Shepard credited the printing press with breaking the grip of aristocracy. But he thought that law was triumphant here.³¹⁹ Shepard, in characteristically Democratic fashion, did not think there was too much disorder in the United States. Instead, he thought equality and constitutionalism were well-balanced. Contrary to Tocqueville’s sense, Shepard found that people in the United States “exhibit to the eyes of mankind the most sublime spectacle of mingled power and obedience.”³²⁰ And for many years, that was an accurate description of politics and constitutionalism in the United States. Yet, attitudes were changing and orators in Chapel Hill reflected some of the division in attitudes towards Union.

317. Bruce at the University of North Carolina, *supra* note 112, at 12.

318. Shepard at the University of North Carolina, *supra* note 106, at 13 (quoting 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 9 (Henry Reeve trans., New York, 4th ed. 1843)).

319. *See id.* at 14.

“[A]ll bow to the requirements and to the majesty of the laws. What though at times we are plagued with faction and riot, and threats of disturbance and disorder—these things serve only to test the firmness of the government, to demonstrate its power to protect property, life and reputation, and to inspire those who made and who contribute to uphold it with an abiding confidence in its complete adaptation to the wishes and desires of mankind.”

Id.

320. *Id.*

V. HEADING INTO SECTIONAL CRISIS

In the 1850s, the addresses turned more of their attention toward the sectional crisis. While the addresses had warned about the dangers of sectionalism and disunion as early as 1830, it was in the 1850s that these issues dominated several important speeches. The theme of the importance of Union appeared in Nicholson's speech where he urged—as had others before him—against any attempt to calculate the value of Union.

Two years later, Aaron V. Brown spoke. He was an 1814 graduate of UNC and a Democrat from Tennessee. Brown had served in the House of Representatives from 1839 to 1845, and served as governor of Tennessee from 1845 to 1847.³²¹ Brown delivered a mildly Democratic address, which contained the usual celebration of technology. For instance, he spoke of how the telegraph held the country together and advocated limited reforms, such as the reform of legal pleadings and the direct election of senators and judges.³²²

Brown also invoked romantic imagery to appeal to a sense of national pride. Governor Brown invoked the romantic images of Chapel Hill's surroundings in his address to the joint literary societies.

If you would kindle up in your bosoms the patriotic fires of the revolution, look out to the west, where you can almost behold the battle grounds of Guilford and King's Mountain. Nearly in the same range of vision, lies good old Mecklenburg, who threw down the first defiance to British power, and first proclaimed American Independence. Turn your eyes now to yonder eastern summit. There you can look down upon the plain, that stretches off in the distance as far as Yorktown, where the last great battle was fought, and where the American Eagle uttered her loudest notes of triumph and exultation. Surrounded on every side by holy and consecrated memorials like these, who is not compelled to exclaim "this is the place"—the very place beyond all others, where the alters of learning, piety and patriotism should have been erected.³²³

Brown's oration drew upon romantic-era rhetoric and imagery. He appealed to the sentiments of freedom that motivated the

321. *Venable Brown, Aaron*, BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS 1774–2005, H.R. DOC. NO. 108-222, at 717 (2005).

322. Brown at the University of North Carolina, *supra* note 200, at 11–12 (urging direct election of the President, senators, and judges). "It is the age of progress—of improvement in every science, in every art, in every profession." *Id.* at 27.

323. *Id.* at 6.

Revolutionary generation. He pointed out that taken from a purely utilitarian standpoint, they would have been better off paying the taxes that the British imposed on the colonies. But, “[h]eaven inspired them to know and feel, that the hour had come when they should build up an independent Empire in the new world; an Empire wherein the civil and religious liberties of themselves and their posterity should be secured and established forever.”³²⁴ Several times during his speech, Brown took poetic license to create a sentimental portrait of the sacrifices made by the Revolutionary generation:

All else was abandoned. The implements of husbandry were left rusting in the field—the ring of the anvil was no longer heard, save in the manufacture of some rude instrument of war—churches dedicated to the Most High were deserted, with no one to minister at their alters—the school houses and the colleges were shut up, and both teacher and scholar hastened to the tented field. Long and dubious was the conflict; when driven from the plains, they took refuge in the mountains; the rocks and the hills became their castles of defence. Sometimes buried in snows—often wasted with disease and threatened with famine. When compelled to retreat from province to province, the enemy would follow them, by the blood trickling from the feet of their bare-footed soldiery.³²⁵

This was an appeal to imagery to save the Union. There was also appeal to Democratic principles such as the idea of equality of the states, a concept advanced by Southerners like John C. Calhoun to protect southern states’ interests.³²⁶

Matt W. Ransom’s 1856 speech was the last attempt to preach the value of the Union. Ransom was twenty-nine at the time of the address, young by the standards of UNC orators. He was an 1847 graduate of UNC and a Whig lawyer.³²⁷ “[T]ell me, if you can,” he asked, “what the Union is worth?”³²⁸ Ransom believed that it was the

324. *Id.* at 9.

325. *Id.* at 10.

326. *Id.* at 15.

327. John G. Barrett, *Ransom, Matthew Whitaker*, in 5 *DICTIONARY OF NORTH CAROLINA BIOGRAPHY* 175, 175 (William S. Powell ed., 1994). Barrett had already served a term as Attorney General of North Carolina from 1852 to 1855. *Id.* He later served as a member of the state house from 1858 to 1861, and then served as a Peace Commissioner to Montgomery, Alabama. *Id.*

328. Ransom, *supra* note 17, at 15. Ransom invoked many of the key phrases of the era in predicting the University’s story: “It will be read in the diffused knowledge, the enlightened sentiments, the moral habits, the just tastes, the conservative principles, the

Constitution that kept the United States together.³²⁹ He countered those who were increasingly applying utilitarian principles to the Constitution, such as counting its value and its costs.

You cannot calculate the value of the Union. The Astronomer from his observatory may measure the disc of the sun, tell you his distance from the earth, describe the motion of his rays, and predict with positive certainty an eclipse; but he cannot compute the utility of heat, the blessings of light, nor the glory and splendor of the God of day. Who can calculate the value of constitutional united Liberty—the blessings of a Free Press, Free Schools, and a Free Religion? . . . By what mathematical process will you calculate the value of national character! In what scales will you weigh political equality and the ballot-box! At what price would you sell American citizenship? What is self-government worth—its freedom, happiness, and example?³³⁰

For Ransom, the Union was bound together by a series of factors, beginning with the telegraph and mail. Other more diffuse, but perhaps even more powerful interests, running from commercial self-interest to sympathies based on our shared history, helped hold our country together. But he concluded—in a phrase that follows Harriet Beecher Stowe's phrase of how the shadow of the law broods over the scenes of slavery and presages Oliver Wendell Holmes' brooding omnipresence in the sky—that "over and above" all those tendencies to Union "more powerful than commercial exigencies, or the currents of rivers or massive mountains, is the overruling and absorbing sentiment of American patriotism."³³¹ In contrast to patriotism, Ransom believed that the danger to the Union lay in fanaticism, a code-word for antislavery.³³² On this he was joined by many others. In response to the forces pushing us apart, Ransom urged his audience to seek to preserve the Constitution and "perpetuat[e] American liberty to all posterity."³³³ He saw a particular virtue in patriotism among scholars, for "[w]hat an influence is United America destined to exert on the mind of the

free institutions, the patriotic spirit and the christian character of the commonwealth." *Id.* at 7.

329. *Id.* at 9.

330. *Id.* at 14.

331. *Id.* at 20.

332. *Id.* at 19.

333. *Id.* at 20.

human race.”³³⁴ From there he concluded that “[t]he Republic of liberty is indeed the land of intelligence.”³³⁵

Ransom captured in that phrase the hope for a country based on constitutionalism and created by law and sentiment, running alongside the republic of letters that so many other orators had spoken about. Ransom’s concluding paragraph appealed to a set of principles of Republicanism and to George Washington:

Young Gentlemen of the University of North Carolina, as you appreciate the blessings of good government, the priceless inheritance of civil and religious liberty, the universal esteem of mankind, and the fate of our race for all future ages, as you value learning and desire peace, as you reverence the memory of our Fathers and love the honor of our Country, as philanthropists, patriots and Christians, I implore you by all of these considerations to use your influence, your talents, your time and all the power you may possess, to preserve, perpetuate, and immortalize the Union of these States, and the Constitution under which we live, and God grant, that the Constitution and that Union, enrobed in the mantle of Washington may last forever.³³⁶

The next year Henry Watkins Miller invoked Washington and spoke of Union as well. But Miller’s was a different message about Union. Miller was a Whig and an 1834 graduate of UNC.³³⁷ Miller’s was the most radical of the speeches given at UNC before the war, for he allowed himself to contemplate disunion. The address surveyed the growth of the United States from the time of the Revolution and Constitution until his time—the growth in population, in agricultural production, in the number of schools, and in territory. Miller gave credit for this growth to the Constitution. He also believed that the Constitution could protect the Union: “If that constitution be properly administered by the several departments of the federal government, it is impossible that any State, or portion of the people, can suffer wrong or oppression from those sources. Such evils cannot

334. *Id.* at 21.

335. *Id.*

336. *Id.* at 23.

337. 1 BATTLE, *supra* note 80, at 795; WILLIAM SCARBOROUGH, *MASTERS OF THE BIG HOUSE: ELITE SLAVE-HOLDERS OF THE MID-NINETEENTH CENTURY SOUTH* 286 (2006) (identifying Miller as a Whig).

arise and work out their disastrous consequences, *under the sanction of the Constitution!*"³³⁸

Miller did not think that the South could rely merely on the forms of the Constitution. The form was not enough, for it would provide only a shadow of protection. There had to be a substantive commitment to the ideas behind the Constitution, and there had to be vigilance on the part of Southerners to protect their rights under the Constitution.³³⁹ The Northern press was the vehicle for sectional discord:

[J]udging from the tone and spirit of many of these productions—the avidity with which they are read, and the industry with which they are circulated—one would readily conclude, that there are no consequences to which they may lead, however disastrous to *our* peace and security, that would not be hailed by their authors and propagators with rapture.³⁴⁰

The discrimination against the South appeared even in school books produced in the North.³⁴¹ Miller feared sectional conflict and that the Constitution's protections of sections would end.³⁴² His glum prediction sprang forth from belief that patriotism is the cornerstone of the Constitution:

When that great principle [of patriotism] is lost sight of—discarded—repudiated—and the lust of sectional domination, the law of force, is substituted in its stead, and made the main spring, the motive power of social and political action, the fate of our national constitution is sealed, and the downfall of the republic is inevitable!³⁴³

Miller feared that the individual states would be overwhelmed by the central government, that their constitutional place would be lost. His prediction was dire and his sense of oppression from the North severe. He saw the world around him arrayed against the South: "The press, the hustings, the halls of Congress, even the pulpit—*all* have

338. Miller, *supra* note 187, at 12. Miller then invoked John C. Calhoun's praise of the Constitution. See *id.* at 13. This was the only reference to Calhoun, the South Carolina expositor of extreme states' rights under the Constitution, in any of the UNC addresses. *Id.* at 21.

339. *Id.* at 14.

340. *Id.* at 18.

341. *Id.*

342. *Id.* at 14–15.

343. *Id.* at 23.

been converted into so many batteries of fiery assault!”³⁴⁴ He grimly concluded, if disunion comes, the South would need the fortitude of General Washington:

We cannot—we *dare* not surrender one jot or title of that constitution to the demands of sectional ambition or the mad behests of fanaticism! It is *that* which has made us what we are—a prosperous, happy, powerful people. *Under* that and *by* that we are content to live. It will guide us to a still higher degree of national prosperity and glory. It will prove an impenetrable shield to our rights, our honor, our safety. But if—which heaven forbid!—the dread conflict with faction and fanaticism *must* come, let us appeal to the example of the immortal Washington, to inspire our hearts with patriotism to meet the crisis, and to the just God of our fathers, to lead us through that conflict and give us courage to face, and fortitude to bear, the direful consequences which may follow!³⁴⁵

An appeal to Washington, thus, was the bookend to Miller’s speech, as it had been for Ransom’s speech the year before. But the conclusion was that Washington might be called upon to support disunion. Four years later, while in the North Carolina legislature during the secession crisis, Miller fell down a staircase and died,³⁴⁶ thus concluding his struggle for independence.³⁴⁷

That also concluded the interesting and radical orations at UNC before the War. Reverend John Thomas Wheat, an Episcopal minister and also a professor at UNC, delivered an address that remains unpublished on the “Proper Relations Between Life and Literature” in 1858.³⁴⁸ Duncan MacRae, a Democrat with Whig sympathies, delivered an address that also remains unpublished on “The Cultivated Intellect, The Equal of Genius.”³⁴⁹ In 1859, William Hooper returned to give an alumni address concerned with the local history and personalities of UNC fifty years before. In 1860, John

344. *Id.* at 25.

345. *Id.* at 33–34.

346. 1 BATTLE, *supra* note 80, at 674.

347. However, there exists contradictory evidence that Miller lived another year. *See Death of Henry Watkins Miller*, STANDARD OF RALEIGH, Sept. 24, 1862.

348. 1 BATTLE, *supra* note 80, at 685.

349. *Id.* at 698.

Pool, an 1847 graduate of UNC and a Whig, then "Opposition Party" candidate for governor, delivered a studied non-political address.³⁵⁰

The anti-climactic nature of UNC addresses on the eve of Civil War contrasts with those at other schools where orators were increasingly focused on the sectional conflict. For instance, in 1860, Reverend T.G. Keen of Petersburg's First Baptist Church spoke at Wake Forest about the threat to Union. "A storm, dark and fearful, is gathering," was Keen's pessimistic and correct assessment.³⁵¹

VI. THE NORTH CAROLINA ADDRESSES IN CONTEXT

Compared with addresses from schools in other states—like Alabama, Virginia, and especially South Carolina—UNC's addresses are remarkably moderate.³⁵²

The addresses given at schools in other states frequently spoke about contributions of the educated and the role of schools in the defense of southern society—sometimes in great amplitude. At the University of Virginia, for instance, James Holcombe's 1853 address to alumni justified the University in part because of the support it gave to slavery.³⁵³ Holcombe was also an activist scholar who gave a public address in 1860 urging secession.³⁵⁴

The norm at southern schools in the 1830s and early 1840s was emphasis on such topics as the role of the individual in education and the role of education in progress—themes that appeared frequently at UNC.³⁵⁵ The relative moderation may have resulted from the practice

350. John Pool, Address Before the Two Literary Societies of the University of North Carolina (June 6, 1860). Pool's moderation is revealed further by his post-war career. He served as a Republican in the United States Senate. William C. Harris, *Pool, John*, in 5 *DICTIONARY OF NORTH CAROLINA BIOGRAPHY* 118, 118–19 (William S. Powell ed., 1994).

351. T.G. Keen, An Address Before the Philomathesian and Euzelian Societies of Wake Forest College, N.C. 12 (June 13, 1860).

352. See, e.g., Thomas R. R. Cobb, Address Before the Society of the Alumni of Franklin College 21 (Aug. 4, 1857); James P. Holcombe, An Address Before the Society of Alumni of the University of Virginia 37–38, 41–42 (June 29, 1853) (discussing the role of University in defending slavery); Joseph W. Taylor, Address Before the Erosophic and Philomathic Societies of the University of Alabama 23–26 (Aug. 9, 1847) (suggesting that the University is useful in promoting the peculiar institutions of Alabama).

353. Holcombe, *supra* note 352, at 37–38, 41–42.

354. James P. Holcombe, The Election of a Black Republican President, an Overt Act of Aggression on the Right of Property in Slaves, Speech Before the People of Albemarle (Jan. 2, 1860).

355. See, e.g., George R. Gilmer, Address Delivered in the College Chapel, Before the Society of Alumni (August 7, 1851); Alexander H. Stephens, Address Before the Few and Phi Gamma Societies of Emory College (July 21, 1852), in *PUB. & PRIVATE*, 1866, at 364–

of selecting speakers from the ranks of UNC alumni. It may also be a reflection of the moderation of the administration and the students. There were, nevertheless, strong proslavery sentiments on the UNC campus and among the UNC faculty. Science professor Elisha Mitchell's two sermons, "The Other Leaf of Nature" and "The Word of God," offered a proslavery critique of leading antislavery public intellectuals Francis Wayland, Theodore Parker, and Theodore Weld.³⁵⁶

By the early 1850s, the themes at other southern schools were changing. T.G. Keen, then a minister in Mobile, told Howard College graduates in 1850 that southern colleges were the places to protect against radicalism: "Where are we to look for the spirit and power of conservatism which shall regulate the storm?" Keen asked. He answered, "to our young men and emphatically to our colleges."³⁵⁷ William Stiles, who had previously given addresses more focused on individual development, emphasized the need for southern values at Cherokee Baptist College in 1858.³⁵⁸ The literary addresses were also the sites for the promulgation of popular southern ideas, such as that some people were best suited to a life of labor. Some of those addresses dealt with the defense of conservative values, like the support for political but not social equality, as early as the 1840s.³⁵⁹

Perhaps the most direct connection between order and the Constitution to appear in any southern literary address was made by Richard Yeadon at The Citadel in 1854.³⁶⁰ Yeadon, who during the abolitionist literature crisis in the mid-1830s wrote a pamphlet advocating the prosecution of abolitionists for seditious libel,³⁶¹ spoke about the Constitution's protection against radicalism:

Under the benign auspices of this Constitution, we not only escape the oppression of kings and privileged orders, but

75 (Henry Cleveland ed., 1866) (emphasizing individual achievement and highlighting the accomplishments of Daniel Webster and John C. Calhoun).

356. ELISHA MITCHELL, *THE OTHER LEAF OF THE BOOK OF NATURE AND THE WORD OF GOD* 63–74 (1848).

357. T. G. Keen, *An Address Before the Franklin and Adelphi Societies of Howard College* 14 (July 24, 1850).

358. William H. Stiles, *An Address Before the Alpha Pi Delta Society of the Cherokee Baptist College* (July 14, 1858).

359. *See, e.g.*, John England, *Address Delivered Before the Demosthenian and Phi Kappa Societies of Franklin College* 9 (Aug. 5, 1840).

360. Yeadon, *supra* note 234, at 12.

361. RICHARD YEADON, *THE AMENABILITY OF NORTHERN INCENDIARIES AS WELL TO SOUTHERN AS TO NORTHERN LAWS* (Charleston, T.A. Hayden 1835).

popular self-government is emancipated from the dominion of the mob, and becomes identified with *conservatism*, and our well-contrived political system, restrained by its admirable checks and balances from injurious or fatal excess, on either side, moves onward in its mission of usefulness and glory, with the harmony and grandeur of the heavenly orrery.³⁶²

Even in the North, some college addresses were more proslavery than many at UNC. North Carolina politician Abraham Watkins Venable traveled to his alma mater, Princeton University, in 1851 to deliver a proslavery speech.³⁶³ Venable's speech had been preceded the year before at Princeton by a similar proslavery oration by David Kaufman, who represented Texas in the United States House of Representatives.³⁶⁴ There had been a shift at Princeton between the 1830s and early 1850s, when James McDowell of Rockbridge County in Virginia's Shenandoah Valley spoke to the Whig and Cliosophic Societies and urged a middle course between abolitionist and proslavery action.³⁶⁵ It represented a middle point between McDowell's 1832 arguments against slavery in the Virginia legislature and his increasing advocacy of slavery in the 1840s and early 1850s.³⁶⁶

The restrained and relatively non-political nature, or at least veiled political nature, of some addresses was undoubtedly intentional. The UNC administration imposed constraints on graduating students' speeches. They were warned by the president of UNC in 1856 against referring to slavery or party politics.³⁶⁷ The outside speakers likely also felt some constraints on their topics, at least until Miller appeared. One way of parsing out the effect that the campus setting had on moderating addresses appears when one compares the UNC addresses with other addresses by the same

362. Yeadon, *supra* note 234, at 12.

363. Venable at Princeton, *supra* note 184, at 33. Venable, who served in the United States House of Representatives as a Democrat from eastern North Carolina from 1847 to 1853, was born in 1799 in Springfield, Virginia. He studied at Hampden-Sydney College, and later studied at Princeton, where he graduated in 1819. *Venable, Abraham Watkins*, BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS 1774-2005, H.R. DOC. NO. 108-222, at 2090 (2005).

364. David S. Kaufman, Address Before the American Whig and Cliosophic Societies of the College of New Jersey 16-17 (June 25, 1850).

365. See James McDowell, Address Before the Alumni Association of the College of New Jersey 28-31 (Sept. 26, 1838).

366. See *Gov. McDowell's Speech*, 15 S. LITERARY MESSENGER 255, 255-59 (1849) (discussing the February 23, 1849 speech in Congress on admission of New Mexico and California).

367. 1 BATTLE, *supra* note 80, at 667.

orators. Three UNC orators bear particular attention here. The first is Henry L. Pinckney, who was moving from a position as a radical nullifier to a somewhat less radical politician as he wrote his UNC address in 1836.³⁶⁸ One might compare Pinckney's UNC address with his Fourth of July Oration in 1833 in Charleston.³⁶⁹ This lengthy oration dealt with a key theme in American jurisprudence: the classification of behavior as constitutional or unconstitutional. There are oddly parallel sentiments to what Henry David Thoreau expressed in "Slavery in Massachusetts," about how to classify who is a law-breaker.³⁷⁰ Both Thoreau and Pinckney have a rigid and objective understanding of constitutionalism and law. In terms reminiscent of Thoreau, Pinckney suggested that it was the people who had passed the Force Act and the Tariff of Abominations who were the slaves, and that such laws—though they had been passed—were not actually law. Pinckney, thus, was more radical than his UNC address suggests. But perhaps the UNC address represents either his growing moderation or the image of increasing moderation that he sought to project.³⁷¹

Senator Aaron Brown of Tennessee also left several speeches that bear comparison with his 1854 UNC literary address and suggest that the venue exercised some constraint on his discussion, as he alluded when he said his North Carolina address was not the place for constitutional disquisitions.³⁷² Some of Brown's other works, such as his 1844 address on abolitionist petitions, his 1850 letters on the Nashville Convention, and his lecture on the "Progress of the United States and on the Slavery Question," in 1850, are more engaged in political and legal arguments than his UNC address.³⁷³ But they all orbit on the theme of Union. Brown's proslavery attitudes did not come through as clearly in his 1854 UNC address as in many of his other speeches.³⁷⁴ Henry W. Miller, by comparison, seems to have

368. See FREEHLING, *supra* note 15, at 352–55 (discussing Pinckney's shifting politics).

369. Henry L. Pinckney, An Oration Before the State Rights and Free Trade Party 41–42 (July 4, 1833).

370. Henry David Thoreau, *Slavery in Massachusetts*, in 10 THE WRITINGS OF HENRY DAVID THOREAU 171, 181 (1893) ("They are the lovers of law and order who observe the law when the government breaks it.").

371. Pinckney, *supra* note 369, at 41–42.

372. Brown at the University of North Carolina, *supra* note 200, at 11.

373. See Aaron V. Brown, Speech On the Progress of the United States and on the Slavery Question (1850), in SPEECHES, CONGRESSIONAL AND POLITICAL, AND OTHER WRITINGS OF EX-GOVERNOR AARON V. BROWN OF TENNESSEE 292, 321, 331 (Nashville, Tennessee, John L. Marling and Company ed., 1854).

374. See *id.*

been relatively unconstrained by his venue at UNC. He gave radically proslavery speeches, and his speech at UNC contemplated disunion.³⁷⁵

CONCLUSION

The UNC graduation speakers often followed in the path of Gaston's 1832 speech that emphasized individual virtue as it warned of disunion. They used speech to promote education, often from the better educated to the rest of society. They marveled at technological and moral changes and sought to use education to continue those changes and to secure the "republic of liberty." The thirty-five published graduation addresses given at UNC before the Civil War were often about duties of individuals to themselves and individuals to their society. They disclosed that many thought education worked in conjunction with law, the Constitution, religious institutions, and the press to promote values of control and virtue. They spoke of the progress of technology, economy, and morality, even as many worried about party politics and about the future of the Union.

Despite many common goals, several important divisions appeared between orators over the nature of the threats to the republic. The Whig orators tended to emphasize the threats to law and the breakdown of respect for authority. Democrats saw the challenges more in terms of spreading the nation's bounties throughout the culture. They were less concerned with political faction and the breakdown of law than were the Whigs.

Such were some of the orators' key ideas. But then there are questions about how to move outward to see how those ideas related to the orators' culture. These are problems in the genealogy of ideas. The addresses give an impressionist painting of what legislators and lawyers cared about, the challenges they faced, and how they thought they might overcome them. Education, speech, and law were all part of their civilization. The orators struggled mightily for a moderate approach in which there was universal education, or at least the influence of the educated mind. And while the addresses are not nearly as focused on slavery as those from universities in other southern states, some disclose a concern for southern rights, as well as the nation's health.

375. Miller, *supra* note 187, at 25-26, 33-34.

The orators saw the Union as the bounty of past generations, of struggle to create a democracy, as in turn benefitting humankind with technological progress. In the process, the Constitution, books, the telegraph, and technological improvements all worked together to create a Union. Constitutional interpreters, people engaged in politics, the judiciary, and the government were all working together to create a Union. These were not people sitting alone in their studies working out some arcane system of constitutional structure, which like medieval Latin could be understood only by a remote few. It was an organic system, with the Constitution as a centerpiece. The next problem, which this Article does not even begin to attempt to solve, is to move outward from the pages of the addresses and the ideas of the speakers and audiences to action. The move from the public's ideas of the Constitution and the Union to action is difficult, but it is central to understanding the coming of Civil War.

Yet, those who pled the cause of Union faced a setback in 1861. In 1866, following the long and hard days of reckoning, Zebulon Vance, North Carolina's Civil War governor, delivered a graduation address on "the duties of defeat."³⁷⁶ The address had a post-war realism, which understood that life was now ordered differently. Vance acknowledged that changes—such as the freedom for 3,500,000—were part of the revolution of society. His conclusion was that the world—particularly that of constitutionalism and law—had been remade: "Change, therefore, not only cometh upon us, but cometh with speed and with power."³⁷⁷ The world that pre-war orators sought to make and preserve had been remade.

376. Zebulon Baird Vance, *The Duties of Defeat: An Address Before the Two Literary Societies of the University of North Carolina* (June 7, 1866).

377. *Id.* at 6.

*Table 1: Published Graduation Speeches at the University of North Carolina, 1827-1860*³⁷⁸

| Orator | Year of Birth | Age at Speech | Date of Address | College | Occupations | Political Party | Type of Speech |
|--------------------------|---------------|---------------|-----------------|---------------------------------|------------------------------------|-----------------|----------------|
| Murphey, Archibald | 1777 | 50 | 1827 | UNC, 1799 | Lawyer | Unknown | Di |
| Hooper, William | 1792 | 37 | 1829 | UNC, 1809 | Educator; Minister | Whig | Di |
| Bryan, John Heritage | 1798 | 32 | 1830 | UNC, 1815 | Lawyer, U.S. Representative | Whig | Phi |
| Green, William Mercer | 1798 | 33 | 1831 | UNC, 1818 | Episcopal Minister | Whig | Di |
| Gaston, William | 1778 | 54 | 1832 | Princeton | Judge | Whig | Phi |
| Badger, George | 1795 | 39 | 1833 | Yale | Legislator; Lawyer | Whig | Di |
| Iredell, James | 1788 | 44 | 1834 | Princeton, 1806 | Lawyer; Former U.S. Senator | Democrat | Phi |
| Pinckney, Henry | 1794 | 42 | 1836 | South Carolina College | Lawyer; Former U.S. Representative | Nullifier | Phi |
| Strange, Robert | 1796 | 41 | 1837 | Hampden-Sydney, 1815 | U.S. Representative | Democrat | Di |
| Shepard, William | 1799 | 39 | 1838 | UNC/ University of Pennsylvania | Lawyer; Former U.S. Senator | Whig | Phi |
| Manly, Charles | 1795 | 43 | 1838 | UNC, 1814 | Lawyer | Whig | Alum/Di |
| Brown, Bedford | 1795 | 44 | 1839 | UNC | U.S. Senator | Democrat | Di |
| McQueen, Hugh | 1798 | 43 | 1839 | UNC, 1819 | Lawyer; A.G. in 1840 | Whig | Alum |
| Barringer, Daniel | 1806 | 34 | 1840 | UNC, 1826 | Lawyer | Whig | Alum |
| Bruce, James Coles | 1806 | 35 | 1841 | UNC, 1825 | Virginia Legislator; Merchant | Whig | Alum |
| Hill, John | 1797 | 46 | 1843 | UNC, 1814 | Former U.S. Representative | Democrat | Di |
| Shepard, James Biddle | 1815 | 29 | 1844 | UNC, 1934 | Lawyer; N.C. Senator | Democrat | Phi |

378. The types of speeches are Alumni (Alum), Dialectic (Di), Philanthropic (Phi), and Baccalaureate.

| Orator | Year of Birth | Age at Speech | Date of Address | College | Occupations | Political Party | Type of Speech |
|---------------------|---------------|---------------|-----------------|---------------------------------|---|------------------|----------------|
| Davis, Thomas F. | 1804 | 41 | 1845 | UNC, 1822 | Episcopal Minister | Whig | Di |
| Moore, B.F. | 1801 | 45 | 1846 | UNC, 1830 | Lawyer | Whig | Phi |
| Mason, John | 1799 | 48 | 1847 | UNC, 1814 | Lawyer; Secretary of the Navy | Democrat | Alum |
| Eaton, William | 1810 | 38 | 1848 | UNC, 1825 | Lawyer; State Senator | Democrat | Phi |
| Graham, William | 1804 | 45 | 1849 | UNC, 1824 | Lawyer; N.C. Governor | Whig | Di |
| Dobbin, James | 1814 | 36 | 1850 | UNC, 1832 | Lawyer; Former U.S. Representative; Speaker of N.C. House | Democrat | Phi |
| Avery, William | 1816 | 35 | 1851 | UNC, 1837 | Lawyer | Whig | Di |
| Nicholson, A. O. P. | 1808 | 45 | 1853 | UNC, 1827 | Lawyer; Former U.S. Senator | Democrat | Di |
| Dickson, James H. | 1802 | 51 | 1853 | UNC, 1823 | Physician | Whig | Alum |
| Brown, Aaron | 1795 | 59 | 1854 | UNC, 1814 | Lawyer; Former Tenn. Governor | Democrat | Phi |
| Davis, George | 1820 | 35 | 1855 | UNC, 1838 | Lawyer | Whig | Di |
| Palmer, B. M. | 1818 | 37 | 1855 | UGA, 1838 | Presbyterian Minister | Whig | Baccalaureate |
| Manly Jr., Basil | 1825 | 41 | 1856 | University of Alabama, 1844 | Baptist Minister | Unknown | Baccalaureate |
| Ransom, Matthew | 1826 | 30 | 1856 | UNC, 1847 | Lawyer; State Attorney General | Whig | Phi |
| Miller, Henry W. | 1814 | 43 | 1857 | UNC, 1834 | Lawyer | Whig | Di |
| Hooper, William | 1792 | 67 | 1859 | UNC, 1809 | Educator; Minister | Whig | Alum |
| Pool, John | 1826 | 34 | 1860 | UNC, 1847 | Lawyer; State Legislator | Whig | Phi |
| Hughes, John | 1797 | 63 | 1860 | Mount St. Mary's (year unknown) | Archbishop of New York | Whig; Opposition | Baccalaureate |

*Table 2: Speakers' Political Affiliation By Sponsoring Society, by Decade*³⁷⁹

| Year | Sponsoring Society | Speakers' Political Affiliation | | | |
|-----------------|----------------------|---------------------------------|-------|---------|-------|
| | | Democrats | Whigs | Unknown | Total |
| 1820s and 1830s | Alumni | 0 | 2 | 0 | 2 |
| | Dialectic | 2 | 3 | 1 | 6 |
| | Philanthropic | 1 | 3 | 1 | 5 |
| Subtotal | | 3 | 8 | 2 | 13 |
| 1840s | Alumni | 1 | 2 | 0 | 3 |
| | Dialectic | 1 | 2 | 0 | 3 |
| | Philanthropic | 2 | 1 | 0 | 3 |
| Subtotal | | 4 | 5 | 0 | 9 |
| 1850s | Alumni/Baccalaureate | 0 | 4 | 1 | 5 |
| | Dialectic | 1 | 3 | 0 | 4 |
| | Philanthropic | 2 | 2 | 0 | 4 |
| Subtotal | | 3 | 9 | 1 | 13 |
| Totals | | 10 | 22 | 3 | 35 |

379. The political affiliation is based on data presented in Table 1. In most cases, assignment of political identification is easy because the speaker was elected on a Democratic or Whig ticket. In the cases of religious leaders, all except Basil Manly were identified as Whig based on their writings, which tended towards Whig, rather than Democratic themes.