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Abstract

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.

"The Republics of Liberty and Letters" focuses on thirty-four addresses given at the University of North Carolina from 1827 to 1860 to see how the orators dealt with ideas about the Union, law, and constitutionalism, along with the ubiquitous but vague trope of "progress." The addresses reveal strong support for 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 towards 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 increasing democracy. The addresses, thus, reveal important points of convergence as well as division.

"The Republics of Liberty and Letters" is primarily about the content of political and legal ideas at the University of North Carolina 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.

On June 20, 1832, Justice William Gaston of the North Carolina Supreme Court 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 of disunion. 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. 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."[2]

Gaston spoke first of individuals' duties to themselves. He 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.[3] 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.[4] Such thoughts about individual control and advancement were common themes in that era of geographic and social mobility when the claims of the past were loosened and many people moved about.

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[5] and of a most extraordinary problem: the end of slavery. Gaston was speaking in the wake of Nat Turner's rebellion, which took place in August 1831 just over the Virginia border from North Carolina. The panic of criminal prosecutions of slaves feared of plotting rebellion 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

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[2] WILLIAM GASTON, ADDRESS DELIVERED BEFORE THE PHILANTHROPIC AND DIALECTIC SOCIETIES AT CHAPEL HILL, N.C., JUNE 20TH, 1832 (Richmond, Thomas W. White, 2nd ed. 1832).

[3] *Id.* at 6-7.

[4] *Id.* at 15.

[5] *Id*. at 19.

> stifles industry and represses enterprise--it is fatal to economy and providence--it discourages skill--impairs our strength as a community, and poisons morals at the fountain head. How this evil is to be encountered, how subdued, is indeed a difficult and delicate enquiry, 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.[6]

That was not a lot, but it was more than many southerners were willing to say in public at this point. The Virginia legislature's debates of the spring of 1832, on the efficacy of a gradual emancipation plan, were still echoing in the press.[7] A few days after Gaston's address, Yale Professor Benjamin Silliman spoke in New Haven about a proposal for a gradual abolition plan, which included transporting the freed slaves to Africa.[8]

Gaston was not the first graduation speaker at UNC to criticize slavery. In fact, three years before, in June 1829, Professor William Hooper more sharply criticized the institution. 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 household." 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."[9] Gaston's was not the first UNC graduation address to criticize slavery, but it was the last.

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.[10] Gaston was speaking as the nullification crisis was going on in neighboring South Carolina. If some of the

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[6] GASTON, *supra* note 2, at 19.

[7] *See, e.g.,* [Jesse Burton Harrison,] *The Slavery Question in Virginia*, 12 AM. Q. REV. 379, 382 (Dec. 1832) (reviewing THE SPEECH OF THOMAS MARSHALL IN THE HOUSE OF DELEGATES OF VIRGINIA, ON THE ABOLITION OF SLAVERY, FRIDAY JANUARY 20, 1832 (Richmond, Thomas White 1832)).

[8] BENJAMIN SILLIMAN, SOME CAUSES OF NATIONAL ANXIETY: AN ADDRESS, DELIVERED IN THE CENTRE CHURCH IN NEW-HAVEN, JULY 4,1832 (n.p., 1832).

[9] WILLIAM HOOPER, AN ORATION DELIVERED AT CHAPEL HILL ON WEDNESDAY, JUNE 24, 1829 ... 14-15 (Hillsborough, Dennis Heartt 1829).

[10] *Id*. at 20.

more agitated South Carolinians had their way, there might be disunion in the near term.[11]

In that speech we learn of 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 University of North Carolina community – students, faculty, and 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 together. The orators reveal their ideas about law, civilization, progress, and Union. And in that process, they reveal the connections between these topics.

Gaston's address was an immediate hit and a long-time favorite. North Carolinians cherished the memory of Gaston's talk down until the Civil War. In his 1850 address to the joint literary societies, William Dobbin, the Democratic speaker of the North Carolina House of Representatives and a member of the class of 1832, recalled Gaston's address. The "restless throng of College youth, ... with buoyant hopes and eager expectation, set as anxious listeners, and drank in with generous confidence and admiration, those moral lessons, those engaging maxims, those warning admonitions, so eloquently, so impressively addressed to us."[12] Dobbin thought that UNC students might know pieces of it by heart.[13] The address reached audiences over many decades because there was an initial print run of 5000 copies and it was reprinted at least five times before the Civil War.[14] Among the other orators at UNC who spoke of Gaston's address were Reverend Thomas Davis, South Carolina's Episcopal Bishop, who recalled Gaston's eloquence in his 1845 address.[15] In 1833, the year after Gaston's address, George

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[11] *See generally* WILLIAM FREEHLING, PRELUDE TO CIVIL WAR: THE NULLIFICATION CONTROVERSY IN SOUTH CAROLINA, 1816-1836 (1966).

[12] JAMES C. DOBBIN, ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES OF THE UNIVERSITY OF NORTH CAROLINA: JUNE 5, 1850 at 5 (Fayetteville, Edward J. Hale & Son 1850).

[13] *See id.* at 6. *See also* WILLIAM H. BATTLE, JUDGE GASTON AS A LITERARY MAN (1860); Sally Greene, *State v. Mann Exhumed*, 87 N.C. L. REV. 701 (2009).

[14] *See* WILLIAM GASTON, ADDRESS DELIVERED BEFORE THE DIALECTIC AND PHILANTHROPIC SOCIETIES preface (4th ed., Raleigh, Seaton Gales 1849) (claiming 5000 initial print run and noting a second edition in Richmond by Thomas W. White, alleging another "second" edition at La Grange College in Alabama). There was also a fifth edition printed by James Henderson in Chapel Hill in 1858. It was also reprinted in 1844 in the *North Carolina University Magazine*.

[15] THOMAS F. DAVIS, AN ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES ... 9 (Raleigh, W.R. Gales, Register Office 1845). Representative Thomas Clingman of North Carolina spoke in favor of Gaston on December 20, 1847. *See On the Political Aspect of the*

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.[16] Decades later, Badger, then a United States Senator, referred back to it again in debate on the Compromise of 1850. He recalled nothing of Gaston's moderate antislavery paragraph. Senator Badger quoted Gaston's warning of the consequences of disunion.[17]

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. The Princeton address was similar to Gaston's North Carolina address; it dealt 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.[18]

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,

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Slave Question, Delivered in the House of Representatives, December 22, 1847, in SELECTIONS FROM THE SPEECHES AND WRITINGS OF HON. THOMAS L. CLINGMAN 197, 223 (1878) (using Gaston and John Marshall as models of morality from the slave-holding south).

[16] GEORGE EDMUND BADGER, ADDRESS DELIVERED BEFORE THE PHILANTHROPIC AND DIALECTIC SOCIETIES, AT CHAPEL HILL, N.C., JUNE 26, 1833 7 n.* (Richmond, Thomas W. Whyte, 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*." *See An Address, Delivered Before the Two Literary Societies of the University of North Carolina*, 4 NEW YORK REV. 261 (1839). *See also Gaston's and Badger's Addresses*, 4 AM. MONTHLY REV. 486-499 (Dec. 1833).

[17] *Speech of Mr. Badger*, CONGRESSIONAL GLOBE, 31st Cong., 1st Sess., 382, 383 (March 18/19, 1850).

[18] WILLIAM GASTON, AN ADDRESS DELIVERED BEFORE THE AMERICAN WHIG AND CLIOSOPHIC SOCIETIES OF THE COLLEGE OF NEW JERSEY, SEPTEMBER, 29, 1835 27 (Princeton, John Bogart, 1835). Mob violence rose dramatically in the 1830s. *See* DANIEL WALKER HOWE, WHAT HATH GOD WROUGHT? THE TRANSFORMATION OF AMERICA, 1815-1848 431 (2007) (listing riots per year in 1830s).

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."[19] Gaston saw a particular role for the educated citizen in supporting law. "The character of our nation is deeply involved in the character of its public men," he told the Princeton students.[20] Gaston thought there should be a more civilized public debate and that the periodical press was the vehicle for that civilization. The press' power to shape public opinion was critical, for "Enlightened public opinion is, next to religion, the great conservator of virtue and propriety."[21]

Yet, one needed to worry about public opinion. Steam was a fearful power in Gaston's mind. He analogized the idea of freedom to steam power. He told students at Princeton in 1835 that freedom, "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, it must be effectually secured and skillfully regulated, or its explosions will spread havoc around."[22]

The preservation of public morals, aided by the press, was one of Gaston's goals. Gaston 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 vigor 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.

From there, Gaston solemnly concluded, "Law is the guardian of freedom."[23] 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 make a union out of diverse 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

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[19] *Id.* at 9.

[20] *Id.* at 21.

[21] *Id.* at 23.

[22] GASTON, *supra* note 18, at 31.

[23] *Id.* at 24.

> only recognized 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 blend into one harmonious union the discordant materials of which society is composed.[24]

Law also promised protections 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 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 existence is not incompatible with perfect freedom.[25]

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* opinion (restricting Indian removal) 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 thought that 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." Indeed, one needed only look around to see examples in the human experience. "The history of the world can scarcely be opened without meeting the annals of the decline and fall of freedom. The summary is short. Liberty becomes licentiousness, 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."[26] Thus would end freedom. Yet, 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 of

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[24] *Id.* at 25.

[25] *Id.* at 25-26.

[26] *Id.* at 27-28.

importance to tell to a student audience. Like other addresses of the era, they give us a sense of how an orator fit his world – or pieces of his world, anyway – together in the compass of about twenty pages. And while there are more detailed discussions of particular issues – from treatises on eloquence and oratory to moral philosophy and proslavery thought – these addresses give a concise picture of the minds of orators as well as their audiences. "In 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 scoures of either the enjoyment or influence of the cultivated mind."[27]

B. William Gaston as Lawyer and Judge

Gaston was, indeed, different from the usual justice of his era. He was Catholic, educated at Princeton, class of 1798, and a former Federalist. Born in 1778, he was a representative of an earlier era – of Federalism, where concepts of virtue, republicanism, and order were central. And also a representative of the era when slavery was not so robustly embraced as it was after 1800. While practicing law, Gaston represented a number of Quakers in their efforts to establish trusts for the emancipation of their enslaved humans.[28] He went on the Supreme Court in 1832 and served until his death in 1844, at age 68. During those sixteen years, Gaston wrote 474 opinions. More than 100 of those cases involved slavery in some way.[29] At the time of his talk, he was fifty-four, older than most orators at the time of their addresses.

Gaston's opinions correlate with and compliment the values he expressed in opinions. 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.*[30] It involved the criminal prosecution of a slave who killed his overseer following a brief dispute with him. 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. Will cut the overseer on the thigh and then the arm, which caused him to bleed to death. The question was whether Will was guilty of murder or only a less serious charge of manslaughter. This turned on whether the law recognized that Will was resisting the overseer or

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[27] DOBBIN, *supra* note 12, at 19.

[28] See Alfred L. Brophy, *Thomas Ruffin; Of Moral Philosophy and Monuments*, 87 N.C. L. REV. 799, 839 (2009).

[29] Gaston employed the word moral in 27 of his opinions (5.7%). By contrast, Chief Justice Thomas Ruffin wrote 1443 opinions and used the word moral in 75 of them (5.2%). Some of Gaston's other revealing phrases were "unconstitutional," "monstrous," "fault," and "consequence of negligence." On his reputation, see Robert Strange, *Life and Character of Hon. Wm. Gaston: A Eulogy ... November 11, 1844* (Fayetteville, Edward J. Hale 1844).

[30] State v. Negro Will, 18 N.C. (1 Dev. & Bat.) 121 (1834); State v. Jarrott, 23 N.C. (1 Ired.) 76, (1840).

whether – as some might suspect – that the overseer should expect absolute and uncontrolled obedience from Will at all times, even in the midst of a dispute. Gaston recognized the process of change and harmonization of precedent involved in the common law:

> 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.[31]

Two important values mixed in Gaston's *Negro Will* opinion. First, the desire to limit violence, particularly violence over slaves. While he recognized that "unconditional submission" was the "general duty of the slave," that power did not "authorize the master to kill his slave." 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 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.[32]

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:

> Unless I see my way clear as a sunbeam, I cannot believe that this is the law of a civilized 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

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[31] State v. Negro Will, 18 N.C. 121, 168 (1834).

[32] *Id.* at 35.

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.[33]

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. It also 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, Badger spoke of the North Carolina common law's protection of slaves. He was responding to an invocation of Justice Thomas Ruffin's 1830 opinion in *State v. Mann* that the master of a slave had uncontrolled authority over the body of the slave. For Senator Isaac Pigeon Walker of Wisconsin had quoted from Ruffin's opinion to show how southern law failed to protect slaves.[34] In response, Badger discussed several opinions, including *Negro Will*, to demonstrate that slaves did have the right to resist their owners.[35] 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. Even Ruffin had conceded limits on the owner's authority nearly a decade after *Mann*, in an 1839 opinion in *State v. Hoover*.[36] Badger concluded with a quotation from Gaston's 1832 literary address on the dangers of disunion.[37]

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[33] *Id.* at *29 (quoting Psalm 19 and William Shakespeare *Merchant of Venice*, Act III, scene 1).

[34] CONGRESSIONAL GLOBE, 31st Cong., 1st Sess. 284 (March 6, 1850) ("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*.").

[35] CONGRESSIONAL GLOBE, 31st Sess., 1st Sess. 285-86 (March 8, 1850).

[36] Ruffin had backed away from the statement about the master's uncontrolled authority over the body of the slave when he found in *Hoover* that "the 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." *See* State v. Hoover, 20 N.C. 500, 503 (1839).

[37] CONGRESSIONAL GLOBE, 31st Sess., 1st Sess. 286 (March 8, 1850). The difference in approach between Ruffin's 1830 *State v. Mann* opinion and Gaston's 1834 *State v. Negro Will* 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 anti-slavery measures. 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*

Other opinions reveal Gaston's mind and emphasis on equal treatment by law. *State v. Manuel*, for instance, upheld the constitutionality of a statute that hired out free blacks to pay for their imprisonment (but apparently not whites).[38] 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.[39] But Gaston was not always so supportive of charitable trusts. 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.[40] 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." 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. It was an opinion of formalism, which required the testator to be more specific in intent, which was concerned over the judges substituting their own judgment for that of the testator, even as it was defeating the testator's general purpose. Nor did Gaston always find in favor of freedom, however. In one 1835 case, *Bryan v. Wadsworth*, he found against a slave's claim that he had been manumitted when an owner petitioned court and was given permission to emancipate, but she sold the enslaved person instead.[41]

North Carolina Supreme Court, 78 VA. L. REV. 1207-1251 (1992). Perhaps it was not so much that sometimes considerations of humanity trumped considerations of law; Gaston and Ruffin articulated different visions of the law's scope and the point where law ended and the master's "authority over the body of the slave," as Ruffin phrased it, began.

Will, of course, arose in a different setting from *Mann*. 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). 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.

[38] 20 N.C. (3&4 Dev. & Bat.) 144 (1838).

[39] Cameron and Mordecai, Ex'rs of John Rex v. Commissioners of Raleigh, 36 N.C. (1 Ired.Eq.) 436 (1841). *See also* Campbell v. Street, 23 N.C. (1 Ired.) 109 (1840) (upholding 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." Gaston – like other judges – saw one purpose in the rationalization of precedent and law through opinions.

[40] Holland v. Peck, 37 N.C. (2 Ired.Eq.) 255 (1842). *See also* State ex rel. Wardens of Poor of Beaufort County v. Gerard, 37 N.C. (2 Ired.Eq.) 210 (1842).

[41] 18 N.C. (1 Dev. & Bat.) 384 (1835).

In his judgments, 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.[42] He was frequently spoken about as one of the great jurists of the era and though his star shines less brightly than his contemporary on the North Carolina Supreme Court Thomas Ruffin, that is likely an unjustified verdict.[43]

Gaston, like the majority of jurists of his age, respected the economic progress brought by railroads. In one opinion he limited railroads' liability to cases where there was evidence of fault, a foundational principle of the antebellum era's judiciary, which sought to limit the liability of corporations and thus promote economic growth. 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 get loose. "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. 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." However, Gaston went on to read in a requirement of fault. "[N]o man, unless he has engaged to become insurer, or the very nature of his undertaking makes him an insurer, against unavoidable accidents, is responsible for damage sustained against his will and without his fault." There needed to be evidence that the spark was the fault of the railroad.[44] This is in

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[42] Ward v. Stow, 17 N.C. (2 Dev. Eq.) 509 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 a 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.

[43] *See* Eric Muller, *Judging Thomas Ruffin and the Hindsight Defense*, 87 N.C. L. REV. 757 (2009).

[44] Ellis v. Portsmouth & R.R. Co., 24 N.C. (2 Ired.) 138 (1841).

keeping with the general limitation of liability in the North Carolina Supreme Court.[45] Yet, the opinion ultimately upheld the jury's verdict because Gaston believed the railroad had not adequately rebutted the presumption that it was negligent in letting the spark get loose.[46]

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 right now 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:

> While our ancestors brought over to this country the principles of the common law, these were nevertheless necessarily accommodated to their new condition. It would have been absurd to hold that the clearing of the forest, so as to fit it for the habitation and use of man was waste. And at this day, when a large proportion of our lands is yet wild, the reduction of part of a tract to an arable state may be highly beneficial to the owner.
>
> We hold also, that the turning out of exhausted lands is not waste. An improved system of agriculture has commenced with us, which we hope will in time supersede the present slovenly, and as it respects the country at large, injurious course of husbandry. But as 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

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[45] And other courts as well. *See, e.g.,* MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW, 1780-1860 (1977); TIMOTHY HUEBNER, THE SOUTHERN JUDICIAL TRADITION (1999); LAURA EDWARDS, THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH (2009); ARIELA GROSS, DOUBLE CHARACTER: SLAVERY AND MASTERY IN THE ANTEBELLUM SOUTHERN COURTROOM (2000).

[46] Gaston upheld the jury's verdict because he thought the plaintiff had made out a prima facia case, which the railroad had not adequately rebutted by showing they had exercised proper care. "But we hold, that when he shows 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 some extraordinary accident, which renders care useless." Ellis, 24 N.C. at *2. In another case involving a dog that had been shot, Gaston found it unreasonable to expect that the dog would never be violent. This concession to the nature of an animal suggests Gaston's attachment to take the world as it was. *See* Dodson v. Mock, 20 N.C. (3&4 Dev. & Bat.) 282 (1838) ("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.").

> 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.[47]

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: "To hold that a permission thus given shall operate forever for the benefit of the grantee and his assigns, against the grantor and his heirs, would be, in effect, to permit a fee simple estate to pass under the name of an irrevocable license. Purchasers would never know what encumbrances were upon their lands, and instead of the solemn and deliberate instruments which the law requires as the indispensable means of transferring freeholds, valuable landed interests would be made to depend wholly on the integrity, capacity, or recollection of witnesses."[48]

In 1834, shortly after going on 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:

> A doctrine 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 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.[49]

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*

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[47] Shine v. Wilcox, 21 N.C. (1 Dev. & Bat. Eq.) 631 (1837). *See also* Carr v. Carr, 20 N.C. (3&4 Dev. & Bat.) 317 (1838) (noting in the opinion's first sentence "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.").

[48] Bridges v. Purcell, 18 N.C. (1 Dev. & Bat.) 492 (1836).

[49] *Johnson v. Cawthorn*, 21 N.C. 32, 34 (1834).

illustrates.[50]

The fact that Gaston was writing something more than just an opinion to decide the case in front of him appears in the first line of many of his opinions. Often he began with a broad statement of law. "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."[51]

In granting relief from a deed given some decades before as security on a loan, Gaston observed that there was little evidence. 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."[52]

One might assess, then, Gaston's opinions as careful works, which protect the commercial interests and expectations of his society. However, he could see a middle path, different from Thomas Ruffin's extreme proslavery views. 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.[53]

Though he died owning about 160 people, in several places, Gaston acted and spoke against (or at least to limit) slavery – as an advocate while drafting trusts for Quakers to free enslaved people, while on the North Carolina Supreme Court in cases like *State v. Negro Will*, and in both of his literary addresses. We can see how the ideas of order and law combined with

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[50] *See* Alfred L. Brophy, *Reason and Sentiment: The Moral Worlds and Modes of Reasoning of Antebellum Jurists*, 79 B.U. L. REV. 1113 (1999).

[51] Tarkinton v. Alexander, 19 N.C. (2 Dev. & Bat.) 87 (1836). Gaston limited precedent when it was based on out-moded, feudal principles. *See* Fox v. Horah, 36 N.C. 358 (1841) (limiting escheat because rules were based on feudal principles). Yet, he applied well-established precedent. *Adams v. Hayes*, 24 N.C. 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. 247 (1842), through expansion of principles, *e.g.*, *State v. Davis*, 24 N.C. 153, 157 (1841), or by a combination of common law drift and legislation, *Fox*, 36 N.C. at 361. Similarly, the Revolution impelled some changes in property rules. *See* State v. Manuel, 20 N.C. 144, 151-53 (1838); O'Daniel v. Crawford, 15 N.C. 197 (1833); Parrott v. Hartsfield, 20 N.C. (3&4 Dev. & Bat.) 242 (1838) ("It hath been always 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.").

[52] Kimborough v. Smith, 17 N.C. (2 Dev. Eq.) 558 (1834).

[53] J. HERMAN SCHAUINGER, WILLIAM GASTON: CAROLINIAN (1949).

Gaston's antislavery ideas to make a jurisprudence of slavery that was more flexible and less ardently proslavery than Ruffin's.[54] And we can see through Gaston's literary addresses and his opinions how ideas were put into action. *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.

II. To Speak is to Act: The Purposes and Reach of College Literary Addresses

Gaston's address was but one of hundreds given at colleges in the years leading into Civil War. William Gilmore Simms, one of the leading novelists of the old South and also editor of the literary journal the *Southern Quarterly Review*, wrote about the importance of literary addresses in a review of several orations in 1851. 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 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 amply 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 people....[55]

While literary addresses certainly had their share of what one reviewer in the *Southern Quarterly Review* termed "vapid common places, and stereotyped pedantry, which too often characterize such productions," some of the addresses invite serious scrutiny for evidence of the place of oratory in southern thought and others for the content of southern ideas, particularly about constitutionalism.[56]

Distinguished orators delivered speeches at ceremonies marking moments of transition

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[54] *See* 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 (1998); MARK TUSHNET, SLAVE LAW IN THE AMERICAN SOUTH: STATE V. MANN IN HISTORY AND MEMORY (2003). Cf. ROBERT COVER, JUSTICE ACCUSED: ANTI-SLAVERY AND THE JUDICIAL PROCESS (1975) (discussing northern anti-slavery judges' conflicts when working within a proslavery law).

[55] [William Gilmore Simms], *Popular Discourses and Orations*, 4 SOUTHERN QUARTERLY REVIEW 317, 319 (Oct. 1851).

[56] *See* [Beverly Tucker,] *An Oration, Delivered Before the Two Societies of the South-Carolina College...,* 17 S.Q. REV. 37 (1850).

and thus created communities of communication. They gave addresses at funerals of students,[57] memorials for those recently departed,[58] and even the much rarer re-interments.[59] Orations were also common at the laying of cornerstones and at dedications of buildings[60] and monuments, such as one placed at a cemetery to commemorate those buried there who had died in a Revolutionary war battle,[61] and the dedication of cemeteries. For instance, Edward Everett, who had been Harvard's president and before that Massachusetts' governor, delivered a lengthy speech on November 19, 1863 at the dedication of a national cemetery in a small town in Pennsylvania,

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[57] *See, e.g.,* SHEPARD K. KOLLOCK, A SERMON, OCCASIONED BY THE DEATH OF EDMUNDS MASON, STUDENT OF THE UNIVERSITY OF NORTH-CAROLINA, ... AUGUST 8, 1824 (Raleigh, J. Gales & Son 1824); JAMES HENLEY THORNWELL, THE VANITY AND GLORY OF MAN: ... IN THE CHAPEL OF THE SOUTH CAROLINA COLLEGE ... ON ... THE DEATH OF BENJAMIN R. MAYBIN, A MEMBER OF THE FRESHMAN CLASS (1842).

[58] DAVID S. DOGGETT, A SERMON ON THE OCCASION OF THE DEATH OF GENERAL WILLIAM HENRY HARRISON ... DELIVERED IN THE CHAPEL OF RANDOLPH MACON COLLEGE, APRIL 18, 1841(Richmond, Christian Advocate, 1841); E.L. MAGOON, A USEFUL LIFE AND A PEACEFUL DEATH: A DISCOURSE DELIVERED BEFORE THE LEGISLATURE OF NORTH CAROLINA, DECEMBER, 18, 1842 (Richmond, H.K. Ellyson, 1843).

[59] MEMOIRS OF REV. ELISHA MITCHELL ... AND THE ADDRESS DELIVERED AT THE RE-INTERMENT OF HIS REMAINS (Chapel Hill, J.M. Henderson 1858).

[60] PEET HARVEY PRINDLE, ADDRESS... ON ... LAYING THE CORNER STONE OF THE NORTH CAROLINA INSTITUTION FOR THE INSTRUCTION OF THE DEAF AND DUMB, APRIL 14TH, 1848 (New York, Egbert, Hovey & King 1848); KENNETH RAYNER, ADDRESS ... AT THE EXAMINATION OF THE STUDENTS OF UNION ACADEMY, AND THE INAUGURATION OF THE NEW ACADEMY BUILDINGS ... AUGUST 2, 1854 (Murfreesborough, Murfreesborough Gazette 1854) rare book room; William F. Stearns, *Address ... At the Laying of the Corner-Stone of the State University, at Oxford, Mississippi ... 14th July, 1846*, 6 FREEMASON'S MONTHLY MAG. 17-21 (1847); JAMES HENLEY THORNWELL, THE RIGHTS AND THE DUTIES OF MASTERS: ... AT THE DEDICATION OF A CHURCH, ERECTED ... FOR THE BENEFIT AND INSTRUCTION OF THE COLOURED POPULATION (Charleston, Walker & James 1850); ROBERT HENRY, ADDRESS DELIVERED BEFORE THE CLARIOSOPHIC SOCIETY OF THE SOUTH CAROLINA COLLEGE, AT THE DEDICATION OF THEIR NEW HALL ... FEBRUARY 10, 1849 (Columbia, I.C. Morgan 1849).

[61] JOSEPH R. CANDLER, AN ORATION DELIVERED AT THE LAYING OF THE CORNER STONE OF A MONUMENT ON MOUNT ZION, IN EPHRATA, LANCASTER COUNTY, PENNSYLVANIA, SEPTEMBER 11, 1845 (Philadelphia, 1845) (commemorating soldiers who were buried in the cemetery of wounds suffered at the Brandywine battle, which took place September 11, 1777); ROBERT WICKLIFFE, AN ADDRESS DELIVERED ON THE OCCASION OF LAYING THE CORNER STONE OF THE NEW MEDICAL HALL, TRANSYLVANIA UNIVERSITY ... (Lexington, Noble & Dunlop 1839).

where a battle had taken place a few months before.[62] In fact, cemetery dedication addresses were common in this era, particularly after Justice Joseph Story gave a dedication speech at Mount Auburn in 1831.[63] Just as the cemetery addresses reflected on the direction of life, college literary addresses offered a moment for reflection, particularly about the role of education and law in American society.

This article turns to the thirty-four addresses given at the University of North Carolina and then published from 1828 through 1860, as supplemented by speeches given at other North Carolina schools and at schools in neighboring states, to take up William Gilmore Simms' challenge of looking for evidence of politics and philosophy in southern addresses. The addresses expand our understanding of the number of intellectuals in the old South; many of these addresses were given by now-obscure people, people who appear nowhere in the standard works of southern intellectual history, though they were people of influence in their own era. Because many were given by judges and lawyers, they offer insight into the salient issues in southern jurisprudence. We can see in a short compass the central ideas that the orators focused on and how they fit their world together. We see how they melded history's lessons about stability and democracy, the technological and moral progress surrounding them, the way that education and the printing press contributed to democracy, as well as the dangers of party politics. They illustrate ideas of popular constitutionalism -- how ideas formulated by lawyers in legislative debate, by politicians out 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 paper 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 orientation.[64]

This article seeks to depict the spectrum of ideas in the addresses, particularly as they link talk of progress and education with the Constitution and the Union. The addresses offer a gauge

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[62] ADDRESS OF HON. EDWARD EVERETT, AT THE CONSECRATION OF THE NATIONAL CEMETERY AT GETTYSBURG ... (Boston, Little, Brown and Company 1864).

[63] JOSEPH STORY, AN ADDRESS DELIVERED ON THE DEDICATION OF THE CEMETERY OF MOUNT AUBURN, SEPTEMBER 21ST, 1831 (Boston, Joseph T. & Edward Buckingham 1831). *See also* HENRY LAURENS PINCKNEY, REMARKS ADDRESSED TO THE CITIZENS OF CHARLESTON... (Charleston, W. Riley 1839) (proposing burials outside of Charleston, partly for aesthetic, though mostly for health reasons); DANIEL BARNARD, ALBANY RURAL CEMETERY ASSOCIATION ... (Albany, C. Van Benthuysen and Co. 1846).

[64] Mark Brandon discusses in *Free in the World: The Constitutional Thought of Abraham Lincoln* (1999) the serious rethinking of constitutional ideas that circulated in the years leading into 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 re Perkins*, 2 Cal. 424–58 (1852), and finally into formal constitutional law in *Dred Scott*. College literary addresses matter in part because they depict the contours of constitutional values and how those values changed. They also suggest the constraining aspects of constitutional law.

of ways that Southerners understood the technological and economic progress of their era, along with how they responded to it and to the moral and economics forces that were pulling sections of the country in different directions.

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, of education, and of fear of radicalism in the French Revolution and in the abolition movement. These addresses illustrate how ideas of law fit within a whole system of ideas about technology and ideology, like the attacks on idealism and materialism, and how the orators sought a world of educated, virtuous citizens who respected Union, property, and order. Through oratory, they celebrated and created a republic of law (one orator called it a "republic of liberty"), 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.

Orators spoke of the values underlying the Constitution – the impulses towards Union taught us by our sentiments and our reason. These are the cultural analogs to the Constitutional arguments that were used to hold the Union together. And 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?[65]

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[65] Addresses, from Fourth of July and August 1 orations, and local literary society addresses, to state constitutional conventions, are increasingly the place to look for ideas about law. *See* MICHAEL KAMMEN, A MACHINE THAT WOULD GO OF ITSELF: THE CONSTITUTION IN AMERICAN CULTURE (1986); MARTHA JONES, ALL BOUND UP TOGETHER: THE WOMAN QUESTION IN AMERICAN AMERICAN PRINT CULTURE, 1830-1900 (2007); JAMES PERRIN WARREN, CULTURE OF ELOQUENCE: ORATORY AND REFORM IN ANTEBELLUM AMERICA (1999); A.V. Huff, *The Eagle and the Vulture: Changing Attitudes Toward Nationalism in Fourth of July Orations Delivered in Charleston, 1778-1860*, 73 S. ATLANTIC Q. 18 (1974); Len Travers, *Celebrating the Fourth: Independence Day and the Rites of Nationalism in the Early Republic* (1997); Paul Quigley, *Independence Day Dilemmas in the American South, 1848-1865*, 75 J.S. HIST. 289 (2009); Donald M. Scott, *The Popular Lecture and the Creation of a Public in Mid-Nineteenth-Century America*, 66 J. AM. HIST. 791-809 (1980).

There is a growing literature on antebellum literary addresses and law, which builds on work that Perry Miller did decades ago. *See* PERRY MILLER, THE LIFE OF THE MIND IN AMERICA: FROM REVOLUTION THROUGH CIVIL WAR (1966); Alfred L. Brophy, The Intersection of Property and Slavery in Southern Legal Thought: From Missouri Compromise Through Civil War chap. 1 (Ph.D. diss, Harvard University, 2001); Alfred L. Brophy, *"The Law of the Descent of Thought": Law, History, And Civilization, in Antebellum Literary Addresses*, 20 LAW & LIT. 343-402 (2008); Steven J. Macias, "The Role of Morality in Early Republican Legal Science: The Case of Gulian C. Verplanck," available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1403726

A. The Power and Place of Oratory

"To write is to act," was a popular saying. 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."[66] The Richmond, Virginia Baptist minister James Lawrence Reynolds 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. "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."[67]

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 the University of North Carolina, spoke about this to the university'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 gather 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 courses, upon which we must chiefly rely, under Providence, for the support and perpetuity of our republican system. He has learned by experience the truth of the maxim which Charles II pronounced in condemnation of Algernon Sydney, *Scribere est agere*. To write is to act.[68]

Writing was action, because, as Reynolds succinctly summed up, "it is thought that impels to action."[69]

Orators also understood and spoke about the power of oratory. James Dobbin, for

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[66] *See, e.g.*, J. L. REYNOLDS, THE MAN OF LETTERS: AN ADDRESS, DELIVERED BEFORE THE LITERARY SOCIETIES OF WAKE FOREST COLLEGE ... JUNE 14, 1849 at 20 (Richmond, R.K. Ellyson, 1849) (to write is to act); *id.* at 19 ("thought is the prime mover of mankind"). *See also* B. F. MOORE, AN ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES OF THE UNIVERSITY OF NORTH CAROLINA 7 (Raleigh, Recorder Office 1846).

[67] REYNOLDS, *supra* note 66, at 19-20.

[68] JOHN Y. MASON, ADDRESS BEFORE THE ALUMNI ASSOCIATION OF THE UNIVERSITY OF NORTH CAROLINA ... JUNE 2, 1847 (Washington, J. & G.S. Gideon 1847).

[69] REYNOLDS, *supra* note 66, at 20.

instance, spoke to the joint University of North Carolina 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."[70] Later, Dobbins 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 piety?"[71] A South Carolina College classics professor commemorated a new building for one of their 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." That meant that eloquence was about "the understanding, the imagination, and the heart."[72] 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." He omitted those remarks when he found the students speakers before him "*decidedly cleaver.*" Mr. Toole, a newspaper editor and 1828 graduate of the University of North Carolina, recalled that his fellow students at the University of North Carolina had not been so cleaver.[73]

James Shepard, an 1834 graduate of the University, delivered an address a decade later, in 1844. By that point, he had served a couple of years in the North Carolina Senate as a Democrat and his political star was rising. In 1846, he ran for governor. The twenty-nine year old Shepard,

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[70] DOBBIN, *supra* note 12, at 13. *See also* W.A. Sasnett, *The United States–Her Past and Her Future*, 12 DEBOW'S REVIEW 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.").

[71] DOBBIN, *supra* note 12, at 17.

[72] HENRY, *supra* note 60, at 6.

[73] HENRY I. TOOLE, AN ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES OF WAKE FOREST COLLEGE ON THE 20TH JUNE, 1844 24 n. 25 (Raleigh, W.W. Holden 1844). *See also* WILLIAM H. STILES, CONNECTION BETWEEN LIBERTY AND ELOQUENCE: AN ADDRESS DELIVERED BEFORE THE PHI KAPPA AND DEMOSTHENIAN SOCIETIES OF FRANKLIN COLLEGE ... 26 (Augusta, Georgia Home Gazette Office 1852) ("eloquence has been a powerful aid in the preservation of liberty"); WILLIAM T. HAMILTON, ELOQUENCE, ITS CHARACTERISTICS AND ITS POWER: AN ORATION DELIVERED BEFORE THE THALIAN AND PHI DELTA SOCIETIES OF OGLETHORPE UNIVERSITY ... NOVEMBER 18, 1846 (Charleston, Jenkins 1846).

proclaimed that "popular eloquence is the most powerful of all arts."[74] Eloquence was so powerful because in the United States the people made law and questions both great and small were discussed in public. This was a theme that a great many orators focused on – the way that oratory shaped the public's mind. In 1839, United States Senator Bedford Brown, another Democrat politician, who studied at the University of North Carolina for a year in the early 1820s, observed that eloquence has flourished most under popular government.[75]

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:

> The spirit of poetry is every where in our Country. It is here a spirit of action and of eloquence. It flashes in the fire 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.[76]

Thirty-six year old lawyer James Dobbin spoke extensively in 1850 about the power of eloquence. Dobbin, who had graduated from UNC in 1832, had by 1850 already served a term in the United States House of Representatives as a Democrat. He was in 1850 speaker of the North Carolina House and two years later served as President Franklin Pierce's Secretary of the Navy. Dobbin noted that eloquence had the power to move humans. The printing press and telegraph transmitted speech from the center to the periphery (Dobbin used the phrase "the center to the circumference") and extended the power of oratory, the physical communication itself retained its power to influence and move people:

> [I]n the long catalogue of accomplishments that impart pleasure and secure influence to the educated mind,–there is perhaps non more entitled to your assiduous cultivation, than the art of Eloquence. 'Tis true the art of Print hath encroached much on its province, and the press now daily sends forth orations that fly on the wings of the wind and the

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[74] JAMES BIDDLE SHEPARD, AN ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES, OF THE UNIVERSITY OF NORTH CAROLINA IN GERARD HALL 12 (Raleigh, Office of the Independent 1844).

[75] BEDFORD BROWN, AN ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES, OF THE UNIVERSITY OF NORTH CAROLINA IN GERARD HALL, ON THE DAY PRECEDING THE ANNUAL COMMENCEMENT, IN JUNE 1839 1636 (Raleigh, North Carolina Standard 1839). *See also id.* at 27 (noting importance and rewards for cultivating eloquence and using John C. Calhoun as a model of eloquence).

[76] SHEPARD, *supra* note 74, at 11. *See also* JAMES B. SHEPARD, AN ADDRESS DELIVERED BEFORE THE CITIZENS, MECHANICS AND GUARDS OF THE CITY OF RALEIGH, JULY 4, 1839 (Raleigh, T. Loring 1839).

> lightning's wire from the centre to the circumference of our wide-spread Republic. Yet in all countries it has ever been the most potent art for effective operations on the heart and on the mind; and under our republican government, where the popular feature so powerfully predominates,–where struggle for increased liberty and the wakeful jealousy of power are ever animating the masses,–where every citizen feels that by genius and industry he can cut out his own pathway from the lower obscurity to the most distinguished eminence....[77]

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 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.[78]

But Gaston thought that the press might be abused. So he asked, "why, then, should this mighty power by allowed, without a struggle, to fall into hands generally inadequate in ability, or disqualified by corruption?"[79]

Orators found, then, eloquence, even as they spoke of its importance. But they recognized that the nature of speech had changed. James Bruce, speaking to the alumni in 1841, observed that ancient oratory had been directed to passions; modern oratory was aimed at "fact, argument, and reason." Much of that change was due to the nature of speeches, which were printed and thus read in private, rather than heard en mass in public. Hence, the orations were calculated to appeal to cold calculations, rather than warm passions. Bruce thought that "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."[80] In fact, it is

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[77] DOBBIN, *supra* note 12, at 16.

[78] GASTON, *supra* note 18, at 18.

[79] *Id.* at 12.

[80] JAMES C. BRUCE, AN ADDRESS DELIVERED BEFORE THE ALUMNI AND GRADUATING CLASS OF THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, ON THE AFTERNOON OF JUNE

through print that these speeches have come down to us, because they were reduced to print and preserved. It is that print that allows us to examine their ideas.

Oratory was also one of the ways of entertainment and of learning, for many had only limited ability to read. University of North Carolina Professor William Hooper spoke to the Pittsboro Literary Society about the importance of oratory in 1835. Hooper, a grandson of a signer of the Declaration of Independence, and an 1811 graduate of the University, occupied an importance place in North Carolina society and was in a good position to observe the nature of oratory. Hooper, taught at UNC from 1817 until 1837 when he left to become president of Furman. Later he served at a number of institutions, including the South Carolina College and several preparatory schools in North Carolina. He told his audience in Pittsboro:

> The bulk of our people may be called an *unreading people*. They are *too busy* to read, and that is not the channel by which they have been in the habit of receiving knowledge. Their stock of knowledge, which it be, has been acquired through the ear.[81]

Hooper's confidence in the power of the spoken word and of culture appeared in his observation that "He was a wise man and had a deep insight into human nature, who said, 'Let me make a people's ballads and any body may make their laws.'"[82] Hooper's solution to the lack of reading culture was to have more well-trained and public-minded orators, a common theme for those who made their living through education.

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 many schools. The Whig lawyer Charles Manly told the societies in 1838 that they "have become great arteries in the system, indispensable to its vitality."[83]

The records of the societies tell the intellectual life of the university – everything from the library borrowing records of the students, to the topics of their talks, and even in some cases the

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THIRD, 1841 15 (Raleigh, North Carolina Standard 1841).

[81] WILLIAM HOOPER, PROFESSOR HOOPER'S ADDRESS, DELIVERED BEFORE THE LITERARY SOCIETY OF PITTSBORO ... (Hillsborough, Dennis Heartt 1835).

[82] HOOPER, *supra* note 81, at 11-12.

[83] CHARLES MANLY, AN ADDRESS ... BEFORE THE ALUMNI ... OF THE UNIVERSITY OF NORTH CAROLINA 15 (Raleigh, North Carolina Standard 1838). *See generally* THOMAS SPENCER HARDING, COLLEGE LITERARY SOCIETIES: THEIR CONTRIBUTION TO HIGHER EDUCATION IN THE UNITED STATES, 1815-1876 (1971).

contents of their arguments. We can learn, to borrow a phrase from my colleague Anne Klinefelter, what the students read last summer.[84] From their libraries, we can reconstruct what they were thinking.[85] And from their records of speeches given at them and from debates they held, we can gauge even more of what students were thinking.

On the University of North Carolina campus, the two literary societies seem to have begun inviting graduation speakers to their joint societies in the late 1820s. They alternated between them the privilege of inviting speakers.[86] Graduation ceremonies lasted for several days and included the joint literary address, an alumni address, a sermon, and addresses by juniors and seniors. They included speeches by graduating students as well as outside speakers.[87] Most often the addresses to the joint literary societies are the addresses that were published; however, occasionally the alumni address was published and in two instances the baccalaureate addresses

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[84] Anne Klinefelter, *Privacy and Library Public Services: Or, I Know What You Read Last Summer*, 26 L. REF. SERVICES Q. 253-79 (2007).

[85] *See, e.g.,* A CATALOGUE OF BOOKS BELONGING TO THE DIALECTIC SOCIETY AT CHAPEL HILL, MAY, 1835 (Raleigh, J. Gales & Son 1835). *See also* WILSON GAINES RICHARDSON, CATALOGUE OF THE LIBRARY OF THE UNIVERSITY OF ALABAMA ... (Tuscaloosa, M.D.J. Slade 1848); CATALOGUE OF THE MEMBERS AND LIBRARY OF THE PHILOMATHAEAN SOCIETY OF PENNSYLVANIA COLLEGE (Gettysburg, H.C. Neinstedt 1846); CATALOGUE OF THE MEMBERS AND LIBRARY OF THE DIAGNOTHIAN LITERARY SOCIETY OF MARSHALL COLLEGE (1841); CATALOGUE OF THE PHILO-LOGIAN LIBRARY, WILLIAMS COLLEGE (Troy, N. Tuttle 1843).

[86] ARCHIBALD D. MURPHEY, AN ORATION DELIVERED IN PERSON HALL, CHAPEL HILL: ON THE 27TH JUNE, 1827, THE DAY PREVIOUS TO THE COMMENCEMENT, UNDER THE APPOINTMENT OF THE DIALECTIC SOCIETY 3 (Raleigh, J. Gales & Son 1827). *See also* Thompson Byrd to Murphey, 1 ARCHIBALD MURPHEY PAPERS 342 (William Henry Hoyt ed., 1914) (letter of Oct. 28, 1826); MANLY, *supra* note 83, at i (explaining this procedure); BROWN, *supra* note 75, at 3 (stating that he had been asked to give a graduation address before but had been unable to accept the invitation).

[87] James K. Polk records in his diary his return to the University of North Carolina in 1847, at which he heard several freshman and sophomore orations, as well as an address by [Judge James Walker?] Osborne of Charlotte (UNC 1830) and his Secretary of the Navy, John Y. Mason. *See* THE DIARY OF JAMES K. POLK DURING HIS PRESIDENCY, 1845 TO 1849 45-48 (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* LIFE, LETTERS, AND SPEECHES OF JAMES PETIGRU 318 (1920); JAMES LOUIS PETIGRU, AN ADDRESS DELIVERED BEFORE THE PHILOMATHEAN AND EUPHEMIAN LITERARY SOCIETIES OF ERSKINE COLLEGE ... AUGUST 13, 1856 (Columbia, Edward H. Britton 1856).

was published. Basic data on each of the addresses that was published appears in table 1.[88]

The speakers were frequently UNC graduates. In fact, after Robert Strange's 1837 speech, all but two of the published speeches were given by UNC alumni. North Carolina politicians also predominated as speakers. The speakers were relatively young (average age 43) and they were from both political parties, but a preponderance of affiliations were Whigs. Of the 31 people for whom political affiliation is known or can be reasonably well estimated, 20 were Whigs, 10 were Democrats, and one was a "nullifier" from South Carolina. That leaves three with unknown affiliation.

Just as Gaston spoke at UNC and Princeton, many orators spoke to multiple societies. James Bruce spoke to the University of Virginia alumni in 1840, to the citizens of Buffalo Spring, Virginia on July 4th, 1847, to the Danville Lyceum in 1853, and to the Union Agricultural Society in 1854, in addition to the UNC alumni in 1841.[89] James Shepard spoke at Wake Forest as well as UNC; Bartholomew F. Moore spoke to Wake Forest in 1844, as well as UNC in 1846; United States Senator Robert A. Strange spoke to UNC in 1837, to Rutgers in 1840, and to Davidson in 1849.[90] Henry Watkins Miller spoke at A.H. Ray's Female Seminary as well as UNC.[91] William Hooper spoke at Wake Forest, as well as twice to UNC graduations.[92]

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[88] In 1859 the University magazine printed the commencement program. *Commencement Exercises*, 9 N.C. UNIV. MAG. 59-63, 105-120 (1859), available at http://docsouth.unc.edu/true/commencement/menu.html

[89] *Popular Knowledge the Necessity of Popular Government*, 19 S. LIT. MESSENGER 292-302 (May 1853); ADDRESS OF JAMES C. BRUCE, ESQ. PRESIDENT OF THE UNION AGRICULTURAL SOCIETY OF VIRGINIA AND NORTH CAROLINA, DELIVERED AT PETERSBURG, ON THE 4TH OF AUGUST, 1854 (1854); JAMES C. BRUCE, AN ADDRESS DELIVERED BEFORE THE SOCIETY OF ALUMNI OF THE UNIVERSITY OF VIRGINIA (Richmond, Peter D. Bernard 1840).

[90] ROBERT STRANGE, AN ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES OF THE UNIVERSITY OF NORTH CAROLINA (Raleigh, Raleigh Register 1837); ROBERT STRANGE, THE PURSUITS OF LIFE, AN ADDRESS DELIVERED AT ... DAVIDSON COLLEGE, ON THE 8TH DAY OF AUGUST 1849 (Fayetteville, Edward J. Hale, 1849); ROBERT STRANGE, AN ADDRESS DELIVERED BEFORE THE PEITHESOPHIAN AND PHILOCLEAN SOCIETIES OF RUTGERS COLLEGE (New Brunswick, John Terhunes 1840). The oddity of Strange's thought appears in a novel about the last Indian in North Carolina, as well. *See* ROBERT STRANGE, EONEGUSKI, OR THE CHEROKEE CHIEF (Washington, Franck Taylor 1839).

[91] HENRY W. MILLER, ADDRESS DELIVERED BEFORE THE YOUNG LADIES, PATRONS AND FRIENDS OF MR. A.H. RAY'S FEMALE SEMINARY, AT LOUISBURG, N.C. (Raleigh, Carolina Cultivator 1855).

[92] *See* Hooper, *supra* note 9; WILLIAM HOOPER, FIFTY YEARS SINCE: AN ADDRESS, DELIVERED BEFORE THE ALUMNI OF THE UNIVERSITY OF NORTH CAROLINA, ON THE 7TH OF JUNE,

Similarly, Benjamin Palmer, who is remembered for preaching one of the key sermons on secession, delivered a series of college addresses, concerned more with religious than secular matters.[93]

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 harrangue 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 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."[94] The addresses by students and guests were an opportunity to show oratorical skills and learning, as illustrated by a scene in Augusta Jane Evans' 1859 novel *Beulah.* There the orphan child Beulah Benton delivered an address on female heroines at her graduation from her academy. The

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1859 (Raleigh, Holden & Wilson 1859); WILLIAM HOOPER, THE SACREDNESS OF HUMAN LIFE AND AMERICAN INDIFFERENCE TO ITS DESTRUCTION: AN ADDRESS BEFORE THE LITERARY SOCIETIES OF WAKE FOREST COLLEGE, JUNE 10TH, 1857 (Raleigh, Holden & Wilson 1857).

[93] *See* ROBERT BONNER, MASTERING AMERICA SOUTHERN SLAVEHOLDERS AND THE CRISIS OF AMERICAN NATIONHOOD xi-xiii(2009); BENJAMIN MORGAN PALMER, INFLUENCE OF RELIGIOUS BELIEF UPON NATIONAL CHARACTER; AN ORATION DELIVERED BEFORE THE DEMOSTHENIAN AND PHI KAPPA SOCIETIES... (Athens, Banner Office 1845).

[94] SIMEON COLTON, AN ADDRESS DELIVERED BEFORE THE PHILOMATHESIAN & EUZELIAN SOCIETIES IN WAKE FOREST COLLEGE, JUNE 16, 1842 3 (Fayetteville, Edward J. Hale 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 the Georgia Supreme Court 4 U.S. L. MAG. 34, 35 (July-August 1851).

school's administration was so impressed that they offered her a job teaching there, which allowed her to claim independence from her benefactor (and later husband).[95]

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 American society. 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 its utility. United States Senator 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."[96]

It was not just that the audience listened to orators, though; literary society members inspired each other. As Hugh McQueen told the University of North Carolina 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 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 country...."[97] 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 "It is a festival less of the 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. It is wisely intended, not so much for the exhibition of hoarded knowledge and the discussions of abstruse thought, as for the promotion of kind feeling, the strengthening of good resolves, the

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[95] AUGUSTA JANE EVANS, BEULAH 165-66 (1859) (1898 ed.). Among the recent works dealing in some ways with literary addresses at southern schools are Jennifer R. Green, *Military Education and the Emerging Middle Class in the Old South* (2008), Peter Carmichael, *The Last Generation: Young Virginians in Peace, War, and Reunion* (2005), and Timothy J. Williams, Intellectual Manhood: Becoming Men of the Republic at a Southern University, 1795-1861 (Ph.D. dissertation, University of North Carolina, 2010).

[96] BROWN, *supra* note 75, at 3.

[97] HUGH MCQUEEN, AN ADDRESS DELIVERED BEFORE THE ALUMNI AND GRADUATING CLASS OF THE UNIVERSITY OF NORTH CAROLINA ... JUNE 26, 1839 14 (Raleigh, Raleigh Standard Office 1839).

awakening and quickening of a spirit of improvement in ourselves and others."[98] The graduation addresses given at North Carolina 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 American have drawn a distinction similar to that Mason saw between passion invoked by speech and reason appealed to by print. Sandra Gustafson calls this the distinction between Cicero and Kant. Yet, there was a convergence of oratory and print – oratory become more rationale, more utilitarian.[99] Thus the distinctions that historians of early America find between reasoned pamphlets and impassioned speech, such as depicted in Jay Fliegelman's *Declaring Independence* and Christopher Looby's *Voicing America: Language, Literacy, Form, and the Origins of the United States*, did not exist in the same magnitude by the 1830s and certainly 1840s and 1850s. Moreover, college literary addresses pull together a wide range of thought and relate those pieces to each other.[100] As we transition from talking about the purposes of speech to its contents, it is important to consider the functions speech might serve.

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 them to have a printing press. "Sir William Berkeley, who had the superintendence of this colony in 1661, gave thanks to Heaven that there was not a Printing-Office in any of the Southern Provinces."[101] 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 distract by faction, destitute of books, and denied the use of the press?"[102] 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 the University of North Carolina in 1796 that he had access to ample books, through the library of the Dialectic Society.

Print continued to offer the prospect of destabilizing, as the most famous college literary address – Ralph Waldo Emerson's "American Scholar," delivered in 1837 to Harvard's Phi Beta Kappa Society – attests. Emerson's address called for students to break free from established

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[98] MASON, *supra* note 68, at 6.

[99] BRUCE, *supra* note 80, at 15.

[100] *See generally* Sandra Gustafson, *American Literature and the Public Sphere*, 20 AM. LIT. HIST. 465 (2008). *See also* MICHAEL KRAMNER, IMAGINING LANGUAGE IN AMERICA, FROM THE REVOLUTION TO THE CIVIL WAR (1992); THOMAS GUSTAFSON, REPRESENTATIVE WORDS: POLITICS, LITERATURE AND THE AMERICAN LANGUAGE, 1776-1865 (1993); CAROLYN EASTMAN, A NATION OF SPEECHIFIERS: MAKING AN AMERICAN PUBLIC AFTER THE REVOLUTION (2010).

[101] MURPHEY, *supra* note 86, at 7.

[102] *Id.* at 7.

modes of thinking. And in some ways that call echoed what was happening in the judiciary. We hear much about the abandonment of outmoded precedent in the south as well as north around this time.[103] Despite the radical potential of print, however, many in the pre-Civil War era employed print and orations to stabilize, rather than destabilize, society.[104]

1. *The Anti-Transcendental Addresses: The Attach on Idealism*

Physician James Dickson, an 1823 graduate of the University of North Carolina, spoke to the alumni in 1853. Dickson's remarkable 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. Dickson's wide-ranging address, which stretched from geology to philosophy, concluded with an appeal for studying the laws of morality. He paraphrased 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 worked as about how their watches worked.[105] 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 mediaeval 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 investigations, 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.[106]

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

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[103] *See, e.g.,* Hugh S. Legare, *Review of Kent's Commentaries*, 2 S. REV. 72 (Aug. 1828).

[104] BERTRAM WYATT-BROWN, HONOR AND VIOLENCE viii (1986) (noting the ways that southern oratory policed the boundaries of order and hierarchy–and helped establish those boundaries as well).

[105] Foster, *On a Man's Writing a Memoirs of Himself*, in GEORGE COMBE, THE CONSTITUTION OF MAN 1, 4 (Hartford, S. Andrus 1845).

[106] JAMES HENDERSON DICKSON, AN ADDRESS DELIVERED BEFORE THE ALUMNI ASSOCIATION OF THE UNIVERSITY OF NORTH CAROLINA, JUNE 1853 42 (Raleigh, Southern Weekly Post 1853). Dickson continued that "Thus 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 Bollingbroke." *See also James Henderson Dickson*, 2 DICTIONARY OF NORTH CAROLINA BIOGRAPHY __ (William S. Powell ed. 1986).

western Pennsylvania in 1853, entitled "The Conservative Elements of American Civilization." This was something of a homecoming for Moore, who was born in western Pennsylvania – though the south became his home. During the Civil War, he was one of the leading ministers in Richmond. Moore realized that Americans were transitioning from a "traditional past" and we had "not yet reached the absolute future."[107] Yet, he found that the sentiments of the democracy pushed us 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. "As in the metals, those that are most common are often most useful, so in intellectual things, topics with which we are most familiar, are often those which should most deeply occupy our thoughts."[108]

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

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[107] T.V. [THOMAS VERNER] MOORE, THE CONSERVATIVE ELEMENTS OF AMERICAN CIVILIZATION: AN ADDRESS BEFORE THE PHILO AND FRANKLIN SOCIETIES OF JEFFERSON COLLEGE ... THIRD OF AUGUST, 1853 6 (Pittsburg, J.T. Shryock 1853). *See also* T. V. MOORE, GOD OUR REFUGE AND STRENGTH IN THIS WAR. A DISCOURSE BEFORE THE CONGREGATIONS OF THE FIRST AND SECOND PRESBYTERIAN CHURCHES .... NOV. 15, 1861 (Richmond, W. Hargrave White 1861); T.V. MOORE, THE CHRISTIAN LAWYER, OR, THE CLAIMS OF CHRISTIANITY ON THE LEGAL PROFESSION: A DISCOURSE DELIVERED AT THE FUNERAL OF RICHARD W. FLOURNOY ... DECEMBER 1ST, 1857 (Richmond, McFarlane and Ferguson 1858). Jefferson College in western Pennsylvania was perhaps particularly receptive to Southern orators. It invited William T. Hamilton of Mobile to speak there in 1849. *See* WILLIAM T. HAMILTON, ON PERSONAL INFLUENCE AT JEFFERSON COLLEGE ... JULY 31, 1849 (Pittsburgh, Kennedys Publication Office 1849). Hamilton spoke at a number of other schools. *See* Hamilton, *supra* note 73; WILLIAM T. HAMILTON, ADDRESS ON THE IMPORTANCE OF KNOWLEDGE: DELIVERED BEFORE THE EROSOPHIC SOCIETY OF THE UNIVERSITY OF ALABAMA ... DECEMBER 11TH, 1841 (Tuscaloosa, Independent Monitor 1841); WILLIAM T. HAMILTON, USEFULNESS: AN ORATION DELIVERED BEFORE THE EUPHEMIAN AND PHILOMATHIAN SCIETIES OF ERSKINE COLLEGE ... SEPTEMBER 15, 1847 (Charleston, Burges, James and Paxton 1847) UNC Rare book room Southern Pamphlet 1612; WILLIAM T. HAMILTON, A PLEA FOR THE LIBERAL EDUCATION OF WOMAN: AN ADDRESS DELIVERED AT THE ANNUAL EXAMINATION OF THE FEMALE SEMINARY ... AT MARION, PERRY CO., ALA., JULY 17TH, 1845 (New York, J. F. Trow 1845). Hamilton's other orations were also frequently published. *See, e.g.,* WILLIAM T. HAMILTON, THE DUTIES OF MASTERS AND SLAVES RESPECTIVELY, OR, DOMESTIC SERVITUDE AS SANCTIONED BY THE BIBLE: A DISCOURSE DELIVERED IN THE GOVERNMENT STREET CHURCH, MOBILE, ALA. (Mobile, F. H. Brooks 1845).

[108] COLTON, *supra* note 94, at 3.

truths," not the new and untried.[109] Badger spoke of the need for a united influence of the educated classes to establish eloquence over appeals to the masses.[110] Badger spoke in the wake of Nat Turner's rebellion and in the wake of mob violence in New York, and growing abolitiont and nullification sentiments. That led him to speak about the importance of law and to worry about its future. "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." Badger urged students to "teach, both by your example and your precepts, a voluntary, steady, and universal submission to the laws."[111] 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: "when 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 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."[112]

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 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.[113]

In a world that supported and relied on heirarchy, it should come as no surprised that orators often invoked famous conservatives like Edmund Burke for their statements that we should follow authority. Calvin Wiley's 1845 address at Wake Forest was one of many that

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[109] BADGER, *supra* note 16, at 4.

[110] *Id.* at 8.

[111] *Id.* at 12.

[112] *Id.* at 13-14.

[113] *Id.* at 14.

invoked Burke, a favorite political philosopher of southerners.[114] Wiley, who graduated from the University of North Carolina in 1838 had studied law and then practiced briefly and ran a newspaper in Oxford, North Carolina. By 1845 he was back in Greensboro, where he grew up, writing novels and working on educational reform and promoting the cause of slavery. Similarly, University of Virginia law professor James P. Holcombe's 1853 address to the Virginia alumni, saw the University as a moral break-water against radical ideas, just as Edmund Burke had been against the ideas of the French Revolution.[115] A major function of the graduation addresses was to retrace the importance of moderation, to argue against fanaticism.

2. *The Ideal in North Carolina Literary Addresses*

Only one speaker, William B. Rodman, came anywhere close to presenting a radical statement. Rodman, an 1836 graduate of the University of North Carolina, 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.[116] Rodman's sentiments are characteristic of the vestiges of Enlightenment ideas still in circulation in the 1830s in southern colleges. He also celebrated the new organization of society:

> old 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

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[114] CALVIN WILEY, ADDRESS TO TWO LITERARY SOCIETIES WAKE FOREST COLLEGE, ON THE 12TH JUNE, 1845 ... 11 (Raleigh, Holden 1845). [CALVIN WILEY,] A SOBER VIEW OF THE SLAVERY QUESTION BY A CITIZEN OF THE SOUTH (np, circa 1847) at Duke; CALVIN H. WILEY, ROANOKE, OR, WHERE IS UTOPIA? (1849) (1866 ed.). *See also* Howard Braverman, *An Unusual Characterization by a Southern Ante-Bellum Writer*, 19 PHYLON Q. 171-179 (1958) (discussing trial of a fugitive slave in *Roanoke*).

[115] JAMES P. HOLCOMBE, AN ADDRESS DELIVERED BEFORE THE SOCIETY OF ALUMNI, OF THE UNIVERSITY OF VIRGINIA... JUNE 29, 1853 (Richmond, MacFarlane & Fergusson 1853). *See generally* DICKSON D. BRUCE, THE RHETORIC OF CONSERVATISM: THE VIRGINIA CONVENTION OF 1829-30 AND THE CONSERVATIVE TRADITION IN THE SOUTH esp. 166-69 (1982) (discussing appeal of Burke's political philosophy in Virginia in 1830s).

[116] WILLIAM B. RODMAN, AN ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES OF WAKE FOREST COLLEGE ON THE 9TH JUNE, 1846 19 (1846). James Henry Hammond, on the other hand, was skeptical of the relation between technological advances and progress and particularly critical of Bacon's contribution to advancement. *See* James Henry Hammond, *An Oration Delivered Before the Two Societies of the South Carolina College on the Fourth of December, 1849*, in SELECTIONS FROM THE LETTERS AND SPEECHES OF THE HON. JAMES H. HAMMOND 199 (New York, John F. Trow 1866).

> knowledge, and with the enthusiasm of unsuccessful discovery, is beginning a new chapter in the annals of the world. ... It can be likened to nothing but one of those catastrophes which geology deciphers for us from the stony pages of the earth, where rows exterminated in one stratum disappear, and in the next we behold successors of a new organization, with other vital forms, successors but not posterity.[117]

The speech may also be characteristic of the thoughts of a young person; he was only 29 years old at the time of the speech. Rodman combined many of the heroes of progressive thinkers of his era. In five pages, he invoked Jefferson, Adam Smith, Bentham, and Kant and spoke of the power of print, constitutional government, and the zeal for discovery.[118]

III. **History, Progress, Democracy, and Education**

We now turn from the mechanism by which speech brought the community together, to the ideas disseminated in those communities. For the graduation addresses reveal not just the perceived importance of speech, they reveal something about the ideas that were being propagated. One orator who believed that the speeches might reveal something about their speakers was North Carolina Governor William A. Graham, a former United States Senator and before that an 1824 graduate of UNC. Graham spoke in 1849. Soon he served as Secretary of the Navy from 1850 to 1852 and then was the Whig Nominee for vice-president in 1852. Graham revealed a key to the importance of these addresses: "Both speaking and writing ... are but arts, designed to portray the productions of the mind."[119]

There were a core group of ideas in these addresses. A primary one 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. These addresses illustrate the messy ways that ideas fits together. Historians are fond of powerful ideas and explanatory constructs. Recent literature on the antebellum era has invoked, variously, the organizing constructs of

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[117] RODMAN, *supra* note 116, at 4-5.

[118] *Id.* at 15-20. *See also* Letter from William Rodman to William Gaston (July 6, 1830), in William Gaston Papers, Wilson Library, University of North Carolina (discussing law books); 3 BIOGRAPHICAL HISTORY OF NORTH CAROLINA 346 (1906).

[119] WILLIAM A. GRAHAM, ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES OF THE UNIVERSITY OF NORTH CAROLINA, JUNE 6, 1849 at 11 (Raleigh, S. Gales 1849). Winfield Scott and Graham, the Whig nominees for president and vice-president, were defeated by Pierce and William R. King.

republicanism, democracy, liberalism, romanticism, empire, and the republic of letters.[120] 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 amplified one another. We see how messy the combinations were; 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 control. Other, perhaps predominantly the Democrats, though not exclusively them, celebrated the changes and looked forward to more. And together we see what they struggled to create – a world of honor, of economic, technological, and moral progress, and of constitutionalism and order. This was the intellectual world they inhabited and as we refine our analysis of these addresses, and put these ideas together with the books in the libraries. The addresses are themselves a form of literature, which help reveal the quality and the contents of the orators' minds. What is the meaning and purpose of education? What is the purpose of government? How can we sustain this American mission?

Many addresses also focused on the role of progress – especially on the mechanism by which progress took place, from the role of print to that of Christianity. Print was often the engine by which progress occurred–but there was progress everywhere. 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. Yet, many of the addresses appealed for a national character, a national literature, and a commitment to the Union. Law played a central and complimentary 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 revolve around common themes, they also illustrate some of the conflicting political ideology of the Whigs and the Democrats. Then, as the nation headed toward Civil War in the 1850s, the addresses turn even more overtly plaintive in favor of Union – and then, in one case, skeptical of it.

1. "Influence of the cultivated mind"[121]

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[120] *See* G. EDWARD WHITE, THE MARSHALL COURT AND CULTURAL CHANGE, 1815-1835 (1988) (on republicanism) and Stephen Siegel, *Book Review*, 67 TEXAS L. REV. 903 (1988) (reviewing White, *supra*); DAVID S. REYNOLDS WAKING GIANT: AMERICA IN THE AGE OF JACKSON (2008) (on democracy), HORWITZ, *supra* note 45 (on liberalism, though described more simply as commercial values); MICHAEL O'BRIEN, CONJECTURES OF ORDER: INTELLECTUAL LIFE AND THE AMERICAN SOUTH, 1810-1860 (2005) (romanticism); ROBERT FERGUSON, LAW AND LETTERS IN AMERICAN CULTURE (1984) (republic of letters); MARY S. BILDER, THE TRANSATLANTIC CONSTITUTION: COLONIAL LEGAL CULTURE AND THE EMPIRE (2004) (empire); DANIEL J. HULSEBOSCH, CONSTITUTING EMPIRE: NEW YORK AND THE TRANSFORMATION OF CONSTITUTIONALISM IN THE ATLANTIC WORLD, 1664-1830 (2005) (empire).

[121] DOBBIN, *supra* note 12, at 19.

In 1841, James Biddle Shepard boasted to the Wake Forest literary societies about the power of education to shape culture: "Give me the direction of the education of the State, and I will convert a Republic into a Monarchy, in the course of thirty years."[122] The addresses frequently dealt with the importance of the mind, which is as one might expect when an educational institution sough to justify itself. Archibald Alexander told students at Washington College in Lexington, Virginia in 1843 that "It is a truth as fully established by experience as any other, that the human mind is entirely susceptible of improvement by culture."[123] And it was at this improvement of individuals and also of collections of individuals that the addresses frequently aimed. Particularly in the early 1830s, the addresses focused on what individuals might do to improvement themselves. This was a theme of Gaston in 1832 and the next year of Badger's addresses.

Later, orators, like William Dobbin, focused on the "influence of the cultivated mind" over others. The addresses were, by expectation, about the duties of the educated–especially about their individual duties to continued studied and towards individual ethics; but they also serve as tools for expansion of political ideology – of republicanism, of broad public education, of deference to the educated.

2. Progress and the "Spirit of the Age"

Henry Laurens Pinckney's 1836 address was called "the spirit of the age." 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 house from 1816 to 1832 and founded the radical *Charleston Mercury* in 1819. He was a proponent of the South Carolina nullification movement and served in the United States Congress from 1833 to 1837. Pinckney was a frequent speaker; he gave an address at Franklin College (now the University of Georgia) in 1837 and many other addresses to more clearly political locations over the years.[124]

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[122] AN ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES OF WAKE FOREST COLLEGE, JUNE 17, 1841 (Raleigh, North Carolina Standard 1841).

[123] ARCHIBALD ALEXANDER, ADDRESS DELIVERED BEFORE THE ALUMNI ASSOCIATION OF WASHINGTON COLLEGE, VIRGINIA, ON COMMENCEMENT DAY, JUNE 19TH, 1843 (Lexington, R.H. Glass 1843).

[124] HENRY LAURENS PINCKNEY, "THE SPIRIT OF THE AGE": AN ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES OF THE UNIVERSITY OF NORTH CAROLINA (Raleigh, J. Gales & Son 1836); HENRY LAURENS PINCKNEY, AN ORATION ON THE PLEASURE AND ADVANTAGES OF KNOWLEDGE, AND THE NECESSITY OF MORAL ... CULTIVATION BEFORE THE LITERARY SOCIETIES OF FRANKLIN COLLEGE (Athens, Southern Whig 1837); AN ORATION ... BEFORE THE STATE RIGHTS AND FREE THOUGHT PARTY ... ON THE 4TH OF JULY, 1833 (Charleston, A.E. Miller 1833).

Pinckney's talk, which was read by the UNC president David L. Swain, because Pinckney was unable to make it to Chapel Hill, was politically focused, but 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."[125] 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 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." Technological progress conquered the land. Pinckney found an

> unprecedented extent to which the dominion of man over physical nature has been carried. This is truly the era of steamboats and railways, of canals and tunnels. ... 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 gold....[126]

Such was the enthusiasm of Americans in the 1830s for progress. Yet, Pinckney was seen as an apostate of the Nullification movement. Because in 1836, as South Carolinians were debating how to respond to the onslaught of anti-slavery literature appearing in the United States mails and to the anti-slavery petitions flooding Congress, Pinckney formulated the gag rule, which held in essence that Congress would not receive the petitions. 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 fall 1836 election by lawyer (and later United States attorney general) Hugh S. Legare. 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. He was more moderate from Calhoun, obviously. This was prepared as he was going through the agony of the gag rule controversy – and was losing his political power in South Carolina. This is where his speech may be particularly closely connected to the political world he inhabited. Pinckney emphasized the need for widespread public education and opposed nullification and mobocracy: "Cultivate an ardent love of liberty and a deep and abiding attachment to the Government under which we live," he told the students.[127] It was the appeal by

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[125] PINCKNEY, SPIRIT, *supra* note 124, at 6.

[126] *Id.* at 12. *See also id.* at 9-10, 11-12.

[127] *Id.* at 30. *See also* JEFFREY ROBERT YOUNG, DOMESTICATING SLAVERY: THE MASTER CLASS IN GEORGIA AND SOUTH CAROLINA, 1670-1837 (1999) (discussing Pinckney's

a man braving a storm of controversy over his political moderation, a call for moderation, like many in this period, whose message was ultimately rejected by the generation of people to whom he spoke.

In fact, many addresses at other schools had titles like, "Progress."[128] Other addresses focused on the virtues of progress as well and sometimes they explained in more detail than Pinckney the places of technological and moral and legal progress. Technological progress was great and that correlated with changes in ideas. One orator at Catawba College referred to the changes by analogy to a kaleidoscope. "Revolutions in society and government succeed each other as rapidly as the shifting scenes of the kaleidoscope."[129] They wondered at the age of progress – of the telegraph, the printing press, the electric lamp, steam engines, railroads, and canals.

Sometimes the descriptions of progress were grand, even extreme. John Hill, an 1816 graduate of UNC, had served one term as a Democrat in the United States House of Representatives, from 1839 to 1841. He spoke in grand and 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 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 examples 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.[130]

This extraordinary celebration of American progress appeared in the landscape art of the era as

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demise following his brokering of the gag rule, because he too readily accepted the power of Congress to legislate on slavery); FREEHLING, *supra* note 11, at 350-56.

[128] *See, e.g.,* JOEL PARKER, PROGRESS: AN ADDRESS BEFORE THE PHI BETA KAPPA SOCIETY OF DARTMOUTH COLLEGE JULY 29, 1846 (Hanover, Dartmouth Press 1846).

[129] JAMES G. RAMSAY, THE EDUCATION OF THE MASSES OF THE PEOPLE, AN ADDRESS DELIVERED AT ... CATAWBA COLLEGE, ON THE 16TH DAY OF NOVEMBER, 1854 (Salisbury, Miller & James 1854). *See also* TOOLE, *supra* note 73, at 20 ("one science succeeds another like the figures of the Kaleidoscope.").

[130] JOHN HILL, AN ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES, OF THE UNIVERSITY OF NORTH CAROLINA, IN GERARD HALL ... 15 (Raleigh, Raleigh Register 1843).

well.[131] 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 changes among some orators. No one was quite sure where progress is going and it threatened to go too far. T.V. Moore, a Presbyterian minister in Richmond, warned that the age had taken down religion and it socialism threatened property as well. In fact, the French revolution had gone too far, as Pinckney noted back in 1836.[132] 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.[133]

While the people of the antebellum era were "progressives all," in Peter Carmichael's apt phrasing,[134] there was division over the meaning of progress and how far progress ought to go, whether progress meant technological advances or something else. The swift technological progress and advances in scientific knowledge challenged evangelicals' belief in Revelation, though some college speakers tried to harmonize those bodies of thought.[135] Progress might be fearful. Whigs were afraid of the destruction of society in politics; Democrats were afraid of the power of property.[136]

Many Southerners interpreted the American Revolution as a non-radical event. For most orators, books offered a way of creating a "republic of letters." That republic – a creation of the literary imagination – lent aid to the creation of the United States. It helped bring us together in a

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[131] *See* Asher Brown Durand *Progress* (1853). *See also* RICHARD SWAINSON FISHER, THE PROGRESS OF THE UNITED STATES OF AMERICA, FROM THE EARLIEST PERIODS ... (New York, J. H. Colton 1854); Alfred L. Brophy, *Property and Progress: Antebellum Landscape Art and Property Law*, 40 MCGEORGE L. REV. 603 (2009).

[132] PINCKNEY, SPIRIT, supra note 124, at 13.

[133] A.O.P. NICHOLSON, ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCITIES OF THE UNIVERSITY OF NORTH CAROLINA, JUNE 1, 1853 8 (Raleigh, W.W. Holden, Standard Office 1853). *See also* JAMES PHILEMON HOLCOMBE, SKETCHES OF THE POLITICAL ISSUES AND CONTROVERSIES OF THE REVOLUTION: A DISCOURSE DELIVERED BEFORE THE VIRGINIA HISTORICAL SOCIETY ... JANUARY 17, 1856 (Richmond, W.H. Clemmitt 1856).

[134] CARMICHAEL, *supra* note 95, at 19-34.

[135] S. S. SATCHWELL, THE INFLUENCE OF MATERIAL AGENTS IN DEVELOPING MAN: AN ADDRESS DELIVERED BEFORE ... WAKE FOREST COLLEGE, ... JUNE, 1858 (Wilmington, C.E. & R. Burr 1858).

[136] *See, e.g.,* RUSH WELTER. THE MIND OF AMERICA, 1820-1860 (1975); CHARLES MCCURDY, THE ANTI-RENT ERA IN NEW YORK LAW AND POLITICS, 1839-1865 (2002).

common cause and helped create the stable and prosperous community that orators so celebrated and so sought.[137]

3. The Utilitarian Age

Very, 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 so 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 with those more committed to the classical curriculum, which was under siege at many schools as students sought a scientific curriculum in place of Latin and Greek.[138] Some of those disputes appeared in the early addresses. 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 "republic of letters" in public life and the public little cared about the Greek and Latin students had learned.[139] Others, like Gaston, more robustly 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 age's favoritism for utility.[140]

> 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 heirophant 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 ever man can read in his own tongue wherein he was born, the wonderful works of

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[137] One Ohio minister connected eloquence to the cause of liberty in the United States. He surveyed western history and drew a picture of increasing liberty, a steady course of upward progress. *See* E.L. MAGOON, ELOQUENCE AND LIBERTY: AN ORATION ... DELIVERED BEFORE THE LITERARY SOCIETIES OF WASHINGTON COLLEGE (Richmond, Ellyson 1846). This was a prelude to his 1856 book, *Westward Empire: Or, The Great Drama of Human Progress* (New York, Harper and Brothers 1856). A southern parallel to Magoon's book was written by Oxford College's W.A. Sasnett, *Progress: Considered with Particular Reference to the Methodist Episcopal Church, South* (Nashville, E. Stevenson & F. A. Owen 1856).

[138] *See, e.g.,* ISAAC WILLIAM STUART, ON THE CLASSICAL TONGUES AND THE ADVANTAGES OF THEIR STUDY: AN INAUGURAL DISCOURSE, ... DECEMBER 12, 1835 ... (Columbia, A. S. Johnston 1836).

[139] BRUCE, *supra* note 80, at 5.

[140] REYNOLDS, *supra* note 66, at 6.

nature, and of man, the servant and interpreter of nature.[141]

Similarly, James Bruce, one of the wealthiest men in the United States, returned to UNC in 1841, to speak to the alumni society. He worried that utility was preferred to beauty and that literature was neglected, even as science triumphed.[142] This was troublesome to Bruce because literature and art were important in sustaining the United States' democracy.

Yet, it was a utilitarian age that celebrated the discoveries and the ways we have conquered nature, through steam and the press.[143] William C. Richards' 1851 address at Erskine College, *The Claims of Science*, summarized the ways that utilitarian age had advanced, including Davy's lamp, the telegraph and the steam engine. The technological change had brought rationality. It was no longer true, as it had been "in remote ages," that "the popular mind was paralyzed by superstition."[144] Yet, amidst all this technological change, there were substantial challenges to order and control. Among Richards' concerns was the way German ideas of materialism–the core idea of which is that humans are controlled by their surroundings–was infecting American culture.[145] But it was not just technological change that worried orators. The political disputes of the era appeared – sometimes in oblique ways – in the addresses. Those disputes between Whigs and Democrats are where we turn next.

4. *Political Ideology in the Addresses*

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[141] *Id*. at 7.

[142] BRUCE, *supra* note 80, at 6.

[143] A. W. VENABLE, SPEECH ... BEFORE THE TWO SOCIETIES AT WAKE FOREST COLLEGE ... JUNE 8TH, 1853 at 20 (Raleigh, A.M. Gorman 1853) (noting that the present utilitarian age made use of previous discoveries); *id.* at 21 (employing metaphor of a child who crawls up steps that a giant hewed out of a mountain). *See also* A. W. VENABLE, ADDRESS ... BEFORE THE AMERICAN WHIG AND CLIOSOPHIC SOCIETIES OF THE COLLEGE OF NEW JERSEY, JUNE 24TH, 1851 at 11 (Princeton, J. T. Robinson 1851) (discussing printing and science).

[144] WILLIAM C. RICHARDS, THE CLAIMS OF SCIENCE: AN ADDRESS DELIVERED BEFORE THE EUPHEMIAN AND PHILOMATHIAN SOCIETIES OF ERSKINE COLLEGE, S.C. ... AUGUST 13TH, 1851 35 (Charleston, Walker and James 1851). *See also* JOSEPH HODGSON, SCIENCE, THE HANDMAID OF REPUBLICANISM: A VALEDICTORY ORATION DELIVERED BEFORE THE JEFFERSON SOCIETY ... UNIVERSITY OF VIRGINIA, JULY 28, 1858 (Richmond, Chas. A. Wynne 1858).

[145] *See also* HENRY W. MILLER, ADDRESS DELIVERED BEFORE THE PHILANTHROPIC AND DIALECTIC SOCIETIES OF THE UNIVERSITY OF NORTH CAROLINA, JUNE 3, 1857 17 (Raleigh, Standard 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").

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 like 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 the Revolutionary ideas. Those ideas contained a core of American identity, a sense of pride in independence.

> The 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.[146]

Though Senator Bryan had been a supporter of Jackson, when he spoke in 1830 he appealed to the Americans' united interests. He spoke of the Constitution and of the virtues of Chief Justice John Marshall (a former Federalist). Bryan observed that "we have, then a Constitution, formed by the wisest heads, and purest hearts; by those who had been tried long and severely; who know well the mischief, and have provided the remedy. It comes recommended to us by every thing 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.'"[147] Bryan was perhaps a relic of what we now refer to as the "era of good feelings," a man who appealed to common values of the Constitution and to patriotism. Other addresses recognized that these celebrations were a time to put away some of "the discord of public life."[148] So we should expect addresses to appeal to common themes.

Yet, the addresses were not uniform in their themes, for there was a range of political ideology of the speakers. There was disproportionate representation of Whigs among the speakers. As table 2 discloses, of the thirty-four speakers, reliable data on political affiliation is available for thirty-two. Of those, twenty-two were Whigs; nine were Democrats; one was a nullifier. There were also some differences between political affiliation based on the organization that invited the orators. Five of the six alumni addresses for which political identification is known were given by Whigs. This comes as no surprise because David L. Swain, who was the president of the University during almost all of the time under study here

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[146] JOHN HERITAGE BRYAN, AN ORATION, DELIVERED AT CHAPEL HILL ON WEDNESDAY, THE 23D JUNE, 1830 ... ACCORDING TO THE ANNUAL APPOINTMENT OF THE TWO LITERARY SOCIETIES BELONGING TO THE UNIVERSITY 10 (Newbern, Pasteur 1830).

[147] *Id*. at 14.

[148] MASON, *supra* note 68, at 3.

(December 1835 to 1868) was a Whig.[149] The Dialectic Addresses were evenly split between Whigs and Democrats. Seven of the 10 Philanthropic Addresses were given by Whigs. Perhaps this makes sense because the Philanthropic members were drawn disproportionately from the eastern, Whig parts of North Carolina. The Dialectic Society was drawn disproportionately from the western parts of North Carolina.[150]

Some of the addresses by Whigs seemed to emphasize more traditionally 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 that public, party virtues. Then, those public virtues would protect society; law would be the mechanism of protecting, preserving, and transmitting society. This was the means by which the educated would exercise their influence and the need for them to do so. Whig addresses often focused on a limited subset of heroes – the influence of the educated, the problems of demagoguery, the need for the rule of law, the importance of internal improvements, the threats from an excess of democracy, as happened in France. The Democratic addresses, on the other hand, sometimes emphasized the importance of universal education and the contributions of artisans.[151] Among the addresses given by Democratic

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[149] 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 chose their society.

[150] *See* MARC KRUMAN, PARTIES AND POLITICS IN NORTH CAROLINA, 1836-1865 94 (1983) (discussing party affiliations of eastern and western North Carolinians).

[151] HARRY WATSON, LIBERTY AND ORDER: THE POLITICS OF JACKSONIAN AMERICA (1990); LAWRENCE F. KOHL, THE POLITICS OF INDIVIDUALISM: PARTIES AND THE AMERICAN CHARACTER IN THE JACKSONIAN ERA 42-72 (1989). *See also* YEHOSHUA ARIELI, INDIVIDUALISM AND NATIONALISM IN AMERICAN IDENTITY (1964); JEFFREY P. SKLANSKY, THE SOUL'S ECONOMY: MARKET SOCIETY AND SELFHOOD IN AMERICAN THOUGHT, 1820-1920 (2002). Rush Welter's *The Mind of America, 1820-1860* (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's more precisely called cultural constitutional law, to emphasize the way that culture modifies constitutional law– has been discussed in many discrete studies. *See, e.g.,* DAVID E. KYVIG, THE AGE OF IMPEACHMENT: AMERICAN CONSTITUTIONAL CULTURE SINCE 1960 (2008). Gerry Leonard explains the centrality of the "party question" in detail in this period in Illinois. Leonard's analysis provides a framework for understanding the concern over partisanship throughout the country during the Jacksonian era. *See* GERALD LEONARD, THE INVENTION OF PARTY POLITICS: FEDERALISM, POPULAR SOVEREIGNTY, AND CONSTITUTIONAL DEVELOPMENT IN JACKSONIAN ILLINOIS (2002). There is, moreover, a stellar body of scholarship that theorizes how to deal with

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.[152]

a. *Whig Ideology in Addresses*

Already we have spoken extensively about Justice William Gaston's addresses at UNC and Princeton, which emphasized key Whig themes of individual duty, morality, and the virtues of order through law. Gaston's address was perhaps the most eloquent of all the UNC addresses in these themes, but others joined him. The next year, 1833, Senator George Badger returned to them. He spoke of order, of law, of individuals' duties, and of the influence of educated men. Badger worried that there were insufficient people "to control public opinion."[153] 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."[154] Badger's solution was equally Whig–there needed to be more influence of the educated. It would take, for instance, the "united influence of the educated classes" to produce a change in literary taste.[155]

> If public taste, much more public morals, require for their reformation, the exertions of the enlightened and virtuous, the delusions of that have gone abroad must be met and

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constitutional culture in American history. *See, e.g.,* Doni Gewirtzman, *Glory Days: Popular Constitutionalism, Nostalgia, and the True Nature of Constitutional Culture*, 93 GEO. L.J. 897 (2005); Robert C. Post, *Foreword: Fashioning the Legal Constitution: Culture, Courts, and Law*, 117 HARV. L. REV. 4 (2003); SANDRA F. VANBURKLEO, "BELONGING TO THE WORLD": WOMEN'S RIGHTS AND AMERICAN CONSTITUTIONAL CULTURE (2001). Other work applies the concept in specific locations. *See, e.g.,* Thomas P. Crocker, *Overcoming Necessity: Torture and the State of Constitutional Culture*, 61 SMU L. REV. 221 (2008); Neil S. Siegel, *Umpires at Bat: On Integration and Legitimation*, 24 CONST. COMMENT. 701 (2007). These themes are developed more fully *infra* beginning at note 208.

[152] This may be because many Whig themes were adopted by Democrats as well, particularly by Democratic lawyers. *See* William W. Fisher, *Ideology, Religion, and the Constitutional Protection of Private Property, 1760-1860*, 39 EMORY L. J. 65 (1990) (identifying key Whig property law concepts, which Democratic jurists also employed). 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 (2000).

[153] BADGER, *supra* note 16, at 6.

[154] *Id.* at 11.

[155] *Id.* at 8.

> dissipated; the press must be corrected; it mut 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.[156]

Reform required, in essence, "a voluntary, steady, and universal submission to the laws."[157] 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:

> No government can be permanent where subordination is unknown. In arbitrary government 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.

Education, Colton thought, should "be so framed as to secure in the best possible manner a habit of subordination and submission to authority."[158]

Order, of course, occupied an important place in the minds of Whig orators. Lawyers, Daniel Barringer said in 1840, "have ever stood in the front rank of the advocates of public liberty, they have always been the friends of public order."[159] Barringer illustrates the Whigs belief in the influence of educated men. "The means that produced 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."[160] Yet, at other times, orators singled out a few individuals for special credit – most frequently Bacon, but

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[156] *Id.* at 11-12.

[157] *Id.*

[158] COLTON, *supra* note 94, at 11. *See also* RICHARD YEADON, ADDRESS ON THE NECESSITY OF SUBORDINATION, IN OUR ACADEMIES AND COLLEGES ... BEFORE THE CALLIPEAN AND POLYTECHNIC SOCIETIES OF THE CITADEL ACADEMY ... NOVEMBER 23, 1853 (Charleston, Walker & James 1854).

[159] DANIEL MOREAU BARRINGER, AN ADDRESS, DELIVERED BEFORE THE ALUMNI AND GRADUATING CLASS OF THE UNIVERSITY OF N.C., WEDNESDAY, JUNE 3, 1840 15 (Raleigh, Raleigh Star 1840); Thomas R. Hunter, *The Institutionalization of Legal Education in North Carolina, 1790-1920*, in STEVEN SHEPARD, THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES: COMMENTARIES AND PRIMARY SOURCES 406-85 (2007) (listing lawyers Gaston trained).

[160] BARRINGER, *supra* note 159, at 14.

also Newton. They sometimes also drew a distinction about where progress occurred and how it occurred. George Howe, a professor at the Columbia, South Carolina, Theological Seminary, speaking at Davidson College in 1846, was most explicit in giving credit to a handful of inventors. He remarked, that "Civilized society could better spare from the earth the whole population of Africa, New Holland, and America (the European settlers excepted) than she could spare these few men [inventors] and their inventions."[161]

Along with order, there was talk of ties that bound the society together, such as James Bruce's discussion of the social chain.[162] 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 grew. Barringer's apt phrasing of this was: "Mind is brought into collision with mind."[163] 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 nature–looking to the feelings, the hopes, the wants, the substantial benefit of mankind ....[164]

Yet, 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 offered an extended attack on French Revolution and sentimental literature:

> Our era has been characterized by such singular events in the world's history,–events which have revolutionized governments, unsettled old opinions and upheaved society from its foundations, that it would be strange indeed, if its literature, which is the embodiment

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[161] GEORGE HOWE, AN ORATION DELIVERED BEFORE THE EUMENEAN AND PHILANTHROPIC SOCIETIES OF DAVIDSON COLLEGE ... AUGUST 13TH, 1846 9 (Columbia, I.C. Morgan 1846). Howe had been born in Massachusetts in 1802, educated at Middlebury College (graduated in 1822) and Andover Theological Seminary. *Eulogy on Professor George Howe, D.D., LL.D.,* in MEMORIAL VOLUME OF THE SEMI-CENTENNIAL OF THE THEOLOGICAL SEMINARY AT COLUMBIA, SOUTH CAROLINA 387-418 (1884).

[162] BRUCE, *supra* note 80, at 21 ("every useful profession is fast rising to the same level; each being an indispensable link, in the social chain which binds").

[163] BARRINGER, *supra* note 159, at 11. *See also id.* at 19 (proclaiming that "we're a reading people").

[164] *Id.* at 11.

> of the thought and feeling of the age, the mirror which reflects our ever changing phases of society, should not have felt the influence of the stirring events which were passing around us.

Dickson 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 the mind with mind, should partake of the vehemence and energy which characterized the physical conflicts of the period.[165]

In 1846, Bartholomew Moore, one of the leading lawyers of North Carolina, addressed the UNC literary societies on the problems with print as well. Two years after the speech, he was appointed by Whig Governor William Alexander Graham as attorney general of North Carolina in 1848, a post he held until 1851. Over his career, Moore, an 1830 graduate of UNC, argued about 220 cases in the North Carolina Supreme Court. Moore's arguments, which are sometimes preserved in the pages of the North Carolina Reports, invite reading for his concern for the equal application law. One excellent example of this is his argument in defense of the enslaved person, Will, against a criminal prosecution for killing his owner. Moore is the third orator at UNC who has some relation to the case. Moore argued it; Gaston decided; and Badger invoked it in the pages of the *Congressional Globe*. Moore asked for the North Carolina Supreme Court to limit the masters' power over slaves and thus 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 basis of the policy."[166] Perhaps Moore undertook this representation for professional reasons, but maybe it was influenced by his interest in the establishment of 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

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[165] DICKSON, *supra* note 106, at 27-28.

[166] State v. Negro Will, 18 N.C. (1 Dev. & Bat.) 121 (1834). We should interpret *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 60; Calvin Wiley, mss, "The Duties of Christian Masters" in Wiley Papers at Wilson Library, University of North Carolina. Moore's advocacy invites a further inquiry 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. At least that seems to have been Senator Badger's usage of Gaston's *Will* opinion. *See supra* notes 34 – 37.

law, like the technology of railroads and steam, was to help control and improve upon nature.[167]

Like Gaston and Badger, Moore was concerned with the imposition of control and stability through law. Moore's attitudes towards 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 of conduct of life." Even more concisely, he stated, "Thought controls life."[168] 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.[169]

Moore's address illustrates other Whig themes as well. Moore spoke of the need for reason and the need to balance passion with reason. This was phrased as a critique of the people who were believed to be governed by passion (read 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

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[167] College orators understood and celebrated this role of law and lawyers. *See, e.g.,* DANIEL LORD, ON THE EXTRA-PROFESSIONAL INFLUENCE OF LAWYERS AND MINISTERS: AN ORATION DELIVERED AT NEW HAVEN, BEFORE THE PHI BETA KAPPA SOCIETY OF YALE COLLEGE . . . July 30, 1851 (New York, S.S. Chatterton 1851); JOHN BELTON O'NEALL, AN ADDRESS DELIVERED BEFORE THE EUMENEAN SOCIETY, OF DAVIDSON COLLEGE ... AUGUST 8TH, 1850 (Charlotte, "Hornet's Nest" Job Office 1850). On law as technology, see Brophy, *supra* note 131, at 652-53, esp. 653 n.153; Stephen Davis & Alfred L. Brophy, *"The Most Esteemed Act of My Life": Family, Property, Will, and Trust in the Antebellum South, forthcoming* 61 Ala. L. Rev. __ (2011).

[168] MOORE, *supra* note 66, at 7, 9.

> Water, fire, air, steam and electricity, all are yoked in the harness of art, and are creating, fetching, carrying, concentrating and distributing, as taste and want may direct, the treasures of mountain and plain, of the rivers and seas, of the poles and equator. Graduated to every degree of energy, the same power upheaves a ton of iron, and directs the delicate mesh of the mazy lace; hammers the huge mass for a paixhan gun, and finished the point of a needle. Even the loud fierce spark of the clouds is taught to drop its rage, to fawn on its conductor, and whisper along the wires. Time overcome, and leagues shortened to furlongs, and the press free to discuss the principles of science, and prompt to announce every discovery and invention, the knowledge of all men becomes the knowledge of each one.

Id. at 5-6.

[169] MOORE, *supra* note 66, at 9.

trope of depicted the head as reason and the heart as sentiment. Moore's reference to duty recalls the historical literature on honor in the old South.[170]

Moore's references to 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."[171]

Other addresses are relatively useless for drawing conclusions about political ideology. For instance, William Avery, a well-known Whig lawyer from western North Carolina, presented a bland survey of issues of concern to North Carolinians – like the need for a history of North Carolina. A few months after the address, he attacked and killed a lawyer who had offended him in court in Asheville. This was particularly embarrassing because Whigs were campaigning against extra-legal violence. But Avery's career continued. Avery's address, on the need for the development of North Carolina was on a characteristically Whig theme, though it was also rather uninspiring as a treatment of that topic.[172]

b. *Democratic Ideology in Addresses*

Of the ten speakers who are reliably identified as Democrats, several were nationally prominent politicians. The first address to the joint literary societies by a Democrat came in 1834 by James Iredell, the son of the famous justice of the North Carolina Supreme Court. That brief address contains little of interest here. Three years later, in 1837, United States Senator Robert Strange delivered an idiosyncratic address on the imagination, revealed Strange as a follower of Scottish moral philosophy on sentiment and perception. There are some amusing lines in Strange's address, such as how people came to use animal hides as clothing. "In a state of nature, man finds his frame shivering amid the snows of winter, while he bides, a houseless wanderer, the peltings of the pitiless storm, and sees those dearer to him than his own flesh shrinking from the blast and uttering piteous lamentations as the cold increases in intensity. Some beast passes by

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[170] GROSS, *supra* note 45, at 47-71.

[171] WILLIAM B. SHEPARD, AN ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES OF THE UNIVERSITY OF NORTH-CAROLINA, at 24 (Raleigh, Raleigh Register 1838). Shepard migrated across party lines; at one point supporting the Bank of the United States and at another time running against George Badger for the United States Senate.

[172] W.W. AVERY, ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES OF THE UNIVERSITY OF NORTH CAROLINA, JUNE 4, 1851 (Raleigh, William W. Holden 1851). Similarly, George Davis' 1855 address was on North Carolina's history. GEORGE DAVIS, ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES ... JUNE 6, 1855 (Raleigh, Standard Office 1855).

him wearing the thick and shaggy covering with which nature has provided it, and Imagination whispers, 'it was not for itself alone that this was given.'"[173] Whether Strange intended that vignette to amuse is, well, unknown.

The next address by a nationally prominent Democrat came in 1839 from Bedford Brown, who represented North Carolina in United States Senate from 1829 to 1840. Brown's address has several hallmarks of the Democratic ideology. He celebrated wide dispersion of knowledge and spoke of such Democratic terms as "popular government" and "universal intelligence."[174] His address celebrated the ways that the printing press put power in hands of the people.[175] 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 the potential for harm as well. Democrats, however, emphasized the positives of the printing press. John Hill, a Democratic politician who had represented North Carolina in the House of Representatives, speaking in 1847, singled out the printing press as a prime cause of the progress:

> The fetters of ignorance were broken. Books were multiplied and became the inmates of the humble cottage as well as 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, caroling its songs of joy and thankfulness.[176]

Hill took an optimistic approach to learning and he emphasized there needed to be universal education, so that everyone could participate in self-government. "Since the days of Bacon, the inestimable trust is fixed, that all things are subject to reason and discussion. The people are the keepers of our political treasure, yes, the solvers of the great problem of the fitness of man for self-government. They must not lack cultivation."[177]

Democratic politicians, understandably, focused on the wide diffusion of knowledge as a cause of 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 at the improvements that were possible and at the improvements that had taken place over the past several centuries.[178]

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[173] STRANGE, *supra* note 90, at 14.

[174] BROWN, *supra* note 75, at 9.

[175] *Id.* at 19.

[176] HILL, *supra* note 130, at 7.

[177] *Id*. at 15.

[178] While some, like John McCardell's *The Idea of a Southern Nation* (1978), have emphasized the growth of southern sectionalism (and also nationalism) in the thirty years before war, the larger southern population was emphasizing the south's role in the nation, as Robert E.

While Whigs also celebrated books and spoke of the printing press, Brown's language displayed a subtle preference for the common people, as opposed to the well-educated. Where Gaston and Badger spoke of the duties of the 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.[179]

Brown also spoke of the "ascendancy of the mind."[180] Unlike Whigs who feared the press and spoke of the need for guiding public opinion, Brown 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. Even under the governments of Europe, most remarkable for their absolute and despotic authority over their subjects, learning through the medium of the press, is asserting its prerogative, and a more enlightened public opinion is already beginning to be felt. 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.[181]

Brown spoke of "this great reform which gives to the present age so just a pre-eminence of 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."[182]

Another address by a Democrat on the national political scene was the 1847 address by John Y. Mason, who was then Secretary of the Navy. After graduating from UNC in 1816, Mason became a lawyer and served in the United States House of Representatives from 1831 to

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Bonner has recently demonstrated in *Mastering America*, *supra* note 93.

[179] BROWN, *supra* note 75, at 29-30.

[180] *Id.* at 20.

[181] *Id.* at 19-20.

[182] *Id.* at 7.

1837, then as a federal judge in Virginia. He was Secretary of the Navy from 1844 to 1845, then attorney general, then Secretary of the Navy again from 1846 to 1849. That graduation was particularly important because President James K. Polk attended. Mason was Polk's Secretary of the Navy; he had graduated from the University of North Carolina in 1816, two years before Polk.

As with Senator Brown, Mason praised "enlightened public opinion," and the "diffusion of knowledge," as well as the printing press. "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."[183] It was widely diffused learning that served "as nurse of equality."

Mason invoked that most democratic of phrases, *salus Reipublicae supreme lex* – the good of the Republic is the supreme law – a phrase often heard in regulation of property and especially in the South during the Civil War, as property rights were sacrificed to the good of the Confederacy. The idea was that private property rights would 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. This conflict was perhaps best illustrated in the dispute over whether the *Charles River Bridge*, which crossed from Boston to Cambridge, had an exclusive charter and thus could enjoin the neighboring Warren Bridge or not. Democratic Chief Justice Roger Taney's decision narrowly construing the charter in 1837 led to Whig predictions of the collapse of the security of property.[184] While *Charles River Bridge* was perhaps the most famous case of its kind, similar cases arose in the state courts and sometimes the Supreme Court down to the Civil War.[185]

Mason celebrated, moreover, the multiple ways that the common person participated in democracy, as a voter, juror, and holder of elected office:

> He wields the power of 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 decisions; 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 summons responsibilities which belong only to the highest station 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

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[183] MASON, *supra* note 68, at 11, 13.

[184] Charles River Bridge v. Warren Bridge, 11 Pet. (13 U.S.) 420 (1837); 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).

[185] *See, e.g.,* Slack v. Maysville & Lexington R.R., 52 Ky. 1, 92 (1852) (interpreting the power of Kentucky to grant charters relieving railroads of tax burdens); Young v. Harrison, 6 Ga. at 146-47 (1849) (construing charter for ferry narrowly, to permit a competing bridge).

> exercise of his power, the American citizen derives fresh excitement to his intellect, and increased dignities to his character.[186]

A Whig might recoil at such participation and seek the exercise of influence by educated men on their peers. Mason celebrated the 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."[187]

5. **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 was one of the ones who employed the romantic imagery the most and the most effectively:

> Poetic imagination is overtasked 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 it, there were also fears of the future, the

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[186] MASON, *supra* note 68, at 15.

[187] *Id.* Just as some of the addresses by Whigs are not illuminating, Democrat William Eaton's 1848 address tells us relatively little about politics or his mind. WILLIAM EATON, ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES ... MAY 31, 1848 (Fayetteville, Edward J. Hale 1848). His 1859 address at Davidson is no more illuminating. WILLIAM EATON, ADDRESS DELIVERED BEFORE THE EUMENEAN AND PHILANTHROPIC SOCIETIES OF DAVIDSON COLLEGE, N.C., JULY 13TH, 1859 (1859).

[188] DOBBIN, *supra* note 12, at 21.

[189] *Id.* at 10 (alluding to Sir Walter Scott's novels).

foreboding of disunion and of party politics. William Biddle Shepard's 1838 speech worried about divisions and fanaticism. Shepard was a 1813 graduate of UNC and had served as Whig in the United States Congress from 1829-1837. He had also been kicked out of the University of North Carolina for giving a political speech during the War of 1812 that criticized a UNC professor who was a British subject. So Shepard graduated from the University of Pennsylvania. William Shepard–not to be 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 the sages who have gone before them.[190]

> 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 as inferior city, known only by the solemn ruins of its ancient splendor.[191]

This fear of the late 1830s was characteristic of Whig concerns for the decline of virtue and lawless during the later stages of the age of Jackson.[192] We see this 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.[193] Such portrayals fit well with Matt Ransom's 1856 address, which saw the "danger – a dark and gloomy danger – as 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."[194] Of course, by 1856 when Ransom

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[190] SHEPARD, *supra* note 171, at 9.

[191] SHEPARD, *supra* note 171, at 8.

[192] MANLY, *supra* note 83, at 8 (discussing decline of Rome).

[193] *See* ANGELA MILLER, THE EMPIRE OF THE EYE: LANDSCAPE REPRESENTATION AND AMERICAN CULTURAL POLITICS, 1825-1875 27-40 (1993); SAMUEL EELLS, ORATION DELIVERED BEFORE THE ALPHA DELTA PHI SOCIETY AT NEW HAVEN, CONN., AUG. 15, 1839: ON THE LAW AND MEANS OF SOCIAL ADVANCEMENT (Cincinnati, Kendall and Henry 1839) (depicting cycles of society).

[194] MATT W. RANSOM, ADDRESS DELIVERED BEFORE THE DIALECTIC AND PHILANTHROPIC SOCIETIES OF THE UNIVERSITY OF NORTH CAROLINA, JUNE 4, 1856 16 (Raleigh,

spoke there was good cause for fear that the ship of state would founder.

That image of cycle of nations was common, but 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. But Woodbury predicted that the United States could break free of that cycle. Woodbury saw progress in individuals, as well as society. Like North Carolina orators, Woodbury celebrated modern society where "liberty and law, the arts and the securities of organized government, reign." 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:

> Viewing the advancement of man as a species, and not of one individual or nation over another, it is highly probable that his condition, in many respects, has gradually grown better, since creation. It is no refutation of this that some empires have perished, their mausoleums even been crumbled to dust, and the ivy again and again clasped their ruins; for they were but parts of a great whole: and if, as in the firmament, some stars and planets should disappear, others break upon the eye, and, with the rest, move forward and sometimes with increased power and more than renovated beauty. In no mode has the course usual with particular nations, been more finely shadowed forth than in Cole's imaginative landscapes; starting first in the rudeness of nature; then maturing to high refinement and grandeur, till, amid the ravages of luxury, time and war, sinking into utter desolation.[195]

Woodbury though there would be no desolation for the United States. Onward and upward, forever, was his picture – much like that of many in New England at the time.

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.[196]

Carolina Cultivator 1856).

[195] Levi Woodbury, *On Progress, An Oration Before the Phi Beta Kappa Society of Dartmouth College, 1844,* in 3 WRITINGS OF LEVI WOODBURY 75, 77 (Boston, Little, Brown and Company 1852).

[196] BRUCE, *supra* note 80, at 4. Bruce was referring to the world as seen by people who 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 gladsome 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

And there were references to 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 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 valleys, 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.[197]

At times orators spoke of the sublime beauty of nature. William Carey Richards, who was born in England in 1818 and then came to the United States and worked as a speaker and educator in the south, before becoming a Baptist minister in 1852, spoke at Erskine College in South Carolina in 1851 on "The Claims of Science." 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 told how that scientific process 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.[198]

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neither all good nor all bad.

Id. at 4-5.

[197] AARON V. BROWN, ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES OF THE UNIVERSITY OF NORTH CAROLINA, MAY 31ST, 1854 11 (Raleigh, William O. Doub 1854).

[198] RICHARDS, *supra* note 144, at 17-18. Richards' brother, Thomas Addison Richards, was a landscape artist whose work often emphasized the beauty of nature. Thomas's works included *The American Artist* (Baltimore, 1838), *Georgia Illustrated in a Series of Views, Embracing Natural Scenery and Public Edifices* (Penfield, Ga., W. & W.C. Richards 1842), *Summer Stories of the South* (Philadelphia, Lippincott, Grambo, & Co. 1853), and an article "The Landscape of the South," 6 *Harpers* 721 (May 1853).

Thomas' capstone work, *American Scenery* (New York, George A. Leavitt 1854), had thirty-two plates. Of those, the majority focused on human structures in nature – like the Georgia Medical School, a steamboat on the Mississippi, a steamboat on the Ohio, and a bridge crossing

The addresses frequently referred to the ways that settlers had tamed the wilderness. "Instead of the cheerless solitude of the wilderness, the voice of civilized, enlightened, social man animates his fellow. The forest falls before the axe of industry–the cabin of the white man is built–and the face of this beautiful and fruitful country is everywhere covered with farms, smiling with the harvest, and nodding with the rich produce of the growing year."[199]

Other romantic images included railroads, reminiscent of George Inness' interpretation of the *Lackawanna Valley*. Inness' landscape had cut trees in the foreground and a locomotive and roundhouse in the background. This disclosed a certain skepticism of the railroad, which some orators shared. James Bruce mentioned railroads, but he was somewhat skeptical of them. William Richards' Erskine address celebrated steam engines of all types:

> The triumphs of the Steam Engine are, indeed, among the sublimest results of Natural Science. 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 Firth 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 labor whatsoever. It weaves our stocking and gloves, it makes our pins and needles, it digs our wells, saws our timber, hews our granite, refines our sugar, prepares our pens, cooks our food, washes our clothes, and, in short, performs for us, at once, the most imposing and the most trivial services.[200]

None of the UNC addresses spent as much time on railroads as Richards, but in 1847 John Mason's celebrated the growth of railroads: "Scarcely more than twenty years ago, it 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 roads."[201]

Sometimes the imagery drew upon biblical references. Thomas F. Davis, the Episcopal

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the Susquehanna. *Id.* at 71, 157, 195, 127. Even those where a natural feature was the setting Thomas frequently depicted the footprint of humans on the land. While William Richards was celebrating the progress over nature, his brother was painting it – and increasingly. His 1857 illustrations to a travel guide contained many illustrations of human structures, such as the Bunker Hill Monument, Union Square in New York City, Albany New York's state hall, the Erie railway's Cascade bridge, and the industrial portion of Pittsburgh, Pennsylvania. *See* APPLETON'S ILLUSTRATED HAND-BOOK OF AMERICAN TRAVEL 69, 110, 135, 140, 191 (New York, Appleton 1857).

[199] ROLLIN C. MALLARY, ORATION ADDRESSED TO AN ASSEMBLY OF CITIZENS AT WHITEHALL, NEW YORK 7 (Rutland, Vt., Fay, Davison & Burt 1817).

[200] RICHARDS, *supra* note 144, at 30.

[201] MASON, *supra* note 68, at 19.

Bishop for South Carolina, delivered a fairly short address at the invitation of the Dialectic Society in 1845. Davis, who graduated from UNC in 1822, then studied law and practiced for six years before becoming an Episcopal minister in 1831. He spoke about returning to dust – and invoked Ecclesiastes. That same section of Ecclesiastes that Davis alluded to appeared on the tombstone of William Holt Bowen, a member of the Dialectic Society, who passed away in 1843 and was buried in the Chapel Hill cemetery. His tombstone read "Or ever the silver cord be loosed, or the golden bowl be broken, or the pitcher be broken at the fountain, or the wheel broken at the cistern. Then shall the dust return to the earth as it was, and the spirit shall return unto God who gave it." An image of a silver cord, a golden bowl, a broken pitcher, and a fountain were carved into the tombstone!

The romantic era was one of paintings of feudalism, – such as Thomas Cole's 1838 series *Past* and *Present* (that presaged Thomas Carlyle's 1843 book *The Past and the Present*).[202] Yet, feudalism found no celebration among the Chapel Hill orators. Quite the contrary, they emphasized the ways that the United States had improved over past societies. Secretary of the Navy John Mason 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 fur 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." Our monuments were found in the Constitution and our landmarks were businesses. "The genius of our Republic goes forth in the dawn of morning, to meet and welcome the approach of the day."[203]

In the United States, we looked forward; our monuments were the successful republican institutions, not blocks of granite and marble or feudal ruins, thought Senator Bedford Brown in 1839:

> 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 domination; to republican institutions, successfully established; to the triumph of the arts of peace through 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.[204]

Brown's mission of appeals to romantic imagery and of sentiments of the heart as well, was one of stirring sentiments for Union, in creating a culture of constitutionalism. It is to that sense of a

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[202] *See* Brophy, *supra* note 131, at 640 (reprinting Cole's *Past* and *Present*); THOMAS CARLYLE, PAST AND PRESENT (New York, William H. Colyer 1843). In Tuscaloosa, Alabama Benjamin Porter, a Whig politician, delivered an address in 1845 responding to Carlyle. *See* BENJAMIN F. PORTER, THE PAST AND THE PRESENT: A DISCOURSE DELIVERED BEFORE THE EROSOPHIC SOCIETY OF THE UNIVERSITY OF ALABAMA (Tuscaloosa, M. D. J. Slade 1845).

[203] MASON, *supra* note 68, at 14.

[204] BROWN, *supra* note 75, at 34.

republic of law and of constitution that we now turn.

B. Law, Constitutionalism, and the Republic of Liberty

Now we get to the hard part: what do we make of these addresses. We could read them for many purposes: as evidence of the quality of oratory and as a form of literature itself.[205] Some recent scholars have lavished attention on oratory and how it was used to mobilize people to action. We might use it to gauge the quality of the minds and the interests of those delivering the addresses or the interests of those hearing the addresses. Ideas about education, moral philosophy, and politics appear throughout these addresses.[206] Some have read addresses, particularly student addresses, for the students' self-identity.[207]

My purpose here is to focus on what these addresses say about constitutionalism and law. These have been rarely used for such purposes, yet they invite such a use because the orators were so frequently legally trained politicians, lawyers, or people with judicial experience. As we move beyond an understanding of doctrine in the Supreme Court, towards a broader understanding of law, the addresses will be of great utility. We can see how ideas in circulation were directed to mold public sentiment. We can use them to measure the meaning of Union, civil and religious liberty, democracy, equality, and order, and ask, in turn, how those conceptions shaped Americans' and Southerners' attitudes. How did we create a Union? How did we attempt to sustain it through appeals to history, sentiment, and utility? Then, tragically, how did we lose it? The addresses cannot tell a complete story, but they serve to gauge ideas of constitutionalism and law, even as they helped to create those values. They put law into a context of history and of contemporary society, so that we can see how people at the time viewed the crises around the breakdown of order and respect for Union. Within a fairly short compass we see the entire world fitted together. We see not just a single opinion or a few opinions on an issue of federalism, for instance, but an entire world on display, so that we can see the cultural correlates of constitutional doctrine. And we see how the Constitution is a document that stretches out into culture, how it represents a whole world view, and how what the Supreme Court does sits on an expansive set of ideas.

Larry D. Kramer's 2004 book *The People Themselves: Popular Constitutionalism and Judicial Review* has revitalized an interest in popular conceptions of constitutionalism. 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 United States Constitution, that grew from it, and that support a whole host of political and social attitudes. Cultural

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[205] FERGUSON, *supra* note 120.

[206] ELIZABETH FOX GENOVESE AND EUGENE GENOVESE, THE MIND OF THE MASTER CLASS (2005); O'BRIEN, *supra* note 120.

[207] ERIKA LINDEMANN, TRUE AND CANDID COMPOSITION: THE LIVES AND WRITINGS OF ANTEBELLUM STUDENTS AT THE UNIVERSITY OF NORTH CAROLINA, available at http://docsouth.unc.edu/true/index.html

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, to the common well of cultural ideas, about nationalism and utility.[208] In fact, previous constitutional historians have identified the ways that ideas in the public are reflected in constitutional thought.[209] In fact, there is an important and growing body of scholarship that looks to such ideas in constitutional culture, particularly in the years from Revolution to Civil War. Much of the literature addresses judicial review.[210] But 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 a political question.[211] 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

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[208] Larry D. Kramer, *"The Interest of the Man": James Madison, Popular Constitutionalism, and the Theory of Deliberative Democracy*, 41 VALPO. L. REV. 697 (2006).

[209] *See* GORDON S. WOOD, THE CREATION OF THE AMERICAN REPUBLIC (1968); JOHANN N. NEEM, CREATING A NATION OF JOINERS: DEMOCRACY AND CIVIL SOCIETY IN EARLY NATIONAL MASSACHUSETTS. David Waldstreicher's *In the Midst of Perpetual Fetes* (1997) relies on a different, though enormous, body of data, to map how popular expressions correlate with constitutional ideas, like "the nation." These fetes–like fourth of July meetings–may be more gauges than creators of nationality. Jason Mazzone, looking beyond individual celebrations, 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 (2005). One suspects that nationality sprang from the very real interests, as well as 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* (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 us gauge those disagreements.

[210] Gary D. Rowe, *Constitutionalism in the Streets*, 78 S. CAL. L. REV. 401 (2005).

[211] Saul Cornell & Gerry Leonard, *The Consolidation of the Early Federal System, 1791-1812*, in 1 CAMBRIDGE HISTORY OF LAW IN AMERICA 518 (2008) (finding multiple constitutional traditions in early America); Richard R. John, *Hiland Hall's "Report on Incendiary Publications": A Forgotten Nineteenth Century Defense of the Constitutional Guarantee of the Freedom of the Press*, 41 AM. J. LEGAL HIST. 94 (1997); Robert E. Mensel, *Originalism and Ancestor Worship in the Post-Heroic Era: The Dred Scott Opinions*, 17 WIDENER L.J. 29 (2007).

appropriate responses to political issues ranging from social unrest to free speech.[212] 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.[213] The constitutional culture might be expressed by people with views as different as southern representatives in Congress, a resident of Concord, Massachusetts, 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 we need to tie those ideas together with action that they take, as they are deciding on what action to take.

As it was depicted in the addresses, American society fulfilled the promise of Montesquieu's *Spirit of the Laws*, 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 critique those who failed to abide that culture. They expanded constitutional thought off the pages of the written constitution and off the pages of the United States Supreme Court 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 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 – our ancestors created a constitutional culture, fought the Revolution for it, and the current generation had to exert a similar effort to maintain it.

1. To See Law and Constitutionalism in Context

The addresses give us a sense of how ideas fit together, of how the common law and the Constitution are a part of a much larger tapestry that structure the moral, legal, and political decisions. The New York Whig lawyer Daniel Barnard brought this together well in his 1845

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[212] *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 (2005); David T. Konig, *Influence and Emulation in the Constitutional Republic of Letters*, 22 L. & HIST. REV. 179 (2004).

[213] *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 366-67 (1987).

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.[214]

Barnard provided a succinct explanation of law in the context of other social constraints of anyone in antebellum America. Many others expressed similar sentiments of the malleable sources of law and of how law drew support from and contributed support to its surrounding culture.

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 the society together. South Carolina lawyer James L. Petigru told the Phi Kappa and Demostenian Societies at the University of Georgia in 1846 that law is "the very bond of society." He detailed the way law was connected to society and helped 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.[215]

Petigru 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 spotted, linked legal codes to public sentiment. James Bruce of Halifax, Virginia and one of the wealthiest people in America at the time, observed in a lecture in 1852, a decade after his UNC

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[214] DANIEL BARNARD, A PLEA FOR SOCIAL AND POPULAR REPOSE, BEING AN ADDRESS DELIVERED BEFORE THE PHILOMATHEAN AND EUCLEIN SOCIETIES OF THE UNIVERSITY OF THE CITY OF NEW YORK (New York, Tribune Job Printing 1845).

[215] J.L. PETTIGRU [SIC], AN ORATION DELIVERED BEFORE THE PHI KAPPA AND DEMOSTHENIAN SOCIETIES OF THE UNIVERSITY OF GEORGIA, AUGUST 6, 1846 12 (Athens, Southern Whig Office 1846). Petigru's 1841 speech at Olgethorpe was focused on the virtues of education. *See* JAMES LOUIS PETIGRU, ORATION DELIVERED BEFORE THE THALIAN AND PHI DELTA SOCIETIES OF OGLETHORPE UNIVERSITY ... 10TH OF NOVEMBER, 1841 (Milledgeville, Grieve & Orme 1841). *See also* WILLIAM HENRY PEASE & JANE H. PEASE, JAMES LOUIS PETIGRU: SOUTHERN CONSERVATIVE, SOUTHERN DISSENTER (2002).

address, that "public sentiment rules the world."[216] These changes came about, also, because the Constitution rested upon culture.

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 the 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 religions and the pursuits of business.

That context for law included the surrounding technological and economic change. Mason, thus, understood that the market culture benefitted from the surrounding technological progress and he believed that benevolent sentiments were increasing at the same time as well.[217]

A.O. P. Nicholson, an 1827 graduate of the University of North Carolina who was admitted to the bar in 1831 and edited the Western Mercury from 1832 to 1835, made similar statements. Nicholson was active as a Democratic politician in Tennessee, where he served in the Tennessee legislature from 1833 to 1839. In 1840, he was elected to fill out a vacant seat in the United States Senate until 1842, then he served in the state senate from 1843 to 1845. Nicholson also served as president of the Bank of Tennessee and as a delegate to the Nashville Convention in 1850, a sign of his proslavery and pro-southern sentiments. He served again in the United States Senate from 1859 to 1861, then left because of the Civil War. Nicholson was, thus, a well-positioned observer of law and politics. He observed that public sentiment, moral philosophy, and law all worked together.

> Public 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 prescribes the rules of social government, and modifies and reverses them at pleasure. It

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[216] Bruce, *Popular Knowledge*, *supra* note 89, at 295. Bruce was an officer of the Colonization Society of Virginia in 1858, along with John H. Cocke, which tells us that Bruce favored termination of slavery, even though he had opposed a gradual abolition plan in the Virginia legislature in 1832 and supported slavery in his 1853 Danville Lyceum Address. 34 AFRICAN REPOSITORY AND COLONIAL JOURNAL 120 (April 1858); Bruce, *Popular Knowledge*, *supra* note 89.

[217] MASON, *supra* note 68, at 20-21. *See also* WILLIAM L. DAYTON, ADDRESS DELIVERED BEFORE THE AMERICAN WHIG AND CLIOSOPHIC SOCIETIES OF THE COLLEGE OF NEW JERSEY, SEPTEMBER 20, 1843 21-23 (Princeton, John T. Robinson 1843) (discussing law as science and the connections of law to other disciplines, as well as the separate, internal logic of law).

> dictates the course of legislative bodies, gives them force and effect to their deliberations and actions, or paralyzes and nullifies them at will. It overthrows monarchies and drives tyrants into exile, or sweeps away republics and erects upon their ruins unmitigated despotisms.[218]

Public sentiment–though it might be channeled by lawyers–was also capricious, for judges could not resist public opinion. Nicholson's speech addressed the influence and responsibility of lawyers. He spoke of the "power of the mind over the mind."[219] Nicholson feared for the changes. The "very corner-stone" of Christianity was being undermined "by the working of a disguised materialism." And it was worse even 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 unloose 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.[220]

Such observations illustrate why the orators were so concerned with the surrounding culture. They saw – correctly, obviously – 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.[221]

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

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[218] NICHOLSON, *supra* note 133, at 21.

[219] *Id.* at 2 and 17 (referring to codes of law as including statutes and public sentiment).

[220] *Id.* at 26.

[221] *Public Education*, *supra* note 89, 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.").

> 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 to-day 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.[222]

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.[223] Just as the United States was, in Perry Miller's apt phrasing, *Nature's Nation*, so law here was the product of nature. But then Americans began, also, to see the need for law. Americans faced with wild and untamed nature turned to technology, including law, to control that wilderness. In fact, it was in the 1820s that Americans turned to a neo-logism, "technology."[224]

2. "The silken cord that unites" --The Constitution and the Case for Union

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[222] R.M.T. HUNTER, AN ADDRESS DELIVERED BEFORE THE SOCIETY OF ALUMNI OF THE UNIVERSITY OF VIRGINIA ... 4TH OF JULY, 1839 17 (Charlottesville, Thompkins & Noel 1839).

[223] *See* MOORE, *supra* note 107, (attributing American independence to Christianity and rejection of irrational precedent, which was facilitated by distance from feudal law); J.P. HOOK, THE BIBLE AND REPUBLICANISM: AN ADDRESS DELIVERED BEFORE THE LITERARY SOCIETIES OF OGLETHORPE UNIVERSITY 11 (Macon, Georgia Telegraph 1859) (linking Christianity to republicanism and noting that "the great doctrine that mankind, while repudiating the notion of mere human monarchy, which is but another name for tyranny, was at the same time to exercise in common the legitimate functions of sovereignty in perfect and harmonious subordination, to the will of God"). Hook went on to explain republicanism as a secular version of the Bible:

> The Bible and the republican ideal 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.

[224] *See, e.g.,* JACOB BIGELOW, ELEMENTS OF TECHNOLOGY: TAKEN CHIEFLY FROM A COURSE OF LECTURES DELIVERED AT CAMBRIDGE (Boston, 2nd ed., Hilliard, Gray, Little, and Wilkins 1831) (1829). Jacob Bigelow claimed that he popularized the term, though it was in use before his lectures. *See* Jacob Bigelow, *On the Limits of Education*, in JACOB BIGELOW, MODERN INQUIRIES 1, 1 (Boston, Little, Brown, and Co. 1867).

There was one place in particular where the public sentiment needed to be conditioned: it was in the 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. The preservation of the federal was the theme of many. Though Bryan, Gaston, and Badger all alluded to threats to disunion, at first there was relatively little space devoted to such threats. Instead, orators spent more time on threats to the republic from corruption, mobocracy; and threats to the rule of law.

It was Henry Laurens 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 Constitution in the 1830s. Pinckney recalled the great advances in constitutionalism and liberty made in the United States.

> The ancients had nothing that deserved the name. Grecian liberty was always wild and tumultuous, and the Romans knew no medium between licentiousness and servitude. These great principles originated in the era of the Reformation, when Luther and Zuingle, and their bold coadjutors, broke the chain of ecclesiastical oppression, and proclaimed freedom of conscience to a captive world. From that period they have gone on regularly, "conquering and to conquer." They shone triumphantly in England, in the memorable Revolution of 1688, and they gave the impulse to our Revolutionary war, and laid the foundation of the American Constitution. And the triumph of Liberty here, awakened the enthusiasm of the gallant French. But, unfortunately, they knew but little of regulated freedom, and their revolution, therefore, instead of ending, like ours, in the success of the principles in which it had its origin, terminated in the establishment of a military despotism. Since then, however, the Catholics of Ireland have achieved their emancipation, and English Dissenters have been admitted to the full enjoyment of their birthright. 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 he finally abolished.[225]

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 connection between the priest and the politician – we alone have no aristocracy but what God and man's own merit have made – have no armed soldiery to imbue their hands in the blood of their brethren – no sinecures – no

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[225] PINCKNEY, SPIRIT, *supra* note 124, at 12.

> bloated wealth – no squalid poverty.[226]

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. This was part of the Whig struggle against those who adopted a strict interpretation of the Constitution and thus limited spending for such projects as internal improvements.

> 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.[227]

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 that unites into one, the states of our Confederacy."[228]

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. 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."[229] Those sentiments of Union would sustain the Union, though there were continuing threats to it.

> We 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 fo justice and respect for the rights of all, which animated our fathers, we will not fail to secure the perpetuity of our institutions.[230]

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[226] BRUCE, *supra* note 80, at 12.

[227] *Id.* at 17-18.

[228] MOORE, *supra* note 66, at 22.

[229] MASON, *supra* note 68, at 6.

[230] *Id.* at 23-24.

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.[231] Such sentiments would prevent the Constitution from becoming a rope of sand.[232] It is, perhaps, unsurprising that a Democrat believed that party conflict could be overcome.

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 illustrates how the republic of letters created a sense of common nation in order to support the Constitution.[233] The American nation was vast; much had been accomplished, but much might also be lost:

> Our 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 scared influences thus exerted, as if in the awful presence of departed worthies, whose indignant spirits would arise in clouds from every neighboring fill and valley to rebuke our profligacy; moving among sense where we first saws 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 "is locked fast in a sort of family settlement – grasped in a mortmain forever."[234]

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[231] *Id.* at 24.

[232] MASON, *supra* note 68, at 23.

[233] I have elsewhere referred to a subset of this genre of talk of the "republic of letters" so common in the pre-Civil War era as the "republic of legal letters." Alfred L. Brophy, *The Law Book in Colonial America*, 51 BUFF. L. REV. 1119, 1141 (2003).

[234] WILEY, *supra* note 114, at 12-13 (quoting Edmund Burke's *Reflections on the Revolution in France*). *Id*. at 20 ("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.").

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.[235]

The meaning of terms like equality was uncertain; Whigs had a different design for it from Democrats. And 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, for we see 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 on politics. The ethos of equality swept across American society and 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.

> 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 a cone, but a 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. Every ambitious individual struggles to obtain the applause of the Society to which he is attached. The author writes for the applause of the literary circle, the painter courts the approbation and patronage of the lovers of art, and the orator addresses himself to the tastes and passions of the holders of political power; while in a country like ours, where all classes are blended in one, ambition woos the smiles of the majority.[236]

> The equalization of American society was a common theme–for some a cause for lament

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[235] BARRINGER, *supra* note 159, at 12-13.

[236] BRUCE, *supra* note 80, at 12.

and for others a cause of celebration. James Biddle Shepard, speaking in 1844, linked the press to the decline of aristocracy. He agreed with Tocqueville's statement that "the spell of royalty has been broken," but Shepard took issue with Tocqueville's follow-up that "the majesty of the laws" had declined. For he did not concur with Tocqueville's statement that "The people have learned to despise all authority."[237] Shepard credited the printing press with breaking the grip of aristocracy. But he thought that law was triumphant here. "[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 an 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."[238] 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 "knowing no authority but that which is constitutional, and which acts upon themselves through regularly constituted organs, but still holding to the fundamental principle, which leads off in the career of revolution whenever existing forms become too intolerable to be borne, they exhibit to the eyes of mankind the most sublime spectacle of mingled power and obedience."[239]

IV. Heading into Sectional Crisis

In the 1850s, the addresses turned more of their attention towards 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 important of Union appeared in Nicholson's speech where he urged – as has 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 1837 to 1845, then Governor of Tennessee, from 1846 to 1850. Brown delivered a mildly Democratic address, which contained the usual celebration of technology. Brown believed that the telegraph held the country together and he spoke of some reforms, such as the reform of legal pleadings and the direct election of Senators and judges.[240]

Brown also invoked romantic imagery to appeal to a sense of national pride. Governor

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[237] SHEPARD, *supra* note 74, at 13-14 (quoting 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 9 (Henry Reeve, trans., New York, 4th ed. 1843)).

[238] *Id.* at 14.

[239] *Id.* at 14.

[240] BROWN, *supra* note 197, at 27 ("It is the age of progress – of improvement in every science, in every art, in every profession."). *Id.* at 11-12 (urging direct election of President, Senators, and judges).

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.[241]

Aaron Brown's oration drew upon romantic-era rhetoric, as well as imagery. He appealed to the sentiments of freedom that motivated the 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, but ...

> Heaven 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.[242]

At a few places (ok, maybe more than a few places), Brown took some 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 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 scholars hastened to the tended 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 defense. 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....[243]

This was an appeal to imagery to save the Union. There was also, though, appeal to Democratic

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[241] BROWN, *supra* note 197, at 6.

[242] *Id.* at 9.

[243] *Id.* at 10.

principles. The direct election of politicians was one of Brown's these. Another was equality, particularly equality of the states, a concept advanced by southerners like John C. Calhoun to protect southern states' interests.[244]

Matt W. Ransom's 1856 speech was the last attempt to preach the value of Union. Ransom was twenty-nine the year of the address, young by the standards of UNC orators. He was an 1849 graduate of UNC and a Whig lawyer. He had already served a term as attorney general North Carolina from 1852 to 1855. He later served as a member of state house, 1858 to 1861 and then served as a Peace Commissioner to Montgomery. "Tell me, if you can," he asked, "what the Union is worth."[245] Ransom believed that it was the constitution that kept the United States together.[246] 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 he 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?[247]

> As state after State marched into the Confederacy and added link to link in the chain of the Union, until its broad circle embraced them all, the work of our political and national creation was finished – the light of the Constitution blazed and beamed over the whole heavens – the arch of the Union spanned the circumference of the Republic, and the pillars which upheld the starry firmament of Liberty, were supported and adorned by the bright bow, which reflected the glories of the past and promised peace to the future.[248]

For Ransom, the Union was bound together by a series of factors, beginning with such factors as

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[244] *Id.* at 15.

[245] RANSOM, *supra* note 194, at 15. Ransom invoked many of the key phrases of the era in predicting University's story: "It will be read in the diffused knowledge, the enlightened sentiments, the moral habits, the just tastes, the conservative principles, the free institutions, the patriotic spirit and the Christian character of the commonwealth." *Id.* at 7.

[246] *Id.* at 9.

[247] RANSOM, *supra* note 194, at 14.

[248] *Id.* at 9.

the telegraph and mail. Other more diffuse but perhaps even more powerful interests running from commercial self-interest to sympathies based in 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 patriotism."[249] Ransom believed that the danger to the union lay in fanaticism. On this he was, obviously, joined by many others.[250] 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." He saw a particular virtue in patriotism among scholars, for "what an influence is United America destined to exert on the mind of the human race." From there he concluded that "the Republic of liberty is indeed the land of intelligence."[251]

"The republic of liberty." Ransom captured in that phrase the hope for a county based on constitutionalism and created by law and by sentiment, running alongside the republic of letters that so many other orators had spoken about. Ransom's concluding paragraph appealed to a set of values 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.[252]

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 an 1834 graduate of the University of North Carolina. He had studied law under George Badger and was a Whig for much of his career, though he was a supporter of the North Carolina American (Know-Nothing) Party at this point–though he was moving towards support of the Democratic Party in 1860. Miller had been an ardent critic of abolitionists. In an 1845 address to the North Carolina Military and Scientific

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[249] *Id.* at 20.

[250] *Id.* at 19.

[251] *Id.* at 21.

[252] *Id*. at 23.

Academy in Raleigh Miller spoke of the self-styled philanthropists.[253]

Miller's was the most radical of the speeches given at UNC before the war. Even though he was pro-Union, 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, 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 arise and work out their disastrous consequences, *under the sanction of the Constitution!*" Miller than invoked John C. Calhoun's praise of the Constitution. This was the only reference to Calhoun, the South Carolina expositor of extreme states' rights under the Constitution, in any of the UNC addresses.[254]

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 a vigilance on the part of Southerners to protect their rights under the Constitution.[255] The Northern press was the vehicle for sectional discord. "Judging from the tone and spirit of many of these productions–the avidity 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." The discrimination against the south appeared even in school books produced in the North.[256] Miller feared sectional conflict and that the Constitution's protections of sections would end.[257] He predicted glumly 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 laws of force, is substituted in its stead, and made the main-spring, the motive power of social and political action,

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[253] Miller gave a number of public speeches, including *Speech of Henry W. Miller, Esq., Delivered at Oxford, North Carolina, November 5, 1850, in Reply to Hon. A.W. Venable on the Compromise of 1850* (n.p, 1850); Henry W. Miller, *The False or Pretended Philanthropy of the Age*, in NORTH-CAROLINA READER: CONTAINING A HISTORY AND DESCRIPTION OF NORTH CAROLINA, SELECTIONS IN PROSE AND VERSE 249 (C.H. Wiley ed., New York, A.S. Barnes 1855), and an1839 graduation speech at Wake Forest, which apparently was never published. *See* CHARLES LEE COON, NORTH CAROLINA SCHOOLS AND ACADEMIES, 1790-1840: A DOCUMENTARY HISTORY 718 (1915).

[254] MILLER, *supra* note 145, at 12-13.

[255] MILLER, *supra* note 145, at 14.

[256] *Id.* at 18.

[257] *Id.* at 14-15.

the fate of our national constitution is sealed, and the downfall of the republic is inevitable!"[258]

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 been converted into so many batteries of fiery assault!"[259] He grimly concluded, if disunion comes, the South would need the fortitude of General Washington:

> We cannot—we Dare not surrender one jot or tittle of our Federal 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 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.[260]

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. Thus, concluded his struggle for independence.[261]

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. Duncan MacRae, a Democrat with Whig sympathies, delivered an address that also remains unpublished on "The Cultivated Intellect, The Equal of Genius." 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 Pool, an 1847 graduate of UNC, a Whig, then "Opposition Party" candidate for

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[258] *Id.* at 23.

[259] *Id.* at 25.

[260] *Id.* at 33-34.

[261] Or so says Kemp Plummer Battle in 1 *History of the University of North Carolina,* 674 (1907). There is some contradictory evidence that Miller lived another year, but the story is too good to ignore here. *Death of Henry Watkins Miller*, STANDARD OF RALEIGH (Sept. 24, 1862).

governor in 1860, delivered a studied non-political address.[262] Pool's moderation is revealed further by his post-war career. He served as a Republican in the United States Senate.

The anti-climactic nature of UNC's 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 obviously correct assessment.[263]

V. The North Carolina Addresses in Context

Compared with addresses from schools in other states – like Alabama, Virginia, and especially South Carolina – the University of North Carolina addresses are remarkably moderate.[264] That may be because the University of North Carolina frequently selected speakers from the ranks of UNC alumni, which limited their options. It is also likely 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*, offered a proslavery critique of the leading antislavery public intellectuals Francis Wayland, Theodore Parker, and Theodore Weld.[265]

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, and sometimes in great amplitude. At the University of Virginia, for instance, James Holcomb's 1853 address to alumni,

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[262] JOHN POOL, ADDRESS: DELIVERED BEFORE THE TWO LITERARY SOCIETIES OF THE UNIVERSITY OF NORTH CAROLINA, JUNE 6TH, 1860 (n.p. c.1860).

[263] T.G. KEEN, THE TIMES WE LIVE IN: AN ADDRESS DELIVERED BEFORE THE PHILOMATHESIAN AND EUZELIAN SOCIETIES OF WAKE FOREST COLLEGE ... JUNE 13, 1860 (Raleigh, Strother & Marcom 1860) (at Duke). 2 GEORGE WASHINGTON PASCAL, HISTORY OF WAKE FOREST 559-97 (1943) (describing Wake Forest literary addresses before the Civil War).

[264] Many of the University of Georgia addresses were also moderate. *See*, *e.g.*, JOSEPH R. INGERSOLL, AN ADDRESS DELIVERED BEFORE THE DEMOSTHENIAN AND PHI KAPPA SOCIETIES OF THE UNIVERSTY OF GEORGIA ... (Athens, Christy & Lampkin 1847); WILLIAM LAW, ADDRESS DELIVERED BEFORE THE DEMOSTHENIAN AND PHI-KAPPA SOCIETIES OF FRANKLIN COLLEGE ... AUGUST 4TH, 1842 (Augusta, Chronicle and Sentinel Print 1842); STILES, *supra* note 73. Several Georgia addresses departed from that moderation in the middle and later 1850s. *See, e.g.,* JOHN ARCHIBALD CAMPBELL, ADDRESS DELIVERED BEFORE THE ALUMNI SOCIETY OF THE UNIVERSITY OF GEORGIA (Athens, J.S. Peterson 1853); THOMAS READ ROOTES COBB, EDUCATIONAL WANTS OF GEORGIA: AN ADDRESS DELIVERED BEFORE THE SOCIETY OF THE ALUMNI OF FRANKLIN COLLEGE ... 4TH AUGUST, 1857 (Athens, Reynolds & Bro. 1857).

[265] ELISHA MITCHELL, THE OTHER LEAF OF THE BOOK OF NATURE AND THE WORD OF GOD (1848).

justified the University in part because of the support it gave to slavery.[266] Holcombe was an activist scholar, who gave a public address in 1860 urging secession.[267] 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.[268]

By the early 1850s the themes at other southern schools was changing. T.G. Keen, then a minister in Mobile, told Howard College graduates in 1850 that Southern colleges as the place 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."[269] William Stiles, who had previously given addresses more focused on individual

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[266] HOLCOMBE, *supra* note 115. *See also* JOHN RANDOLPH TUCKER, AN ADDRESS DELIVERED BEFORE THE SOCIETY OF ALUMNI OF THE UNIVERSITY OF VIRGINIA, ... ON THE 28TH JUNE, 1851 (Richmond, H. K. Ellyson, 1851).

[267] JAMES P. HOLCOMBE, THE ELECTION OF A BLACK REPUBLICAN PRESIDENT AN OVERT ACT OF AGGRESSION ON THE RIGHT OF PROPERTY IN SLAVES ... A SPEECH BEFORE THE PEOPLE OF ALBEMARLE, ON THE 2D DAY OF JANUARY, 1860 (1860) (rare book room). Earlier, Holcombe had addressed the Virginia agricultural society on the consistency of slavery with natural law. JAMES PHILEMON HOLCOMBE, AN ADDRESS DELIVERED BEFORE THE SEVENTH ANNUAL MEETING OF THE VIRGINIA STATE AGRICULTURAL SOCIETY, NOVEMBER 4TH, 1858 (1858). In fact, agricultural societies were common sites for proslavery addresses. A.W. VENABLE, ADDRESS ... DELIVERED BEFORE THE UNION AGRICULTURAL SOCIETY ... OCT. 25, 1854 (Petersburg, The Southern Farmer 1854); THOMAS H. GHOLSON, VALEDICTORY ADDRESS ... DELIVERED BEFORE THE UNION AGRICULTURAL SOCIETY ... OCTOBER 27, 1854 (Office of the Southern Farmer 1854).

[268] *See, e.g.*, J. L. MATHEWSON, AN ADDRESS BEFORE THE BELLES LETTRES SOCIETY OF OAKLAND COLLEGE ... MARCH 30, 1841 (Natchez, Daily Free Trader Office 1841); GEORGE ROCKINGHAM GILMER, THE LITERARY PROGRESS OF GEORGIA: AN ADDRESS DELIVERED IN THE COLLEGE CHAPEL AT ATHENS ... AUGUST 7TH, 1851 ... (Athens, Wm. N. White & Brother 1851); Alexander Hamilton Stephens, *Address before the Few and Phi Gamma Societies of Emory College*, in ALEXANDER H. STEPHENS IN PUBLIC AND PRIVATE ... 364-75 (Henry Cleveland ed. 1866) (graduation address of July 21, 1852, emphasizing individual achievement, highlighting the accomplishments of Daniel Webster and John C. Calhoun); JASPER ADAMS, CHARACTERISTICS OF THE PRESENT CENTURY. A BACCALAUREATE ADDRESS TO THE GRADUATES OF THE COLLEGE OF CHARLESTON ... 31ST OCTOBER 1834 (Charleston, Burgess & Honour 1835).

[269] T. G. KEEN, AN ADDRESS DELIVERED BEFORE THE FRANKLIN & ADELPHI SOCIETIES OF HOWARD COLLEGE ... 14 (Tuskaloosa, Slade 1850).

development, emphasized the need for southern values at Cherokee Baptist College in 1858.[270] 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.[271]

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. Yeadon, who during the abolitionist literature crisis in the mid-1830s wrote a pamphlet advocating the prosecution of abolitionists for seditious libel, 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 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.[272]

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, in 1851 to deliver a proslavery speech. 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 and studied at Hampton Sydney and later Princeton, where he graduated in 1819.[273] Following practice of law in Prince Edward and Mecklenberg Counties in Virginia, he moved to North Carolina in 1829. Venable's speech had been preceded the year before at Princeton by a similarly proslavery one by David Kaufman, who represented Texas in the United

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[270] WILLIAM H. STILES, SOUTHERN EDUCATION FOR SOUTHERN YOUTH. AN ADDRESS BEFORE THE ALPHA PI DELTA SOCIETY OF THE CHEROKEE BAPTIST COLLEGE (Savannah, George N. Nichols 1858).

[271] *See, e.g.*., JOHN ENGLAND, ADDRESS DELIVERED BEFORE THE DEMOSTHENIAN AND PHI KAPPA SOCIETIES OF FRANKLIN COLLEGE, ATHENS, GA., ON THURSDAY, AUGUST 5TH, 1840 9 (Athens, Whig Office 1840).

[272] YEADON, *supra* note 158, at 12; RICHARD YEADON, THE AMENABILITY OF NORTHERN INCENDIARIES AS WELL TO SOUTHERN AS TO NORTHERN LAW... (Charleston, T.A. Hayden 1835). *See also* RICHARD YEADON, AN ADDRESS: DELIVERED BEFORE THE EUPHEMIAN & PHILOMATHEAN LITERARY SOCIETIES OF ERSKINE COLLEGE ... AUGUST 8TH, 1855 ... (Columbia, Telescope Office 1855).

[273] VENABLE, *supra* note 42.

States House of Representatives.[274] There had been a shift at Princeton in the early 1850s from the 1830s 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. 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.[275]

Some of the restrained and relatively non-political nature, or at least veiled political nature, was undoubtedly intentional. The administration imposed constraints on graduating students' speeches. They were warned by the president in 1856 against including any references to slavery or party politics.[276] The outside speakers likely also felt some constraints on their topics, at least until Miller appeared. One way of partialing out the effect that the campus setting had on moderating addresses appears when one compares the UNC addresses with other addresses by the same orators. Three UNC orators bear particular attention here. The first is Henry Laurens 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. One might compare Pinckney's UNC address with his Fourth of July Oration in 1833 in Charleston. Pinckney's lengthy July 4 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 Civil Disobedience about how to classify who is a law-breaker. Both Thoreau and Pinckney have a rigid and objective (one is tempted to say natural law) 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.[277]

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

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[274] DAVID S. KAUFMAN, ADDRESS ... BEFORE THE AMERICAN WHIG AND CLIOSOPHIC SOCIETIES OF THE COLLEGE OF NEW JERSEY, JUNE 25TH, 1850 (Princeton, J.T. Robinson1850).

[275] *See* JAMES MCDOWELL, ADDRESS DELIVERED BEFORE THE ALUMNI ASSOCIATION OF THE COLLEGE OF NEW JERSEY, SEPTEMBER 26, 1838 (Princeton, J. Bogart 1838); *Gov. McDowell's Speech*, 15 S. LIT. MESSENGER 255 (1849) (discussing Feb. 23, 1849 speech in Congress on admission of New Mexico and California, *Cong. Globe Appendix*, 30th Cong., 2nd Sess., 212-18).

[276] 1 WILLIAM KEMP BATTLE, HISTORY OF THE UNIVERSITY OF NORTH CAROLINA: FROM ITS BEGINNING TO THE DEATH OF PRESIDENT SWAIN, 1789-1868 667 (1887).

[277] HENRY L. PINCKNEY, AN ORATION DELIVERED IN THE INDEPENDENT CONGREGATIONAL CHURCH, CHARLESTON, BEFORE THE STATE RIGHTS AND FREE TRADE PARTY ... 4TH OF JULY, 1833 41-42 (Charleston, A.E. Miller 1833).

discussion, as he alluded when he said his North Carolina address was not the place for constitutional disquisitions.[278] 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 Slavery of the United States and the Slavery Question at Odd Fellows' Hall," in 1850, are more engaged in political and legal arguments than is his UNC address. But they all orbit on the theme of Union. Brown's proslavery attitudes did not through as clearly in his 1854 UNC address as in many of his other speeches.[279] Henry W. Miller, by comparison, seems to have been relatively unconstrained by his venue at UNC. He gave radically proslavery speeches and his speech at UNC contemplated disunion.

VI. Conclusions

Speech, then, was used to promote education of different kinds, top down and bottom up. The thirty-four graduation addresses given at UNC before the Civil War and then published were about duties of the individuals to themselves and also the 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.

This article raises several key methodological problems. The first is the straight-forward one of recovering the orators' ideas. And then, moving outward in level of abstraction, how those ideas related to the orators' culture? These are problems in the taxonomy and genealogy of ideas. This is hard enough, but maybe through close reads we can create a picture of what orators cared about and how they understood their world. The next problem is to move outward from the pages of the addresses to action. On that question, the move from the public's ideas of the Constitution and the Union, to action is difficult. The addresses give an impressionist painting of what legislators and lawyers cared about, the challenges they faced, and how they might overcome it. 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.

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. And in the process, the Constitution, books, the telegraph, and the technological improvements all worked together to create a Union. Constitutional interpreters, people engaged in politics, the judiciary, and 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

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[278] BROWN, *supra* note 197, at 11.

[279] *See* AARON VENABLE BROWN, SPEECHES, CONGRESSIONAL AND POLITICAL ... (Nashville, J.L. Marling 1854). *Id.* at 321, 331; *id.* at 292.

Latin could be understood only by a remote few. It was an organic system, with the Constitution as a center-piece.

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." The address had a post-war realism, which understood that life was now ordered differently. Vance acknowledged that changes – such as the freedom for 3.5 million people – 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."[280]

[280] ZEBULON VANCE, THE DUTIES OF DEFEAT: AN ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES ... JUNE 7TH, 1866 (Raleigh, William B. Smith & Company 1866).

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

Orator	dob	age at speech	data of address	college	occupation	political party	type of speech
Murphey, Archibald	1777	50	1827	UNC 1799	lawyer		Di
Hooper, William	1792	37	1829	UNC 1808	educator; minister	Whig?	Di?
Bryan, John Heritage	1798	32	1830	UNC 1815	lawyer; US Representative	Whig	Phi?
Green, William Mercer	1798	33	1831	UNC 1818	minister; Episcopal	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 06	lawyer; former US Senate	Democrat	Phi?
Pinckney, Henry	1794	42	1836	SCC	US House	Nullifier	Phi
Strange, Robert	1796	41	1837	H-S 1815	lawyer; US Senator	Democrat?	Di?
Shepard, William	1799	39	1838	UNC/Upenn	lawyer; former US House	Whig	Phi
Manley, Charles	1795	43	1838	UNC 1814	lawyer	Whig	alum/Di
Brown, Bedford	1795	44	1839	UNC	US Senator	Democrat	Di
McQueen, Hugh	1798	43	1839	UNC 1819	lawyer; AG in 1840	Whig	alum
Barringer, Daniel	1806	34	1840	UNC 1826	lawyer	Whig	alum
Bruce, James Coles	1806	35	1841	UNC 1825	VA legislator; merchant	Whig	alum
Hill, John	1797	46	1843	UNC 1814	former US House 1839-41; clerk of court	Democrat	Di
Shepard, James Biddle	1815	29	1844	UNC 1834	lawyer; NC Senate, 1842-44	Democrat	Phi
Davis, Thomas F.	1804	41	1845	UNC 1822	minister; Episcopal	Whig?	Di
Moore, B.F.	1801	45	1846	UNC 1830	lawyer; later AG	Whig	Phi
Mason, John	1799	48	1847	UNC 1814	lawyer; Sec Navy	Democrat	alum

Eaton, William	**1810**	**38**	**1848**	**UNC 1825**	**lawyer; state senate**	**Democrat**	**Phi**
Graham, William	**1804**	**45**	**1849**	**UNC 1824**	**lawyer; Governor NC**	**Whig**	**Di**
Dobbin, James	**1814**	**36**	**1850**	**UNC 1832**	**lawyer; former US House; Speaker NC House in 1850**	**Democrat**	**Phi**
Avery, William	**1816**	**35**	**1851**	**UNC 1837**	**lawyer**	**Whig**	**Di**
Nicholson, AOP	**1808**	**45**	**1853**	**UNC 1827**	**lawyer; former US Senate**	**Democrat**	**Di**
Dickson, James H	**1802**	**51**	**1853**	**UNC 1823**	**physician**	**Whig**	**alum**
Brown, Aaron	**1795**	**59**	**1854**	**UNC 1814**	**lawyer; former gov TN**	**Democrat**	**Phi**
Davis, George	**1820**	**35**	**1855**	**UNC 1838**	**lawyer**	**Whig**	**Di**
Palmer, BM	**1818**	**37**	**1855**	**UGA 1838**	**minister; Presbyterian**	**Whig?**	**bacc.**
Ransom, Matt	**1826**	**30**	**1856**	**UNC 1847**	**lawyer; State AG**	**Whig**	**Phi**
Miller, Henry W.	**1814**	**43**	**1857**	**UNC 1834**	**lawyer**	**Whig; Know-Noth**	**Di**
Hopper, William	**1792**	**67**	**1859**	**UNC 1809**	**educator**	**Whig?**	**alum**
Pool, John	**1826**	**34**	**1860**	**UNC 1847**	**lawyer; state legislature**	**Whig; opposition**	**Phi?**
Hughes, John	**1797**	**63**	**1860**	**Mt. St. Mary's**	**archbishop NY**		**bacc.**

Table 2
Speakers' Political Affiliation
By Sponsoring Society, By Decades*

Sponsoring	*Speaker's Political Affiliation*			
Society	Democrats	Whigs	Unknown	Totals
1820s/1830s				
Alumni		2		2
Dialectic	2	3	1	6
Philanthropic	1	3	1	5
Subtotal	3	8	2	13
1840s				
Alumni	1	2		3
Dialectic	2	2		4
Philanthropic	0	2		2
Subtotal	3	6		9
1850s				
Alumni/Admin.		3	1	4
Dialectic	1	3		4
Philanthropic	2	2		4
Subtotal	3	8	1	12
Totals	9	22	3	34

* The political affiliation is based 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, I have identified them as Whig based on their writings, which tended in each instance towards Whig rather than Democratic themes.