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**"these great and beautiful republics of the dead":
Constitutionalism and the Antebellum Cemetery**

Alfred L. Brophy¹



Concord, Massachusetts on April 19, 1775,
from the National Gallery of Art, Washington, DC

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Abstract

“Public Constitutionalism and the Antebellum Cemetery” joins the growing literature on public constitutionalism by focusing on the seventy published addresses given at cemetery dedications from Supreme Court Justice Joseph Story’s address at Mount Auburn Cemetery in Cambridge, Massachusetts, in 1831, through the addresses by Edward Everett and Abraham Lincoln at Gettysburg in November 1863. The addresses were part of a vibrant public discussion of constitutional principles, which spanned such diverse occasions as July Fourth celebrations, arguments in the Supreme Court (like Daniel Webster’s *Dartmouth College* argument), dedication of public monuments (like Daniel Webster’s speech at the placement of the cornerstone of the Bunker Hill Monument in 1824), lyceum addresses, and college literary society lectures. For Americans, especially those of the Whig Party, the Constitution was a key component of culture and a key unifier of the nation.

Rural cemeteries provided support for Whig constitutional values. The cemetery supported constitutional values of Union, respect for property, and obedience to the rule of law. For visitors to the cemetery learned about the importance of each of those values at the cemetery. It was an instructor of values; its ordered lanes and graves also served as a sign of the health of the Christian republic. Cemeteries fulfilled duties owed the past. The cemetery inspired sentiments of love of family and country. People would leave the cemetery inspired to preserve the United States as a Christian republic. They also supported Whig values by bringing beauty and order to the landscape; they served to mediate an impersonal, commercial world and brought uplift through the lessons of morality and patriotism that people learned when they visited the cemeteries. Finally, these abstract ideas were promoted through private charitable corporations. Those private organizations, which worked as adjuncts to public institutions, brought the community together to promote the republic.

The cemetery dedication addresses, like other addresses designed to promulgate constitutional ideas, mixed appeals to economics, morality, religion, and political theory with legal and constitutional ideas. Rural cemeteries promoted Whig constitutional ideals about order, patriotism, and Union. Those values were at the center of the debate over the response to secession and they were put into practice by soldiers along Cemetery Ridge at Gettysburg in 1863. Lincoln’s address at Gettysburg reflects the appeals to sentiment and Constitution that were so frequently invoked in the thirty years before the War.

This article reveals an important and neglected role of oratory in disseminating constitutional ideas, as well as the significance of rural cemeteries to public constitutional thought. This hidden history reveals how those ideas mobilized support for Union and, thus, how public constitutional thought affects the actions of voters, jurists, and politicians.

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**INTRODUCTION:
Justice Joseph Story and the Mount Auburn Cemetery**

Supreme Court Justice Joseph Story, in the beginning of his fifty-second year, spoke in front of thousands of Boston's citizens at the dedication of the Mount Auburn Cemetery on September 24, 1831.² Mount Auburn, the United States' first "rural cemetery," had been in the making for several years, a joint venture of the Massachusetts Horticultural Society and a group of Bostonians who sought a more appropriate place for burials than the overcrowded downtown Boston cemeteries.³ It used a private charitable corporation to organize for public missions – the dignified burial of the dead, the preservation of their memory, and the elevation of those who visited cemeteries.⁴ Story began his address with a statement about natural law -- the universal human respect for the dead and the desire to have a place of repose as well as veneration.⁵ This was a principle common to humans throughout history, from the time of Egypt to Rome and Greece, down to the present.⁶ Such universal sentiments could serve noble purposes. "We should accustom ourselves to view" cemeteries "as influences to govern human conduct, and to moderate suffering."⁷ After visiting a cemetery, "we feel ourselves purer, and better, and wiser, from this communion with the dead."⁸ For Story thought -- as did other people of his time, like

² JOSEPH STORY, AN ADDRESS DELIVERED ON THE DEDICATION OF THE CEMETERY AT MOUNT AUBURN, SEPTEMBER 24, 1831 (Boston, Joseph T. & Edward Buckingham 1831); *Rural Cemeteries*, 53 N. AM. REV. 385, 389 (1841) (commenting that thousands attended Story's dedication address).

³ BLANCHE M. G. LINDEN, *SILENT CITY ON A HILL: PICTURESQUE LANDSCAPES OF MEMORY AND BOSTON'S MOUNT AUBURN CEMETERY* (revised ed. 2007).

⁴ CATALOGUE OF THE LOTS IN MOUNT AUBURN CEMETERY: NAMES OF THE PROPRIETORS AND REPRESENTATIVES OF DECEASED PROPRIETORS, THE CHARTER, BY-LAWS 13-16 (Boston, Austin J. Coolidge 1860) (charter of Massachusetts Horticulture Society); *id.* at 16-26 (act to "Incorporate the Proprietors of the Cemetery of Mount Auburn"). *See also* [William B. O. Peabody,] *Mount Auburn Cemetery*, 72 N. AM. REV. 397-406 (Oct. 1831) (discussing "Report of the Massachusetts Horticultural Society Upon the Establishment of An Experimental Garden and Rural Cemetery," in *Massachusetts Horticultural Society* 62-69 (Boston, Isaac R. Butts 1831)).

⁵ STORY, *supra* note 2, at 7.

⁶ *Id.* at 7-9.

⁷ *Id.* at 6.

⁸ *Id.* at 7.

Washington Irving⁹ -- that cemeteries might be turned from places of gloom to places of moral uplift. "Why," he asked, "do we not enlist it with more persuasive energy in the cause of human improvement? ... Why do we not make it a more efficient instrument to elevate Ambition, to stimulate Genius, and to dignify Learning?"¹⁰

The cemetery was part of a Christian mission to teach people about the eternal life of the soul; that lesson separated civilized Christians from barbarians. By visiting the graves of ancestors individuals engaged in a sentimental project of learning from the past and interacting with it. "[W]e gather up, with more solicitude, the broken fragments of memory, and weave, as it were, into our very hearts, the threads of their history."¹¹ By removing graveyards from cities, where there was no opportunity to reflect on their lessons, where they were disturbed by commerce, and where they had to be gated to prevent further violation, and putting them in rural settings where people might visit them in quiet moments, Story planned to enlist cemeteries in "the highest purposes of religion and human duty."¹²

Story sought to enlist sentiment to accomplish moral uplift. Here he drew upon common sense philosophy, which emphasized the role that sentiment could play in motivating and shaping character.¹³ Often Americans tried to speak to considerations of sentiment and reason both – or what many referred to at the time as the “heart” and “head.”¹⁴ Such religious purposes overlapped with secular purposes in antebellum America, for religion worked in conjunction with the Constitution, the government, and individual sentiment to create a godly, civilized nation.

All these pieces operated together in Justice Story. From his 1826 Harvard Phi Beta Kappa address that linked the common law to Christianity and those two together to moral and

⁹ [Washington Irving], 1 THE SKETCH BOOK OF GEOFFREY CRAYON 279 (London, John Murray 1822) ("rural funerals").

¹⁰ STORY, *supra* note 2, at 10.

¹¹ *Id.* at 7.

¹² *Id.* at 13.

¹³ DONALD MAYER, THE INSTRUCTED CONSCIENCE: THE SHAPING OF THE AMERICAN NATIONAL ETHIC (1972).

¹⁴ PETER KARSTEN, HEART VERSUS HEAD: THE JUDGE-MADE LAW IN NINETEENTH-CENTURY AMERICA (1997).

economic progress,¹⁵ to his *Commentaries on the Constitution*,¹⁶ through to his opinions on the Supreme Court,¹⁷ Story's world was one of moral duties that restrained vice, preserved the republic through patriotism and Christianity, and preserved property rights.¹⁸

Americans learned about those constitutional values in many places. They heard about constitutional values in church pulpits,¹⁹ at debates and addresses of college literary societies,²⁰ at gatherings of civic organizations,²¹ at militia and military meetings.²² Another prominent place for discussions of constitutional values – the places where those sentiments of Union, economy, and law were put into action – were legislative halls.²³ Story saw a unique ability of cemeteries

¹⁵ JOSEPH STORY, *A DISCOURSE PRONOUNCED BEFORE THE PHI BETA KAPPA SOCIETY: AT THE ANNIVERSARY CELEBRATION ON THE THIRTY-FIRST DAY OF AUGUST, 1826* (Boston, Hilliard, Gray, Little, and Wilkins 1826).

¹⁶ JOSEPH STORY, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES* (Boston, Hilliard, Gray and Company 1833).

¹⁷ See, e.g., *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 554 (1837) (Story dissenting); *Swift v. Tyson*, 41 U.S. 1 (1842) (on nationalizing mission); *Trustees of Dartmouth Coll. v. Woodward*, 17 U.S. 518, 666, 4 L. Ed. 629 (1819) (Story's concurrence).

¹⁸ R. KENT NEWMAYER, *SUPREME COURT JUSTICE JOSEPH STORY: STATESMAN OF THE OLD REPUBLIC* 115-54 (1985) (Story's economic thought); *id.* at 155-95 (Story's constitutional thought); G. EDWARD WHITE, *THE MARSHALL COURT AND CULTURAL CHANGE, 1815-1835* 103-10, 493-94 (1988) (Story's constitutional thought).

¹⁹ MITCHELL SNAY, *THE GOSPEL OF DISUNION: RELIGION AND SEPARATISM IN THE ANTEBELLUM SOUTH* (1997).

²⁰ Alfred L. Brophy, *The Law of Descent of Thought: Law, History, and Civilization in Antebellum Literary Addresses*, 20 *LAW & LIT.* 343 (2008); Donald M. Scott, *The Popular Lecture and the Creation of a Public in Mid-Nineteenth-Century America*, 66 *J. AM. HIST.* 791-809 (1980).

²¹ DAVID WALDSTREICHER, *IN THE MIDST OF PERPETUAL FETES: THE MAKING OF AMERICAN NATIONALISM, 1776-1820* (1997); JOHANN NEEM, *CREATING A NATION OF JOINERS: DEMOCRACY AND CIVIL SOCIETY IN EARLY NATIONAL MASSACHUSETTS* (2008); Jason Mazzone, *The Creation of a Constitutional Culture*, 40 *TULSA L.J.* 671 (2005).

²² JENNIFER R. GREEN, *MILITARY EDUCATION AND THE EMERGING MIDDLE CLASS IN THE OLD SOUTH* (2008).

²³ CHRISTIAN FRITZ, *AMERICAN SOVEREIGNS: THE PEOPLE AND AMERICAN'S CONSTITUTIONAL TRADITION BEFORE THE CIVIL WAR* (2008); Saul Cornell, *The People's*

to contribute to the mission of those related institutions. Cemeteries taught moral truths differently (and in some ways better) than anywhere else, for they spoke with a voice that everyone could hear. “They may preach lessons, to which none may refuse to listen, and which all, that live, must hear. Truths may be there felt and taught in the silence of our own meditations, more persuasive, and more enduring, than ever flowed from human lips.”²⁴ Indeed, there was an eloquence – a phrase of particular importance to antebellum Americans who often communicated orally²⁵ – in cemeteries that spoke to everyone:

The grave hath a voice of eloquence, nay, of superhuman eloquence, which speaks at once to the thoughtlessness of the rash, and the devotion of the good; which addresses all times, and all ages, and all sexes; which tells of wisdom to the wise, and of comfort to the afflicted; which warns us of our follies and our dangers; which whispers to us in accents of peace, and alarms us in tones of terror; which steals with a healing balm into the stricken heart, and lifts up and supports the broken spirit; which awakens a new enthusiasm for virtue, and disciplines us for its severer trials and duties; which calls up the images of the illustrious dead, with an animating presence for our example and glory; and which demands of us, as men, as patriots, as christians, as immortals, that the powers given by God should be devoted to his service, and the minds created by his love, should return to him with larger capacities for virtuous enjoyment, and with more spiritual and intellectual brightness.²⁶

Cemeteries, thus, had a unique call on the mind, which fit with Story’s desire to “use every possible incentive to human virtue.”²⁷ Cemeteries exercised a sentimental pull because of the people buried there. They also caused people to reflect on life. The rural setting amplified their appeal to visitors’ emotions. Mount Auburn was within sight of Boston and Harvard and

Constitution vs. the Lawyer's Constitution: Popular Constitutionalism and the Original Debate Over Originalism, 23 YALE J.L. & HUMAN. 295, 333 (2011); Mark Tushnet, *Popular Constitutionalism and Political Organization*, 18 ROGER WILLIAMS U. L. REV. 1 (2013); Gary D. Rowe, *Constitutionalism in the Streets*, 78 S. CALIF. L. REV. 401-54 (2005).

²⁴ STORY, *supra* note 2, at 13.

²⁵ Alfred L. Brophy, “*The Republics of Liberty and Letters*”: *Progress, Union, and Constitutionalism in Graduation Addresses at the Antebellum University of North Carolina*, 89 N.C. L. REV. 1879-1961 (2011) (discussing college oratory about constitutional law).

²⁶ STORY, *supra* note 2, at 13. *See also* HISTORY, INCORPORATIONS, AND RULES AND REGULATIONS OF OAKWOOD CEMETERY ... 36 (Syracuse, J.G.K. Truair 1860) (“The graves of all the dead have myriad voices, that speak to the living with more than the eloquence of human lips.”) (dedication speech of Judge William J. Bacon).

²⁷ STORY, *supra* note 2, at 15.

farms. Thus, "within our reach, every variety of natural and artificial scenery, which is fitted to awaken emotions of the highest and most affecting character."²⁸ The cemetery furnished a useful school for instruction. As the *North American Review* commented in 1841, "The appropriate burial of the dead ... is fraught with moral and religious uses, which the thoughtful will readily interpret."²⁹

Story concluded with a call to "cultivate feelings and sentiments more worthy of ourselves, and more worthy of Christianity."³⁰ Story's address operated at a high level of generality as it tapped a well of cultural ideas. It also set the model for many addresses down to the Civil War, just as Mount Auburn set the standard for subsequent rural cemeteries.³¹ Several books detailed the monument art and layout of Mount Auburn and travel memoirs recorded the thoughts of important tourists.³² Within a few years rural cemeteries were opening through the United States.³³

This article turns to the seventy dedication addresses³⁴ that were published from Story's Mount Auburn address in 1831³⁵ through Abraham Lincoln's November 1863 address at

²⁸ *Id.* at 18 (quoting James Beattie, *The Minstrel*. Book ii. Stanza 17). *See also* CAROLINE HOWARD GILMAN, *RECOLLECTIONS OF A SOUTHERN MATRON* 81-82 (New York, Harper and Brothers 1838) (discussing funeral of slave, Jacques); CAROLINE GILMAN, *THE POETRY OF TRAVELING IN THE UNITED STATES* 158-168 (New York, S. Colman 1838) (discussing visit to Mount Auburn); *id.* at 158 (quoting Story's address).

²⁹ *Rural Cemeteries*, *supra* note 2, at 387.

³⁰ STORY, *supra* note 2, at 21.

³¹ The *North American Review*'s article on the Mount Auburn Cemetery, *supra* note 4, helped spread the word. When Laurel Hill opened in Philadelphia in 1838, Story's address was reprinted in newspaper articles about the new cemetery. *See Letters from Philadelphia, November 28th, 1838*, SALEM GAZETTE at 2 (December 4, 1838).

³² *See, e.g.*, NATHANIEL DEARBORN, *A CONCISE HISTORY OF, AND GUIDE THROUGH MOUNT AUBURN: WITH A CATALOGUE ...* (Boston, Nathaniel Dearborn 1843); CORNELIA WALKER, *MOUNT AUBURN ILLUSTRATED ...* (New York, R. Martin 1847); JACOB BIGELOW, *A HISTORY OF THE CEMETERY OF MOUNT AUBURN* (Boston, James Munroe 1861); WILSON FLAGG, *MOUNT AUBURN: ITS SCENES, ITS BEAUTIES, AND ITS LESSONS* 6 (Boston, James Munroe 1861).

³³ LINDEN, *supra* note 3, at 133-53 (discussing growth of rural cemeteries).

³⁴ *See* Appendix 1, Cemetery Dedication Addresses, 1831-1861.

³⁵ STORY, *supra* note 2.

Gettysburg³⁶ to pull together the threads in the dedication addresses that are most directly related to constitutional culture of the pre-Civil War era. It reveals a vibrant constellation of ideas about the cemetery as a promoter of patriotic sentiments, which supported a constitutional republic. Those ideas included the reverence of the past, the promotion of an ordered republic that improved upon sublime nature, and the use of charitable corporations to promote public values. They were part of a public constitutional debate, which was advanced by the Whig Party.

This article begins by locating the Whig ideas about constitutionalism and their vehicles for promoting those ideas, from oratory to judicial opinions and situating the data here in the secondary literature on public constitutionalism, which has recently expand the boundaries of “constitutional law.” Part 2 then excavates the constitutional and political ideas in the dedication addresses. Those orators saw cemeteries as part of the establishment of order through public and private co-operation. The cemeteries were places of order and of private action for public good, which brought the republic together to recall the past and learn about the future. They were an articulation of the Constitution’s mission of creating an ordered republic. Part 3 turns to the legal technology of charitable corporations that was employed to create and run the cemeteries. Cemeteries were made possible by the corporate form and the affluence of the republic; they were also instruments in the creation of an ordered constitutional state. In this way, technology helped advance civilization through art and through improvement upon nature and through the creation of beauty. Part four concludes with a holistic look at the effect of the rural cemetery movement on public constitutional thinking. It turns to the two addresses at the Gettysburg National Cemetery, which reflected the constitutional thought of the Whigs in the thirty years leading into Civil War and propelled a new vision of the Constitution, especially of democracy and equality.

1. **Public Constitutionalism and Whig Constitutionalism**

a. *The Literature of Public Constitutionalism*

For several decades now, running back at least to Michael Kammen’s path-breaking *A Machine that Would Go of Itself*,³⁷ scholars have expanded the scope of study of constitutional law. They have shown that people outside of the Supreme Court had vibrant and sophisticated ideas about the Constitution and that those ideas have shaped how judges have understood the Constitution – but even more than that, they have shown that public constitutional ideas shaped political action as well.³⁸ Kammen focused on how Fourth of July addresses tapped the deep

³⁶ Abraham Lincoln, *Address at Gettysburg, Pennsylvania*, in ABRAHAM LINCOLN: SPEECHES AND WRITINGS, 1859-1865 536 (Don E. Fehrenbacher ed., 1989).

³⁷ MICHAEL KAMMEN, *A MACHINE THAT WOULD GO OF ITSELF: THE CONSTITUTION IN AMERICAN CULTURE* (1986).

³⁸ Even before Kammen, there was a literature that located Supreme Court decisions in the public thought about the Constitution. *See, e.g.*, DON E. FEHRENBACHER, *THE DRED SCOTT*

reservoir of respect for the Revolution and the Constitution to celebrate and advance constitutional values.³⁹ And in the wake of *A Machine that Would Go of Itself*, legal scholars and historians have expanded the spectrum of sources of constitutional study. They are increasingly finding the making of the constitutional culture in streets and in civic organizations.⁴⁰ These studies range from the legal ideas that motivated the American Revolution,⁴¹ to political and social organizations in the early Republic,⁴² to oratory in African American community in the nineteenth century,⁴³ through to the twentieth century reformers who took the civil rights movement into the streets and injected seemingly radical ideas into the courtroom⁴⁴ – and those who opposed the civil rights movement in the streets as well.⁴⁵ Perhaps in response to the robust criticism of scholarship on public constitutional law, which questions the relevance of studies of public ideas about the Constitution to the core of issues of constitutional law,⁴⁶ scholars are also increasingly focusing on the ways that the public understanding of the Constitution had a powerful gravitational pull on the Supreme Court.⁴⁷ They also address how public ideas operate

DECISION IN LAW AND POLITICS (1977); WILLIAM WIECEK, *THE SOURCES OF ANTISLAVERY CONSTITUTIONALISM IN AMERICA, 1760-1848* (1977).

³⁹ KAMMEN, *supra* note 37, at 21, 45, 50, 70, 98, 227, 292.

⁴⁰ *See, e.g.,* Mazzone, *supra* note 21.

⁴¹ DANIEL J. HULSEBOSCH, *CONSTITUTING EMPIRE: NEW YORK AND THE TRANSFORMATION OF CONSTITUTIONALISM IN THE ATLANTIC WORLD, 1664-1830* (2004).

⁴² *See* WALDSTREICHER, *supra* note 21; Hendrik Hartog, *The Constitution of Aspiration and the "Rights That Belong to Us All,"* 74 J. AM. HIST. 1013 (1987).

⁴³ MARTHA S. JONES, *ALL BOUND UP TOGETHER: THE WOMAN QUESTION IN AFRICAN AMERICAN PUBLIC CULTURE* (2009).

⁴⁴ KENNETH W. MACK, *REPRESENTING THE RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER* (2012).

⁴⁵ MICHAEL J. KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* (2004).

⁴⁶ Lucas A. Powe, Jr., *Are "The People" Missing in Action (and Should Anyone Care)?*, 83 TEX. L. REV. 855 (2005).

⁴⁷ *See, e.g.,* Reva B. Siegel, *Dead or Alive: Originalism as Popular Constitutionalism in Heller*, 122 HARV. L. REV. 191 (2008) (detailing the Supreme Court's adoption of an interpretation of the Second Amendment that had become commonplace outside of the Court); Joseph Blocher, *Popular Constitutionalism and the State Attorneys General*, 122 HARV. L. REV. F. 108 (2011) (locating similar public constitutional ideas about the second amendment in the

outside of the Supreme Court, often to constrain the action of legislators.⁴⁸ In fact, a central question for scholars addressing constitutional culture and its relationship to formal law is a variety of what is the relationship between public ideas and constitutional thought?⁴⁹ This involves a series of questions: what is the nature of public constitutional thought and how do those ideas impel action (or restrain it)? That is, what are the contours of the thought and how much and how do public constitutional ideas matter? Scholars may have decided in the words of Mark Tushnet's book their mission should be *Taking the Constitution Away from the Court*.⁵⁰ But how they are going to do that – or whether it has been done before – is something we are still exploring.⁵¹

For the pre-Civil War period there is a particularly vibrant literature on civic organizations. Historian Johann Neem's *Creating a Nation of Joiners: Democracy and Civil*

briefs of state attorneys general); Robert Post & Reva Siegel, *Popular Constitutionalism, Departmentalism, and Judicial Supremacy*, 92 CALIF. L. REV. 1027, 1027 (2004); Robert C. Post, *The Supreme Court 2002–Foreword: Fashioning the Legal Constitution: Culture, Courts, and Law*, 117 HARV. L. REV. 3 (2002).

⁴⁸ See, e.g., Doni Gewirtzman, *Glory Days: Popular Constitutionalism, Nostalgia, and the True Nature of Constitutional Culture*, 93 GEO. L.J. 897, 900 (2005) (noting that constitutional culture addresses public's various invocations of the Constitution, but that scholarship is sometimes respectful and at other times suspicious of public judgments about the public's power in Constitutional interpretation); Doni Gewirtzman, *Our Founding Feelings: Emotion, Commitment, and Imagination in Constitutional Culture*, 43 U. RICH. L. REV. 623 (2008) (focusing on invocations of sentiment, rather than reason, as a central feature of eighteenth century moral philosophy and constitutional thought).

⁴⁹ Larry Alexander & Lawrence B. Solum, *Popular? Constitutionalism?*, 118 HARV. L. REV. 1594, 1635 (2005) (reviewing LARRY KRAMER, *THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW* (2004)). See also Tom Donnelly, *Making Popular Constitutionalism Work*, 2012 WISC. L. REV. 159 (explaining how public ideas may serve to constrain political actors); David E. Pozen, *Judicial Elections as Popular Constitutionalism*, 110 COLUM. L. REV. 2047, 2049 (2010) (noting that scholars of popular constitutionalism have not yet developed a pragmatic theory of how popular ideas will work their way into principles of formal constitutional law).

⁵⁰ MARK TUSHNET, *TAKING THE CONSTITUTION AWAY FROM THE COURTS* (2000).

⁵¹ Some of those explorations have come in studies of how public ideas affect the development of Supreme Court doctrine. See, e.g., BARRY FRIEDMAN, *THE WILL OF THE PEOPLE: HOW PUBLIC OPINION HAS INFLUENCED THE SUPREME COURT AND SHAPED THE MEANING OF THE CONSTITUTION* (2009). See also Matthew Adler, *Popular Constitutionalism and the Rule of Recognition: Whose Practices Ground U.S. Law?*, 100 NW. U. L. REV. 719 (2006).

Society in Early National Massachusetts focuses on the emergence of an ideology that turned to private charitable corporations to pursue the public good in the early nineteenth century.⁵² Neem's close study of Massachusetts follows up other broader studies of the constitutional ideas and political theories of the Whigs.⁵³

Much of the study of what legal scholars frequently call "popular constitutionalism" is about how popular ideas about the Constitution are used to limit the scope of acceptable action for politicians – in essence a legislative oversight that substitutes for judicial review.⁵⁴ Yet, others are increasingly looking to the ways that public ideas about constitutionalism help to shape and impel positive action. This is particularly true for work on the Civil War, where attitudes about the perpetuity of the Union provided moral support to the war effort in the North, while in the south their ideas of state power and property rights supported secession and war as well.⁵⁵

Scholars have already recognized that cemeteries were part of creating nation-wide stories about the past. For instance, as Michael Kammen showed in *Digging Up the Dead: A History of Notable American Reburials*, beginning in the middle of the nineteenth century, cemetery creators dug up and re-buried famous Americans to help add dignity and power to their cemeteries.⁵⁶ This was a part of the celebration of the past and the promulgation of the values of American nationhood. And there is a robust literature on Lincoln's Gettysburg Address.⁵⁷

But what has not yet been studied is the role that rural cemeteries played in the creation and sustenance of a constitutional vision.⁵⁸ Lincoln's words at Gettysburg represented a new

⁵² NEEM, *supra* note 21.

⁵³ DANIEL WALKER HOWE, *WHAT HATH GOD WROUGHT: THE TRANSFORMATION OF AMERICA, 1815-1848* (2007); LAWRENCE KOHL, *THE POLITICS OF INDIVIDUALISM: POLITICS AND THE AMERICAN CHARACTER IN THE JACKSONIAN ERA* 63-99 (1989).

⁵⁴ KRAMER, *supra* note 49; Mark Tushnet, *Popular Constitutionalism as Political Law*, 81 CHI.-KENT L. REV. 991 (2006).

⁵⁵ MARK E. NEELY, *LINCOLN AND THE TRIUMPH OF THE NATION: CONSTITUTIONAL CONFLICT IN THE AMERICAN CIVIL WAR* (2011). While historians are now rightly and thoroughly skeptical of claims that the Civil War was about states rights and constitutionalism as distinct from slavery, they are increasingly recognizing the ways that constitutional principles were utilized by southern politicians to support secession, just as Northern visions of constitutionalism supported the cause of Union.

⁵⁶ MICHAEL KAMMEN, *DIGGING UP THE DEAD: A HISTORY OF NOTABLE AMERICAN REBURIALS* (2010).

⁵⁷ See GARRY WILLS, *LINCOLN AT GETTYSBURG: THE WORDS THAT REMADE AMERICA* (1993). See also MARTIN P. JOHNSON, *WRITING THE GETTYSBURG ADDRESS* (2013).

⁵⁸ The leading historian of the rural cemetery movement begins her book with an acknowledgment of the role that cemeteries might play in political thought. See LINDEN, *supra*

constitutional vision of equality;⁵⁹ the seeds of that vision were laid over the preceding decades in many places, including the rural cemeteries that were planted in the United States beginning in the 1830s. This article recovers the role that the dedication addresses served in the propagation of a constitutional culture and also to use the addresses and the cemeteries corporations as a gauge of the distinct constitutional vision put forward by the Whig Party. For the cemetery was also a form of commemoration closely linked to the erection of monuments to the past. The era of the creation of the rural cemetery was also the era of monuments to the American Revolutionary generation, which included the Bunker Hill Monument,⁶⁰ the Washington Monument in Washington, DC.,⁶¹ and Richmond, Virginia's Washington Equine Statue,⁶² as well as numerous local monuments to Washington, such as copies of the Washington statue in the Richmond capitol building that were displayed in Raleigh, North Carolina, and Columbia, South Carolina.⁶³ The painting of Concord on the day of opening of the Revolution that appears at the front of this article, which was painted in the early nineteenth century, further illustrates the centrality of the cemetery to the mindset of antebellum Americans and its relationship to

note 3, at 1 ("In new republics the art of the painter, sculpter, architect, or landscape gardener would augment and perpetuate the work of statecraft."). Linden's book does not address the constitutional significance of the cemeteries and the addresses.

⁵⁹ WILLS, *supra* note 57, at 121-47; DREW GILPIN FAUST, *THIS REPUBLIC OF SUFFERING: DEATH AND THE AMERICAN CIVIL WAR 189* (2009).

⁶⁰ *See also* DANIEL WEBSTER, *AN ADDRESS DELIVERED AT THE LAYING OF THE CORNER STONE OF THE BUNKER HILL* (Boston, Cummings, Hilliard, and Company 1825).

⁶¹ ROBERT C. WINTHROP, *ORATION PRONOUNCED ... ON THE FOURTH OF JULY, 1848, ON THE OCCASION OF LAYING THE CORNER-STONE OF THE NATIONAL MONUMENT TO THE MEMORY OF WASHINGTON* (Washington, John Wilson & Son, 1848).

⁶² R.M.T. HUNTER, *MR. HUNTER'S ORATION: OPENING ODE AND ORATION DELIVERED AT INAUGURATION OF CRANFORD'S WASHINGTON EQUESTRIAN STATUTE* (Richmond, McFarlane & Fergusson, 1858)

⁶³ Christopher M. S. Johns, *Proslavery Politics and Classical Authority: Antonio Canova's "George Washington,"* 47 *MEMOIRS AM. ACADEMY ROME* 119-150, 121, 124 (2002); *Historical Notes*, 8 *S. CAROLINA HIST. & GENEALOGICAL MAG.* 42, 42-43 (1907) (discussing placement of Houdon statue at Columbia, South Carolina statehouse); TOM ELMORE, *COLUMBIA CIVIL WAR LANDMARKS* 47-48 (2011); Gordon S. Wood, *The Legacy of Rome in the American Revolution*, in THOMAS JEFFERSON, *THE CLASSICAL WORLD, AND EARLY AMERICA* 11, 26 (Peter S. Onuf & Nicholas P. Cole eds., 2011) (discussing statues modeled on classical art). *See also* MICHAEL KAMMEN, *MYSTIC CHORDS OF MEMORY: THE TRANSFORMATION OF TRADITION IN AMERICAN CULTURE* 17-40, 685-688 (1993) (discussing how Americans recorded their history as they wanted it to be, to tell stories about their imagined, rather than actual, past).

American constitutionalism. For the cemetery appears the center of the painting.⁶⁴

b. *The Whig Constitutional World*

In the years leading into Civil War the dominant party of constitutionalism and law was the Whig Party.⁶⁵ The Whigs – who were the successors to the Federalists and the forerunners of the Republican Party⁶⁶ – concentrated their attention on government promotion of economic development, on technological and moral progress, and on order through law.⁶⁷

For Americans in the 1830s and 1840s, the central issues included how to maintain the Union amidst rapid technological and economic changes. As the country grew in size and innovations like the steam ship and railroad made people much more mobile, the traditional bonds that united people – connections to their family and place of birth – declined. Thus, the market revolution led to a decline of human connections.⁶⁸ America in the 1830s was a world of individualism,⁶⁹ of the market,⁷⁰ and of revolutions in communication⁷¹ and migration.⁷² Thus, in law there was the emergence of rules promoting duty to others – like the rapidly growing law of

⁶⁴ Artist Unknown, *View of Concord c. 1830*, National Gallery of Art, available at: <http://www.nga.gov/content/ngaweb/Collection/art-object-page.56748.html>
See also MICHAEL G. KAMMEN, *MEADOWS OF MEMORY: IMAGES OF TIME AND TRADITION IN AMERICAN ART AND CULTURE* 63-64 (1992).

⁶⁵ *See generally* RUSH WELTER, *THE MIND OF AMERICA, 1820-1860* (1975).

⁶⁶ WILLIAM E. GIENAPP, *THE ORIGINS OF THE REPUBLICAN PARTY, 1852-1856* (1987); MICHAEL HOLT, *THE RISE AND FALL OF THE AMERICAN WHIG PARTY: JACKSONIAN POLITICS AND THE ONSET OF THE CIVIL WAR* (1999).

⁶⁷ William W. Fisher, III, *Ideology, Religion, and the Constitutional Protection of Private Property: 1760-1860*, 39 *EMORY L.J.* 65, 112-20 (1990).

⁶⁸ KOHL, *supra* note 53, at 15 (loosening of traditional bonds).

⁶⁹ *See* KOHL, *supra* note 53, at 6-12.

⁷⁰ CHARLES SELLERS, *THE MARKET REVOLUTION: JACKSONIAN AMERICA, 1815-1846* (1991); HOWE, *supra* note 53, at 5 (discussing market growth rather than revolution and referring to the “communications revolution”).

⁷¹ HOWE, *supra* note 53, at 5.

⁷² *Id.* at 41-43 (migration and transportation).

trustees' responsibility to beneficiaries⁷³ – and an emphasis on the role of law in promotion of the community. Where traditional relationships might have constrained violence in the early Republic, by the 1830s riots were a major concern in cities.⁷⁴

The Whig response to these rapid and unsettling changes were a series of intersecting ideas. They included promotion of duties to oneself and to one's nation,⁷⁵ which would help increase trust and promote national harmony. Then, working outwards from the focus on the duties of the individual, Whigs saw a need for promotion of the rule of law in the face of what seemed like a lawless people and uncontrolled passions.⁷⁶ They looked with fear and disdain at such varied events as the riots in cities,⁷⁷ state legislatures' attempts to infringe on property rights of corporations,⁷⁸ and President Andrew Jackson's confrontation of the Supreme Court.⁷⁹ Whigs appealed to the state and national governments to promote economic growth, such as through funding of internal improvement programs like canals, roads, and railroads.⁸⁰ And they capped these off with appeals to patriotism and the bounties that could accrue to the country if it promoted obedience to law and economic growth.⁸¹ Thus, economic growth, rule of law, property rights, and Union were central themes of Whig constitutional thought.⁸²

William Gaston, then a Whig politician but soon to be a member of the North Carolina Supreme Court, for instance, linked trade and law together with economic and intellectual

⁷³ See Alfred L. Brophy and Douglas Thie, "Land, Slaves, and Bonds: Trust and Probate in the Pre-Civil War Shenandoah Valley" (unpublished paper) (discussing growth of trust doctrine from 1820s through 1850s).

⁷⁴ WILLIAM GASTON, AN ADDRESS DELIVERED BEFORE THE AMERICAN WHIG AND PHILOSOPHIC SOCIETIES OF THE COLLEGE OF NEW JERSEY, SEPTEMBER 29, 1835 27 (Princeton, J. Bogert 1835) (appeal to duties to nation and law).

⁷⁵ See, e.g., WILLIAM GASTON, ADDRESS DELIVERED BEFORE THE PHILANTHROPIC AND DIALECTIC SOCIETIES AT CHAPEL HILL, NORTH CAROLINA, JUNE 20, 1832 (Richmond, Thomas W. White ed., 2d ed. 1832) (on duties of individuals).

⁷⁶ GASTON, *supra* note 74, at 22, 27.

⁷⁷ *Id.* at 27.

⁷⁸ James Kent, *Supreme Court of the United States*, 2 N.Y. REV. 372, 385 (1838).

⁷⁹ HOWE, *supra* note 53, at 410-13.

⁸⁰ *Id.* at 220-21.

⁸¹ Brophy, *supra* note 25, at 1937-49 (discussing values of constitutionalism Union, and economy in graduation addresses by Whig politicians and judges).

⁸² See KOHL, *supra* note 53, at 145-85.

progress in a letter he sent to a group of Whigs in Montgomery, Alabama:

Free as heart could wish, yet loyal to all constitutional and legal obligations, until even more by affection than by the forms of common government, and practically drawing more and more closely together by the wonder-working Steam Boat, the Canal, and the Railroad; subduing the forest to the dominion of Agriculture, and whitening every sea with their sails; advancing daily in manufacturing and mechanical skills, in arts, science, and literature; growing with unexampled rapidity in making wealth and strength; enjoying the blessings of Providence ... how could you look upon these my happy fellow citizens ... without a thrill of exultation that this was my own very native land?⁸³

Law and constitutionalism were part of the process of creating the nation, along with economic, moral, and technological progress.⁸⁴

This Whig vision of progress through private corporations came by the 1830s to be opposed to the Democratic vision of progress, of good springing up from the many.⁸⁵ A classic statement of the conflict comes in the *Charles River Bridge Case*,⁸⁶ in which Justice Story's vision of broad respect for a charter to a private corporation conflicted with Chief Justice Roger Taney's vision of narrow construction of that charter, to protect the public's right against monopoly.⁸⁷ This conflict played out frequently in cases at the federal and state level through the Civil War, with oscillation between broader construction of charters by Whigs and narrower constructions by Democrats.⁸⁸

⁸³ Gaston to Gentlemen [Montgomery, Alabama Whigs], October 3, 1832, Gaston Papers, Wilson Library, UNC.

⁸⁴ HOWE, *supra* note 53, at 411-45 (discussing "Jacksonian Democracy and the Rule of Law").

⁸⁵ NEEM, *supra* note 21, at 141.

⁸⁶ *Proprietors Charles River Bridge v. Proprietors Warren Bridge*, 36 U.S. 420, 554 (1837).

⁸⁷ *See* 36 U.S. at 583 (Story's dissent); Kent, *supra* note 78, at 385 (complaining about *Charles River Bridge's* attack on property rights).

⁸⁸ *See* Stephen Siegel, *Understanding the Nineteenth Century Contract Clause: The Role of the Property-privilege Distinction and "Takings" Clause Jurisprudence*, 60 S.CAL. L. REV. 1 (1985); OSCAR HANDLIN AND MARY HANDLIN, *COMMONWEALTH: A STUDY OF THE ROLE OF GOVERNMENT IN THE AMERICAN ECONOMY: MASSACHUSETTS, 1774-1861* 102-03 (1969) (discussing Massachusetts context of *Charles River Bridge*); Alfred Konefsky, *Simon Greenleaf, Boston Elites, and Social Meaning and the Construction of the Charles River Bridge Case*, in 2 *TRANSFORMATIONS IN AMERICAN LEGAL HISTORY* 165 (Daniel Hamilton & Alfred L. Brophy eds., 2010).

Senator Daniel Webster's argument in the *Dartmouth College* case is a key example of sentimental appeal that mobilized support for a constitutional principle. Webster's peroration appealed to the Court to save the school and others like it, which contributed so much to knowledge. Webster's appeal on behalf of Dartmouth College used sentiment to support the school's charter granted by the Crown before the Revolution and thus to preserve property rights from alteration by the New Hampshire legislature.⁸⁹ The *Dartmouth College* case is an example of a private corporation that operated to promote the public good.⁹⁰

While Whigs focused on property rights as a central part of their constitutional virtues, the Democrats interpreted the Whig's constitutional agenda differently. For Democrats saw the promotion of property rights as a detriment to equality. George Bancroft, a leading Democrat thinker and the author of Andrew Jackson's second inaugural address, for instance described Whig constitutional thought in a July Fourth oration in 1836 in Springfield Massachusetts.⁹¹ Bancroft said that "the whig idolizes present possessions ... the whig, forgetting that God is not the God of the dead, appeals to prescription; [and] the whig [pleads] for a wealthy aristocracy..."⁹² Bancroft thought that the Whigs' focus on "liberty" was really a focus on vested property rights.

The whig professes to cherish liberty, and he cherishes only his chartered franchises. The privileges that he extorts from a careless or a corrupt legislature, he asserts to be sacred and inviolable. He applies the doctrine of divine right to legislative grants, and spreads the mantle of superstition round contracts. He professes to adore freedom, and he pants for monopoly.⁹³

Where Whigs called for law and constitutionalism, Democrats saw an interference with "justice."⁹⁴ There was, thus, a serious question about the virtues of property – of whether

⁸⁹ See, e.g., WHITE, *supra* note 18, at 616-17; ROBERT FERGUSON, LAW AND LETTERS IN AMERICAN CULTURE 213-19 (1987) (discussing Webster's *Dartmouth College* argument).

⁹⁰ See Mark McGarvie, *Dartmouth College and the Legal Design of Civil Society*, in CHARITY, PHILANTHROPY, AND CIVILITY IN AMERICAN HISTORY 91-106 (Lawrence J. Friedman & Mark McGarvie eds. 2003).

⁹¹ GEORGE BANCROFT, AN ORATION DELIVERED BEFORE THE DEMOCRACY OF SPRINGFIELD AND NEIGHBORING TOWNS, JULY 4, 1836 (Springfield, George and Charles Merriam 1836).

⁹² *Id.* at 11.

⁹³ *Id.* at 7.

⁹⁴ *Id.* at 6.

constitutional property rights were virtues or whether they subordinated human rights.⁹⁵ But whatever interpretation one places on Whig constitutional thought, there was agreement by both Whigs and Democrats that Whigs focuses on constitutional thought as it related to property and to vested rights.

Nevertheless, Whigs promulgated their constitutional vision frequently through public oratory, running from dedication addresses for monuments,⁹⁶ for churches,⁹⁷ and for school buildings,⁹⁸ to funeral orations⁹⁹ and college literary addresses.¹⁰⁰ The cemeteries themselves and the dedication addresses for them were, thus, part of American constitutional culture. This article moves from the general ideas in the addresses, which were frequently about personal and sentimental uplift and patriotic duty, to more specific ideas of the Whig constitutional ideology. The cemeteries were part of a Whig mission of ordering the home, the marketplace, the community, and the nation through a combination of appeals to sentiment¹⁰¹ and adherence to law¹⁰² and by use of civic associations.¹⁰³ The addresses, thus, fit into a matrix of ideas about the

⁹⁵ *Id.* at 11.

⁹⁶ WEBSTER, *supra* note 60; DANIEL WEBSTER, AN ADDRESS DELIVERED AT THE COMPLETION OF THE BUNKER HILL MONUMENT, JUNE 17, 1843 (Boston, Tappan and Dennet 1843); HUNTER, *supra* note 62.

⁹⁷ JAMES HENLEY THORNWELL, THE RIGHTS AND THE DUTIES OF MASTERS: A SERMON PREACHED AT THE DEDICATION OF A CHURCH, ERECTED IN CHARLESTON, S.C., FOR THE BENEFIT AND INSTRUCTION OF THE COLOURED POPULATION (Charleston, James & Walker 1850).

⁹⁸ JOHN WHITE BROCKENBROUGH, ADDRESS DELIVERED ON LAYING THE CORNER STONE OF THE NEW BARRACKS OF THE VIRGINIA MILITARY INSTITUTE. JULY 4, 1850 (New York, John Wiley 1850).

⁹⁹ EDWARD EVERETT, AN ADDRESS DELIVERED AT CHARLESTOWN, AUGUST 1, 1826: IN COMMEMORATION OF JOHN ADAMS AND THOMAS JEFFERSON (Boston, W.L. Lewis 1826).

¹⁰⁰ TIMOTHY WALKER, THE REFORM SPIRIT OF THE DAY: AN ORATION BEFORE THE PHI BETA KAPPA SOCIETY OF HARVARD UNIVERSITY, JULY 18, 1850 (Boston, James Munro and Company 1850).

¹⁰¹ *See, e.g.*, JAMES C. BRUCE, AN ADDRESS DELIVERED BEFORE THE ALUMNI AND GRADUATING CLASS OF THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, JUNE 3, 1841 12 (Raleigh, North Carolina Standard 1841) (explaining that United States had made a reality of what had been a Utopian dream); BARTHOLOMEW F. MOORE, AN ADDRESS DELIVERED BEFORE THE TWO LITERARY SOCIETIES OF THE UNIVERSITY OF NORTH CAROLINA 14 (JUNE 15, 1846 (Raleigh, Recorder Office 1846) (appealing to sentiments of “silken cord of Union”).

¹⁰² *See, e.g.*, GASTON, *supra* note 74, at 18-22 (appealing to constraints of law as a civilizer); William Gaston, Address to Montgomery [Alabama] Whigs, Gaston Papers, Southern

individual's support for the state¹⁰⁴ and the use of civic organizations to advance the state's mission.¹⁰⁵

2. The Purposes, Lessons, and Places of Cemeteries in the Constitutional Order

In 1845, at the dedication of Spring Grove Cemetery near Cincinnati, United States Supreme Court Justice John McLean spoke about how the “voice of the tomb reaches the heart.”¹⁰⁶ The lessons of the cemetery helped formulate character. Cemeteries spoke to individuals and this was part of the Whig mission of individual reform. “There is no language which reaches the heart with such power and effect,” said Justice McLean, who a dozen years later was a dissenter in the *Dred Scott* decision,¹⁰⁷ “as that which proceeds from the graves of those we loved.”¹⁰⁸ Graves spoke to the dead and encouraged them to virtue because they reminded the visitor of “the end of Mortality.”¹⁰⁹ Such a reminder “must chasten the heart.”¹¹⁰

By such reminders the cemetery created more virtuous citizens. For it caused citizens to ask “why should I cherish an unholy ambition for fame, or seek to accumulate wealthy by doubtful means? Why should I endeavor, by injustice, to enrich myself at the expense of my neighbor, seeing the time of enjoyment is so short, and the end of my career is so certain?”¹¹¹ The cemetery conveyed such ideas by both seeing and feeling. It did this in a number of ways,

Historical Collection, Wilson Library, UNC.

¹⁰³ See NEEM, *supra* note 21, at 6 (discussing formation of a culture of non-governmental civic associations “to form private organizations to promote their interests and to shape public opinion”).

¹⁰⁴ DANIEL D. BARNARD, *MAN AND THE STATE: SOCIAL AND POLITICAL: AN ADDRESS DELIVERED BEFORE THE CONNECTICUT ALPHA OF THE PHI BETA KAPPA AT YALE COLLEGE, NEW HAVEN, AUGUST 19, 1846* 6, 8 (New Haven, B.L. Hamlen 1846).

¹⁰⁵ *Dartmouth College v. Woodward*, 17 U.S. 518, 552-588 (1819) (Webster's argument).

¹⁰⁶ JOHN MCLEAN, *ADDRESS DELIVERED ON THE CONSECRATION OF THE SPRING GROVE CEMETERY, NEAR CINCINNATI, AUGUST 20TH, 1845* at 14 (Cincinnati, Daily Atlas Office 1845).

¹⁰⁷ 57 U.S. 393, 529 (1857) (opinion of McLean, dissenting).

¹⁰⁸ MCLEAN, *supra* note 106, at 13.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 13-14.

from appeals to beauty, to countering the market, to serving as part of a Christian republic.

a. *Beauty, Landscape, Setting, and Uplift*

Many addresses drew on romantic images and in that era the beauty of landscape was seen as one important mode of moral uplift.¹¹² Beauty and nature combined to instruct.

This human improvement of nature was frequently discussed by landscape artists as well – people who had special reason to observe and understand the relationship of nature to human progress and art. Landscape artist Thomas Cole spoke to a lyceum audience in 1836 about the power of cultivated scenery. Though Cole was talking about landscape paintings, his reasoning applies equally to garden cemeteries. Cultivated scenery facilitated the shaping of human culture. Such scenery

is still more important [than natural scenery] to man in his social capacity—necessarily bringing him in contact with the cultured; it encompasses our homes, and, though devoid of the stern sublimity of the wild, its quieter spirit steals tenderly into our bosoms mingled with a thousand domestic affections and heart-touching associations—human hands have wrought, and human deeds hallowed all around.¹¹³

The South Carolina landscape artist Charles Fraser, thus, was particularly well-situated to lecture on the power of beauty of the natural world and the cultivated garden at the 1850 dedication of Charleston’s Magnolia cemetery. Fraser’s address linked the beauty of cemeteries to the public character. Fraser thought that the rural cemeteries were motivated in part by problems with city cemeteries, as “an emigrant population” filled “up our cities” and there emerged “a fatal epidemic, hitherto unknown in our favored country, carrying disease and mortality into its healthiest portions.”¹¹⁴ But even more impetus came from an understanding of the “moral proprieties involved in the subject.” Beauty could mold and improve character and make more fit citizens. For cemeteries offered “peaceful situations, where the beauties of nature and the improvements of art may be united in promoting the moral purposes of their establishment.”¹¹⁵ Fraser likened the cemetery to an “unsullied canvas, inviting creations of fancy from the pencil of the artist.” The cemetery offered “a wide field, in almost original simplicity,

¹¹² See, e.g., MCLEAN, *supra* note 106; OAKWOOD, *supra* note 26, at 36; HUMPHREY, *supra* note 134, at 15.

¹¹³ Thomas Cole, *Essay on American Scenery*, 7 AM. MONTHLY MAG. 1, 3 (Jan. 1836). Where Cole was concerned with wild nature, the cemetery was a retreat both from wilderness and the market.

¹¹⁴ CHARLES FRASER, ADDRESS DELIVERED ON THE DEDICATION OF MAGNOLIA CEMETERY, ON THE 19TH NOVEMBER, 1850 17 (Charleston, Walker and James 1850).

¹¹⁵ *Id.* at 17-18.

... spread before you by the hand of nature, and requiring only the adornments of taste to carry out her design of beauty.”¹¹⁶

Many others joined him in these sentiments. At the dedication of Savannah’s Laurel Grove Cemetery in 1852 lawyer Henry Rootes Jackson praised nature for providing a setting. He called for improvement of the garden. “Nature has done her part in the work, by presenting a surface beautifully undulating,—with the level plain, the gentle declivity, the dark ravine,—and planting around her stately forests with their pendant moss. Nature has done her part; it remains but for Art to do hers.”¹¹⁷ And the artwork around the cemeteries prepared confirmed their role in beautification. For instance, a series of prints celebrated the ordered beauty of Mount Auburn in a series of prints made from the 1830s through the 1850s. These included William Henry Bartlett’s views of Mount Auburn in *American Scenery*,¹¹⁸ Thomas Chambers’ *Mount Auburn Cemetery*.¹¹⁹ The carefully ordered nature of the cemeteries is also apparent in the maps that were produced for the cemeteries.¹²⁰

This sphere of rural beauty was one of the cemeteries’ great advantages. Revered J.H.C. Dosh asked at the 1855 dedication of Gettysburg’s Ever Green cemetery – soon to become world famous as the scene of battle – “could a more lovely spot have been chosen?”¹²¹ Reverend F.W. Shelton began his dedication address for the Green Mount Cemetery in Montpelier, Vermont, in 1855, with an observation about how the cemetery had already improved upon the wilderness.

We stand upon a hill-side which, almost yesterday, lay unreclaimed in its original wildness, and now already it begins to look like an embellished garden. Art has redeemed it from its rude estate, with an almost magic transformation. It has its winding walks, and

¹¹⁶ *Id.* at 19.

¹¹⁷ LAUREL GROVE CEMETERY! AN ACCOUNT OF ITS DEDICATION, WITH ... THE ADDRESS OF THE HON. HENRY R. JACKSON, ... 10TH NOVEMBER, 1852 ... 19 (Savannah, City Council 1852). *See also* HENRY R. JACKSON, TALLULAH AND OTHER POEMS (Savannah, John M. Cooper 1850) (emphasizing pastoral themes); HENRY R. JACKSON, COURAGE: AN ORATION DELIVERED BEFORE THE LITERARY SOCIETIES OF FRANKLIN COLLEGE AUGUST 3, 1848 (Athens, Demostheian Society 1848).

¹¹⁸ *See* 2 NATHANIEL P. WILLIS, AMERICAN SCENERY; OR LAND, LAKE, AND RIVER: ILLUSTRATIONS OF TRANSATLANTIC NATURE 97 (London, G. Virtue 1840).

¹¹⁹ *See* AMERICAN NATIVE PAINTINGS: NATIONAL GALLERY OF ART, WASHINGTON 54 (Judith Millon ed. 1992) (discussing Chambers’ *View of Mount Auburn*).

¹²⁰ *See, e.g.,* NATHANIEL DEABORN, MOUNT AUBURN AVENUES (Boston, n.p. 1848), available at: <http://maps.bpl.org/id/12739>; ALBANY RURAL CEMETERY (n.p., J.E. Gavit 1846), available at: <http://digitalgallery.nypl.org/nypldigital/id?434097>

¹²¹ ANNOUNCEMENT OF EVER GREEN CEMETERY OF GETTYSBURG ... 5 (Gettysburg, H.C. Neinstadt 1855).

will have its shady avenues. It is the most choice position" in this valley, and its natural surface presents the charm of great variety. There is no stretch of landscape, in this neighborhood, around the abodes of the living, which can vie in beauty with this Paradise which you now dedicate, as the resting place of your beloved dead.¹²²

The beauty of cemeteries inspired visitors, for the cemeteries were not just places to visit ancestors, they were refuges for many from city life. Reverend Pharcellus Church's dedication of the Rochester cemetery in 1838 called upon romantic imagery to convey the beauty of the cemetery and the inspiration that visitors would feel:

when you stand on the summit itself, how enchanting is the prospect! The smooth current of the Genesee meandering round the base, and stealing its now obvious and now concealed way to the distant lake, like the passing of life through shade and sunshine to the ocean of eternity. Around, you see, spread out in the ample view, the rich fields of one of the richest countries in the world, sending their loaded harvests to the marts of trade, and supplying the staff of life to millions of people. Before you lies the thronged city, with its spires and minarets pointing to heaven, while the clatter of hydraulic machinery, or the deep toned bell, or the voices of living multitudes, united to the roar of the neighboring cascades, all, send up to heaven a voice as deafening and discordant as the cries of factious clans on the world's tumultuous theatre. Far off beyond the city, the broad blue Ontario skirts the undefined distance, as if to remind you of the boundless fields of existence which eternity will unfold, and to make you feel how few and meager are the objects subjected to our present inspection, compared with those in the distance, which a future world will disclose.¹²³

Other addresses linked natural setting with the cemeteries' lessons. "The Cemetery is nature's Commentary, in which are drawn out ... the inevitable destinies of man," said Reverend Abraham Gillette at the dedication of Woodlands Cemetery in Cambridge, New York, near

¹²² F.W. Shelton, *Address*, in SERVICES AT THE DEDICATION OF GREEN MOUNTAIN CEMETERY, MONTPELIER, VT., SEPTEMBER 15, 1855, WITH THE RULES AND REGULATIONS 17 (Montpelier, E.P. Walton 1855). *See also* JOHN F. NORTON, THE HOME OF THE ANCIENT DEAD RESTORED. AN ADDRESS DELIVERED AT ALTHOL ON JULY 4, 1859 22 (Althol Depot, Rufus Putnam 1859) (the cemetery turned wilderness into a fruitful field). This is the story of America written in micro-script in the cemetery and this is precisely the story that landscape artists were telling at the same time.

¹²³ PHARCELLUS CHURCH, AN ADDRESS DELIVERED AT THE DEDICATION OF MOUNT HOPE CEMETERY, ROCHESTER, OCT. 2, 1838: AND ... BEFORE THE ROCHESTER ATHENÆ AND YOUNG MEN'S ASSOCIATION at 17 (Rochester, David Hoyt 1839).

Albany, in 1858.¹²⁴ “It is a book that may ever be read with impressiveness and profit. To the cultivated and the rude, it is a faithful and true prediction of the unavoidable doom of our fallen race.”¹²⁵ Gillette explained the mechanism by which the cemetery worked its magic:

Cemeteries exert a healthful moral influence over the minds and hearts of the living.

Good taste, though not always associated with pure morality, is so nearly allied to, and so highly conducive of it, that we may well link them in wreathes, which we love to twine with our memory for the dead.

I believe few persons in whose bosoms glow any sparks of moral emotion, can visit a rural Cemetery, without leaving it a humbler and better citizen, parent, friend, kindred and man.¹²⁶

The rural cemeteries, thus, tapped into values of nature, art, and sentiment. The cemeteries provided a place of beauty and order in a chaotic world.¹²⁷ The cities were crowded and graveyards in them were health hazards and they were not appropriate places to mourn the dead. Now there is the chance for something that is peaceful and dignified and a place of sentiment, which was a way of dealing with the market. The cemeteries were far enough away from the center of town that they would not be threatened by city life. This was especially important because the crowded urban graveyards were believed to threaten public health.¹²⁸ In

¹²⁴ THE WOODLANDS CEMETERY AT CAMBRIDGE, N.Y., WITH ... AN ADDRESS BY A.D. GILLETTE ... JUNE 2, 1858 45 (Troy, A.W. Scribner 1859).

¹²⁵ *Id.*

¹²⁶ *Id.* at 46 (“Among the refined Greeks and sturdy Romans, the dead were buried beyond the walls of Towns.... How rich with lessons of mortality these sequestered shades, groves and tomb-stones must become—generations better than ours shall live to testify.”).

¹²⁷ See WILLS, *supra* note 57, at 67-65 (discussing cemeteries’ appeal as places of order and peaceful nature); KOHL, *supra* note 53, at 147-48 (discussing Whig desire for order in a world of chaos).

¹²⁸ HENRY W. PINCKNEY, REMARKS ADDRESSED TO THE CITIZENS OF CHARLESTON, ON THE SUBJECT OF INTERMENTS, AND THE POLICY OF ESTABLISHING A PUBLIC CEMETERY, BEYOND THE PRECINCTS OF THE CITY (Charleston, W. Riley 1839) (discussing right of Charleston to prohibit burials that would be a health hazard); Brick Presbyterian Church in the City of New York v. New York, 5 Cowen 538 (N.Y. Sup. Ct. 1826) (upholding New York City ordinance prohibiting burials); see also LINDEN, *supra* note 3, at 149.

fact, the rural cemeteries grew up as the cities prohibited burial.¹²⁹ In short, beauty, order, and improvement over nature all led to virtue.

Even the location of the cemeteries often conveyed a sense of continuity of place. Many were built on the site of former Indian burial grounds, or at least stories were frequently told about how the cemeteries were built on Indian burial grounds. Fort Hill Cemetery was built on the site of an ancient Indian village cemetery.¹³⁰

At other times, the importance of the cemetery's location sprang from more recent events. Brooklyn's Greenwood cemetery, for instance, was built within sight of the Revolutionary War Brooklyn battlefield from 1776.¹³¹ At Magnolia Cemetery in Charleston a recent burial there conferred particular dignity. A soldier who died in the Mexican American War was buried in the spot where he had last spoken with his mother before his regiment decamped for the war. Artist Charles Fraser told the story in sentimental terms in his 1850 dedication address:

Filial piety, parental affection, devoted patriotism, are the moral elements of the atmosphere that surrounds it. ... For there were interchanged the last farewell words between a dutiful son and an affectionate mother. The regiment was quartered in this neighborhood on the eve of its departure for Mexico. Under that tree, and on that secluded spot ... the interview took place. How deeply it impressed him, may be learned from the fact, that he requested, should he fall in battle, that his remains might be brought home to his native soil, and deposited on a spot so endeared to his recollection.¹³²

Even when there was no particular historical association of the place, the beautiful setting of the cemetery – as improved by human cultivation – had an elevating power.¹³³ Edward Humphrey emphasized this in 1848 at the dedication of Cave Hill near Louisville:

The bleak hill-side, or the unprotected and barren field, is not suitable either for the living

¹²⁹ See LINDEN, *supra* note 3, at 149-63. See also WILLS, *supra* note 57, at 71 (linking rural cemeteries and the Victorian culture's fascination with death). See also Thomas Bender, *The "Rural" Cemetery Movement: Urban Travail and the Appeal of Nature*, 47 N. ENGLAND Q. 196-211 (1974).

¹³⁰ HANDBOOK OF FORT HILL CEMETERY: CONTAINING INFORMATION RESPECTING THE ANCIENT MOUND AND FORTIFICATION, AND THE INDIAN MONUMENT WITHIN THE ENCLOSURE... (Auburn, W.J. Moses 1853).

¹³¹ NEHEMIAH CLEAVELAND, GREENWOOD ILLUSTRATED ... 79-91 (New York, R. Martin 1847).

¹³² FRASER, *supra* note 114, at 21.

¹³³ E.A. NISBET, THOUGHTS ON THE BEAUTIFUL: AN ADDRESS DELIVERED AT THE COMMENCEMENT OF THE GRIFFIN SYNODICAL FEMALE COLLEGE IN JUNE 1857 (Griffin, Empire State Job Office 1857).

or the dead. Let the place of graves be rural and beautiful. Let it be under the free air and cheerful light of heaven. Let trees be planted there. Let the opening year invite to their branches the springing leaf and birds of song, and when the leaves and birds are gone, let the winds summon from their boughs sweet and melancholy strains. Let the tokens of fond remembrance, in the shrub and flower, be there. Let the murmuring of the gentle rill be there. There let the rising sun cast westward the shadows, admonishing us of life's decline, and then let the evening shadows point to the eastern sky, in promise of another and brighter day. Amidst ever-changing beauty and harmony, where the decay and renovation of nature may perpetually remind us that we must die, and that to die is to live again, there let the dust return to the earth as it was.¹³⁴

Such places were hallowed even before the rural cemeteries were planted there; and the place helped to add to the cemetery's dignity and to the lessons that the cemetery could teach. For cemeteries offered lessons on the continuity of the republic and the power of long-term rights.

b. Cemeteries as Places of Repose from City and Market

The placement of cemeteries near cities, but far enough away from them as to be places of repose, was part important to their civilizing mission.¹³⁵ Oliver Baldwin's 1849 address at Richmond's Hollywood Cemetery linked the cemetery to the environment surrounding it. Baldwin wanted the cemetery near enough to the city that people might visit it, but far enough away maintain the cemetery's seclusion.¹³⁶ From Hollywood, high on a hill overlooking the James River, one could see the Richmond's commerce and also survey centuries of history. The location made it possible for the cemetery to be a vehicle of uplift and repose.

We see the stream so replete with historic associations, seized for manufacturing purposes, and yonder black smoke telling where the captive waters struggle at the wheel and labour for the benefit of man. If the "Knights of the Golden Horse Shoe" have ceased to exist, we have an even more potent brotherhood in those Knights of the Iron Horse, whose dark track we see on yonder bridge, and whose fierce tramp may be heard on every hand, as with fiery nostrils he seems to devour the air, and with his exulting shout of triumph to make the forests ring. ... We behold distinct, but prominent, that commanding eminence,

¹³⁴ EDWARD P. HUMPHREY, AN ADDRESS, DELIVERED AT THE DEDICATION OF THE CAVE HILL CEMETERY ... JULY 25, 1848 15 (Louisville, Courier Job-Room 1848).

¹³⁵ LINDEN, *supra* note 3, at 149-63 (discussing health concerns in Boston that impelled new burial places outside the crowded city); Stanley French, *The Cemetery as Cultural Institution: The Establishment of Mount Auburn and the "Rural Cemetery" Movement*, 26 AM. Q. 37-59 (1974).

¹³⁶ OLIVER BALDWIN, ADDRESS DELIVERED AT THE DEDICATION OF THE HOLLY-WOOD CEMETERY: ON MONDAY, THE 25TH JUNE, 1849 13 (Richmond, Macfarlane & Fergusson 1849).

Church Hill, so replete with sublime historical recollections,— that sacred Church, from which the voice of Patrick Henry rang like a trumpet call upon the ear of every freeman in the land, — that political Sinai from which the Spirit of Liberty proclaimed—Thou shalt no longer bow the knee to kingly idols. ... Within our sight are the halls of justice; the grand and symmetrical proportions of the Capitol; the temples of Religion, all whose office is to prepare us for this spot.¹³⁷

Where Baldwin saw the connections between the cemetery and the ethic of commerce, most others who spoke about this saw cemeteries as a place for the development of art in a setting that was free from the market. This allowed citizens a respite from the bustle of the market, among art and nature. Though Whigs were the party of the market, they found in cemeteries an appropriate balance of the market. A book published in 1851 about Brooklyn's Greenwood cemetery explained the contrast between the bustling city of the living and the peaceful city of the dead, which were so close together.

An opening on his left reveals to him the lower bay, Staten Island, and the Narrows. Another, in front, reaches across the harbor, and is bounded by the masts, spires, and dwellings of New York and Brooklyn. The little dell which he has just passed, with its shady water, is immediately below. Here, with a city of the living before him, and another of the dead growing up around, the charm of contrast is felt in its power. Here are presented, as it were, side by side, art and nature—bustle and repose—life and death;—while each quiet sail, moving but noiseless, seems a fit medium of communication between them.¹³⁸

Many others saw a similar moral effect of cemeteries, though they emphasized more the ways that cemeteries explicitly countered the market than the ways that they worked together. An article in the *Yale Literary Magazine*, for instance, concluded with a celebration of how cemeteries countered the cold feelings of the market:

The moral effect of a cemetery, thus laid out and ornamented, especially in the vicinity of a mammon-serving and tumultuous city, cannot well be overrated. Its solemn aisles are frequented by many who never seek elsewhere the temple of God. And though the giddy may prattle, and the sentimental pluck rose-buds for their fair ones— the white monument will still stand by their side, and death be their constant companion. As one enters such a place, a feeling steels over him, not unlike that which the traveler experiences as he gazes upon the mouldering shrines and cathedrals of some city of the past, whose memory is almost obliterated;—the impression indeed is deeper, and the suggestions more personal. At the close of day, or during the quiet hours of the Sabbath, I delight to wander among its ghostly mausoleums, to view the unsleeping green of nature, standing in solemn vigil over

¹³⁷ *Id.* at 14-15.

¹³⁸ CLEVELAND, GREENWOOD ILLUSTRATED, *supra* note 131, at 26.

the last resting place of the immortal soul. As I gaze upon the obelisks of the wealthy, I reflect with sorrow upon the vanity and littleness of man,—as I walk by the monuments of the honored and loved, I am convinced that nothing can perpetuate our memories, but deeds of goodness and virtue; the quiet tombs of youthful beauty and loveliness remind me of the soul's immortality,—and the faded cenotaphs that commemorate the scattered dust of our ancestry, cause me to remember that the time is not far distant, when for us, too, shall "the silver cord be loosed, and the golden bowl broken."¹³⁹

c. *Speaking Through the Grave: The Cemetery as the "Great Moral Teacher"*

Story's words traveled far and served as a model for many subsequent dedications. Four years later when Stephen Duncan Walker urged Baltimore to establish a rural cemetery he used a question Story had asked at Mount Auburn: "Who that has stood on Mount Vernon, on the margin of the tranquil Potomac, 'but feels his heart more pure, his wishes more aspiring, his gratitude more warm, and his love of country touched by a holier flame?'"¹⁴⁰ Walker asked for Baltimore to collect the remains of Maryland's founding fathers in one place because the graves of great people inspired more greatness. Such relics "would form a treasure if collected together, of inestimable value, upon which posterity might draw, without consuming; it would be a widow's cruse of holy impulses, forever flowing and forever full."¹⁴¹ The power of cemeteries to instruct was great, indeed. The grave might "speak audibly to the human conscience, and though without tongue or voice, breath with 'miraculous organs' over the mystic chords of sensibility, to the heart and to the judgment."¹⁴²

Similarly, at the 1838 dedication of the Worcester Cemetery, Massachusetts Governor Levi Lincoln invoked Yale President Timothy Dwight's comments on cemeteries that "a Burial Ground should be a solemn object to man, because in this manner, it easily becomes a source of useful instruction, and desirable impressions."¹⁴³ Indeed, many dedication addresses emphasized that cemeteries provided instruction to the living.¹⁴⁴ But it was not only that the living learned from the cemeteries, cemeteries were indicators of how far culture had progressed. They

¹³⁹ *Ornamental Cemeteries*, 21 YALE LITERARY MAGAZINE 45, 50 (1855).

¹⁴⁰ STEPHEN DUNCAN WALKER, RURAL CEMETERY AND PUBLIC WALK at 19 (Baltimore, Sands and Neilson 1835) (quoting Story, *supra* note 2, at 14).

¹⁴¹ WALKER, *supra* note 140, at 20.

¹⁴² *Id.* at 20.

¹⁴³ LINDEN, *supra* note 3, at 14, 21-22.

¹⁴⁴ THE DALE CEMETERY, (AT CLAREMONT, NEAR SING-SING,) ITS INCORPORATION, RULES AND REGULATIONS, AND THE DEDICATION ADDRESSES 21 (New York, Casper C. Childs 1852).

illustrated the growth of social conditions. “We build” cemeteries, one orator said in 1852, “for the use, the pleasure, the instruction, the edification of the living.”¹⁴⁵ Unitarian Minister Amory B. Mayo explained in 1858, the society had progressed to the stage where it could afford better cemeteries than in the colonial era.¹⁴⁶ Cemeteries were, thus, both props to further progress and signifiers of progress.

The makers of the cemetery had the power to tell stories through the cemetery. Professor Edward North of Hamilton College told his audience at the dedication of the Clinton, New York cemetery in 1857 about the messages that cemeteries might delivery.

It is our privilege to speak from our graves. With this privilege comes the inquiry, What expression shall we choose for ourselves in our place of burial; in the memorials that tell where our dust reposes; in the surroundings and decorations of the spot? What shall be the lessons taught by the grave-ground we expect to occupy, and which, by a serious forethought that betokens innate longing for a glorified reunion of soul and body, we select, embellish and consecrate ere our tune of departure?

We shudder at the desecration of crowded city cemeteries when ruthless Mammon breaks down moss-covered head-stones, invades the sanctity of family vaults, shovels out the relics of whole generations, and lays open streets or sells building lots where the hush of the sepulchre ought to have been perpetual.¹⁴⁷

Lawyer Bellamy Storer, who had served as a Whig in Congress in the 1830s, explained the process of thought by which we could expect to learn lessons in a cemetery in his dedication address at Linden Grove Cemetery in Covington Kentucky in 1843.

There is no train of reflection more subdued, nor more instructive, than that which is induced by the contemplation of a grave yard. We gather around us, while we wander among its monuments, the past, the present, and the future. All of life and of death, and the life to come, are grouped in the brief hour! We are dissociated from our fellows! We become individualized, in the truest sense of the term, and understand, if we never did before, the meaning of personal accountability, our relation to the world, and to Him who

¹⁴⁵ *Id.* at 20.

¹⁴⁶ A.D. MAYO, THE AMERICAN CEMETERY: ADDRESS AT THE DEDICATION OF GREEN HILL CEMETERY AT AMSTERDAM, MONTGOMERY COUNTY, NY, ... SEPTEMBER 1, 1858 7 (Amsterdam, Recorder Office 1858).

¹⁴⁷ ADDRESSES DELIVERED AT THE DEDICATION OF ... CLINTON CEMETERY, CLINTON, N.Y. 14 (Utica, Roberts 1857).

made the world!¹⁴⁸

Storer, who began teaching at the University of Cincinnati Law School in 1855, did not speak exactly in constitutional terms. He was dealing with cultural ideas, like patriotism, that we associate with constitutional values.¹⁴⁹ Whig lawyer Daniel Barnard, who figures prominently later in this story, had a similar interpretation as Storer in his 1844 address at the Albany Cemetery. Barnard invoked general terms dealing with morality, which prepared individuals for constitutional government.

We may expect this place to become a great moral Teacher; and many valuable lessons there are, that may be learned here – lessons of humility, of moderation, of charity, of contentment, of mercy, of peace—lessons touching nearly all that concerns life, touching death, and touching immortality.¹⁵⁰

Professor Truman Marcelleus Post of Washington University recalled in a speech at Bellefontaine Cemetery in St. Louis in 1851, that schools were often – literally – placed within sight of ancient cemeteries.

What a school was that of the cemetery of the Ceramicus, where Plato and Aristotle taught in sight of the tombs of the great departed! What memories there aided their instructions to the youth of Athens, with an eloquence more glowing, subduing and awful than the wisdom of the Areopagus or the Senate — than the heroic thought and Pythic enthusiasm of Homer or Pindar—or than the pathos of her tragic Muse, or the fiery logic of her great Orator. There, in awful marble, still spoke her great Lawgiver — there stood the hero of Marathon, whose trophies would not suffer Themistocles to sleep; and there Pericles, the true, the noble, the eloquent, still plead for the life and glory of the Athens he loved so

¹⁴⁸ BELLAMY STORER, AN ADDRESS DELIVERED AT THE CONSECRATION OF THE LINDEN GROVE CEMETERY, COVINGTON, KENTUCKY, SEPTEMBER 11, 1843 9 (Cincinnati, E. Morgan & Co. 1843).

¹⁴⁹ More than a dozen years later, Storer's address at the University of Louisville linked law and the Bible. *See* BELLAMY STORER, THE LEGAL PROFESSION: AN ADDRESS DELIVERED BEFORE THE LAW DEPARTMENT OF THE UNIVERSITY OF LOUISVILLE, KENTUCKY, FEBRUARY 20TH, 1856 13 (Cincinnati, C. Clark 1856) (In the Bible “we ... learn that human law, in its highest developments, is but an emanation from the hallowed flame that illuminates its every page.”).

¹⁵⁰ DANIEL DEWEY BARNARD, ALBANY RURAL CEMETERY ASSOCIATION: ITS RULES, REGULATIONS, &C., WITH AN APPENDIX 31-32 (Albany, C. Van Benthusen and Co. 1846).

well.¹⁵¹

Perhaps inspired by the recollection that ancient schools were located near cemeteries, in the 1830s Martin Dawson, an affluent reform-minded Virginian, left money in trust in his will to fund several schools, with the stipulation that at least one of the academies be located near his family's cemetery. The Virginia legislature created "The Literary Fund" by a special act to hold Dawson's bequest. The Liberty Fund supported several lower schools and the University of Virginia as well, though the entire will, which also provided for freedom for Dawson's slaves, was challenged by his relatives and the Virginia Court of Appeals heard several appeals regarding Dawson's estate.¹⁵² Dawson's will is yet another example of the ways that cemeteries were located next to other reform movements, including education and anti-slavery, in the minds of Americans.

The cemeteries taught lessons to the entire nation, not just to the scholars in adjacent schools. For, as Professor Post recalled, Rome cemented "the tremendous strength of her empire in tears of honor for the dead, even more than in the blood of war."¹⁵³ Post's return to history for discovering universal truths of human nature was common in the romantic era. Unsurprisingly, a survey of contemporary history revealed the same:

So of modern nations — the monuments of the dead keep watch for the living. Does not the life of Britain this hour stand as much in the memories of Westminster, and other high places of her dead, as in her fleets and armies, or in her industrial greatness, or Parliamentary wisdom? Nor is the beneficent power of this sentiment confined to names eminent and world-famed. From sire to son in the obscurest household, and through all the relations of family and friendship, this contexture of sympathy and authoritative memory extends, binding together the fabric of society. Each hearth-side has its memories of virtues, thoughts and affections, unknown to the great world, but to it a vestal fire.¹⁵⁴

Post then claimed that the rural cemetery "demanded by natural taste and for its moral uses, we may regard as almost a necessity of civilization; and we feel it worthy of ourselves and our city to provide such a place for the burial of our dead, and to consecrate it for all coming time as a

¹⁵¹ DEDICATION OF THE BELLEFONTAINE CEMETERY: ADDRESS OF PROFESSOR POST, AND OTHER PROCEEDINGS ON THAT OCCASION ... (St. Louis, T.W. Ustick 1851).

¹⁵² See *Dawson v. Dawson's Ex'r*, 37 Va. (10 Leigh) 602, 1840 WL 2210 (1840); *Literary Fund v. Dawson*, 37 Va. (10 Leigh) 147, 1839 WL 2064 (1839).

¹⁵³ POST, *supra* note 151, at 19. Post's other publications included *Genius: An Address Delivered Before the Philomesthian Society of Middlebury College, August 20, 1850* (Middlebury, Vt., Justus Cobb 1850).

¹⁵⁴ POST, *supra* note 151, at 20.

sanctuary for grief, and memory, and funeral silence and repose."¹⁵⁵

The cemeteries instructed when visitors saw the graves of ancestors and of venerable people and learned about the deeds of great people buried there. Instruction came from the sentiments that visiting graves conjured, as generations of poets had already spoken about -- from Gray's "Elegy Written in a Country Churchyard"¹⁵⁶ to William Cullen Bryant's 1817 poem "Thanatopsis."¹⁵⁷

Presbyterian minister (and later professor at Centre College) Edward Humphrey phrased the moral values of cemeteries succinctly in his dedication of the Cave Hill Cemetery near Louisville, Kentucky, in July 1848. The cemetery's "ancient monuments, its pious inscriptions, its moss-covered head-stones, its venerable shades, the memory of the great and good of olden time, constitute a legacy of imperishable moral wealth to those who come after."¹⁵⁸ Humphrey's address to the Phi Delta Theta literary society at Miami University in 1853 provides a context for his thoughts about the role that the cemetery could provide in moral uplift. That address surveyed western civilization to tell a story of gradual progress. He concluded with a character study of Henry Clay, designed to show how great men were made. Humphrey portrayed Clay's education during the Revolution as setting the course of his life. Clay's experience during the Revolution and the early republic left him with a sense of patriotism and a reverence for the Constitution. "Every early recollection and fixed conviction, every impulse and prejudice even, of his ardent nature allied itself with the institutions of the country; and a veneration for the Constitution and Union of these States was the highest principle—nay, the strongest passion—of his earliest manhood and his latest declining age."¹⁵⁹ Clay learned those values in many ways – from studying with the Revolution's leaders to living through the Revolution itself.

His soul had been fused down in the camp-fires of the revolution, and like the molten gold, it received a coinage which showed that it was purely American. His voice pleading ever for liberty, had in it the ring of the old revolutionary metal. He was the product of our republican institutions. The genius of his country struck all its forces into his spirit. He was a native of the soil. We think of him as we gaze upon the noble, aboriginal tree which now casts its broad shadows upon us. Its roots pierce the virgin soil. It trails low its boughs to drink the dew. It spreads its branches far and wide. All the elements are its ministers. From the deep mould, from rain and sunshine, from day and night, yea, from all the winds

¹⁵⁵ *Id.* at 20.

¹⁵⁶ THOMAS GRAY, AN ELEGY WRITTEN IN A COUNTRY CHURCHYARD (Philadelphia, 1883) (1751).

¹⁵⁷ WILLIAM CULLEN BRYANT, THANATOPSIS (New York, G.P. Putnam's Sons).

¹⁵⁸ HUMPHREY, *supra* note 134, at 31-32.

¹⁵⁹ E.P. HUMPHREY, ADDRESS DELIVERED BEFORE THE SOCIETY OF THE PHI DELTA THETA AT THE MIAMI UNIVERSITY, JUNE 29, 1853 21, 23 (Cincinnati, C. Clark & Co. 1853).

and storms of heaven it elaborates its springing life and its vernal crown. It is the noble growth of the soil—its product and its pride.¹⁶⁰

d. *The Cemetery's Civilizing Mission*

Cemeteries were places where people learned about their obligations to the future, and where they discharged their duties to the past. For burial was a sacred duty, which had humans had fulfilled from time out of mind. And the preparation of cemeteries helped to discharge such duties.¹⁶¹ But it was not just a discharge of a solemn (and one is tempted to say grave) duty. The rural cemeteries also served other civilizing missions in the instruction they provided. Artist Charles Fraser explained during the dedication of Charleston's Magnolia Cemetery in 1850 the many benefits the dead had conferred on the living. They provided examples of virtue, the discoveries and inventions "which are diffusing the benefits of comfort and prosperity throughout the world," and "we owe not only the foundations of the great fabric of our liberties, but those lessons of wisdom, justice, and moderation, upon the observance of which alone can depend its stability."¹⁶² Those debts could be discharged by tribute in a cemetery. Thus, the cemetery was a place where we discharged our debts -- it was something that we owed to those before us and to the country. It was in that way backwards looking, the fulfilling of an obligation. Indeed, a decent burial was "the common debt due from man to his fellow."¹⁶³ Cemeteries were also, however, forward looking places where we taught future generations.

The fullest description of how cemeteries related to human progress came in Cyrus Mason's address at Dale Cemetery in 1852. Mason, who was a Presbyterian minister and sometimes professor at New York University, started at a meta-level, with a description of human progress. He dealt with the means by which humans achieved dominion over nature; how humans had turned nature to their uses. He turned to the history of human development to illustrate how human ingenuity might conquer nature. "A few hundred savages led a poor and wretched life along the Hudson where millions now rejoice in rich abundance."¹⁶⁴

That sense of progress then invited the question: how does progress, what he called "social condition," occur? Improvement required society-wide mobilization. "Everyone knows that life,

¹⁶⁰ *Id.* at 23.

¹⁶¹ *Rural Cemeteries*, 3 S.Q. REV. 523 (April 1851).

¹⁶² FRASER, *supra* note 114, at 4-5.

¹⁶³ William L. Clark, *Address in DEDICATION OF MOUNT HEBRON CEMETERY*, IN WINCHESTER, VIRGINIA, JUNE 22, 1844 ... 12, 13 (Winchester, Republican Office 1844). *See also* WILLIAM L. CLARK, *IMPORTANCE OF INTEGRITY OF NATIONAL CHARACTER: AN ORATION ... IN THE OLD LUTHERAN CHURCH*, [WINCHESTER] JULY 4, 1853 (Winchester, Senseney & Coffroth 1853).

¹⁶⁴ DALE, *supra* note 144, at 18.

liberty and property are in hourly dependence on society. If these are not defended, society is deemed a failure....”¹⁶⁵ Mason set on a lengthy demonstration of how social condition depended on moral condition, how morality led to protection of property and commerce and society. He compared the present social condition with that of the colonial era and with feudalism in Europe, “Where the king, the soldier, the landlord and the priest, take all the fruits of the people’s labor, except the precise amount, which will keep together the souls and bodies of a people who never cherish the thought of an improved condition.”¹⁶⁶ The present, improved social condition was due to the government, education, and natural resources. But it was also dependent on the moral condition of individuals.

Mason thus moved from a society-wide analysis to the individual. His prescription was to take action to improve individuals.

We must adopt and cherish those forms of social action, which have a tendency to make the members of society obtain the mastery over the dangerous elements of nature within themselves, as well as the available elements of nature without them. We must take such measures, and adopt such institutions as are manifestly adapted to make men mindful of the past and regardful of the future, to quicken their tenderest sensibilities, to invigorate their domestic and social affections, to inspire them with an honest pride of ancestry and a deep care of their posterity, to cultivate their taste, and to inflame them with a common sentiment of regard for the honor of their town and their townsmen. These are the germs of a high social condition; give to these a vigorous growth, and you insure a steady progress of the common welfare.¹⁶⁷

Mason showed that the founding of cemeteries was just that kind of “social action” when he demonstrated the contributions cemeteries made to the mission of individual improvement. The cemetery was about the improvement of the living. Monuments are erected “to teach the living a great lesson of patriotism, to show them how mankind regard those, who by mortal peril found a nation and make it free.”¹⁶⁸ The purpose of the cemetery was one of improving individual condition so that social condition, too, was improved. Quite simply, “the true idea, the motive and end” of this new, social institution “is a permanent and common memorial of the community, in which, each family has its appropriate place, and where the past life and influence of the departed are, in some sense, preserved for the benefit of those who survive.”¹⁶⁹ The cemetery

¹⁶⁵ *Id.* at 19.

¹⁶⁶ *Id.* at 20.

¹⁶⁷ *Id.* at 20-21.

¹⁶⁸ *Id.* at 21 (“[W]e build here for the living: for the use, the pleasure, the instruction, the edification of the living.”).

¹⁶⁹ *Id.* at 22.

worked its magic over people in four ways. First, by collecting the sentiments of the survivors, by giving a pride to family and to country. “Let it be made easy for the day-laborer to own a lot in this Cemetery, let him be induced to save by carefulness the price of this lot, and his descendants will be all the more likely to shun the grog-shop, the poor-house and the prison.”¹⁷⁰ Second, by introducing beauty and order. Third by introducing a common interest and a common attachment of the people irrespective of existing divisions into classes, sections, denominations and political parties.¹⁷¹ And finally the cemetery offered to grow in influence as more people were buried there. “The memory of the just, the wise, the useful will here become precious.”¹⁷²

All of those values together led to the advance of civilization – a phrase used often in discussion of cemeteries and elsewhere in American culture. Advance of civilization was one theme that Story referenced several times in his Mount Auburn address. In fact, this was a term in wide-spread use at the time. It conveyed the sense of the technological and moral progress Americans had experienced – and conveyed a set of inter-related ideas about the settlement of the continent, the displacement of Native Americans, technological advancements like the steam engines, which conquered space as it made faster printing possible. Shortly Americans would add the telegraph to their list of devices that had transformed the country. Law was yet another of the technologies that facilitated settlement; in fact, it was central to advancement for it controlled the passions of humans and provided a stable government.¹⁷³ Such ideas were conveyed in graphic terms in the landscape art of the era – such as Asher Durand’s 1853 canvas, *Progress*,¹⁷⁴ and also in a series of books – like E.L. Magoon’s *Westward Empire*¹⁷⁵ – and it was a value widely celebrated in college literary addresses.¹⁷⁶

¹⁷⁰ *Id.* at 23.

¹⁷¹ *Id.* at 24.

¹⁷² *Id.* at 25.

¹⁷³ See Alfred L. Brophy, *Property and Progress: Antebellum Landscape Art and Property Law*, 40 MCGEORGE L. REV. 602, 608-09 (2009) (discussing James Fenimore Cooper’s focus on law in settling the frontier in the novel *The Pioneers* (New York, Charles Wiley 1823).

¹⁷⁴ *Id.* at 647-48 (discussing Asher Durand’s 1853 landscape painting *Progress*). See also ANGELA MILLER, *THE EMPIRE OF THE EYE: LANDSCAPE REPRESENTATION AND AMERICAN CULTURAL POLITICS, 1825-1875* (1993).

¹⁷⁵ ELIAS LYMAN MAGOON, *WESTWARD EMPIRE: OR, THE GREAT DRAMA OF HUMAN PROGRESS* (New York, Harper and Brothers 1856).

¹⁷⁶ See, e.g. JAMES H. PERKINS, *CHRISTIAN CIVILIZATION. AN ADDRESS DELIVERED BEFORE THE ATHENIAN SOCIETY OF THE UNIVERSITY OF OHIO AT ATHENS, SEPTEMBER SIXTEENTH, 1840* (Cincinnati, A. Pugh 1840); JOSEPH P. BRADLEY, *PROGRESS, ITS GROUNDS AND POSSIBILITIES: AN ADDRESS DELIVERED BEFORE THE PHILOCLEAN AND PEITHESSOPHIAN SOCIETIES OF RUTGERS COLLEGE, NEW BRUNSWICK* (New Brunswick, Daily Advertiser Office

That civilizing mission contained important elements of order and stability. Professor Macellus Post, who taught history at Washington University, turned to lessons of history for the evidence of the power that cemeteries held over humans. History taught that cemeteries served to bring stability to human society.

History shows the strength of the power of political conservation, in reverence for the dead, even in cases of its abuse and perversion. The Chinese, whose worship of the dead has conserved an effete civilization for twenty centuries—the Hindoo, whose traditions embalmed in time defying monuments from the source of the Ganges to Cape Comorin, have for 3,000 years kept watch over a civilization seemingly as lasting and changeless as the features of the natural world — ancient Egypt, who embalmed herself for ages in porphyry and granite and marble, making the whole Nile valley one cemetery of mausoleum, of obelisk and pyramid — illustrate the power of the principle, though in mis-direction and excess. Greece understood its power—and in temple and grove, and forum and cemetery, in forests of statuary and funeral sculpture, she caused her gifted and glorious dead to speak, from generation to generation, to her brilliant but mobile people.¹⁷⁷

As with so much of pre-Civil War thinking about the lessons of history, Post found that history taught lessons about the need for stability.¹⁷⁸

In other places writers casually linked cemeteries with the mission of commerce. For instance, in 1855 Congressman James L. Orr of South Carolina included cemeteries as part of his plan for "development of southern industry" in an article in *DeBow's Review*.¹⁷⁹ Orr asked for every southern town to have a "cemetery--enclosed with substantial iron railing--laid out in plats and walks, and planted with flowers and evergreens ... This would be showing that respect and

1849); Levi Woodbury, *On Progress: Address to Dartmouth Phi Beta Kappa Society*, in 3 WRITINGS OF LEVI WOODBURY ... POLITICAL, JUDICIAL AND LITERARY 75 (Boston, Little Brown & Co. 1852).

¹⁷⁷ POST, *supra* note 151, at 18-19.

¹⁷⁸ See, e.g., THOMAS R. DEW, A DIGEST OF THE LAWS, CUSTOMS, MANNERS, AND INSTITUTIONS OF THE ANCIENT AND MODERN NATIONS 484, 562-69, 572-662 (New York, Appleton 1853) (discussing instability in the wake of the French Revolution). See also KUNAL PARKER, COMMON LAW, HISTORY, AND DEMOCRACY IN AMERICA, 1790-1900: LEGAL THOUGHT BEFORE MODERNISM 184-85 (2011) (discussing utility of historical arguments to conservatives in pre-Civil War period).

¹⁷⁹ James L. Orr, *Development of Southern Industry*, 19 DEBOW'S REVIEW 1, 6-7 (July 1855). In an address at Erskine, Orr elaborated on the parts of culture that fit together to create a republican government, including schools and commerce. See JAMES L. ORR, ADDRESS DELIVERED BEFORE THE LITERARY SOCIETIES OF ERSKINE COLLEGE ... AT THE REQUEST OF THE PHILOMATHEAN SOCIETY, ... SEPTEMBER 16, 1846 (Greenville, O.H. Wells 1846).

affection for the memory of the dead due by a civilized and Christian people."¹⁸⁰ And a few years later the Spring Grove, Ohio cemetery's annual report of 1857 suggested that monuments were part of the advance of Christian civilization.¹⁸¹

e. *Cemetery as Part of a Christian Republic*

Because rural cemeteries were places of beauty and repose from the market, which nurtured and taught values of Christianity, patriotism and order, they were part of the Christian republic. They operated, as did other private organizations, to support a constellation of ideas about religion, economy, and constitutional order. Orators at the dedication understood this. Amory Dwight Mayo's 1858 address at the dedication of Green Hill Cemetery in Amsterdam, northwest of Albany in the Hudson River Valley, for instance, provided a detailed sense of the connections of the cemetery to the United States as a nation and to constitutionalism. At the cemetery, it was easy to recall how much civilization had progressed in the generations since the beginning of the eighteenth century. The land was no longer inhabited by Native Americans (who were buried with their faces "turned to the east, in prophetic foresight of the coming civilization").¹⁸² Through "patient fortitude" the valley's settlers had "subdued the wilderness" and with "patriotic devotion saved" the valley "for the heritage of freemen."¹⁸³ Mayo then looked to the future to "behold in vision the scene that shall gladden the eyes of your descendants a century and a half from today." Mayo predicted those far-off generations would find "a garden valley more enchanting than any Eden of the past, peopled by a race that in power and opportunity shall surpass our largest prophecy." The cemetery was the best act citizens of the town had ever undertaken, which promised to grow in beauty over the generations and appeal "to the holiest and calmest sentiments of our being, through the spectacle of enchanting natural scenery, and the associations of the beloved on earth..."¹⁸⁴

Mayo explained that the cemetery was part of establishing the principles of democracy and republicanism because it brought people together in death. The cemetery was – again – a symbol of republicanism and a creator of it:

All things are tending, at least in the more advanced portions of our country, to a broad and pure republicanism, founded on the Christian law of love; and what emblem can be more significant of this happy tendency than the American Cemetery, constructed by the

¹⁸⁰ Orr, *Development of Southern Industry*, *supra* note 179, at 7.

¹⁸¹ THE CINCINNATI CEMETERY OF SPRING GROVE, REPORT FOR 1857 43 (Cincinnati, C. F. Bradley 1857).

¹⁸² MAYO, *supra* note 146, at 4.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 5.

money, taste and sentiment of the whole people; containing the dust of the earliest generations removed thither with pious care; receiving the body of every citizen when his earthly work is done, and he steps down from his little eminence of worldly distinction, to mingle with the great democracy of death.¹⁸⁵

Mayo's praise for the cemetery was extreme – it was, like American society in general, “a powerful aid in teaching the people the Christian view of life and death; as a perpetual preacher on the relations of those who live in this world, and in the world of souls.”¹⁸⁶

For Mayo, the cemetery was an important piece part of a larger mission of what he called “a true Christian civilization.”¹⁸⁷ Other addresses also took up Mayo's themes, though not quite in as much detail. Reverend Increase N. Tarbox spoke in similar, if more general, terms at the 1848 dedication of the Framingham cemetery. He explained that cemeteries amplify the general moral influence that Christianity exercises. Together the sentiments evoked by the cemetery and Christianity combine to make people more moral, that is more respectful of others and the future. The work of the cemetery would continue and its influence would grow as more people were buried there. At Framingham, Tarbox spoke in general terms, but some sense of his ideas about government appear in more detail in an 1843 address at Hamilton College on the “origins, progress, and present condition of philosophy.” That address was an attack on idealists, especially Ralph Waldo Emerson, who embodied what Tarbox thought was the “sickly sentiment of men

¹⁸⁵ *Id.* at 7-8. Similarly, Augustus Ely Silliman's *A Gallop Among American Scenery: or, Sketches of American Scenes...* 220-31 (New York, D. Appleton 1843) has a chapter on Green Wood Cemetery in Brooklyn.

¹⁸⁶ MAYO, *supra* note 146, at 8-9:

How impressive is the testimony of the Cemetery to that true equality of man founded on respect for his nature; and that union of all men for the common Welfare which is the foundation stone of our national existence. However we may be forced by shallow theories or selfish projects to despise and run over any man or class, in the mad struggle of our week-day life, we have only to come up here to be converted from the sin of contempt for Humanity. For in the cemetery all distinctions lie level with the dust. Friend and foe, rich and poor, wise and simple, good and bad, honored and obscure, are all here. ... From these green graves a voice shall speak to us, saying, "Man is worthy of respect as man;" and this primal reverence transcends all secondary distinctions. Made in the shape of a common Father; clothed in the dust of the common earth; bound to every spirit by a common nature; destined to a common immortality; the soul demands more reverence than any man can pay. Of all distinctions, but one endures beyond these walls; and this only for the common good of Humanity.

¹⁸⁷ A.D. MAYO, *SYMBOLS OF THE CAPITAL; OR, CIVILIZATION IN NEW YORK* 350 (New York, Thatcher & Hutchinson 1859).

who live apart from the world and whose minds heat and ferment with thought.”¹⁸⁸ In fact, Tarbox recalled how far New England had traveled from the days of its founding when pragmatic ideas ruled to the present when idealists like Emerson were corrupting philosophy by reference to cemeteries:

In New England, – a land of hills and primitive rocks – beneath whose soil seven generations of hardy Saxon men are sleeping – the foundation of whose institutions was laid by hands hardened with toil – whose genius is the genius of utility and practical sense, – in our own New England, a class of men are found who discourse, by the day, of moonlight and starlight and abstract beauty generally; who find a sort of religion in dew-drops and flowers and falling snow-flakes, and manufacture a kind of God out of the spirit of the age....¹⁸⁹

Instead of the idealists like Emerson, Tarbox respected Anglo-Saxon common sense philosophy – what he called the philosophy of Bacon. Tarbox explained how practical ideas influenced the flow of thought from the high to the low and that is perhaps a model of how a cemetery could influence everyone in a community.¹⁹⁰ Tarbox focused in particular on the centrality of commerce in bringing about progress – this was constitutional theory at very high level of generality – one that focused on the practical and utility as it sought to promote a commercial republic.¹⁹¹ Other addresses linked the ways that cemeteries reflected the natural instinct for respect for the deceased with natural law. That is, the cemeteries were a manifestation of natural instincts and natural law.¹⁹² They appealed to the Whig sense of natural justice, which appeared in the Whig desire for legal order.¹⁹³

There is another way of comparing Tarbox and Emerson; it is through Emerson’s address at the dedication of the Sleepy Hollow Cemetery in Concord, Massachusetts. That address has

¹⁸⁸ I.N. TARBOX, AN ADDRESS ON THE ORIGIN, PROGRESS & PRESENT CONDITION OF PHILOSOPHY: DELIVERED BEFORE THE HAMILTON CHAPTER OF THE ALPHA DELTA SOCIETY ON ITS ELEVENTH ANNIVERSARY AT CLINTON, N.Y. 25 (Utica, R.W. Roberts 1843).

¹⁸⁹ *Id.* at 23.

¹⁹⁰ *Id.* at 10.

¹⁹¹ *Id.* at 29.

¹⁹² See, e.g., DANIEL APPLETON WHITE, AN ADDRESS, DELIVERED AT THE CONSECRATION OF THE HARMONY GROVE CEMETERY, IN SALEM (Salem, The Gazette Press 1840) (natural affection for the dead is part of natural law); Edward North, *Dedicatory Address, in CLINTON CEMETERY*, *supra* note 147, at 13, 24 (explaining the natural instinct for justice).

¹⁹³ See HOWE, *supra* note 53, at 411-45 (discussing Whig support for law over Democratic appeals to power).

substantially fewer references to God than the others; it is more focused on the beauty of nature (it uses one of Emerson's favorite words, sublime, several times); it is more forthright than many addresses in its acknowledgment that cemeteries are about the present. For instance, after discussing that individuals die even as human society continues and that it is impossible to preserve bodies for long, Emerson says that "our people accepting this lesson from science, yet touched by the tenderness which Christianity breathes, have found a mean in the consecration of gardens."¹⁹⁴ Emerson alludes to the "simultaneous movement" in "a hundred cities and towns" to establish rural cemeteries.¹⁹⁵ His focus is on the beauty of nature and the longevity of trees. "What work of man will compare with the plantation of a park," he asked? This address is classic Transcendentalism and thus has less to do overtly with law than a lot of others. Emerson explicitly links the cemetery to the local courthouse, when he says they were both "part of a large block of public ground, permanent property of the town and country."¹⁹⁶

The cemetery's civilizing mission was one piece of a much larger mosaic. That cemeteries were part of the world of the market, commercialization, religion, civic organizations, and reform movements appears perhaps most clearly in Amory Mayo's book *Symbols of Capital; Or, Civilization in New York*.¹⁹⁷ Published the year after his Amsterdam dedication address, *Symbols of the Capital* places the cemetery into the context of New York culture, for it has chapters on free labor, modern inventions like the canal and railroad, the higher law critique of the fugitive slave act, art, the penitentiary, women's rights, and churches. All of that was capped off with a final chapter on cemeteries, which supplemented Mayo's dedication address.¹⁹⁸ Thus in that book we see the cemetery as part of a system of public and private institutions and individual and collective action, all of which pointed towards republicanism founded on Christian principles.¹⁹⁹ Those elements interacted – from art that served to provide the refinement that is the foundation of the state – to free labor, and human inventions that improved life and provided and preserved a republican government. At the center of this was commerce, which served as the advance guard of Christianity. For commerce, Mayo wrote, "turns out a pioneer of civilization and Christianity. Every blow of the spade or sweep of the mower on the uplands and in the valleys of New York, is felt in the spiritual experience of these who dwell in far-off lands."²⁰⁰

Mayo saw in commerce the workings of God. And he turned to images of commerce to

¹⁹⁴ Ralph Waldo Emerson, *Consecration of Sleepy Hollow Cemetery*, 11 COMPLETE WORKS OF RALPH WALDO EMERSON: MISCELLANIES 430 (1911).

¹⁹⁵ *Id.* at 430.

¹⁹⁶ *Id.* at 432.

¹⁹⁷ MAYO, *supra* note 187.

¹⁹⁸ *Id.* at 343-68.

¹⁹⁹ *Id.* at 351.

²⁰⁰ *Id.* at 354.

illustrate God's presence in the United States.

Were I challenged by the skeptics to show my strong reasons for the faith in God, and moral obligation and immortality, I do not think I should detain him in my study among the volumes of dead divines, but I would lead him to the very throbbing heart of this world's activity, to the decks of those steamers freighted with the science and burdened with the hopes of two continents. There I would stand, as these messengers ploughed their way through the waves, breasting an ocean of incredulity more chilling than the surges of the cold Atlantic, I would bid him mark the demeanor of those toil-worn men; their fidelity, their silent and sacred obedience to every command, the faith of their leader unsubdued by failure.²⁰¹

Mayo carried the story farther than many. He linked the bustle of American commerce to the cemetery. For the cemetery was nearby the city, though separated from it. It was a place where visitors would think of life rather than death.

How admirable, then, is the sentiment that often places the Rural Cemetery within sight of all the agencies of our new civilization. Walking among its silent graves, you can almost hear the hum of the machinery that crowds the adjacent stream; the meadows are sown and harvested beneath your eye; the spires and roofs of the city gleam in the distance, or the village streets are vocal below; the near river or blue ocean afar glitter with flitting sails; the thunder and the scream of the lightning train startle the echoes of innumerable ravines, and swift as thought, fly tidings of humanity over the glittering wire. All is life around; oh, yes, and there is no death here.²⁰²

The cemetery, then, was part of a world of the "Christian republic"²⁰³ – a place where people mixed and where we learned lessons of republicanism. Amory Mayo's 1858 address at Green Hill Cemetery in Amsterdam provided the most elaborate explanations of the country's a tendency toward "a broad and pure republicanism, founded on the christian law of love" and how cemeteries functioned to foster that principle.²⁰⁴ "Containing the dust of the earliest generations removed thither with pious care, receiving the body of every citizen when his earthly work is done, and he steps down from his little eminence of worldly distinction, to mingle with the great democracy of death."²⁰⁵ The cemetery represented "a most significant type of the great democratic

²⁰¹ *Id.* at 355.

²⁰² *Id.* at 357.

²⁰³ *Id.* at 196.

²⁰⁴ MAYO, *supra* note 146, at 8.

²⁰⁵ *Id.*

idea, on which our society is founded, as a powerful aid in teaching the people the Christian view of life and death, as a perpetual preacher on the relations of those who live in this world, and in the world of souls.”²⁰⁶ For the cemetery represented “that true equality of man founded on respect for his nature, and that union of all men for the common Welfare which is the foundation stone of our national existence.”²⁰⁷ It illustrated those principles by leveling distinctions.

Friend and foe, rich and poor, wise and simple, good and bad, honored and obscure, are all here. Whatever they may have been or may have done above-ground, our gentle mother earth opens her bosom to the least and greatest alike. However separated by the accidents of conventional society, Nature, the most illustrious hostess, keeps open house for all. From these green graves a voice shall speak to us, saying, "Man is worthy of respect as man;" and this primal reverence transcends all secondary distinctions. ...²⁰⁸

At the cemetery Mayo believed there would be critical lessons about Christian republicanism.

Come to this hill side from the selfish competitions that divide man from man, and learn from the way our mother treats her every child, to reverence all men for their manhood derived from God, to live for each other, counting any superiority of native faculty, a culture, or character, as a trust to be used for the uplifting of the whole, to make society in this Community, in our beloved country, one family, bound together by respect for the nature and rights of all—a republic on earth, fit emblem of the kingdom of God in heaven.²⁰⁹

Mayo was one of many people who linked Christianity, the market, and Constitutionalism. He was preceded in this by lawyer Oliver Baldwin, who told the audience at the dedication of Richmond’s Hollywood Cemetery in June 1849, “of all the schools of instruction there is non like that which speaks to us from the dust.”²¹⁰ Baldwin explained the ways that cemeteries evoked religious sentiments:

The Grave, the Grave, how simply but powerfully it speaks through the eye to the soul,

²⁰⁶ *Id.*

²⁰⁷ MAYO, *supra* note 146, at 7-8; Baldwin, *supra* note 136; *see also Hollywood Cemetery*, RICHMOND ENQUIRER at 1 (June 29, 1849) (discussing absence of political talk in Baldwin's address, which emphasized equality of humans). MARY H. MITCHELL, HOLLYWOOD CEMETERY: THE HISTORY OF A SOUTHERN SHRINE 26 (1985) (discussing Peter Mayo’s injunction against sale of the lots).

²⁰⁸ MAYO, *supra* note 146, at 8.

²⁰⁹ *Id.* at 9.

²¹⁰ BALDWIN, *supra* note 136, at 11.

and bids it mediate upon itself and its destiny. An ancient writer has said that man was taken from the dust of the earth to prompt him to humility. ... The lessons which will here be taught are adapted to all conditions of life, and readily suggest themselves to every mind. ... The votary of wealth may learn a useful lesson when he sees the purple robe of the rich exchanged for the unsightly shroud, and the man who fared sumptuously every day become himself a banquet for worms. The sons of sorrow and of poverty may come here not to mourn, but to be comforted; to be reminded that trouble, like pleasures, have an end; and that for the meek and pure in heart the grave is but the gate to ceaseless felicity above. Even the man of an evil nature may perhaps be touched with solemn awe when, whether he reject Divine Revelation or note, he sees around him a thousand incontestable evidences that *Sin* is in the world, and *Death* by Sin. ... Here may the Christian stand and look upon the monument of his departed friend as his own lighthouse to the harbor of eternal rest.²¹¹

f. *Whig Constitutionalism Within and Beyond the Cemetery*

Whig politician Daniel Dewey Barnard made the most explicit connection between nature, art, and constitutional values of any cemetery orator. Barnard, who was a constant figure in New York politics from the 1830s through the 1850s and a staunch defender of property rights during the New York anti-rent movement,²¹² spoke in other addresses about the need for protection of property rights²¹³ and the important role that the government played in establishing order.²¹⁴ At the Albany cemetery, though, Barnard emphasized the particular place of the cemetery's natural setting and the possibilities of further cultivation in order and uplift.

The grounds where we are now assembled have been selected for a cemetery ... with a special view to their natural beauty, and their capability of improvement after the manner of landscape gardening. Think of all this natural beauty at once fully brought out and softened by the hand of art – at once heightened, yet subdued by the civilizing and humanizing process to which it may be subjected – and then think of it inhabited only the by the dead; here and there a grave, or a group of graves; some in one lovely spot, some in another What scene in nature could be more beautiful, more attractive, more

²¹¹ *Id.* at 12-13.

²¹² CHARLES W. MCCURDY, *THE ANTI-RENT ERA IN NEW YORK LAW AND POLITICS, 1839-1865* 11, 14-16, 228-31 (2001).

²¹³ DANIEL D. BARNARD, *ADDRESS DELIVERED AT AMHERST, BEFORE THE LITERARY SOCIETIES OF AMHERST COLLEGE, AUGUST 27, 1839* (Albany, Hoffman & White 1839).

²¹⁴ BARNARD, *supra* note 104.

impressive, more improving!²¹⁵

Where Barnard's Albany address operated at a high level of generality with respect to constitutionalism, we can see how Barnard's constitutional world fit together in some of his other addresses, such as the address he delivered in 1843 at Amherst College three years before his dedication address at the Albany Cemetery. At Amherst, Barnard drew the connections between Christianity and the Constitution.²¹⁶ And in an 1846 address at the University of the City of New York, Barnard credited four key events in shaping a solid American character: "We have the Bible, and the Reformation, and the American Revolution, and the Constitution of the United States." In the United States the public mind acted a stabilizer, to "keep society firm and assured and enable it to throw back, as from a rock based in deep unfathomed earth, all the shocks which the restless, the speculative, the bigoted or the fanatical may direct against it."²¹⁷ In that search for stability – Barnard called his lecture a "plea for social and popular repose" – the cemetery could be one of the many elements.²¹⁸

Barnard developed his political philosophy perhaps most fully in an address, "Man and the State. Social and Political" to the Yale Phi Beta Kappa Society in 1845. Barnard spoke of his anxiety – of his concern that the well-educated would use their talents for the "genial, gentle, suasive influence over the popular mind."²¹⁹ His mission was a search for eternal truth amidst the "age of reform." His address was on the "relation of the state and of governments to the subject

²¹⁵ BARNARD, *supra* note 150, at 29.

²¹⁶ BARNARD, *supra* note 213.

²¹⁷ DANIEL BARNARD, PLEA FOR SOCIAL AND POPULAR REPOSE: ADDRESS BEFORE PHILOMATHEAN AND EUCLEIAN SOCIETIES OF UNIVERSITY OF CITY OF NEW-YORK, JULY 1, 1845 7-8 (New York, Tribune Job Printing 1845).

²¹⁸ Barnard wrote against the anti-rent movement and spoke about the problems of excesses of democracy and attacks on property numerous times. *See, e.g.*, DANIEL D. BARNARD, A DISCOURSE ON THE LIFE, SERVICES AND CHARACTER OF STEPHEN VAN RENSSELAER: DELIVERED BEFORE THE ALBANY INSTITUTE (Albany, Hoffman & White 1839) (attacking early anti-rent movement); DANIEL D. BARNARD, A DISCOURSE PRONOUNCED AT SCHENECTADY: BEFORE THE NEW-YORK ALPHA, OF ... PHI BETA KAPPA, JULY 25TH, 1837 (Albany, Hoffman & White 1837) (urging support for law instead of excesses of democracy); DANIEL D. BARNARD, AN ORATION: DELIVERED BEFORE THE HONORABLE THE CORPORATION AND THE MILITARY AND CIVIC SOCIETIES OF ... ALBANY, ON THE FOURTH OF JULY, 1835 (Albany, E.W. & C. Skinner 1835); DANIEL D. BARNARD, A DISCOURSE DELIVERED BEFORE THE SENATE OF UNION COLLEGE ... (Albany, Weed & Parsons 1843).

²¹⁹ BARNARD, *supra* note 104, at 6.

of the Moral condition and Progress of man.”²²⁰ The state was based on an unwritten social constitution that helped define the “political estate” – the group of political actors who in turn formed a written constitution. Barnard wanted civil society to overcome what he called “political materialism,” in which physical and material impulses led to a tyranny of the majority’s wishes.²²¹

This was a central issue: How to mold and shape humans for progress? And while often addresses spoke of an individual’s duty, such progress occurred through society, through legal forms, through actions of the state, the family, and private organizations. For “men find themselves every where, not merely existing by the side of other men, but associated every where with other men, in various relations.”²²² It was the social and the political state that could organize and develop human morality, for “Man does not exist alone.”²²³

Barnard’s political theory justified, indeed depended upon, a “higher constitution” than mere numbers. It was a sense of patriotism, Christian duty, and morality.²²⁴ Law was an adjunct to Barnard’s vision of “personal Morality.” Together the laws and such personal morality formed “a Code of National Morality.”²²⁵ Given the centrality of law to the country’s definition and maintenance of morality, Barnard identified the terms where there might be progress—it had to “be done in the state and under the state.”²²⁶ Barnard looked forward to the day when the state, aided by Christianity, would head off for “moral renovation, reform, and progress.”²²⁷

Law was also central because it was about setting boundaries on popular will. He wrote the leading defense of the feudal tenures that were attacked during the New York Anti-rent movement. Barnard saw the movement at base as an appeal to “public licentiousness,” akin to other popular movements that tended to destroy respect for law.²²⁸ He appealed to the Constitution and to a return to principles of respect for property and principles in place of those of who “look to the end, and . . . easily quiet themselves about the means.”²²⁹ Those popular appeals

²²⁰ *Id.* at 8.

²²¹ *Id.*

²²² *Id.* at 8.

²²³ *Id.* at 11.

²²⁴ *Id.* at 36-38.

²²⁵ *Id.* at 39-40.

²²⁶ *Id.* at 43.

²²⁷ *Id.* at 45.

²²⁸ [Daniel Barnard], *The “Anti-Rent” Movement and Outbreak in New York*, 2 WHIG REV. 577, 580 (1845).

²²⁹ *Id.* at 578.

led to the movement. “There seems to be nothing so intrinsically base or wicked, that respectable and apparently well meaning persons may not be found to encourage and support it, provided only it have the sanction of numbers in its favor.”²³⁰

Though these ideas do not have the sophistication that we often associate with constitutional theory in places of high culture like the floor of the United States Senate²³¹ and the pages of the Supreme Court’s decisions,²³² works like Barnard’s address and also Mayo’s allow us to see how contemporaries fit the cemetery into their world. The cemetery emerges as one piece of a complex system that saw the reformation and the American Revolution, and the Revolution’s result – a Constitutional republic – as the center of the American nation.²³³ Progress in morals was bound up with progress in economics, and always it was Christianity – of which the cemetery was a key part – at the center of this progress. The Erie Canal, steam boats, railroads, the telegraph, women’s domestic sphere that elevated all of culture, fine art, free labor, the reform of prisons, and the cemetery – all these were parts of the same culture and they worked together in the Christian mission.²³⁴ This was why Elias W. Leveanworth, the president of Syracuse’s Oakwoods Cemetery, found the cemetery a necessary – though missing – piece of progress of the age.²³⁵

At a high level of generality, then, cemeteries functioned to promote republican values. They taught lessons about the early Republic, about change over centuries. Their monuments’ inscriptions as well as the historical importance of their setting and the beauty of their landscaped gardens inspired citizens to more moral thinking. But in other ways the cemetery was part of the mission of creating a republican government. Richmond’s periodical *Southern Literary Messenger* wrote in 1853, shortly after the dedication of the Hollywood Cemetery, of the need for permanent rural cemeteries. When children moved away from their ancestral homes, family cemeteries fell into disrepair; perhaps they were even forgotten entirely and often the cemeteries fell to development and farming. “Change is the order of the day,” was the explanation.²³⁶ Where in England families would stay and thus were able to provide care for family plots, in the United

²³⁰ *Id.* at 580.

²³¹ DANIEL WEBSTER, SPEECH OF THE HON. DANIEL WEBSTER UPON THE SUBJECT OF SLAVERY: DELIVERED IN THE UNITED STATES SENATE ON THURSDAY, MARCH 7, 1850 (Boston, Redding & Co. 1850).

²³² *See, e.g.*, *Dred Scott v. Sandford*, 57 U.S. 393 (1857).

²³³ GORDON S. WOOD, EMPIRE OF LIBERTY: A HISTORY OF THE EARLY REPUBLIC, 1789-1815 (2009); MARK E. BRANDON, FREE IN THE WORLD: AMERICAN SLAVERY AND CONSTITUTIONAL FAILURE __ (1998).

²³⁴ MAYO, *supra* note 187, at 196.

²³⁵ HISTORY ... OF OAKWOODS, *supra* note 26, at 20.

²³⁶ *Memorials of the Dead*, S. LIT. MESSENGER 543, 543 (1853).

States things were entirely different. Because of the constant migration, “the father plants and stranger to his blood and family waters.” There could not – indeed should not – be laws prohibiting development. “The character of our institutions forbid a change in our laws and nature demands, as well as the good of society, that they shall not be altered.”²³⁷ This led the *Messenger* to ask whether the problem of the desecration of family cemeteries could “be remedied without an abrogation of a policy so essentially necessary to the freedom and prosperity of our country?”²³⁸ It could, if there were a place where the dead would be cared for in perpetuity. “These great and beautiful republics of the dead” served that purpose.²³⁹

It was not just that cemeteries inspired patriotic sentiments; they actually were examples of democracies and republics. Rural cemeteries brought everyone together regardless of religious affiliation. There was a democracy in cemeteries, where rich and poor mingled. The lawyer John Thompson, who was elected to the United States House of Representatives in 1856 as a Republican, spoke of such democracy of cemeteries in his 1854 dedication address at Poughkeepsie’s cemetery:

Here the rich and the poor—the lofty and the lowly, friends and foes, meet and mingle in a fellowship that knows no rivalries; admits of no distinctions. Whatever the affection or opulence of survivors may erect, “of storied urn, or animated bust,” to mark the merit of the lost—the dwellers in this quiet city of the dead, will experience no difference—rank and precedence are unknown, and peace sits enthroned in every chamber of these silent realms.²⁴⁰

Orators like Daniel Barnard and Amory Mayo realized that cemetery dedication addresses were part of a world of Whig thought about constitutionalism, law, patriotism, order, and even beauty. Together those ideas amplified each other. The cemetery addresses and the cemeteries themselves were part of implementing an ordered republic, which was a place of moral and economic growth. When we seek to understand their world and the place of the Constitution in it, we see that many institutions came together to create that orderly world of subordination to law. The legal form of the corporation was used to create and maintain cemeteries and, thus, the corporate form served constitutional purposes.

3. The Cemeteries’ Legal Methods: Private Corporation and Public Regulation

²³⁷ *Id.* at 543.

²³⁸ *Id.*

²³⁹ *Id.* Similarly, counsel for the City of Hannibal, Missouri, arguing in favor of eminent domain in 1852 used similar phrasing: “A graveyard is not private property, but belongs to the great ‘Republic’ of the dead.” *See City of Hannibal v. Draper*, 15 Mo. 634, 635 (Mo. 1852).

²⁴⁰ John Thompson, *Address in THE POUGHKEEPSIE RURAL CEMETERY, ITS BY-LAWS, RULES AND REGULATIONS ...* 10, 18 (Poughkeepsie, Platt and Schram 1854).

Story spoke not only about lessons of sentiment and constitutionalism. His speech also dealt with the seemingly mundane issue of the cemetery's legal authority, its charter from the Massachusetts legislature.²⁴¹ Indeed, the pamphlet version of Story's address printed shortly after his speech also had the cemetery's organic act and its rules for operation, which included instructions on how to assign lots and the varying levels of rights among owners.²⁴² The cemetery was a triumph of the corporation, which assembled money from investors for a purpose of eternal preservation. In fact, Story emphasized the perpetual nature of Mount Auburn.²⁴³ In an era when charities were feared by many precisely because they were perpetual,²⁴⁴ this was an extraordinary moment. There were two aspects of the rural cemetery that dealt rather directly with law, though Story only dealt with the first one in his 1831 Mount Auburn address. The first was the corporate form, which was authorized first by special legislative act and then, later, by a general incorporation statute for cemeteries. The second and in many ways more important one was the power of the state to regulate burials for the public good.

a. **Corporate Form and Public Good**

Pharcellus Church's 1839 dedication address at Rochester explained in more detail how the corporate form worked. The cemetery corporation was established to provide for the perpetual upkeep of the grounds, because the profit from the sale of the land went into a fund for preservation of the cemetery.

By a wise provision, the lots here sold will be secured to the purchasers forever, under such circumstances too, as to afford every assurance, that, should their families remove to the ends of the earth or become extinct, the graves of their friends will be respected and will share in the general improvements which the grounds may be expected to receive. And, to what a pitch of perfection may these grounds be carried, by allowing due scope to art in improving the advantages of nature! ... [I]t is pleasant to reflect that a laudable desire of providing for the dead, has determined our corporation to devote all the proceeds from the sale of lots, after paying the debts contracted in the purchase, to improvements. By duly prosecuting this noble design, our cemetery will become the brightest ornament of

²⁴¹ STORY, *supra* note 2, at 18.

²⁴² *Id.* at 24-25.

²⁴³ *Id.* at 19, 25.

²⁴⁴ *See, e.g.*, American Bible Soc. v. Noble, 11 Rich.Eq. 156, 1859 WL 4395 (S.C.App.Eq. 1859) (discussing mortmain statutes and the reasons why the concentration of property in hands of churches had proven a problem in the United Kingdom); Gallego's Ex'rs v. Attorney General, 30 Va. (3 Leigh) 450, 1832 WL 1845 (1832) (detailing Virginia's opposition to concentration of property in hands of churches).

our city, and be able to vie with any thing of the kind on the surface of the globe. ... How may avenues and walks be cut in every direction, among the thick trees and tortuous ravines, to make way for the solemn procession, or the contemplative traveler to spend an hour of pensive musing and awful converse with eternity!²⁴⁵

This was an instance in which the private corporation contributed to public good. So much so, in fact, that the New York legislature passed an act for the general incorporation of cemeteries in 1847.²⁴⁶ Professor Cyrus Mason of New York University¹ told the audience at Dale Cemetery near Sing Sing in 1852 that the New York statute was designed to increase cemeteries.²⁴⁷ Mason thought a public service is performed by corporation.²⁴⁸

Robert Cochran, another speaker at the Dale cemetery dedication, praised the New York legislature even more than Mason. Cochran found that the legislature had acted in keeping with the “spirit of the age” with the incorporation statute because it guaranteed the cemetery plot against creditors:

With a wise and humane policy, that reflects the greatest honor upon that dignified body,

²⁴⁵ CHURCH, *supra* note 123, at 18.

²⁴⁶ “*An act authorizing the incorporation of Rural Cemetery Associations,*” 1 LAWS OF [NEW YORK OF] 1847 125, ch. 133 (Albany, Charles Van Benthuyssen, 1847) (passed April 27th, 1847); *see also* “*An Act To Provide for the Incorporation of Cemetery Associations,*” LAWS OF WISCONSIN TERRITORY 237-41 (Madison, W.W. Wyman 1844); “*An Act authorizing the incorporation of rural cemetery associations,*” A DIGEST OF THE LAWS OF NEW JERSEY 80-82 (Philadelphia, J.P. Lippincott 1855) (act of March 14, 1851); “*An Act making provision for the Incorporation of Cemetery Associations,*” 2 PUBLIC STATUTES ... OF THE STATE OF OHIO 1443 Chap. 867 (Cincinnati, Maskell Curwen) (February 24, 1848); “*An Act to provide for the Incorporation of Cemetery Associations by General Law,*” A COMPILATION OF THE STATUTES OF THE STATE OF ILLINOIS 271-72 (Chicago, Keen & Lee 1856) (passed February 14, 1855); “*An Act to Authorize the Incorporation of Rural Cemetery Associations,*” STATUTES OF CALIFORNIA 281-75 (Sacramento, John O’Meara 1859); “*An Act to Provide for the Incorporation of Cemetery Associations,*” GENERAL LAWS OF THE STATE OF KANSAS 86-87 (Lawrence, Kansas State Journal 1861) (June 4, 1861); *An Act to Establish the Wilmington and Brandywine Cemetery,* 10 LAWS OF THE STATE OF DELAWARE 27-29 (Dover, S. Kimmey 1845) (act of February 6, 1845); *An Act to Incorporate the Madison Cemetery,* LAWS OF THE STATE OF INDIANA 344 Chap. 354, (January 19, 1846) (Indianapolis, J.P. Chapman 1846); *An Act to Incorporate the Wheatfield Cemetery, Association,* LAWS OF THE STATE OF NEW YORK 85 (Albany, C. Van Benthuyssen 1844) (act passed March 29, 1844). *See also* NEEM, *supra* note 21, at 77 (discussing growth of charters for charitable corporations).

²⁴⁷ DALE CEMETERY, *supra* note 144, at 38.

²⁴⁸ *Id.* at 25.

the Legislature of this State have recently enacted laws encouraging the Incorporation of Rural Cemeteries, and throwing around them certain important sanctions and immunities. Under the protection of these beneficent enactments, the poor laborer in the lowlier walks of life, as well as the more favored and prosperous, may here, cheaply, purchase, his little plot of ground for the final abode of himself and those whom he loves, and hold it without fear. The hard and unrelenting grasp of the creditor cannot shake his tenure. No public taxes, rates, or assessments can be imposed, by civil authority, upon his estate. Having hallowed the soil, by interring in it one pale form of kindred dust, he has set the seal to his possession, and not even his own act, in a moment of desperate madness, can wrench it from him.²⁴⁹

This was yet another instance of the use of public power to encourage private action for public good. Amory Mayo mused in 1858 that there as yet uncalculable public good would emerge from the cemetery. The community did not yet know the size of its debt to the cemetery's creators.²⁵⁰ Others mused on that question as well. "The moral effect of this one burial place no one can anticipate or describe," Reverend Gillette said in 1858. Yet he was certain the value would be greater than the cost. "It will be alone more than sufficient to repay the anxiety, expense and toil its respected projectors have bestowed upon it, and will redound with benefits untold, upon their children and their children's children, even to the remotest generations."²⁵¹

New York Judge David Buel spoke in some detail about the 1847 New York cemetery statute at the dedication of Troy's Oakwood Cemetery in 1850. He discussed the ways that the statute protected cemeteries from tax assessment, protected buyers of individual lots from their creditors. Moreover, once someone was buried there, their relatives could never sell the lot. It also limited the power of cemeteries to spending the money they collected for the preservation and improvement of the cemetery. "Thus the law provides that by no change of circumstance, by no pressure of poverty which may overtake the first proprietor ... can he or his descendants, ever be deprived of their last earthly home." Buel concluded "the law makes this inheritance of the dead a sacred charity."²⁵²

The rural cemeteries used corporate form (and celebrated it with their publication of charters) to do something that Whigs urged on individuals and on educational institutions -- bring the nation together to celebrate the past and have moral uplift.²⁵³

²⁴⁹ *Id.* at 37.

²⁵⁰ MAYO, *supra* note 146, at 5.

²⁵¹ WOODLANDS CEMETERY, *supra* note 124, at 48.

²⁵² DAVID BUEL, AN ADDRESS DELIVERED AT THE CONSECRATION OF OAKWOOD CEMETERY, OCTOBER 16, 1850 13 (Troy, John F. Prescott 1850).

²⁵³ The rural cemeteries confirm the role of private, collective action for public good and for the promotion of values. *See, e.g.,* Joseph Story, *Rights of the Fellows of Harvard College*, in

Many of the dedication pamphlets contained the cemeteries' rules, the deeds that they gave to purchasers, their charters, and sometimes even the state acts that authorized the creation of cemeteries.²⁵⁴ Why was there an elaborate legal literature regarding the rural cemeteries and why was it often linked to the dedication ceremonies? This was part of a larger movement to legitimize through public discussion the organic act – we see this with all sorts of private charitable corporations, like libraries and churches. The public organic act was a badge of honor, as well as an element of legal technology. Moreover, the charters served to give notice to the lot owner of the procedures that the cemetery corporations needed to follow. The cemetery rules served notice to all interested in the cemetery of the proper behavior and the rules that they must follow and that the cemetery needed to follow as well.

The charters and financing – for instance some of the public cemeteries were financed through public bonds – are designed to make the cemeteries permanent. Charters tell us this and

3 MISCELLANEOUS WRITINGS OF JOSEPH STORY 298-339 (Boston, Little Brown 1852). *See also* ALBRECHT KOSHIK, *LET A COMMON INTEREST BIND US TOGETHER: ASSOCIATIONS, PARTISANSHIP AND CULTURE IN PHILADELPHIA, 1775-1840* (2007); Scott Gregory Lien, *Contested Solidarities: Philanthropy, Justice, and the Reconstruction of Public Authority in the United States, 1790-1860* (Ph.D. Diss. University of Chicago, 2006). For the rural cemetery was a public civic association that all might join and that all might benefit from. It was part of a robust spirit of charitable corporations in the Northeast. *Cf.* Johann Neem, *Politics and the Origins of the Nonprofit Corporation in Massachusetts and New Hampshire*, 32 *NONPROFIT & VOLUNTARY SECTOR* Q. 344-65 (2003); PETER DOBKIN HALL, *INVENTING THE NONPROFIT SECTOR* 32-36 (1992) (discussing antebellum institutional and philanthropic culture); Peter Dobkin Hall, *What the Merchants Did with Their Money: Charitable and Testamentary Trusts in Massachusetts, 1780-1880*, in *ENTREPRENEURS: THE BOSTON BUSINESS COMMUNITY, 1700-1850*, 365, 403-16 (Conrad Edick Wright & Kathryn P. Viens eds., 1997) (discussing Boston philanthropy funded via testamentary trusts in the nineteenth century); KATHLEEN MCCARTHY, *AMERICAN CREED: PHILANTHROPY AND THE RISE OF CIVIL SOCIETY* 123-43 (2003) (discussing Jacksonian Democracy's conflicts with philanthropy).

²⁵⁴ *See, e.g.*, HISTORY ... OF OAKWOOD, *supra* note 26, at 68-79 (printing cemetery rules and New York's incorporation statute); Clinton Cemetery, *supra* note 147, at 37-40 (incorporation act); *Act of Incorporation*, in DANIEL APPLETON WHITE, *AN ADDRESS, DELIVERED AT THE CONSECRATION OF THE HARMONY GROVE CEMETERY, IN SALEM* xii-xv (Salem, The Gazette Press 1840); REGULATIONS OF THE LAUREL HILL CEMETERY, ON THE RIVER SCHUYLKILL 12-14 (Philadelphia, C. Sherman 1846) (act of incorporation); HANDBOOK OF THE FORT HILL CEMETERY 62 (Auburn, W.J. Moses 1853) (state charter); REGULATIONS OF THE BALTIMORE CEMETERY WITH SUGGESTIONS TO LOT-HOLDERS, AND THE ACT OF INCORPORATION, 1850 19-23 (Baltimore, John Murphy 1850) (charter); THE POUGHKEEPSIE RURAL CEMETERY, ITS BY-LAWS, RULES AND REGULATIONS (Poughkeepsie, Platt & Schram 1854); FIRST REPORT OF THE ... ALLEGHENY CEMETERY: TOGETHER WITH THE CHARTER OF THE CORPORATION ... 23-26 (Pittsburg, Johnston & Stockton 1849) (charter); HUMPHREY, CAVE HILL CEMETERY, *supra* note 134, at 31-32 (incorporation act).

the promotional literature emphasizes that this is about perpetual memory, not profit.²⁵⁵ Occasionally orators also explained in some depth the importance of the cemetery charters in promoting the purposes of the cemeteries – in preserving them free from taxes, protecting the assets, so that the cemetery could continue forever, and in protecting the lots of individual owners from their debts. “It is to be rejoiced over that in opening this, our Rural Cemetery,” said Edward North, who taught Greek at Hamilton College, at the dedication of the Clinton, New York cemetery in 1857, that “we are able to embody in its organic regulations ideas of permanence and sacred use.” North went on to explain how the cemetery’s charter reflected the purposes of its founders in preserving the cemetery.

No mercenary or speculative views can ever thwart the sacred purpose of our Cemetery Association, by controlling the action of those who serve as its Trustees. The law under which the Association is formed, requires that after the payments for purchase money are made, all its revenues shall be expended in improving and keeping the grounds, and for no other purpose. By a wise provision of statute the title to this soil once made perfect, becomes inalienable. The property of the Association is exempt from all public taxes, rates and assessments. It is not liable to be sold on execution, or for the payment of debts due from individual proprietors. After the title of a plat has been transferred to an individual and an interment made therein, the plat becomes his inalienable property, descending to his heirs and their heirs forever, or so long as they choose to retain it. No sheriff’s writ can ever deny our right to sleep here after death, with our fathers and descendants, unmolested.²⁵⁶

²⁵⁵ CLEVELAND, GREEN-WOOD ILLUSTRATED, *supra* note 131, at 3. *See also* CHURCH, *supra* note 123, at 18 (noting that cemeteries will be preserved forever, no matter where descendants live).

²⁵⁶ CLINTON CEMETERY, *supra* note 147, at 15-16. *See also* EDWARD NORTH, AN ADDRESS DELIVERED BEFORE THE SONS OF TEMPERANCE: IN PALMER’S GROVE, NEAR FRANKFORT, N.Y. ON THE FOURTH OF JULY, 1848 (Utica, H.H. Curtiss 1848).

Professor North articulated why the cemetery charter was so important: all too often churches were closed and converted to new uses.

In this age of abrupt changes, revolutions and runnings to and fro, when household altars are set up to-day and destroyed to-morrow, when a church is consecrated this year for sacred worship, and next year sold for a theatre or a barn, when even religious principles are pulled up, now and then, as children pull up the shrubs they have planted to see if they have taken root, it is pleasant to be permitted to organize a Cemetery that carries the elements of durability and the permanent expression of a sacred purpose. It is pleasant and grateful to know that our right to an inviolable burial-place, or God’s Acre, into whose furrows we shall all be cast, is respected by the laws of the State; and that nature herself consents to co-operate with us in doing deathless honor to the dead.

CLINTON CEMETERY, *supra* note 147, at 16.

Yet even as many celebrated the role of private corporations in the working of public good, others urged that cemeteries be undertaken by the public. Hon. John B. Wilkins' 1852 address at the West Roxbury Cemetery celebrated the public good that the private cemetery corporation.²⁵⁷ The public role that was served by private action. But Wilkins also urged public action.²⁵⁸

Professor Mason praised the proprietors for taking action for public benefit.

we come to celebrate the opening to the public of an enterprise set in motion, for purposes of private gain as well as public benefit. These two features are desirable in every public enterprise. In the best state of society there would be no room for gratuities because none would need them. The nearer we can approach this state of things the better. Every proprietor here will walk uncringing through these grounds, because he has paid his share of a full remuneration to the company. And yet there will be room in his heart for deep and manly gratitude to those citizens, who set on foot this enterprise. For there is always required a sort of daring and superior forecast in those, who project and execute important social projects. They step out in advance of their fellow citizens, and do a service, which, but for them, would not be done; they act against the fears of their friends, and (sometimes) against the sneers of the bystanders; and they take all the chances of a failure. When their project is successful, they create, by their action, the benefit they confer; they bring into existence and distribute to the people large measures of tangible wealth, or of social advantage, which lays none under any painful pecuniary obligation. They enrich others without becoming poorer themselves.

Such men are the highest order of benefactors. Their reward comes slowly, because their service to mankind comes slowly into view, and is gradually appreciated; but time is the sure friend of men of genius and enterprise, and their reward is as sure as the revolutions of the earth, and as large as the justice of unbiased minds.²⁵⁹

The addresses sometimes even turned to the language of property to described the cemeteries. "The dead should have a permanent freehold – precincts fortified against the world's enterprise, that would invade their house, and hold that their bones as encumbrances against the rights of

²⁵⁷ John H. Wilkins, *Introductory Remarks*, in *MOUNT HOPE CEMETERY IN DORCHESTER AND WEST ROXBURY: WITH THE EXERCISES AT THE CONSECRATION, ... JUNE 24, 1852* 7 (Boston, Crosby, Nichols & Co. 1852). *See also Public and Private Charities of Boston*, 61 N. AM. REV. 135-59 (1845); MARSHALL FOLETTA, *COMING TO TERMS WITH DEMOCRACY: FEDERALIST INTELLECTUALS AND THE SHAPING OF AN AMERICAN CULTURE* (2001).

²⁵⁸ Wilkins, *supra* note 257, at 7-8.

²⁵⁹ DALE, *supra* note 144, at 25.

property and as the spirit of improvement.²⁶⁰

But for most orators, the nature of the law's protection for cemeteries was of less importance than that it preserved the cemeteries. The process was less important than the result. And it was law working in conjunction with sentiment that ensured the preservation. At the Cave Hill dedication in 1848, Edward Humphrey linked corporate and property law with public sentiment to ask for protection of the cemetery. "The authority of the law, and the public sentiment and conscience, must be successfully invoked to guard our graves from the cupidity of our survivors."²⁶¹ This illustrates the ways that Whigs joined the technology of law with their culture to accomplish the civilizing mission. It is important to see legal thought and legal forms working in tandem with less visible factors like moral force to create an American culture.

We have already discussed how cemeteries brought order and improvement upon nature. This happened through the extensive regulations regarding decorum. Yet, such laws designed to bring order to cemeteries were unnecessary, because of the reverence that existed for cemeteries. "Such institutions of themselves appeal so forcibly to the better instincts of our nature, and raise up so spontaneously sentiments of respect in the human bosom," Whig politician and novelist John Pendleton Kennedy said at the dedication of Green Mount Cemetery in Baltimore in 1839, "as to stand in need of little rigor in the enforcement of the laws necessary to guard them against violation."²⁶²

Similarly, orators frequently noted how cemeteries joined public good with private enterprise. New York Supreme Court Judge William J. Bacon, in commenting on the efforts that Syracuse's citizens made – including re-routing a plank road – to create their cemetery, thought it "honorable alike to the public spirit and the private enterprise that have been engaged in its acquisition."²⁶³ Bacon believed that nature would combine with human efforts to beautify the cemetery. "Nature has done much, but taste, and skill, and affection, will do still more in the future years of its history to make it a very Mecca of the mind and heart."²⁶⁴ Similarly, Professor Edward North commented in 1857 that "We propose to embody this faith in a public enterprise that invites the sympathy and co-operation of all our citizens."²⁶⁵

²⁶⁰ CHARLES F. MAYER, SKETCH OF LOUDON PARK CEMETERY: ITS DEDICATION, AND ADDRESS OF THE HON. CHARLES F. MAYER, DELIVERED ON THAT OCCASION 17 (Baltimore, The Printing Office, 1853).

²⁶¹ HUMPHREY, *supra* note 134, at 10.

²⁶² John P. Kennedy, *Green Mount Cemetery, 1839*, in OCCASIONAL ADDRESSES ... 111, 119 (New York, G. Putnam 1872).

²⁶³ HISTORY ... OF OAKWOODS, *supra* note 26, at 37.

²⁶⁴ *Id.* Bacon thought that in the cemetery the voices of the dead will speak to the living. *Id.* at 36.

²⁶⁵ NORTH, *supra* note 147, at 19.

b. Regulation of Burial for Public Good

Beginning in the 1820s, many cities moved to prohibit interments in city graveyards. That led to legal challenges. The first was in New York, where the Brick Presbyterian Church challenged the city's prohibition of interment as a violation of the church's property rights.²⁶⁶ Although the city won that case with the argument that the prohibition was a reasonable exercise of its police power – an argument used frequently afterwards to justify many regulations – other churches continued to challenge similar restrictions. In 1839 Charleston South Carolina's mayor Henry Laurens Pinckney issued a report discussing the evidence that city burials were a health hazard. He suggested that even if they were not a nuisance, rural cemeteries were desirable for other reasons like their pastoral and peaceful setting.²⁶⁷ Pinckney was an embodiment of these norms of self-sacrifice and Union above individual, for he had sacrificed his rising political career to oppose nullification in his home state and thus cost himself his seat in Congress in 1834. He wrote about these values of patriotism, union, and constitutionalism in a literary address for the University of North Carolina in 1836, as radical politics in South Carolina pushed him from the scene.²⁶⁸ Pinckney's report did not settle the dispute, however, and in 1850 the South Carolina Supreme Court upheld the constitutionality of Charleston's prohibition on interment in the city. The ordinance had been challenged by churches claiming – as the Brick Presbyterian Church has

²⁶⁶ HENDRICK HARTOG, *PUBLIC PROPERTY AND PRIVATE POWER: THE CORPORATION OF THE CITY OF NEW YORK IN AMERICAN LAW, 1830-1870* (1983).

²⁶⁷ PINCKNEY, *supra* note 128, at 4-5.

²⁶⁸ 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). *See also* Brophy, "The Republics of Liberty and Letters," *supra* note 25, at 1916-18 (discussing Pinckney's address).

twenty years before in New York²⁶⁹ — that the ordinance deprived them of their property rights.²⁷⁰ As late as 1854, the Illinois Supreme Court upheld a prohibition on burial in a town because of the potential health hazard to such burials.²⁷¹

Similarly, in 1860 North Carolina upheld an injunction against use of a Baptist church's graveyard, on a theory that the burial posed an unreasonable hazard to a neighbor.²⁷² Just the year before, the North Carolina Supreme Court had upheld the use of a public rural cemetery in the town of Washington against a claim that the cemetery would be emotionally disturbing to a neighbor. The Supreme Court thought that public cemeteries were important and did not find the cemetery necessarily morbid. "Public cemeteries, for the orderly and decent sepulture of the dead, are necessary requirements for all populous towns. In fixing sites for them private must yield to public convenience, and the courts will be particularly careful and not interfere to prevent such establishments, unless the mischief be undoubted and irreparable."²⁷³ In fact, the North Carolina Supreme Court found that it could be beneficial to think about death, an argument quite similar to that advanced by Justice Story and many others to justify the establishment of rural cemeteries:

If the grounds be arranged and drained, and the burial of the dead be conducted as elsewhere in such establishments, we incline decidedly to the opinion, it will not be a nuisance, either public or private. The word nuisance is, of course, used here in its legal

²⁶⁹ *Brick Presbyterian Church in the City of New York v. New York*, 5 Cowen 538 (N.Y. Sup. Ct. 1826). New York City's regulation prohibiting interring bodies was upheld, even though the charter had expressly granted the right to inter. *Brick Presbyterian Church*, 5 Cowen at 542. Thus, *Brick Presbyterian Church* was invoked frequently to justify the broad application of the police power to the regulation of property. See, e.g., *In re Opening of Albany St.*, 6 Abb.Pr. 273 (N.Y. S.Ct., 1858) (upholding city ordinance that closed street); *City of NY v. Second Ave. R. Co.*, 32 N.Y. 261, 265 (1865) (citing *Brick Presbyterian Church* in deciding that no private contract can nullify the government's authority to enact regulatory ordinances for the public good). See also *Providence Bank v. Billings*, 29 U.S. 514, 548 (1830) (argument of counsel, who used *Brick Presbyterian Church* to argue in favor of bankruptcy statute passed after contracting).

²⁷⁰ *City Council of Charleston v. Wentworth Street Baptist Church*, 35 S.C.L. 306, 1850 WL 2814 (S.C. App. Law 1850).

²⁷¹ *Goddard v. President, etc., of Town of Jacksonville*, 15 Ill. 588, 1854 WL 4744 (1854) (citing *Brick Presbyterian Church* for proposition that even long-existing use of property for sale of liquor may be a nuisance).

²⁷² *Clark v. Lawrence*, 59 N.C. (6 Jones Eq.) 83, 1860 WL 2016 (1860) (water flowed down from the church yard into the neighbor's yard and thus posed a health hazard).

²⁷³ *Ellison v. Commissioners of Town of Washington*, 58 N.C. (5 Jones Eq.) 57, 1859 WL 2255 (N.C. 1859).

sense, and is confined to such matters of annoyance, as the law recognizes and gives a remedy for. The unpleasant reflections suggested by having before one's eyes, constantly recurring memorials of death, is not one of these nuisances. Mankind would, by no means, agree upon a point of that sort, but many would insist that suggestions thus occasioned would, in the end, be of salutary influence. The death-head is kept in the cell of the anchorite, perpetually before his eyes as a needful and salutary monitor. The nuisance, which the law takes cognizance of, is such matter as, admitting it to exist, all men, having ordinary senses and instincts, will decide to be injurious.²⁷⁴

The court explained the justification of the cemeteries and turned them into a public good:

The cemeteries, which have been established near the principal cities and towns of our country, (and which it is the commendable purpose of the Washington corporation to imitate) have sprung from the idea that open space, free ventilation, and careful sepulture, not only prevent such places from becoming nuisances, but make them attractive and agreeable places of resort.²⁷⁵

The rural cemetery, thus, owed part of its origin to the increasingly robust ideas of public regulation, to the sense that the city burials threatened health, as well as the constitutional values of order, beautification, and commemoration of death.²⁷⁶ Those rural cemeteries were near enough to the city so residents could be inspired, but far enough away as to not bother the living. Mount Hope, for instance, was far enough away from the city that the city could develop without interfering with the cemetery.²⁷⁷

4. Public Constitutionalism and the Rural Cemetery

How, then, do the seventy addresses relate to constitutional law? They operated at a high level of generality and collected a constellation of ideas –about individuals, the community, art, nature, Christianity, and charitable organizations–that worked together to form constitutional culture. Even before Lincoln's address at Gettysburg he acknowledge the centrality of cemeteries in fostering a constitutional culture. Lincoln's first inaugural address concludes with an appeal to the sentiments of Union that were nurtured by -- among other images -- patriot graves. "The mystic chords of memory, stretching from every battle-field, and patriot grave, to every living

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ HARTOG, *supra* note 266, at 71-81; LINDEN, *supra* note 3, at 149-52 (discussing regulation of Boston cemeteries).

²⁷⁷ MOUNT HOPE CEMETERY DORCHESTER AND WEST ROXBURY: WITH THE EXERCISES AT CONSECRATION, THURSDAY JUNE 24, 1852 at 17-18 (Boston, Crosby, Nichols & Co. 1852).

heart and hearthstone, all over this broad land,” Lincoln said, “will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.”²⁷⁸ Lincoln tapped the affection for historical sites -- the Revolutionary war battlefields and graves.²⁷⁹

What is the vision of constitutionalism in these addresses? virtue, community, public vs. private, visitors, inclusion, morality, -- not so much specific legal cases. This is about public constitutionalism, not the lawsuit variety of constitutionalism so commonly written about by lawyers. This is about how people in the nineteenth century spoke about their relationship to the nation and each other; what were the bonds that held us together and how do we try to achieve a common core of principles that helped us as we expanded the nation. Who was included, how did people assume their places, who was allowed to rise?

For, as people at the time understood, the Constitution was more than a document interpreted by the Supreme Court that defined and limited federal and state power. The Constitution provided a framework for public debate about a series of abstract but important ideas of law, individualism, the state, and how to hold together a Constitutional republic.²⁸⁰ It helped structure the beliefs of individuals throughout the country on issues of the market, the role of the state in promotion of the economy and of morality, and of the likely future course of the country. Though there were often areas of agreement across political parties, there were frequently issues of disagreement on the proper lessons to draw from the Constitution about federal intervention in the economy, about the power and desirability of the market, and about the relationship of individuals to the community.

Artist Charles Fraser, who in 1850 delivered the dedication address at Charleston’s Magnolia Cemetery,²⁸¹ spoke in 1828 at the placement of a corner-stone of a building on the College of Charleston's campus. He spoke about education in much the same way that many spoke about cemeteries. Education had an ability to "unify sympathies of the heart and harmonize diversity of opinion."²⁸² Fraser went on to explain the effect education could have on supporting the Constitution and breathing life into the values of the Constitution.

²⁷⁸ Abraham Lincoln, *First Inaugural Address*, in LINCOLN’S SPEECHES AND WRITINGS, *supra* note 36, at 215, 224.

²⁷⁹ *See supra* notes 60 - 63 (discussing Bunker Hill Monument, Washington Monument, and Washington Equine Statute).

²⁸⁰ *See, e.g.*, Orestes A. Brownson, *Origin and Ground of Government*, 13 U.S. MAG. & DEM. REV. 353, 361 (1843) (discussing “Constitutional Republic”). *See also Mr. Webster’s Plea in the Case of the Girard College Will*, 3 NEW ENGLANDER AND YALE REVIEW 89, 99 (1845) (discussing Webster’s plea for charities to expand the principles of the “Christian republic” in *Girard’s Executors v. Vidal*, 43 U.S. 127 (1844)).

²⁸¹ *See FRASER, supra* note 114.

²⁸² CHARLES FRASER, AN ADDRESS ... AT THE LAYING OF THE CORNER STONE OF A NEW COLLEGE EDIFICE ... 12TH JANUARY, 1828 1 (Charleston, J.S. Burges 1828).

The Constitution is an admirable effort of the human intellect. Foreigners passing through our country, and observing the result of the giant invisible agent in the uniform, peaceful, and harmonious operations of society, emphatically ask, where is your government? We might as emphatically reply, that it exists in the hearts and minds of its citizens -- that its energies are derived from public opinion -- that a rational respect for the laws and institutions of our country, impart to them that vital principle which pervades and regulates every part of the republican system. ... If we would preserve the ark of our covenant in its original sagacity, let "Wisdom, judgment, and Understanding," be the lamps that burn before it.²⁸³

Fraser spoke of the public nature of the Constitution -- not as something that existed only as interpreted by the United States Supreme Court and state courts, but as something that existed in the minds of American citizens. This Constitution was an idea, something created in the hearts and minds of Americans -- and supported by our national action and by our culture.²⁸⁴ That is the way in which the Constitution appeared in cemetery dedication addresses, as a set of values that the cemeteries would support. For the orators recognized that the rural cemetery's mission was about the living more than the dead.

a. Public Constitutionalism, American Culture, and the Supreme Court

While the cemetery dedication addresses operated at a very high level of generality, they paralleled ideas made in the pages of the *United States Reports*. One should turn to the opinions of two cemetery orators, Justice Joseph Story and Justice John McLean, for examples of how general appeals to constitutional values in dedication addresses paralleled the ideas in formal law. To take three of many examples from Justice Story's work, one sees in his concurrence in *Dartmouth College* a focus on the charter rights of the College, which Story preserved through an expansive reading of the Constitution's Contracts Clause. A decade later in *Van Ness v. Packard*, Story used the imagery of improvement of the American wilderness to support a claim by a tenant that he was entitled to remove a structure he had built on his landlord's property when the lease ended. The landlord wanted, in essence, to keep the building that the tenant had put on the property. Story faced a question of whether to apply the English common law here, which supported the landlord. Story pointed to the wild conditions of the land in early America that counseled in favor of a rule that encouraged tenants to build structures on the land. That is, if the land was going to be improved, tenants needed to have the opportunity to recapture their investments by moving buildings when their lease ended.²⁸⁵ But even beyond that economic

²⁸³ *Id.* at 11-12.

²⁸⁴ Fisher, *supra* note 67.

²⁸⁵ 27 U.S. 137, at 145 ("The country was a wilderness, and the universal policy was to procure its cultivation and improvement. The owner of the soil as well as the public, had every motive to encourage the tenant to devote himself to agriculture, and to favour any erections

argument in favor of a rule that encouraged improvement, Story thought that another rule applied as well, which allowed the tenant to remove structures built for trade.²⁸⁶ Story was shaping rules to encourage development of property, just as the cemeteries reflected Americans' settlement of the land. The third example is Story's dissent in *Charles River Bridge v. Warren Bridge*, where Story emphasized the harm that comes from the failure to protect the charter rights of corporations. Like cemeteries, robust protection of property was both a sign of civilization and an encouragement to further civilization.

A similar story could be told about Justice McLean, who dissented in *Charles River Bridge*²⁸⁷ and also in several other later cases that too narrowly construed charter rights in his opinion.²⁸⁸ In those dissents McLean broadly construed corporate charters. He also construed a bank charter broadly to protect against subsequent state regulation in his majority opinion in *Piqua Branch of State Bank of Ohio v. Knoop*.²⁸⁹ McLean's dissent in *Groves v. Slaughter*, a case questioning whether slaves were articles of commerce under the interstate commerce clause, illustrates his broad construction of commerce power.²⁹⁰ Moreover, McLean's dissent in *Dred Scott* illustrates his anti-slavery attitudes, his sense of moral progress that would limit slavery to places where there was an affirmative act supporting it.²⁹¹ As with Justice Story, Justice McLean's jurisprudence correlates with the rural cemetery movement. The support of cemeteries was a part of a Whig world view of order and of economic and moral advance.

The pages of appellate reports were not the only places where such conflicting visions of the Constitution appeared. The contest appeared in Congress and state houses, as well as newspapers, in a period when there was dramatic evolution of ideas about the proper role of the government, private corporations, and individual conceptions of morality in the evolution of constitutional ideas. As the last several generations of historians of the Civil War have demonstrated, the war itself was about how to weigh the relationship of property, the market, individual humanity, and the state's role in governing the relationship between property and humanity.

which should aid this result; yet, in the comparative poverty of the country, what tenant could afford to erect fixtures of much expense or value, if he was to lose his whole interest therein by the very act of erection?").

²⁸⁶ *Id.* at 146.

²⁸⁷ *Proprietors Charles River Bridge v. Proprietors Warren Bridge*, 36 U.S. 420, 554 (1837).

²⁸⁸ *West River Bridge v. Dix*, 47 U.S. 507, 536 (1848); *Richmond, Fredericksburg, and Potomac R.R. v. Louisa R.R.*, 54 U.S. 71, 83 (1851).

²⁸⁹ *Piqua Branch Bank Ohio v. Knoop*, 57 U.S. 369 (1853)

²⁹⁰ *Groves v. Slaughter*, 40 U.S. 449, 503 (1841).

²⁹¹ *Dred Scott v. Sandford*, 60 U.S. 393, 535-536 (1857).

The community participated in the celebrations. Thousands attended Story's speech; the entire community, including the local militia company attended the dedication of Syracuse's Oakwood Cemetery in 1860,²⁹² though the processions at the dedications set them apart from the typical democratic assembly. William Foster began his 1860 address at the Blossom Hill Cemetery in Concord by with an observation about that difference. "We are assembled to-day for the performance of no ordinary duty. Not with pageantry, with music, banners and rejoicing shouts, but with reverent steps and decorous gravity we have come to this beautiful seclusion."²⁹³

The oratory worked in conjunction with the voice of the grave in the cemeteries to help create a more moral community – and it was this culture of moralism that would work to bring about reform and to assist in constitutional development. Georgia's Chief Justice Joseph Henry Lumpkin spoke of the power of sentiment in 1850 at the South-Carolina Agricultural fair: "*Benevolence*, instead of *malevolence*, is beginning to be the grand master-spirit and motive power of the world. All working for the good of all–this is society–all else is savagism. Associated man regulating the pursuits of individual man–not by law, nor sword, nor thumbscrew, nor bullet, nor bayonet–but by precept and example, moral suasion, personal influence, and the law of good neighborhood."²⁹⁴

One of the fullest connections of the cemetery to the constitutional ideals came in John F. Norton's address on July 4 1859, "The Home of the Ancient Dead Restored," at the rededication of the Athol, Massachusetts Cemetery. Norton looked back on the long movement that led to the Revolution, back to the Puritans rebelling against the authority of the church in the seventeenth century and found the values that made the Revolution, such as "the spirit of the men and women that entered into this wilderness and converted it into a fruitful field, their honesty of purpose, their firm resolve, their enlarged views, their sound judgment, their readiness to sacrifice self for the common good, their high moral courage, their faith in God."²⁹⁵ The cemetery connected the people who made the Revolution with his audience and Norton used that connection to urge further action "in the name of civilization, patriotism and religion."²⁹⁶ Norton explained the reverence owed to the past as well as the lessons the future generations will draw from the

²⁹² OAKWOOD, *supra* note 26, at 40 (listing order of procession).

²⁹³ WILLIAM L. FOSTER, RELIGIOUS SERVICES AND ADDRESS ... AT THE CONSECRATION OF BLOSSOM HILL CEMETERY, CONCORD, N. H., FRIDAY, JULY 13, 1860 (Concord, McFarland & Jenks 1860).

²⁹⁴ JOSEPH HENRY LUMPKIN, AN ADDRESS DELIVERED BEFORE THE SOUTH-CAROLINA INSTITUTE, AT ITS SECOND ANNUAL FAIR, ON THE 19TH NOVEMBER, 1850 51-52 (Charleston, Walker & James 1851).

²⁹⁵ NORTON, *supra* note 122, at 14.

²⁹⁶ *Id* at 20.

cemetery. He left it up to future generations to extend the Revolution's legacy.²⁹⁷

b. *Public Constitutionalism at Gettysburg: Cemetery Ridge, Edward Everett, and Abraham Lincoln*

This story of public constitutional values and the rural cemetery should conclude at Gettysburg, where on July 3, 1863, on Cemetery Ridge, the United States soldiers put into operation the principles of perpetual Union that had been so carefully nurtured by the Whig and later Republican parties.²⁹⁸ Much of the decisive battle, which was critical to preserving the Union, was fought along Cemetery Ridge,²⁹⁹ named after the Ever Green Cemetery that was atop nearby Cemetery Hill. Ever Green had been dedicated eight years earlier, in 1855.³⁰⁰ The dedication addresses for the rural cemeteries and the cemeteries themselves had contributed to the sentiments of constitutional Union. Improbably, the Ever Green Cemetery that was part of a movement to support and advance the constitutional values that were being tested in the early days of July 1863, was part of the battle. The soldiers positioned on Cemetery Ridge beat back the Pickett's charge³⁰¹ and in doing so they put into operation a new constitutional vision of equality and democracy. Those soldiers had more to say about how to interpret the Constitution than Supreme Court Chief Justice Roger B. Taney, John C. Calhoun, or Jefferson Davis.

A few months later, on November 19, politicians, reporters, military officials, and patriotic Americans, assembled to hear another cemetery dedicated in that hamlet. One of the most commonly told stories of those ceremonies was of some speaker who droned on for two and half hours before Lincoln's brief speech.³⁰² Though his name may be rarely remembered, that speaker, Edward Everett, was famous in his era, for he had served as Senator from Massachusetts and as President of Harvard.³⁰³ Everett's was the very last dedication address before Lincoln redefined

²⁹⁷ *Id.* at 21.

²⁹⁸ See, e.g., ERIC S. FONER, *FREE SOIL, FREE LABOR, FREE MEN: THE IDEOLOGY OF THE REPUBLICAN PARTY BEFORE THE CIVIL WAR* (1972).

²⁹⁹ ALLEN C. GUELZO, *GETTYSBURG: THE LAST INVASION 164-65, 241-60* (2013) (discussing centrality of Cemetery Ridge to the battle).

³⁰⁰ EVER GREEN, *supra* note 121.

³⁰¹ GUELZO, *supra* note 299, at 241-60.

³⁰² WILLS, *supra* note 57, at 34-35. See also LINCOLN AND THE GETTYSBURG ADDRESS (Allan Nevins ed. 1964) (evaluating the Address' place in American thought on its one-hundredth anniversary); JOHNSON, *supra* note 57 (identifying Lincoln's evolving emphasis on Union, sacrifice, and race in the drafts of the address).

³⁰³ *Id.* at 27, 35 (noting that the dedication was moved from October to November to accommodate Everett's schedule and that Everett was given billing on the program as the orator

the genre. But before that address Everett had spoken about the respective roles of the state and individuals. His 1824 Phi Beta Kappa address at Harvard –given in the presence of General LaFayette, the French hero of the American Revolution who was in the United States touring the country fifty years after the Revolution³⁰⁴ – was about the place that a well-governed state could play in raising the moral level of a people.³⁰⁵ Everett as a speaker, thus, connected the generation of the Revolution to that of the Civil War. He linked the Constitution and the state it helped establish to the goal of human progress. That Constitution then further linked individuals to the state – it was necessary to put the whole system together – one piece could not accomplish the purpose of human society.

Where the cemetery dedication addresses before the Civil War were about the role of cemeteries in promotion of moral values, such as patriotism and religion, Everett’s speech was about the duty owed the people buried in Gettysburg, the War itself, and ways to put the country back together again. Everett’s primary theme was the debt owed to the United States soldiers buried in the National Cemetery and to the rest of the soldiers. This was, after all, a tribute. The address began with reference to the graves of patriots and the “eloquent silence of God and Nature” in the cemetery. Then he turned to the burial practices of ancient Athens, where war heroes were buried at public expense, to establish an ancient and honorable lineage for this national cemetery.³⁰⁶

Everett called upon images of sentiment and patriotism to consecrate the cemetery. “As my eye ranges over the fields whose sods were so lately moistened by the blood of gallant and loyal men, I feel, as never before, how truly it was said of old that is sweet and becoming to die for one’s country,” he said.³⁰⁷ Then he turned to just how critical the situation was for the United States at the time of the battle. The consequences would have been dire, indeed, he said, if “those who sleep beneath our feet, and their gallant comrades who survive ... had failed in their duty on those memorable days.”³⁰⁸ Everett told the story of the entire war; much of the address was about the campaign of 1863, with a detailed description of the Gettysburg battle that highlighted the

and that Lincoln’s name was not even present on the program).

³⁰⁴ 1 A. LEVASSEUR, LAFAYETTE IN AMERICA IN 1824 AND 1825: OR, JOURNAL OF A VOYAGE TO THE UNITED STATES 42 (John D. Goodman, trans., Philadelphia, Carey & Lea 1829) (mentioning Everett’s address).

³⁰⁵ EDWARD EVERETT, AN ORATION PRONOUNCED AT CAMBRIDGE, BEFORE THE SOCIETY OF PHI BETA KAPPA, AUGUST 27, 1824 (New York, J.W. Palmer 1824).

³⁰⁶ EDWARD EVERETT, ADDRESS OF HON. EDWARD EVERETT, AT THE CONSECRATION OF THE NATIONAL CEMETERY AT GETTYSBURG, 19TH NOVEMBER, 1863 (Boston, Little, Brown 1864).

³⁰⁷ *Id.* at 33.

³⁰⁸ *Id.*

heroism of the Union soldiers and the debt owed them for protecting the Northern population.

Then he turned from the history of battle to larger questions about the issues at stake in the War. Everett used the occasion to plead that case of the United States and our Constitution against the Confederate rebels. He quoted Jefferson Davis' statement that the United States was "the best government ever instituted by man . . . under which the people have been prosperous beyond comparison."³⁰⁹ While the rebels claimed to be the successors to the American Revolutionaries, Everett spoke of their crime against the Constitution and labeled their actions treason. He rebutted what he called the Confederacy's "wretched sophistries" of their interpretation of the Constitution. Where southerners believed that the Constitution set up sovereign states, Everett responded that the Constitution's preamble says it is established by "the People of the United States."³¹⁰ Everett presented a concise version of the United States' constitutional argument that the Union was perpetual and that states could not secede.

The address called for restoration of the Union. A truce with the Confederacy would be a disaster for the United States, for the people loyal to the United States in the South, and for the enslaved people of the South. Everett wanted restoration of the Union and he concluded with a call for reconciliation and an argument that reconciliation was possible. Everett drew on many examples from European history stretching back hundreds of years. This was a deeply patriotic address, which sought support for the cause by celebrating the soldiers and also looking forward to a restored Union. It was a lengthy address that dealt with a lot of the United States' recent history, with our Constitutional history, and with European history. Despite its length, it served the purpose of Union. Because of the deeds of the patriots buried at Gettysburg and those who survived, those in the audience that day felt a "new bond of Union."³¹¹

What followed Everett's lengthy address was entirely different. Lincoln spoke in broad terms about the sacrifices at Gettysburg and then appealed to broad principles, such as the "new birth of freedom."³¹² Lincoln was the visionary who spoke in general and broad terms and helped remake American democracy. Lincoln's address appealed to the spirit of the Constitution, much as the antebellum dedication addresses had. Lincoln remade the genre, but also remade our Constitution.³¹³ He legitimized the idea of equality and of self-government that have framed the

³⁰⁹ *Id.* at 62.

³¹⁰ *Id.*

³¹¹ *Id.* at 81.

³¹² Abraham Lincoln, *Dedicatory Address of President Lincoln*, *supra* note 36, at 536.

³¹³ WILLS, *supra* note 57, at 90, 125-32. There remain the questions of Lincoln's agency and whether the Address represented a signal about the evolution of ideas or actually caused a shift in those ideas. See Linda Selzer, *Historicizing Lincoln: Garry Wills and the Canonization of the "Gettysburg Address,"* 16 RHETORIC REVIEW 120-137 (1997). Cf. JOHNSON, *supra* note 57, at __ (linking shifts in constitutional ideas of Union and equality to Lincoln's Address). The questions that Selzer raises about Wills' attribution of causation to Lincoln's Address parallel

hopes of our nation and our courts ever since. None of the earlier speeches had the eloquence or the gravity of Lincoln's words at Gettysburg. But many of them had tapped into – and helped create – the Romantic Era appeals to sentiment that propelled Lincoln and his supporters towards war to preserve the Union – and to the Emancipation Proclamation.³¹⁴

It was on the battlefield at Gettysburg and at many other previously obscure places like Antietam, Chancellorsville, Cold Harbor, and Petersburg, that Americans put into practice their constitutional ideals. At those places soldiers showed that the values so cherished by Whigs in their cemetery dedication addresses – of order under law, Union, and economic and moral progress – were part of a large world. That world bound humans to each other as they sought to improve upon nature and as they created an ordered republic governed by sentiments and by law.

questions this article has raised about pre-war cemetery dedication address' contribution to constitutional culture. At the very least they are gauges of constitutional values.

³¹⁴ Abraham Lincoln, *Emancipation Proclamation*, in ABRAHAM LINCOLN: SPEECHES AND WRITINGS, 1859-1865, *supra* note 36, at 368-70.

Appendix

Published Dedication Speeches, 1831-1860 Reverse Chronological Order

1. WILLIAM L. FOSTER, RELIGIOUS SERVICES AND ADDRESS OF WILLIAM L. FOSTER, AT THE CONSECRATION OF BLOSSOM HILL CEMETERY 13-24 (Concord, 1860).
2. REVEREND J. C. BODWELL, ADDRESS DELIVERED AT THE CONSECRATION OF THE LAKE GROVE CEMETERY, HOLLISTON, MASS. JUNE 1, 1860 (Holliston, 1860).
3. ORGANIZATION AND DEDICATION CEREMONIES OF LAKE-VIEW CEMETERY (Jamestown, NY, Sacket & Bishop 1860).
4. William J. Bacon, *Address of William J. Bacon* (Nov. 3, 1859) in THE HISTORY, INCORPORATION, RULES AND REGULATIONS OF OAKWOOD CEMETERY 27-39 (Syracuse, 1860).
5. JAMES C. CONKLING, ADDRESS DELIVERED BY JAMES C. CONKLING AT THE DEDICATION OF OAK RIDGE CEMETERY, SPRINGFIELD, ILLINOIS (N.p. 1860).
6. JOHN F. NORTON, THE HOME OF THE ANCIENT DEAD RESTORED: AN ADDRESS (Althol, R. Putnam 1859) (July 4, 1859).
7. A.D. MAYO, THE AMERICAN CEMETERY: AN ADDRESS DELIVERED AT THE DEDICATION OF GREEN HILL CEMETERY (Amsterdam, NY, 1858).
8. WILLIAM WILEY, THE MISSION CEMETERY AND THE FALLEN MISSIONARIES OF FUH CHAU, CHINA: WITH AN INTRODUCTORY NOTICE OF FUH CHAU AND ITS MISSIONS (New York, Carlton & Porter 1858).
9. John Waugh, *Address at the Consecration of the Riverside Cemetery* (June 28, 1858) in RULES AND REGULATIONS OF RIVERSIDE CEMETERY, AT GOUVERNEUR, ST. LAWRENCE COUNTY, N.Y. WITH THE CONSECRATORY EXERCISES (Ogdensburgh, Hitchcock, Tillotson, and Stilwell 1858).
10. A.D. GILLETTE, THE WOODLANDS CEMETERY, AT CAMBRIDGE, N.Y., WITH HISTORICAL SKETCHES, AND AN ADDRESS OF REV. A.D. GILLETTE, D.D., DELIVERED AT THE DEDICATION, JUNE 2, 1858 (Troy, NY, A.W. Scribner 1858).
11. John McLean, *Address of John McLean in THE CINCINNATI CEMETERY OF SPRING GROVE, REPORT FOR 1857* (Cincinnati, Ohio, C.F. Bradley 1857).
12. James W. Dennis, *Address of James Dennis at the Consecration of the Evergreen*

- Cemetery* (July 26th, 1857) in CONSECRATION OF "EVERGREEN CEMETERY" (Stoughton, MA, 1857).
13. O.S. Williams and Edward North, *Addresses of O.S. Williams and Edward North, in ADDRESSES DELIVERED AT THE DEDICATION DELIVERED AT THE DEDICATION OF THE CLINTON CEMETERY* (Utica, NY, Roberts 1857).
 14. James F. Chalfant, *Address, in REPORT OF THE TRUSTEES OF OAK DALE CEMETERY TO THE MAYOR AND TRUSTEES OF THE CORPORATION OF URBANA* (Urbana, OH, C.B. Flood 1856).
 15. A. N. Littlejohn, ADDRESS DELIVERED AT THE DEDICATION OF THE NEW GROUNDS OF THE EVERGREEN CEMETERY OF NEW HAVEN, JULY 29TH, 1856 (New Haven, S. Babcock 1856).
 16. J. H. C. Dosh, *Address, in FIRST ANNOUNCEMENT OF EVER GREEN CEMETERY, GETTYSBURG, PA., WITH AN ADDRESS DELIVERED AT THE OPENING CEREMONIES BY REV. J.H.C. DOSH, AND A DISCOURSE DELIVERED AT THE LAYING OF THE CORNER STONE OF GATEWAY AND LODGES AT CEMETERY* (Gettysburg, H.C. Neinstedt 1855).
 17. W. R. G. Mellen, *Address of W.R.G. Mellen (June 29, 1855) in THE CHRISTIAN IDEA OF DEATH: AN ADDRESS AT THE CONSECRATION OF OAK GROVE CEMETERY* (Gloucester, Advertiser Press 1856).
 18. F. W. Shelton, *Address of Rev. F. W. Shelton, in SERVICES AT THE DEDICATION OF GREEN MOUNTAIN CEMETERY, MONTPELIER, VT., SEPTEMBER 15* (Montpelier, VT, E. P. Walton, Jr., 1855).
 19. John Thompson, *Address of John Thompson, in THE POUGHKEEPSIE RURAL CEMETERY, ITS BY-LAWS, RULES AND REGULATIONS* (Poughkeepsie, Platt & Schram 1854).
 20. DEDICATION OF THE OAKLANDS CEMETERY: TOGETHER WITH THE CHARTER AND BY-LAWS (West Chester, PA, Register & Examiner Steam Press 1854).
 21. John A. Albro, ADDRESS AT THE CONSECRATION OF THE CAMBRIDGE CEMETERY (Cambride, MA, Metcalf and Co. 1854) (Nov. 1, 1854).
 22. Rev. Butler, *Address of Rev. Doct. Butler (Aug. 1, 1854) in SKETCH AND DEDICATION OF GLENWOOD CEMETERY, WASHINGTON, D.C., AUGUST 1ST, 1854* (Washington, D.C., 1854).
 23. Ralph Waldo Emerson, *Dedication Speech of Ralph Waldo Emerson at Sleepy Hollow Cemetery* (Sept. 29, 1855), in 11 COMPLETE WORKS OF RALPH WALDO EMERSON:

MISCELLANIES 430 (1911).

24. ADDRESS OF THE REV. DAVID MAGIE AND OTHER SERVICES DEDICATORY OF "THE EVERGREEN CEMETERY," TOGETHER WITH THE CERTIFICATE OF INCORPORATION, AND THE RULES AND REGULATIONS THEREOF (Elizabethtown, NJ, n.p. 1853).
25. Samuel Wolcott, ADDRESS DELIVERED AT THE CONSECRATION OF ROCK HILL CEMETERY IN FOXBOROUGH, MASS. (Providence, 1853).
26. H.D. WALKER, REV. H.D. WALKER'S ADDRESS DELIVERED AT THE CONSECRATION OF MOUNT VERNON CEMETERY, ABINGTON, MASS., MAY 31, 1853 (Boston, A. Mudge 1853).
27. SKETCH OF LOUDON PARK CEMETERY: ITS DEDICATION, AND ADDRESS OF THE HON. CHARLES F. MAYER, DELIVERED ON THAT OCCASION (Baltimore, The Printing Office 1853).
28. Green Kendrick, *Address, in* THE RIVERSIDE CEMETERY, AT WATERBURY, CONN. ITS ARTICLES OF ASSOCIATION, BY-LAWS AND RULES AND REGULATIONS, WITH THE DEDICATION ADDRESS ... SEPT. 24TH, 1853 (Waterbury, 1853).
29. LAUREL GROVE CEMETERY! AN ACCOUNT OF ITS DEDICATION, WITH THE POEM OF THE HON. ROBERT M. CHARLTON, AND THE ADDRESS OF THE HON. HENRY R. JACKSON, DELIVERED ON THE 10TH NOVEMBER, 1852, TO WHICH ARE ADDED THE ORDINANCES ESTABLISHING AND REGULATING THE CEMETERY (Savannah, GA, G.N. Nichols 1853).
30. F.D. Huntington, *Address, in* MOUNT HOPE CEMETERY IN DORCHESTER AND WEST ROXBURY JUNE 24, 1852 (Boston, Crosby, Nichols & Co. 1852).
31. Robert Crowell, ADDRESS, DELIVERED OCTOBER 27TH, 1852, AT THE CONSECRATION OF THE SPRING STREET CEMETERY, ESSEX, MASS. (Boston, B. Marsh 1853).
32. George A. Lyon, *Address in* FIRST REPORT OF THE MANAGERS OF THE ERIE CEMETERY, TOGETHER WITH THE ACT OF INCORPORATION (Erie, PA, The Gazette Office 1852).
33. Cyrus Mason, *Address, in* THE DALE CEMETERY, (AT CLAREMONT, NEAR SING-SING,) ITS INCORPORATION, RULES AND REGULATIONS, AND THE DEDICATION ADDRESSES 1852 (NY, C.C. Childs 1852).
34. GEORGE EDWARD ELLIS, AN ADDRESS DELIVERED AT THE CONSECRATION OF THE WOODLAWN CEMETERY IN CHELSEA AND MALDEN (Boston, John Wilson & Son 1851).
35. E. B. WILSON, AN ADDRESS DELIVERED AT THE CONSECRATION OF THE RIVERSIDE CEMETERY IN GRAFTON APRIL 29, 1851 (Boston, J. Wilson & Son 1851).

36. SPENCER M. RICE, ADDRESS, DELIVERED BEFORE THE SAUQUOIT VALLEY CEMETERY ASSOCIATION: AT THE CONSECRATION OF LAWN HILL CEMETERY, OCTOBER 16, 1851 (Utica, NY, H.H. Curtiss 1851).
37. HIRAM WILEY, CONSECRATION OF CEDAR GROVE CEMETERY (New London, Conn., D.S. Ruddock 1851).
38. WILLIAM GILMORE SIMMS, THE CITY OF THE SILENT, A POEM, DELIVERED AT DEDICATION OF MAGNOLIA CEMETERY (Charleston, Walker & James 1850).
39. CHARLES C. SHACKFORD, AN ADDRESS DELIVERED AT THE CONSECRATION OF THE PINE GROVE CEMETERY (Lynn, MA, T. Herbert 1850).
40. CHARLES FRASER, ADDRESS DELIVERED ON THE DEDICATION OF THE MAGNOLIA CEMETERY, ON THE 19TH OF NOVEMBER, 1850 (Charleston, Walker and James 1850).
41. FREDERIC AUGUSTUS WHITNEY, AN ADDRESS DELIVERED AT THE CONSECRATION OF EVERGREEN CEMETERY, BRIGHTON, WEDNESDAY, AUGUST 7, 1850 (Boston, John Wilson 1850).
42. THOMAS DAWES, AN ADDRESS DELIVERED ON SUNDAY EVENING, JULY 7TH, 1850 AT THE CONSECRATION OF THE RIVER-SIDE CEMETERY IN FAIRHAVEN, MASSACHUSETTS (New Bedford, MA: B. Lindsey, 1850).
43. FREDERIC J. GOODWIN, AN ADDRESS, DELIVERED AT THE DEDICATION OF THE INDIAN HILL CEMETERY, MIDDLETOWN, CONN. (Middletown, CN, C.H. Pelton 1850).
44. AN ADDRESS BY HENRY NEILL & A POEM BY OLIVER WENDELL HOLMES (Pittsfield, MA, Axtel, Bull, and Marsh 1850) (Pittsfield Rural Cemetery).
45. C. Edwards Lester, *Address, in* THE MOUNTAIN GROVE CEMETERY ASSOCIATION (Bridgeport, CN, William S. Pomeroy 1853).
46. DAVID BUEL, AN ADDRESS DELIVERED AT THE CONSECRATION OF OAKWOOD CEMETERY (Troy, NY, John F. Prescott 1850).
47. JOHN B. BAILEY, AN ADDRESS, PREPARED TO BE DELIVERED AT THE CONSECRATION OF MOUNT HOPE CEMETERY, IN ATTLEBOROUGH, JULY 2, 1850 (Taunton, MA, C.A. Hack 1851).
48. REPORT OF THE TRUSTEES OF GREEN LAWN CEMETERY; WITH THE ARTICLES OF ASSOCIATION, THE BY-LAWS, REGULATIONS, AND THE DEDICATION ADDRESSES

- (Columbus, OH, Ohio State Journal 1849).
49. DANIEL HUNTINGTON, ADDRESS DELIVERED AT THE CONSECRATION OF THE UNION CEMETERY, AT OAK GROVE, NORTH BRIDGEWATER, MASS., MAY 21, 1849 (1849).
 50. OLIVER PERRY BALDWIN, ADDRESS DELIVERED AT THE DEDICATION OF THE HOLLY-WOOD CEMETERY (Richmond, Macfarlane & Fergusson 1849).
 51. GEORGE PUTNAM, AN ADDRESS DELIVERED BEFORE THE CITY GOVERNMENT AND CITIZENS OF ROXBURY, AT THE CONSECRATION OF THE CEMETERY AT FOREST HILLS, JUNE 28, 1848 (Roxbury, J.G. Torrey 1848).
 52. INCREASE N. TARBOX, AN ADDRESS BEFORE THE CITIZENS OF FRAMINGHAM, AND THE NEIGHBORING TOWNS, AT THE CONSECRATION OF THE CEMETERY IN SAID TOWN, OCT. 13, 1848 (Boston, Joseph L. Hallworth 1849).
 53. J. R. ARNOLD, AN ADDRESS DELIVERED AT THE OPENING OF THE LINWOOD CEMETERY, COLCHESTER, CONN., JUNE, 1848 (Colchester, CN 1850).
 54. EDWARD P. HUMPHREY, AN ADDRESS DELIVERED ON THE DEDICATION OF THE CAVE HILL CEMETERY: NEAR LOUISVILLE, JULY 25, 1848 (Louisville, 1848).
 55. Daniel Dewey Barnard, *Address, in* ALBANY RURAL CEMETERY ASSOCIATION: ITS RULES, REGULATIONS, &C., WITH AN APPENDIX (Albany, C. Van Benthuyzen and Co. 1846).
 56. John McLean, *Address, in* ADDRESS DELIVERED ON THE CONSECRATION OF THE SPRING GROVE CEMETERY, NEAR CINCINNATI: AUGUST 20TH, 1845 (Cincinnati, 1845).
 57. DEDICATION OF MOUNT HEBRON CEMETERY, IN WINCHESTER, VIRGINIA, JUNE 22, 1844; THE ACT OF INCORPORATION BY THE LEGISLATURE OF VIRGINIA IN 1844, AND THE CONSTITUTION AND BY-LAWS OF THE MOUNT HEBRON CEMETERY COMPANY (Winchester, VA, 1845).
 58. David Damon, *Address in* AN ADDRESS DELIVERED AT THE CONSECRATION OF THE NEW CEMETERY IN WEST CAMBRIDGE, MASS., JUNE 14TH, 1843 (Somerville, MA, Edmund Tufts 1843).
 59. JAMES BUNKER CONGDON, AN ADDRESS DELIVERED AT THE CONSECRATION OF THE OAK GROVE CEMETERY, IN NEW-BEDFORD, OCTOBER 6TH, 1843 (New Bedford, MA, Benjamin Lindsey 1844).
 60. BELLAMY STORER, AN ADDRESS, DELIVERED AT THE CONSECRATION OF THE LINDEN GROVE CEMETERY, COVINGTON, KENTUCKY, SEPTEMBER 11, 1843 (Cincinnati, E. Morgan

& Co. 1843).

61. JOSIAH CLARK, AN ADDRESS: DELIVERED AT THE CONSECRATION OF THE RUTLAND RURAL CEMETERY, OCTOBER 7, 1842 (West Brookfield, MA: C.A. Mirick, 1843).
62. JONATHAN F. STEARNS, RESPECT FOR THE REMAINS OF THE DEAD: AN ADDRESS DELIVERED AT THE CONSECRATION OF OAK HILL CEMETERY, IN NEWBURYPORT, JULY 21, 1842 (Newburyport, A. Augustus Call 1842).
63. WILLIAM BOURN OLIVER PEABODY, ADDRESS DELIVERED AT THE CONSECRATION OF THE SPRINGFIELD CEMETERY: SEPTEMBER 5TH, 1841 (Springfield, MA, Wood and Rupp 1841).
64. AMOS BLANCHARD, AN ADDRESS DELIVERED AT THE CONSECRATION OF THE LOWELL CEMETERY, JUNE 20, 1841 (Lowell, Leonard Huntress 1841).
65. DANIEL APPLETON WHITE, AN ADDRESS DELIVERED AT THE CONSECRATION OF THE HARMONY GROVE CEMETERY (Salem, MA, The Gazette Press 1840).
66. JOHN PENDLETON KENNEDY, THE DEDICATION OF GREEN MOUNT CEMETERY, JULY 13TH, 1839 (Baltimore, Woods & Crane 1839).
67. HENRY LAURENS PINCKNEY, REMARKS ADDRESSED TO THE CITIZENS OF CHARLESTON, ON THE SUBJECT OF INTERMENTS, AND THE POLICY OF ESTABLISHING A PUBLIC CEMETERY BEYOND THE PRECINCTS OF THE CITY (Charleston, W. Riley 1839).
68. SAMUEL BUEL, ADDRESS DELIVERED ON THE OCCASION OF THE OPENING OF THE MARSHALL CEMETERY, MICHIGAN, MAY 2, 1839 (Marshall, H.C. Bunce 1839).
69. PHARCELLUS CHURCH, AN ADDRESS DELIVERED AT THE DEDICATION OF MOUNT HOPE CEMETERY, ROCHESTER, OCT. 2, 1838, AND REPEATED BY REQUEST BEFORE THE ROCHESTER ATHENAEUM AND YOUNG MEN'S ASSOCIATION (Rochester, NY, D. Hoyt 1839).
70. JOSEPH STORY, AN ADDRESS DELIVERED ON THE DEDICATION OF THE CEMETERY AT MOUNT AUBURN, SEPTEMBER 24, 1831 (Boston, Joseph T. & Edward Buckingham 1831).