Fall 2013

MARYLAND
Historical Magazine

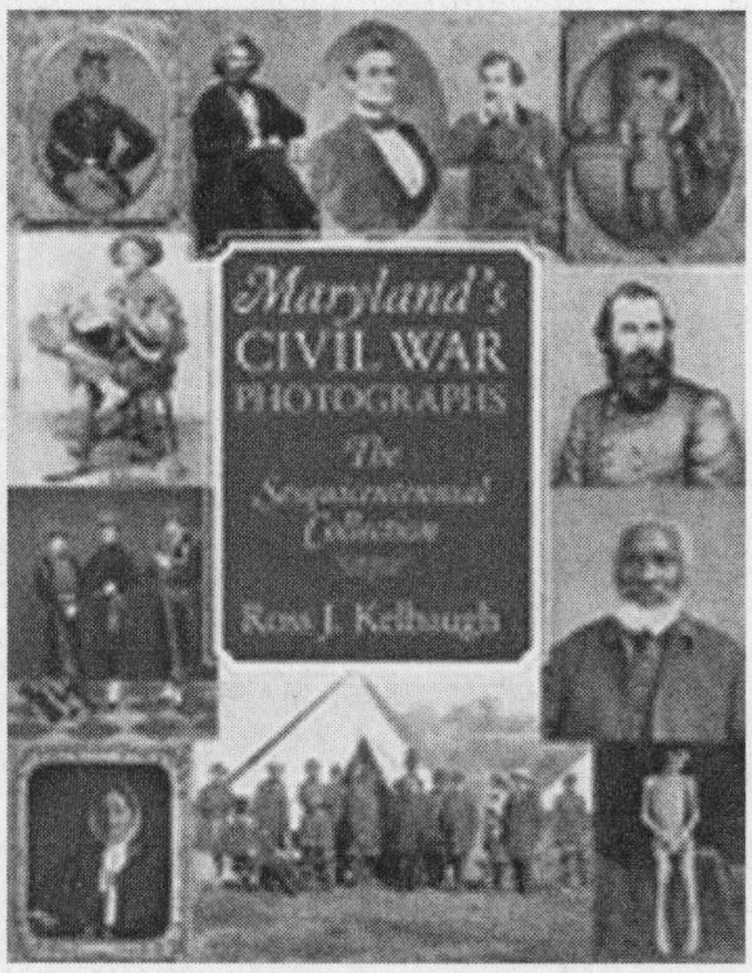
Cover

The Gettysburg Address

On November 19, 1863, under a bright November sky, a crowd assembled just outside a small Pennsylvania town to witness the dedication of a cemetery wherein would lie thousands of men who had fallen in battle a few months before. Among the visiting dignitaries was the president of the United States. Like the audience, few of whom paid attention to him, photographers seemed to regard him as an afterthought. But recently, thanks to technological developments, we can speculate that one or two preserved his image as he prepared to deliver a modest address that would resound for centuries. For more, see pages 256–59.

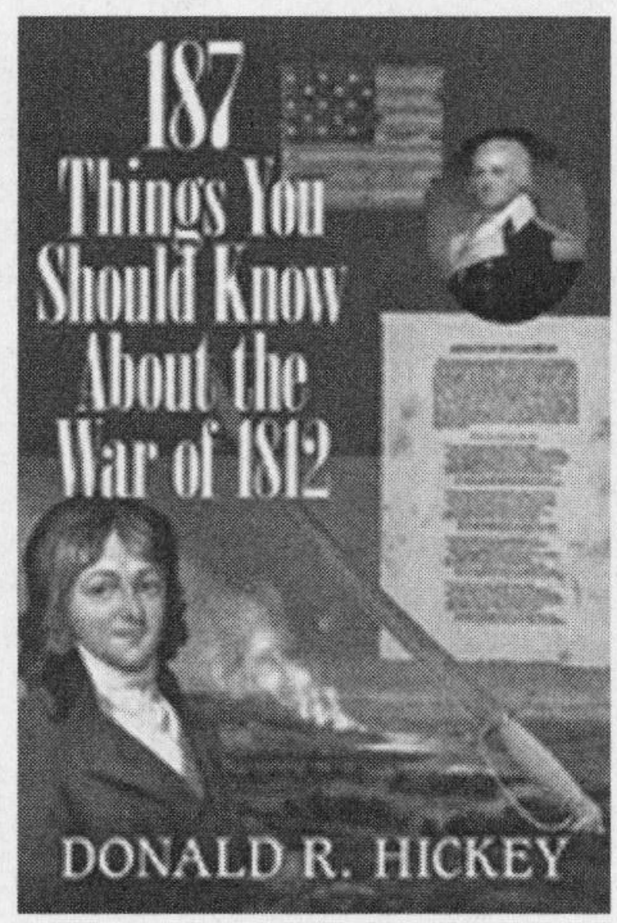
Friends of the Press of the Maryland Historical Society

THE PUBLICATIONS COMMITTEE continues its stalwart support of Maryland Historical Society books with the funding of two titles during this season of commemorating the sesquicentennial of the Civil War and the bicentennial of the War of 1812.



Ross J. Kelbaugh, *Maryland's Civil War Photographs: The Sesquicentennial Collection*, is a vast photographic record of the people, places, and events surrounding the war. It is also the largest collection of original Maryland-related Civil War photographs ever published.

Donald R. Hickey's *187 Things You Should Know About the War of 1812* is a concise and informative introduction to the often complex issues surrounding that conflict, presented in an engaging question-and-answer format.



These books are numbers five and six of the Friends of the Press titles, continuing the society's mission to bring forth the best new Maryland history. We invite you to become a supporter, to follow the path first laid out with the society's founding in 1844. Help us fill in the unknown pages of Maryland's past for future generations. Become, quite literally, an important part of Maryland history. If you would like to make a tax-deductible gift to the Friends of the Press, please direct your gift to Development, Maryland Historical Society, 201 W. Monument Street, Baltimore, MD, 21201. For additional information on MdHS publications, contact Patricia Dockman Anderson, Editor, 410-685-3750 x317, or panderson@mdhs.org.

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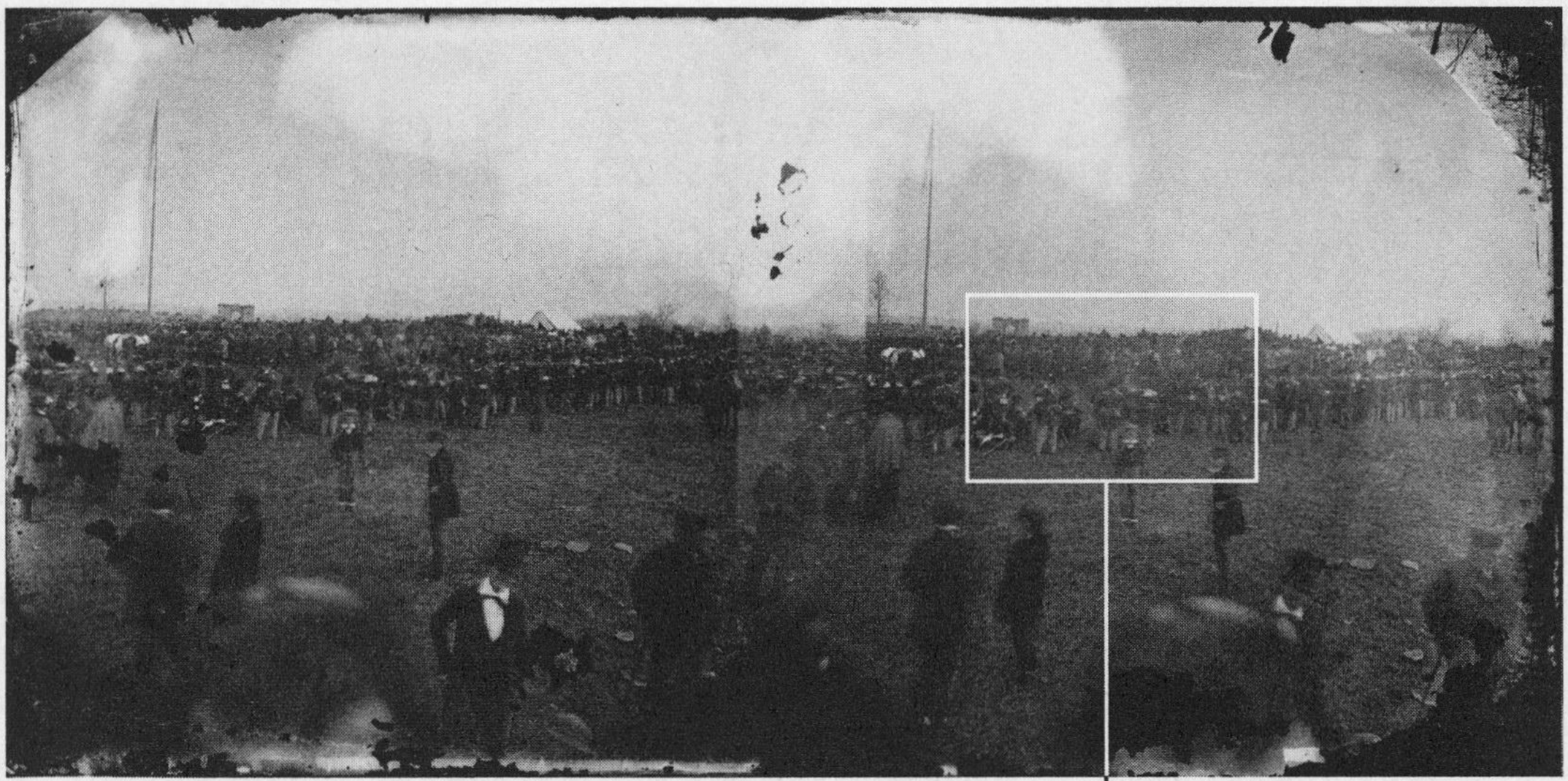
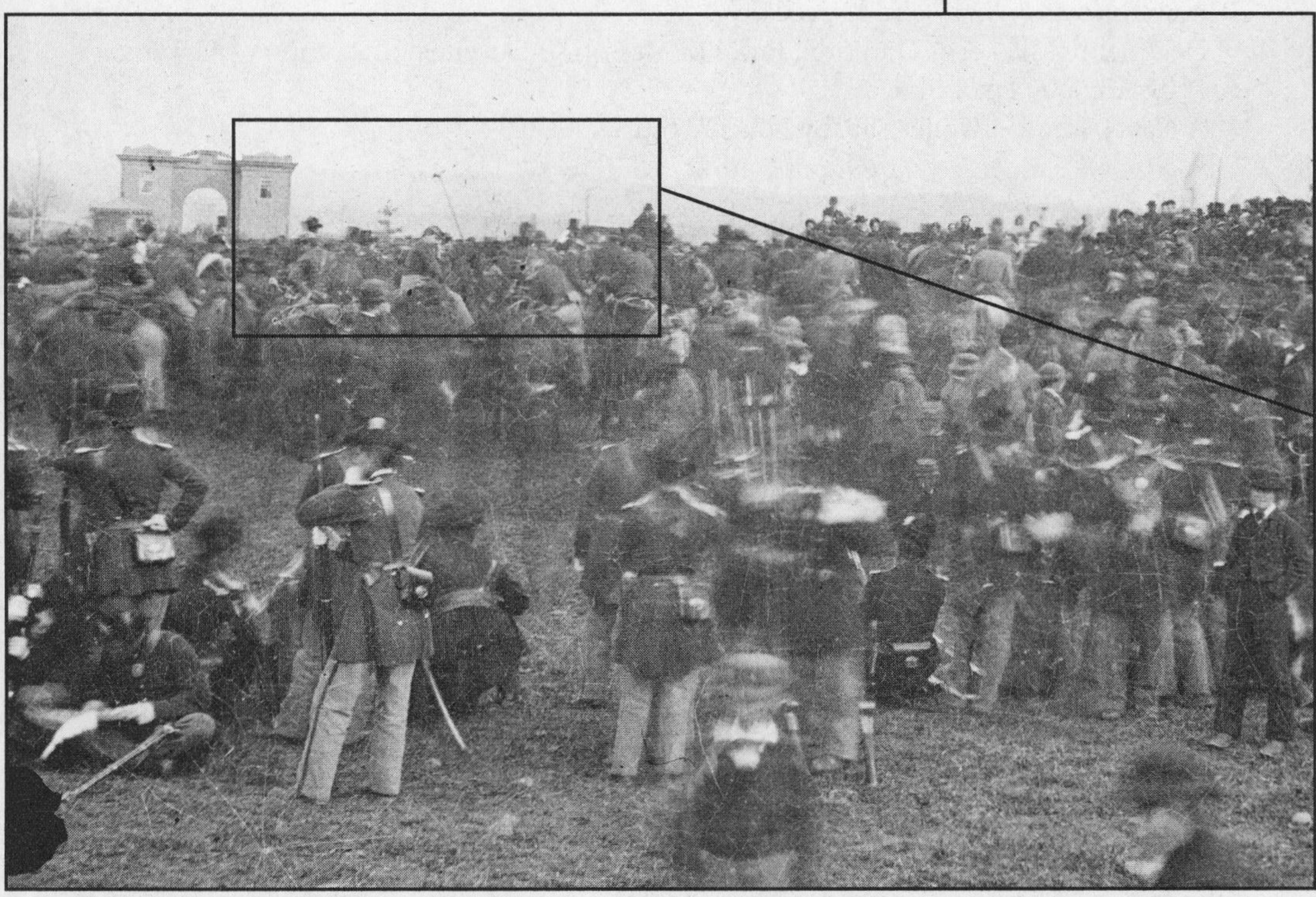


TOP: *Soldiers' National Cemetery, Gettysburg, Pennsylvania, November 19, 1863. One of three Alexander Gardner stereoviews taken as the crowd gathered for the dedication.*
Is Abraham Lincoln among the framed figures in the distance?
4" × 10" Stereograph 1863 Nov. 19 by Alexander Gardner.



Enlarged view of the above detail, reveals a tall figure in a stove-pipe hat. Enlarged five and a half times the original size.

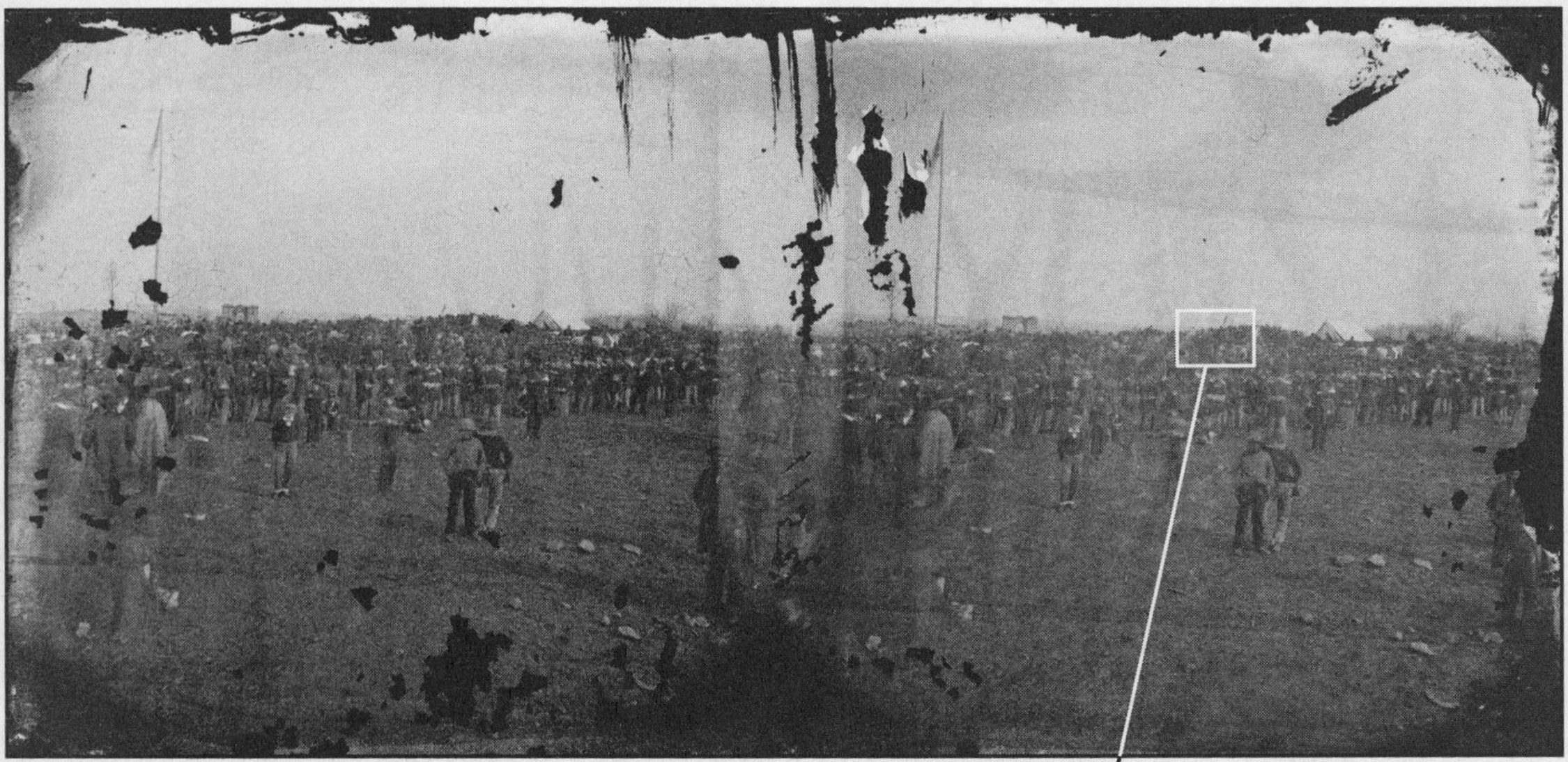
"These Grounds will be Consecrated"

Gettysburg, November 19, 1863

At dusk on November 18, 1863, President Abraham Lincoln, still wearing a mourning band for his son on his hat, arrived in Gettysburg, Pennsylvania, for the dedication of the Soldiers' National Cemetery. The next day, Edward Everett, the ceremony's featured orator, addressed the crowd for nearly two hours. The cemetery committee asked Lincoln, last on the program, to "formally set apart these grounds" and to reassure all who gathered that "those who sleep in death on the battlefield are not forgotten." The president spoke for just two minutes, delivering an address that continues to resonate after a century and a half.

Only one photograph of Lincoln at Gettysburg was known to exist until the Library of Congress began placing their 7,000 Civil War photographs online. High resolution digital scans revealed a figure who may be the president in two additional images, an exciting find in 2007 and one that prompted others to closely examine the tall, bearded figure among the throngs of people gathered for the dedication. Experts include a former Disney animator, members of the Center for Civil War Photography's "murder board," and noted Civil War historians. Is the tall and bearded man in the photographs Abraham Lincoln? The question is still unresolved. The images presented here depict the figure in question. For the complete story and interactive features see Franz Lidz, "Will the Real Abraham Lincoln Please Stand Up," *Smithsonian Magazine*, October 2013 (www.smithsonianmag.com).

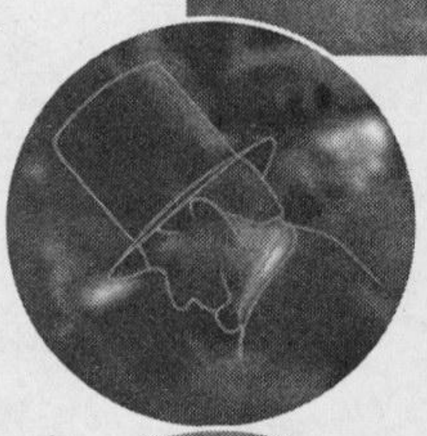
Additional detail, arm raised saluting the troops? Perhaps . . . This detail is enlarged fifteen times its original size.

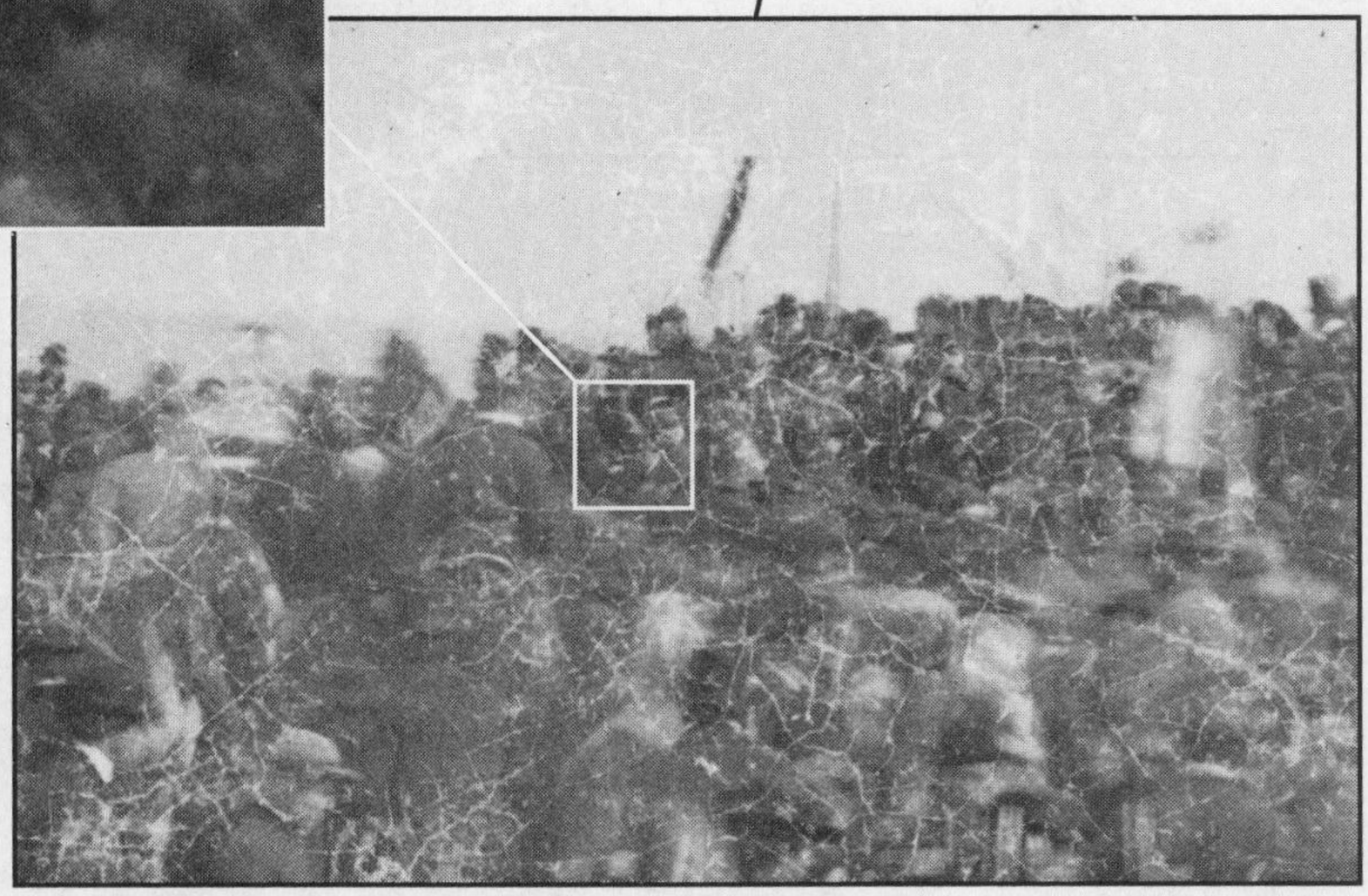


ABOVE: *Lincoln experts found another view of the president in the second stereoview. The framed detail is enlarged below. Researchers framed a second section for close examination. Is Lincoln the bearded gentleman in the tall hat?* 4" × 10" Stereograph 1863 Nov. 19 by Alexander Gardner.

LEFT: *Detail enlarged sixty-one times its original size.*

BELOW: *Detail enlarged to thirteen times original size.*



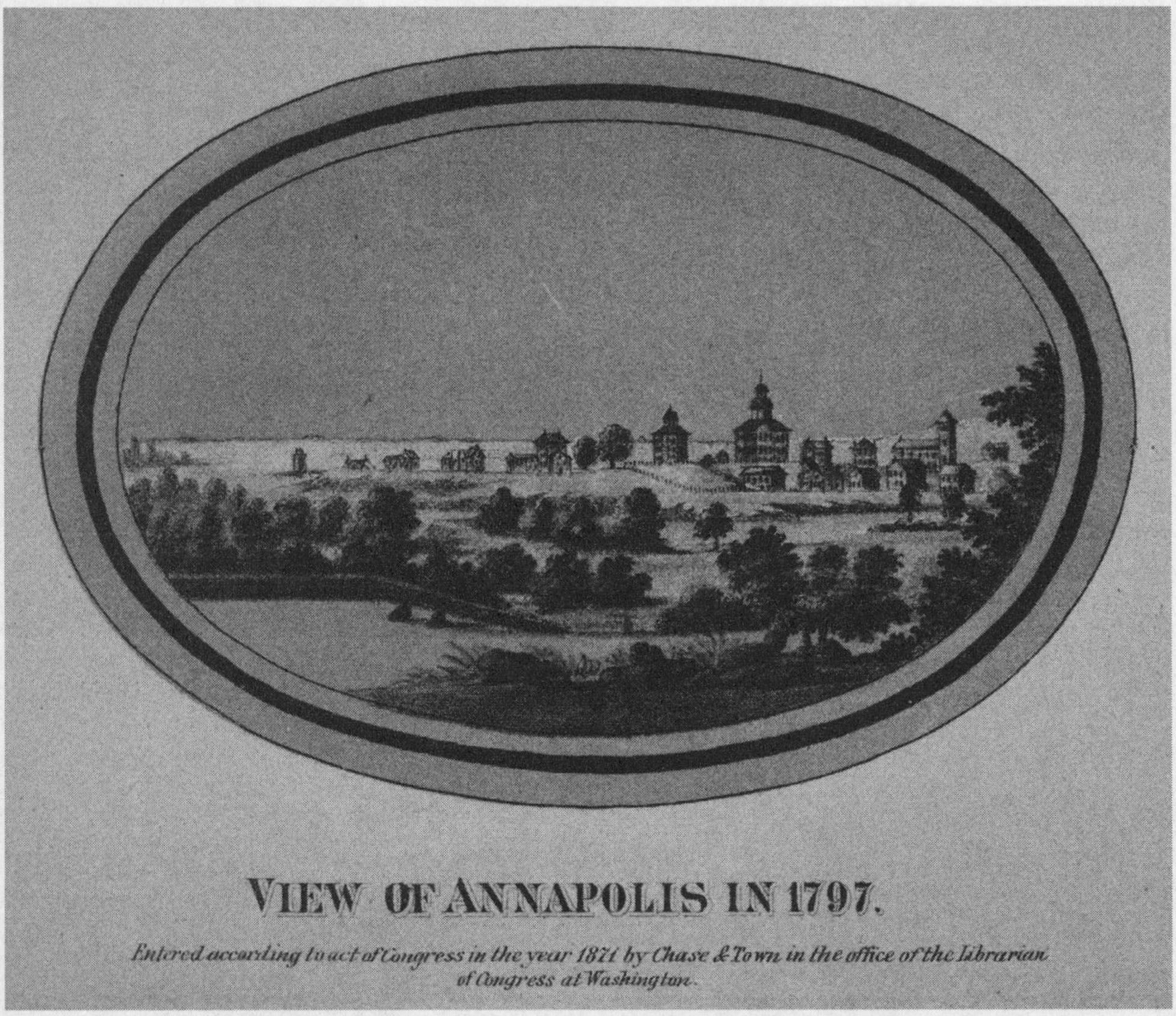


ABOVE: *Former Disney animator Christopher Oakley overlaid a photograph Lincoln sat for several days earlier. Do the facial lines and features match?*

BELOW: *Lincoln at Gettysburg. The name of the photographer who captured this famous view of Lincoln at Gettysburg has not been verified. Perhaps it is from one of the glass negatives that Maryland photographer David Bachrach made and later gave to* Harper's Weekly. *Lincoln is sitting bare-headed on the speaker's platform.*

Gelatin Silver Print from copy negative Library of Congress.

RIGHT: *Detail.*



Annapolis, 1797, seat of Maryland government, where legislators debated incorporating English common law into the new state's legal code. (From a sketch by Comte de Maulvier, View of Annapolis, *1797.)*

English Law and American Democracy in the Revolutionary Republic: Maryland, 1776–1822

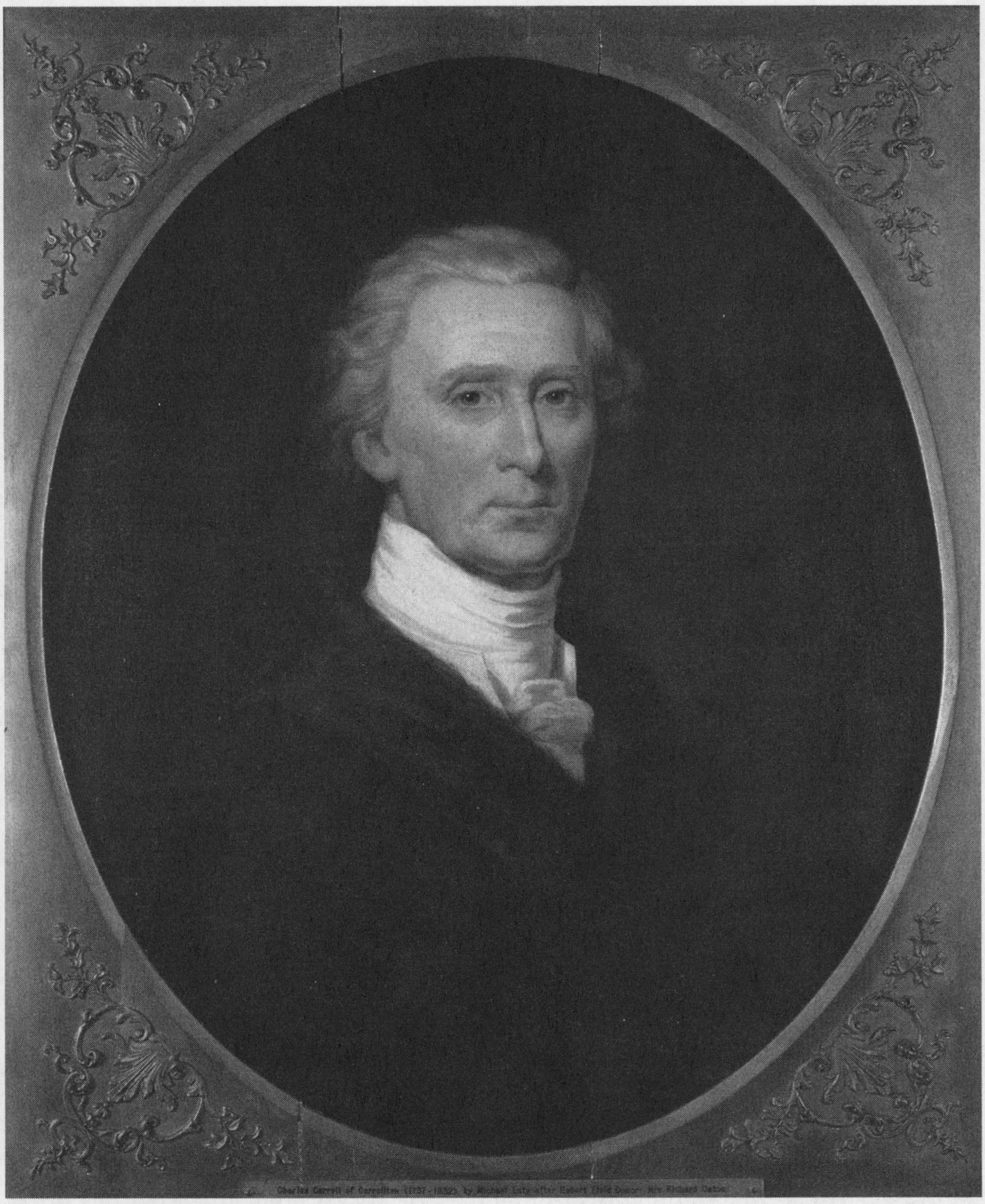
JEFFREY K. SAWYER

With the Revolution and preparations for war with Great Britain underway in July 1776, leaders in Great Britain's American colonies assumed the extraordinary task of designing new, independent forms of government. That raised the difficult question of what to do with Anglo-American colonial law. On one hand, English law had been built into the basic fabric of American law through authorizing charters, governor's commissions, and like acts, as well as by decades of specific local legislation and judicial decisions in colonial courts. On the other, government based on the sovereignty of the people and common sense was a fundamental purpose of the fight for independence.[1]

Delegates to Maryland's constitutional convention faced the issue squarely and acted decisively. The first and second articles of Maryland's Declaration of Rights proclaimed in emphatic language: the people are sovereign; "all government of right originates from the people"; legitimate government "is founded in compact only"; and "the people . . . ought to have the sole and exclusive right of regulating the internal government and police." In Article 3, though, they strongly affirmed a general principle of *legal continuity* with the colonial past using explicit language to define the criteria for the continuing authority of the common law (with a particular emphasis on trial by jury) and British statutes.[2]

Article 3 was a victory for Maryland's Revolutionary leaders and a central piece of their vision of the Revolution. A clearer view of the significance of this revolutionary commitment to a specific vision of the rule of law might begin with the contrast between Maryland and Virginia in 1776. In Virginia, an early draft of the first state constitution nicely summarized the idea in these words: "laws heretofore in force in this colony shall remain in force, except so far as they are altered by [this constitution's] fundamental laws, or so far as they may be hereafter altered by acts of the [new] Legislature." This was a view shared by many, and found explicitly in the Journals of the Continental Congress. Yet neither those words nor the basic idea made it into the text of Virginia's 1776 constitution. So dominant was the distrust of

Jeffrey K. Sawyer is the H. Mebane Turner professor at the University of Baltimore, where he teaches history and legal studies.



Charles Carroll of Carrollton (1737–1832), with Matthew Tilghman, Samuel Chase, and William Paca, led the majority of delegates who supported independence and also believed that the "inhabitants of Maryland are entitled to the common law of England." (Maryland Historical Society.)

British ways and executive power that Virginia's governor was initially barred from exercising "under any pretense, . . . any power or prerogative, by virtue of any law, statute, or custom of England." Only later would Virginians enact a legal continuity statute.[3]

What lies beneath this apparent divergence on such a fundamental issue?

Competing visions of what the Revolution was about? Differing political dynamics among leaders and constituents? Inherent tensions between democracy and the rule of law?

Between 1776 and 1784, eleven of the original thirteen states made some provision for the continuing authority of the common law and British statutes.[4] But there were highly significant variations in the pattern from state to state, variations that helped to differentiate each state as a unique jurisdiction. In Maryland, despite the effort of leading lawyers to settle the matter once and for all in 1776, the precise effects of Article 3 had to be worked out over several decades of political, legal, and intellectual maneuvering. As a result, Marylanders left a remarkable record of politicians, lawyers, and judges contesting for different views of the importance of legal continuity in a democratic republic. This history helps explain why Marylanders are still entitled to the benefits of the common law by the authority of Article 5 of their current constitution, and it also illuminates a defining feature of American democracy, the tension between its theory of sovereignty and the rule of law in practice.[5]

As historians and students of the revolutionary era in Maryland well know, the constitution of 1776 as a whole was a defeat for direct democracy and any popular agenda of social leveling or economic equality that may have been in play. A few idealists, notably Colonel Rezin Hammond of Anne Arundel County, were elected to the 1776 convention but were unable to build a strong statewide political coalition. Effectively led by their wealthy and worldly leaders, notably Charles Carroll of Carrollton, Matthew Tilghman, Samuel Chase, Thomas Johnson, Charles Carroll the Barrister, and William Paca, a majority of delegates embraced independence from the British Empire but voted consistently for a style of government that was familiar and predictable. Why was this plan so conservative? In part because delegates embraced a conception of democratic legitimacy shaped not just by Revolutionary ideals and rhetoric about liberty and rights, but also by the particulars of local legal history.[6]

English Common Law and British Statutes in the Constitution of 1776

Late in the afternoon on Wednesday, July 3, 1776, Maryland's provisional governing body resolved "that a new Convention be elected for the express purpose of forming a new government, *by the authority of the people only*." After the election, Maryland's re-constituted convention convened on August 14 and proceeded to draft, debate, publish, and approve a two-part "Declaration of Rights and Constitution and Form of Government." The constitutional convention then adjourned on November 11, leaving a small executive committee (the Council of Safety) to continue with preparations for war and for the implementation of the constitutional plan for the independent republic of Maryland.[7]

Neither the election of delegates to the convention nor the adoption of the Maryland constitution went smoothly. The *Maryland Gazette*, Annapolis's weekly newspaper, helped keep the public informed as to who would be able to vote for

delegates to the convention and how the elections were to be conducted (as well as carrying news from the Congress in Philadelphia and from other colonies and publishing various political correspondence, Revolutionary documents, and commentary). The August elections reintroduced stricter property qualifications for voting, and in some jurisdictions irregularities compelled the convention to order new elections. Fewer than thirty members of the Eighth Convention were returned to the seventy-six seats in the Constitutional (Ninth) Convention, which therefore contained many new members.[8]

Three days into the convention, on Saturday, August 17, Samuel Chase moved that a committee be appointed to draft the constitution. The language he used emphasized the popular meaning of the act. The committee was to prepare a "declaration and charter of rights, and a plan of government agreeable to such rights as will best maintain peace and good order, and most effectually secure happiness and liberty to the people of this state." Immediately William Fitzhugh, a malcontent from Calvert County and political opponent of the convention's leadership, tried to obstruct the work by moving to delay until all the members were present and then to complicate the proceedings by requiring every vote by every member to be on the record. These motions were defeated.[9]

The delegates then elected a formidable drafting committee consisting of Matthew Tilghman (already the president of the convention), Charles Carroll (Barrister), William Paca, Charles Carroll of Carrollton, George Plater, Samuel Chase, and William Goldsborough, all men with ability, education, and political experience. Carroll (Barrister), Paca, Plater, Chase and Goldsborough were formally educated and highly successful lawyers. Carroll (of Carrollton), the son of a very wealthy Catholic merchant, had defied his father's demands that he study law at the Inns of Court, but he had pursued other advanced studies in England and France. He had also recently bested Daniel Dulany Jr., one of the more renowned lawyers in the colonies, in a public debate over the legality of setting the fees of certain public officials by executive proclamation rather than by a legislative act (such fees being, in effect, indirect taxes).[10] Tilghman, from a wealthy and influential family, had been a leader in the lower house of the colonial legislature for many years; he was chosen president of the first Revolutionary convention in 1774 and all but two of the subsequent conventions, including this one.

The proceedings of the drafting committee were unrecorded and no personal notes from any members appear to have survived. After ten days Plater formally delivered to Tilghman (in his capacity as president of the convention) a draft of a "declaration and charter of rights." This was read and then ordered printed to facilitate discussion and debate. Work on the "plan of government" continued. Two committee members, Carroll (Barrister) and Chase, became embroiled in a controversy over instructions from their constituents and resigned their seats at the convention. (Chase returned on September 10 after a special election, but Carroll went to

Philadelphia after being replaced at the convention by John Hall.) On August 30, Robert Hooe and Thomas Johnson were added to the drafting committee. Johnson was another eminent lawyer and politician. He was elected the first governor under the new Maryland constitution, and was later appointed an associate justice of the United States Supreme Court. As the ruling authority in Maryland, the convention also occupied itself with other business, including military preparations, fiscal issues, and the division of large and heavily populated Frederick County into three counties—Frederick, Washington, and Montgomery. Then, on Tuesday afternoon, September 10, Plater formally delivered to Tilghman "a constitution and form of government" that was "read and ordered to lie on the table." After some wrangling over the calendar, the convention agreed to Fitzhugh's motion to postpone formal consideration until the draft of the constitution could be "printed for the consideration of the people at large" and copies sent to each county in order that "the fullest consideration be had thereon." Along with other business, the convention proceeded to debate the Declaration of Rights and the form of government as a committee of the whole (off the record) for twenty more days.[11]

When formal proceedings for the adoption of the Maryland constitution began, the very first substantive, public, recorded vote on October 31 underscored the significance of the issue of Anglo-Maryland legal continuity for both the dissenting minority and the large majority of the delegates. Upon a motion whether to preserve Article 3 in the "Declaration of Rights," fourteen delegates voted to strike it.[12] Despite its rather technical language, this article was no effort by lawyers at the convention to slip something into the constitution unnoticed.

Before exploring the implications of Article 3 in detail, however, it will be helpful to summarize very briefly key elements of the constitutional plan as a whole, elements of which form a larger context for the balancing of popular sovereignty and legal continuity. The greatest powers of government went to the legislature, and the larger more numerous branch would be directly elected. Property qualifications for voters remained in effect, though they were lowered slightly. The legislature would be styled "The General Assembly" and consist of a House of Delegates elected annually (four from each county and two each from Annapolis and Baltimore) and a much smaller Senate whose members served five-year terms and were indirectly chosen by electors (elected by each county for that purpose). The governor was elected annually by a joint ballot of both houses of the legislature and provided with a council not of his choosing but by vote of the legislature. The governor was also limited to no more than three consecutive terms. The constitution itself could be amended if the amendment was approved by the legislature in two separate sessions with an intervening election. Property requirements for the principle office holders in state government insured that the governor, members of his council, state legislators, and even county sheriffs would be wealthy and well-connected men.[13]

The judicial branch of government looked a lot like the colonial system. Judges

would be appointed by the governor with the advice and consent of his council, though judicial independence was guarded by the constitutional provision that judges would serve permanently once appointed. A Court of Appeals had the power of final determination in all cases coming from the lower courts. The principal trial court with general jurisdiction would resemble the old Provincial Court—renamed the General Court and mandated to sit on both the Western and Eastern Shores. At least initially, county-level courts, clearly anticipated but not actually established by the constitution, would carry on with a lesser jurisdiction as before, until the legislature began re-defining their jurisdiction by statute and ultimately undertaking major reforms in the 1800s. A chancellor for cases in equity and a judge of admiralty (later pre-empted by federal law under the United States Constitution) would take over the traditional roles of those important jurisdictions. The constitution said nothing directly about a Maryland bar *per se* but required persons appointed to the high judicial offices to be "persons of integrity and sound judgment in the law" (Article 56). There can be no doubt that the majority of delegates to the convention intended to place the judicial branch of government securely in the hands of a learned and well-trained legal profession, if not necessarily one that was the product of elaborate, formalized, English-style legal education.[14]

In gaining approval for these arrangements, convention leaders (with Chase and Paca often out front) earned the support the majority of convention delegates after long debate and many challenges. Several times during the final votes to approve the plan, a persistent and vocal minority challenged the majority. The opposition had already made its presence known during the elections. At the convention the opposition consisted primarily of the delegations from Baltimore and Harford counties: Thomas Cockey Deye, Charles Ridgely, Peter Shepherd, John Stevenson, John Archer, Jacob Bond, John Love, and Henry Wilson Jr. They were frequently joined by two men from old Frederick County, David Shriver and Elisha Williams, as well as William Fitzhugh and John Mackall from Calvert County. Benjamin Brevard and Patrick Ewing of Cecil County joined the opposition on some votes, as did Rezin Hammond, from Anne Arundel, and Adam Fischer and William Bayley Jr. from the middle and lower districts of Frederick County respectively. Historians have identified and characterized this group in a variety of ways. In the final analysis they constituted an opposition voting bloc, but did not share a common political ideology or party agenda, with the possible exception of their commitment to the absolute supremacy of an elected legislature. The Baltimore and Harford County delegations in particular sought mainly to protect their county-centered bases of power and the local interests of their constituents, but they also disliked the influence of lawyer-politicians in government.[15]

Article 3 preserved colonial law and its English and British roots as part of the new, republican form of government. Although it certainly made clear that the legislature could alter state law at its discretion, Article 3 also perpetuated a traditional

role for learned lawyers and judges in guiding the development of the law through the work of the judicial branch of government. Tests of "applicability" and "usage" implied that the legal establishment would largely determine when the common law of England, or old English statutes in force in 1635, or even more recent British statutes enacted subsequently, remained in effect in Maryland or were appropriate to be incorporated into state law. The exact language of Article 3 was as follows:

> That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury, according to the course of that law, and to the benefit of such of the English statutes as existed at the time of their first emigration, and which by experience have been found applicable to their local and other circumstances, and of such others as have been since made in England or Great-Britain, and have been introduced, used, and practised by the courts of law or equity; and also to all acts of assembly in force on the first of June seventeen hundred and seventy-four, except such as may have since expired, or have been, or may be altered by acts of Convention, or this declaration of rights; subject nevertheless to the revision of and amendment or repeal by the legislature of this state; and the inhabitants of Maryland are also entitled to all property derived to them from or under the charter granted by his majesty Charles the first, to Caecilius Calvert, baron of Baltimore.[16]

A more complete analysis of the precise intention of this article and its several distinct elements is necessary to understand its larger significance. Its political meaning begins to emerge immediately, though, from the actions of its fourteen opponents.[17]

Not simply English and British law, but lawyers and judges and their traditional influence in Maryland politics, were the targets of the opposition. Several subsequent proposals and votes make this absolutely clear. Some were on key issues such as suffrage, and some were almost trivial. After it had lost the battle over Article 3, the opposition tried to undermine the financial independence of the legal profession in the future republic by limiting lawyers' fees and judges' salaries, and they sought to weaken judicial independence by subjecting judicial behavior to constant scrutiny by the legislature. On November 1 they forced several votes on the constitutional criteria for, and manner of, removing the chancellor and senior judges. The anti-lawyer faction proposed to amend Article 30 to facilitate the removal of judges upon a mere resolution by majority vote in the legislature. Refusing to accept defeat on their first attempt, they tried again, but Paca outmaneuvered them. In the end, the majority agreed that after appointment judges would retain their offices during good behavior, unless convicted in a court of law or removed by the governor upon a petition passed by a super majority of both houses. This gave Maryland judges the same independence that senior judges had been given in Britain since 1714. But then came a motion from Fitzhugh to eliminate salaries for judges, providing them instead with

only a *per diem* expense allowance for days actually sitting on the bench. The anti-lawyer faction supported this motion for the most part, though a few broke ranks, but it was overwhelmingly voted down. On Saturday, November 2, Williams took aim at legal fees again, and proposed that an article be included in the Declaration of Rights stating that "the practitioners of the law being suffered to take, receive, or demand exorbitant fees for their services" any legal fees other than those "provided by an act of the legislature of this state, [are] injurious and oppressive to the good people thereof, and ought to be prevented." Dissenters Fitzhugh, J. Mackall, Fischer, Ridgely, Deye, and Stevenson voted for this insulting language, but no one else joined them. When all was said and done, the anti-lawyer men at the constitutional convention failed to affect much of the substance of the constitutional plan, and the lawyers prevailed decisively on the question of Anglo-Maryland legal continuity.[18]

Although the constitutional drafting committee at the convention was dominated by lawyers, the majority of delegates supporting Article 3 clearly were not attorneys. Article 3 had been drafted with great care, but it was not without ambiguity. It took decades for its meaning to be fully interpreted and articulated by the legislature, the legal profession, and the courts. The first element, almost certainly the easiest to understand and the most widely embraced, namely, a general continuation of the common law in Maryland, proved particularly open ended.

Article 3 and English Common Law in the New Republic

Article 3 established five principles for the preservation of colonial law and its English and British roots as part of the new, republican form of government. To wit: 1) The common law of England generally, and specifically the right to trial by jury, would be preserved, as before the Revolution. 2) English statutes in force in 1635 remained in effect in Maryland if before the Revolution they had by experience been found applicable to local circumstances. 3) English or British statutes enacted subsequently remained in effect in Maryland if they had been recognized and applied by Maryland courts. 4) All acts of the colonial Maryland Assembly in effect on June 1, 1774 (when the first convention met) remained in force unless expired or altered by the Revolutionary conventions. 5) All property rights in Maryland derived through the royal grant by Charles I to Lord Baltimore remained in effect. All of the above incorporations except perhaps the last were subject to revision or repudiation by an act of the legislature (the colonial legislature, the Revolutionary conventions, or the new state legislature) or invalidation by the terms of the constitution itself.[19]

In 1776 the common law was understood almost universally in the English-speaking world as a body of ancient principles underpinning the fundamental rights of free Englishmen and as a vast repository of specific rules, substantive and procedural, that defined property rights, differentiated "lawful" from "unlawful" acts in everyday commerce, defined criminality and provided a system for dealing with criminals, and so on. Lawyers and others inclined toward the romantic idea that the

common law was an ancient, almost timeless, conceptually coherent whole. The great oracle of the common law, Sir Edward Coke, wrote in the preface to Part Three of his *Reports*—required reading for law students in the late eighteenth century—that the records and judicial proceedings of the ancient Britons had to have been "written and sentenced in the Greek tongue." He then provided from that starting point a long, fantastic analysis of the subsequent history of the common law. This was a seductive idea, in part, because it provided a way to imagine the common law as a kind of original legal authority that had grown naturally out of the customs and common sense of the people, had withstood the test of time over the centuries, and that, above all, conceptually antedated the political authority of the British monarchy. No less a skeptic than Thomas Jefferson paid homage to such notions when commenting on the plan to revise Virginia's laws after the Revolution: "The plan was this. The common law of England, by which is meant, that part of the English law which was anterior to the date of the oldest statutes extant, is made the basis of the work. It was thought dangerous to attempt to reduce it to a text; it was therefore left to be collected from the usual monuments of it." In using the metaphor of a "monument," a surveyor's term denoting legal boundaries, Jefferson was referring to the long-established sources of the early common law. Since it was widely understood among lawyers as a matter of convention that the Magna Carta was the first statute, the point of Jefferson's remark was that Virginians intended to incorporate into their new republic all of the English common law that was of enduring importance since more or less the beginning of legal history, but no specific enactments of English or British legislation tainted with the authority of monarchy. Jefferson knew this was an illusion of history, a legal fiction perpetrated by lawyers, and a popular rhetorical device. He personally favored reform through codification, but he thought that would be "dangerous" because the work of reform would result in revised texts. However authoritative, new language would encourage lawyers to challenge settled meanings. For some of the same reasons, the authors of Article 3 in Maryland incorporated a similarly large and intentionally diffuse conception of the common law into Maryland law, but in providing a constitutional entitlement they also avoided any expansive references to unwritten law or to ancient, immemorial maxims and usages.[20]

As is often the case in the history of the law, the meaning of legal language takes shape over time as applied to actual facts in real adjudications. Such was *Griffith vs. Griffith's Executors* (4 H. & McH. 101 [1798]), a case of disputed inheritance, the first reported case in which Maryland's leading lawyers and judges provided a full analysis of Article 3. In the printed report the case is announced as an action of "replevin" (for the recovery of personal property unlawfully withheld) removed by writ of *certiorari* to the General Court of the western shore. It was a highly intricate case, both in its procedural origins and with regard to the underlying human drama. Samuel Chase issued the writ to remove the case to the General Court, but he had moved on to the United States Supreme Court by the time it was argued. Some of the

Samuel Griffith's working plantation, located near Swan Creek, Harford County, sat at the center of a disputed inheritance case. (Detail, Dennis Griffith, Map of the State of Maryland, 1794 *[1795].)*

important details of the case, especially regarding women and property, have been addressed elsewhere; provided here is only the background necessary to understand the arguments about Article 3.[21]

Samuel Griffith of Harford County made a will in which he left his second wife, Martha, a specific portion of his real estate for use during her life (dower), specifically, a working plantation near Swan Creek, south of Havre de Grace. There was no provision in the will for any portion of Griffith's personal property to go to his widow. The widow did not contest the will at first, but later (after the legally prescribed time for doing so) she contested her exclusion from the distribution of personal property. Her legal strategy evolved into a suit claiming one-third of the personal estate, the standard "widow's share" under English common law, a rule clearly recognized in Maryland colonial statutes. The personal property in question included slaves, livestock, supplies, and equipment that would ensure that the farm on Swan Creek would continue to be a productive enterprise. However, Samuel Griffith's detailed will had also left other real estate and personal property, in various specific proportions, to his eldest son, eldest daughter, and two younger unmarried daughters, all by his first marriage, as well as to other relatives, and, much less generously, to his four young sons by Martha (the plaintiff). So, the executors resisted Martha's claim to the personal property. The legal issues boiled down to two questions: First, was Martha

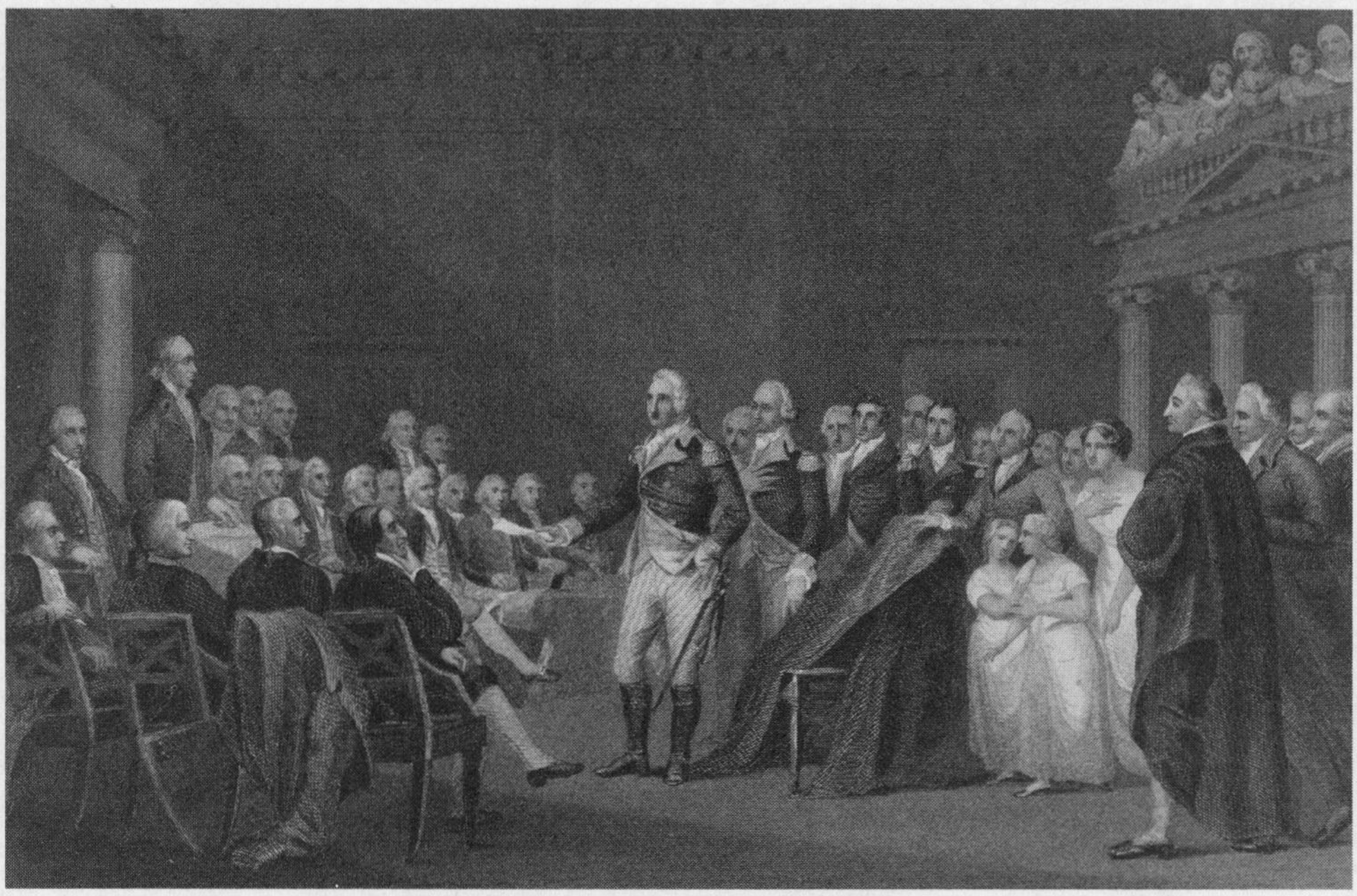
Griffith entitled to a one-third share of the personal property of her husband, after deducting the debts and funeral charges, even though these had not been left to her in the will? Second, was her failure to timely contest the will a bar to recovery?

What was the common law in this case? Several clauses of Article 3 came into play because the relevant sources of inheritance law were many and confusing. Real property and personal property had historically been subject to different rules and jurisdictions in England. Probate of wills and related litigation remained in the courts of the Church of England until 1857. Descent of property was a matter of the common law, but statutes had modified the common law. Maryland statutes from colonial times had created a unique local framework with many specific provisions that assumed certain standard practices but also varied both from English law and from the laws of neighboring colonies, especially in cases of intestacy. English authorities presented contradictory rules because the widow's right to her "thirds" (the use of a portion of real property during her lifetime, unless she remarried, and a third share of the personal property) was a rule of common law. At the same time, a husband's power over his entire estate had increased dramatically in England in the seventeenth and eighteenth centuries through the instrument of the "strict settlement," the type of instrument Samuel Griffith had used as his last will and testament to provide for his widow, children, and others as he saw fit.[22]

Several of Maryland's leading attorneys represented the parties and provided arguments and advice to the General Court; one of the judges, Gabriel Duvall, had been the secretary to Maryland's constitutional convention; another, Samuel Chase's second cousin Jeremiah Townley Chase, had been a delegate to the convention. The chief judge, Robert Goldsborough IV, was the son of one of the lawyers on the constitutional drafting committee. A lot was at stake for the reputations of these men in the outcome of the widow Griffith's case, as well as for the reputation of the bar and for the principle of Anglo-Maryland legal continuity. Was Maryland law, under the provisions of Article 3, intellectually coherent? According to one distinguished participant, should the court fail to recognize the common law rule, it would be difficult to show that Maryland had "*any law at all*" [emphasis added].

In his argument to the court on behalf of Samuel Griffith's executors, Luther Martin (also attorney general) argued that Maryland statutes simply did not apply to the facts of the case and that therefore, under Article 3, the common law would have to be controlling. He concluded, however, that the widow could not take the specific provision of real estate under the terms of the will, and at the same time have the will overturned with respect to the personal property. Mr. Winchester, for Mrs. Griffith, argued that the intent of the (colonial) Maryland statutes was quite clear. A widow was entitled to receive at least one third of the personal estate and one third of the real estate under any conditions except that she voluntarily renounce them.

The published report provides not just the opinion of the judges but extensive, detailed arguments by Martin and Winchester, the attorneys of record, and addi-



Jeremiah Townley Chase (1748–1828), pictured just above Washington's hand, served as delegate to the Continental Congress and later as chief judge of the Maryland Court of Appeals. (Engraving, John Rogers after John Trumbull, Washington Resigning his Commission in Annapolis, *1783.)*

tional opinions from two other leading attorneys, William Pinkney and William Cooke, in the role of consultants to the court. Pinkney's opinion focused squarely on chronological distinctions in the language of Article 3 and the historical discontinuity in the development of English law. Pinkney noted the likelihood that the common law in the 1630s (the period established for its incorporation into Maryland law under the language of Article 3) was very different in the late eighteenth century. Pinkney saw further confusion among the contemporary English authorities as to the unequivocal right of the widow to her share of the personal estate but suggested nonetheless that the common law as it applied in Maryland had to be on the side of Mrs. Griffith. This was so, he continued, because the Maryland Charter was made during the reign of Charles I at a time when English law appeared to guarantee the wife a one-third portion of the personal estate as a matter of common law. Then, from "colonization to the [Maryland] act of 1715, the rule remained unchanged in this country, although in England it was undergoing gradual alterations, and in 1715, the provincial legislature expressly recognized it as settled law." Under the framework laid out in Article 3, he claimed, changes in the law of England would have no influence upon Maryland in this regard. He further noted that, while not exactly reenacted, the settled common law rule regarding widow's thirds was reinforced by having been clearly acknowledged in two Maryland acts

of Assembly and "strengthened by the uniform opinion and usage of the country." It was Pinkney who said the common law rule was so clearly settled that were the court to overturn it, "it will be difficult to shew that we have any law at all." On the second question, he explained that there was no need to renounce the will; since none of the personal estate was bequeathed to Mrs. Griffith, there was nothing to renounce. Her right to the property was unquestionable. Cooke went even further, suggesting that Mrs. Griffith was entitled not only to the specific bequest of real estate and a one-third share of the personal property, but an additional one-third share of the real estate from which she was not explicitly barred in the will (*Griffith vs. Griffith's Ex'rs*, 121).[23]

Judge J. T. Chase wrote the opinion of the court, with Goldsborough, and Duvall concurring. The court followed both the political and legal logic of Article 3 by citing the Maryland acts of 1704, 1715, and 1729. There was no question that these were appropriate sources of Maryland law, and the court thought they constituted "clear and explicit recognition of the right of the wife to one-third part of the personal estate." The court sided with the view that this was the common law rule in the time of Charles I and therefore rightfully incorporated under Article 3 in the common law of Maryland. Chase added the following remarks about the common law:

> I consider successive acts of the [colonial] legislature, and the uniform practice conformable thereto, as the best evidence of what was the common law in the opinion and judgement of the legislature and the citizens of Maryland. Suppose it questionable, and not well settled in England[.] [T]he acts of the legislature, and the practice here, prove, beyond a doubt, that it was the general opinion the wife was entitled to a third part of the personal estate by common law (*Griffith vs. Griffith's Ex'rs*, 122).

Accordingly, the court concluded that the general common law principle of the widow's right to her thirds clearly overrode any silence on the part of the statutes as to the particular situation of Martha Griffith.

This opinion established a new footing for Maryland state jurisprudence. Common law was at once an ancient source of legal authority and a historically defined body of principles found in monuments of English law as well as Maryland's legal history. Chase traced the widow's reasonable allowance back to two thirteenth-century sources, Magna Carta and a treatise known as *Bracton*, and believed that these were acknowledged to be the law in England at the time of Charles I, even if some high English authorities may have suggested otherwise. So, as a matter of the logic of Article 3, the question then became whether this rule, apparently in place at the time of the "first emigration," had been altered by acts of the Maryland legislature. If such acts contained imprecise language, so that modification of the common law rule was uncertain, the courts should interpret an intent on the part of the legislature

to preserve it. Article 3 meant what its opening section said—the common law, as best it could be construed, was fundamental law in Maryland.

This framework for interpreting Article 3 was confirmed in *Coomes et al. vs. Clements* (4 H. & J. 480, [1817]) nearly two decades later and in a very different political climate. The issue was essentially the same as that in *Griffith*, that is, whether a man might exclude his wife from inheriting any of his personal property. J. T. Chase, now chief judge of a differently configured Court of Appeals, gave an even more strident rendition of his earlier view in light of the Maryland act of 1798.[24] Judges Johnson and Martin agreed. Judge Dorsey, revealing some concern for the historical accuracy of the precedents alleged, was less confident, but unwilling to push the point.

> I consider [*Griffith*] as establishing principles by which the controversy in this case must be settled. If the point had been *re nova* [i.e., "new matter" or a case of first impression], I should have pondered before I decided that the common law of England, at the time of the settlement of Maryland, gave to a widow a part of the personal estate of her husband, in opposition to his will, but as that, and other points . . . now before the Court, have been settled in the case referred to, I must bow to its authority (*Coomes et al. vs. Clements,* 484).

Dorsey appears to have believed that the precise state of English common law in the 1630s could have been the subject of further research and analysis, which might have altered the outcome. At the same time he sustained the manner of reasoning about the applicability of the common law under Article 3. *Griffith* established a Maryland precedent, and on the principle of *stare decisis*, he refused to urge that it be set aside.

A few years later, as a trial judge in *State v. Buchanan et al.*, (5 H. & J., 317 [1821]), Dorsey would have another opportunity to consider the transplantations of English law to Maryland. This time it was a criminal case that began with an indictment in Baltimore City Court against three officials of the Bank of the United States. Maryland lost a major constitutional battle in *McCulloch v. Maryland* (4 Wheaton 316, 17 U.S. 316 [1819]), when the Supreme Court ruled that Maryland could not protect local banking interests by taxing the operations of the U.S. Bank. After the credit collapse of 1819, however, which ruined many local fortunes, including that of the prominent war hero and local politician Samuel Smith, Attorney General Luther Martin initiated prosecutions against the U.S. Bank's regional officers. Smith's partner, James A. Buchanan, was president of the Baltimore office of the U.S. Bank, which regularly made loans to local banks and merchants. Buchanan, along with James W. M'Culloh (referred to as "cashier" but likely the branch manager), and George Williams, one of the directors, were all indicted. The defendants' attorneys, insisting they could never get a fair trial in the city, asked that the trial be moved to Harford County. In the circuit court in Bel Air, the defendants entered a special demurrer, alleging in

effect that the state had no case. The three-judge county court ruled the demurrer good, despite senior judge Dorsey's dissent, and dismissed the defendants. The attorney general appealed.[25]

The original indictment alleges that the defendants embezzled $1,500,000 by use of bank notes. Evidence later published showed Buchanan and M'Culloh involved in a number of complicated financial schemes both legitimately as officers of the bank and surreptitiously on behalf of themselves. One part of the activities involved Buchanan and M'Culloh making very large loans of U.S. funds to their own business ventures on their own authority. Another part involved lending against the value of the stock of other banks at manipulated values. Defense counsel argued that such actions were unwise but common and legitimate financial manipulations. Had they succeeded rather than suffered losses, it was further claimed, the defendants would have been heroes of the merchant community. The U.S. Bank evidently lost money on some of these transactions, although it is difficult to say how much of it was due to fraud and how much to an underlying credit contraction and banking crisis. Since the defendants demurred, there was no trial of facts the first time around. When the state won its appeal and the case was sent back to Bel Air for a second trial, Buchanan and M'Culloh were acquitted, and the charges against Williams dropped.[26]

In the current context the focus is not on the defendants' guilt or innocence but on the arguments surrounding whether there was a common law of criminal conspiracy in Maryland under which the defendants could be prosecuted and convicted. The answer to that question required yet another interpretation of Article 3. "Criminal conspiracy" had been used widely in Britain to criminalize laborers organizing for the purpose of raising wages, for example, but it had not been used in the same way in Maryland. The issue was whether Article 3 imported the substance of British law into Maryland. In an important secondary ruling, the Court of Appeals also determined that "a writ of error would lie at the instance of the state in a criminal prosecution" because the common law provided the (sovereign) King of England with a writ of error in criminal prosecutions, and the (sovereign) people of Maryland must therefore be entitled to the same. This was an important example of the Court of Appeal's use of Article 3 to settle a point of criminal procedure.

The conspiracy case provided Chief Judge Chase and Judge John Buchanan an opportunity to rule on the interpretation of Article 3. Buchanan, apparently not a close relation to the defendant, wrote a detailed opinion for the court, and Chase, who had been unable to attend during the final deliberations, wrote a separate concurring opinion. Emphasizing the importance of the "intention" of those whom he called the "framers," Buchanan understood them to have driven a massive conceptual wedge between the common law in general and particular English or British statutes.

According to the court, "the *third section* of the *Bill of Rights* [i.e., Declaration of Rights], . . . declares the inhabitants of *Maryland* to be entitled to the benefit of such *British* statutes made since the emigration, as had been introduced, used and

practiced by the courts of law or equity, and thus virtually inhibits the use of all such as had not been so introduced." It was the binary logic of incorporation or exclusion as it applied to the statutes that furnished the key to the sweeping comprehensiveness of legal continuity with regard to the common law.

> [I]t was not the intention of the framers of that instrument to exclude any part of the common law, merely because it had not been introduced and used in the courts here, and [Article 3] strongly implies, that there were portions of that valuable system which had not been actually practiced upon. And the judicial proceedings of our courts furnish no evidence of any prosecution before the revolution, for a cheat effected by false public tokens [e.g., counterfeit or worthless bank notes]; and yet it is not pretended, that from the *non user*, it is not now an indictable offence (*State v. Buchanan*, 359).

In this context Buchanan emphasized that under Article 3 the common law was not so much about the authority of particular rules or specific "adjudications" (his term); it was about "*principles which cannot become obsolete*" (emphasis added). Article 3 meant to incorporate into the law of Maryland not the "positive or statute law" but "the common law in mass, as it existed here, either potentially, or practically, and as it prevailed in England at the time, except such portions of it as are inconsistent with the spirit of that instrument, and the nature of our new political institutions." Along the lines Jefferson described, the legal profession did not need a full enumeration to excavate the details of the common law from its ancient monuments.

More specifically with respect to criminal conspiracy, Buchanan saw two possible scenarios. The first was that criminal conspiracy to commit fraud had been an indictable offense in England according to basic principles of common law. If so, it was also an indictable offense in Maryland, even if Maryland law had not explicitly recognized it prior to 1776. If, however, the offense was created by some particular statute, which had not been found to be applicable in Maryland, it was not Maryland law. For this reason, interpretation of an English statute known as "*de conspiratoribus*" from 33 Edw. I (1304–1305), was of considerable importance. Did that statute introduce new rules concerning criminal conspiracies, or did it merely affirm a pre-existing common law of criminal conspiracy? The published report includes nearly two full pages of citations alleged by the attorney general to buttress his contention that the statute did not introduce a new rule "but was merely in affirmance of the common law." With this contention the court agreed.

Chase's opinion was equally strident on the common law and its application to Maryland.

> The statute 33 Edw. I, *de conspiratoribus*, was made in affirmance of the common law, and is a final definition of the instances or cases of conspiracy mentioned in it; but certainly it does not comprehend all of the cases of conspiracy at the

> common law, which is most apparent from the adjudged cases of the courts of *England* on the subject (*State v. Buchanan*, 366).

Chase went on to further emphasize the point that with respect to the common law, prior recognition in Maryland was not necessary for a rule to be in force.

> I consider the adjudications of the courts of England, prior to the era of the independence of America, as authority to show what the common law of England was in the opinion of the judges of the tribunals of that country, and since that time, to be respected as the opinions of enlightened judges of the jurisprudence of England.
>
> The better opinion appears to be, that a conspiracy to do an unlawful act is an indictable offence, although the object of the conspiracy is not executed. In this case the conspiracy to cheat, defraud and impoverish the Bank of the United States by appropriating the monies, promissory notes, and funds of the bank, to the use of the accused, has been proved by the admission and confession of the defendants (ibid., 367).

It was a matter of enduring principles, not necessarily of positive recognition of the pre-1635 law. Chase, who, it should be recalled, had been a delegate to Maryland's constitutional convention, underscored the point when he referred to Sir Edward Coke's fantasies about the common law's completeness and perfection.

> The common law of England is derived from immemorial usage and custom, originating from acts of parliament not recorded, or which are lost, or have been destroyed. It is a system of jurisprudence founded on the immutable principles of justice, and denominated by the great luminary of the law of England [Coke], the perfection of reason (ibid., 365).

This being the case, the job of determining the exact content of the common law, under the authority of Article 3, must be the duty of the courts. The holding in *Buchanan* established this point definitively.

> The common law of England was adopted by the people of Maryland, as it was understood at the time of the [Declaration of Rights, in 1776], without restraint or modification. Whether particular parts of the common law are applicable to our local circumstances and situation, and our general code of laws and jurisprudence, is a question that comes within the province of the courts of justice, and is to be decided by them (ibid., 365–66).

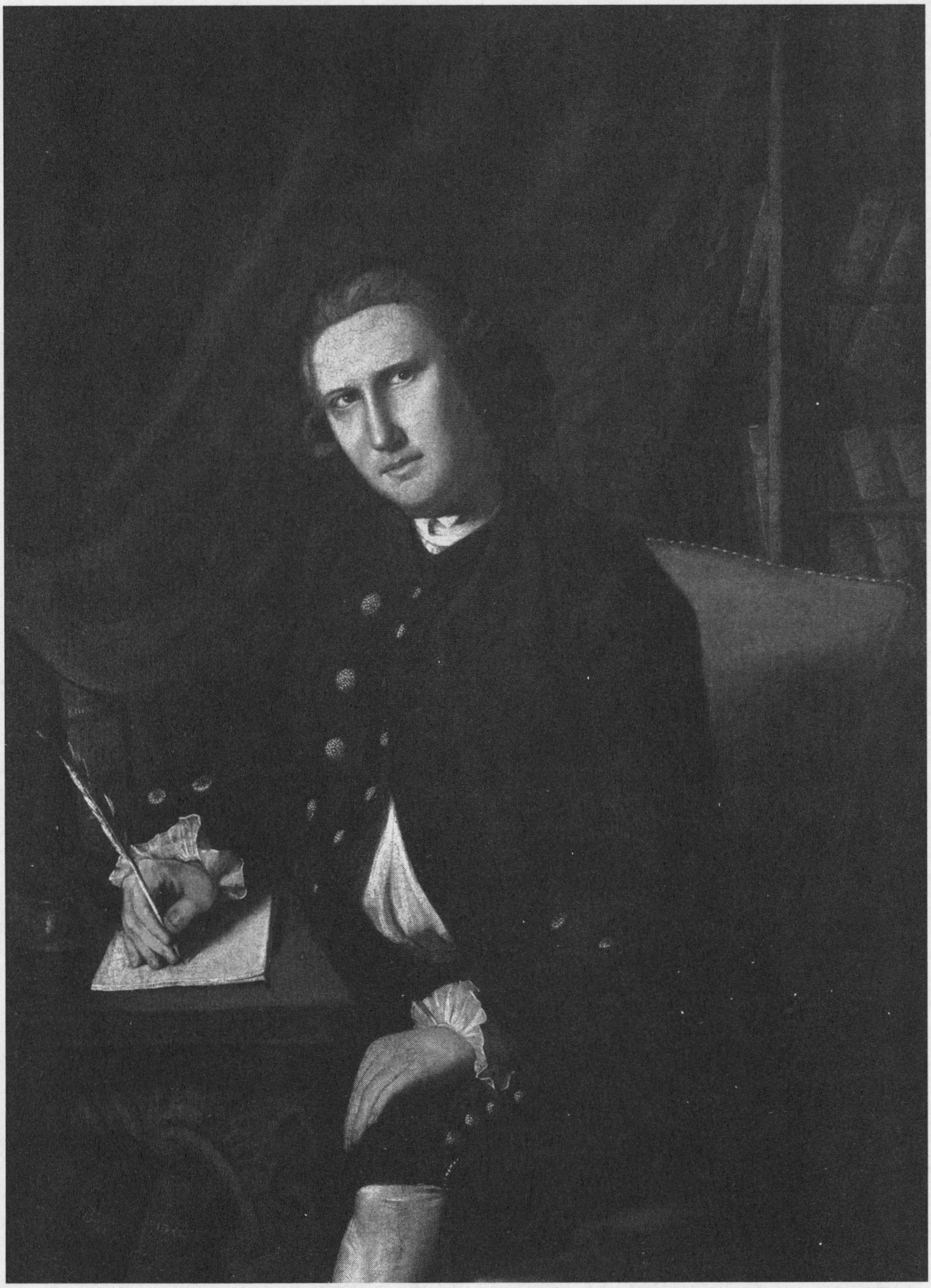
From *Griffith* to *Buchanan*, judges engaged in an effort to make Maryland law responsive to Maryland's needs as they saw them while re-affirming the historic

and intellectual coherence of Anglo-Maryland law as a whole. Using Article 3 as a foundation, Maryland judges created a distinctive historical and analytical jurisprudence to determine which parts of the English common law would survive or be brought to life anew in state law. *Buchanan* established, for good, in retrospect, that Maryland's Court of Appeals would decide what had been and what would be the common law in Maryland, especially in criminal matters, until the legislature specifically enacted otherwise.

Article 3 and the British Statutes: The Legislature and the Legal Profession

In the 1790s Maryland's General Assembly began agitating for clearer standards of evaluation for the different classes of British statutes described in Article 3. This was the result of a combination of developments, but certainly the general confusion surrounding testamentary law was a major factor. An initiative originating in the House of Delegates in the November 1794 session called for the appointment of a commission to "revise and amend the whole system" of testamentary law into a "very complete code." Within a couple of weeks, the proposed project had expanded, and the House passed a resolution on to the Senate to appoint a similar commission to review the British statutes in their entirety. As we have seen repeatedly in the story of English law in Maryland, the issues were both technical and substantive on the one hand, and political and emotional on the other. The Lower House claimed it was "a badge and monument of former dependence that the British statutes should be cited in our courts of justice, which conveys, at the same time, the false and disgraceful idea that the citizens of Maryland are not competent to legislate for themselves." Philip B. Key, Samuel Chase, William Pinkney, Luther Martin, and Alexander C. Hanson, all distinguished attorneys, were nominated to a commission "to revise the existing laws of this state, and report to the next general assembly what acts of assembly or British statutes are now in force." When making their report, furthermore, they were to abandon the traditional way of reporting the British statutes (using regnal years) and to adopt the terminology mandated in Article 57 of the Maryland constitution's Form of Government, namely that "the stile of all laws run thus, 'Be it enacted by the general assembly of Maryland . . . .'" The members of the commission were promised "liberal compensation for their time and services." Once passed, the final version became known as "Resolution No. 22."[27]

The idea was to produce a comprehensive code, that is "to compile, digest, and consolidate, into one bill all acts of assembly and British statutes" then in force, or such parts as were in force, arrange them in an appropriate order, etc. The goal, in other words, was to definitively nail down the formerly English or British content of existing Maryland law, as defined by the principles of Article 3, by enacting the report of the commission as a statute. What was actually accomplished as a result of Resolution No. 22 is unclear. No doubt some part of the work contributed to the major overhaul of testamentary law enacted in 1798, and perhaps that took the wind



Samuel Chase (1741–1811), appointed to the 1794 commission charged with revising state law and reporting on which British statutes remained in force. (Maryland Historical Society.)

out of the sails for completing the rest of the task. Several men nominated to the commission had to have studied the subject, since they gave their learned opinions

four years later in the case of *Griffith vs. Griffith's Executors*, discussed above. But the entire project was a vast undertaking, and perhaps no one wanted to do the work without a clearer guarantee of significant compensation. An earlier effort to digest the laws of Maryland had clearly left Chancellor Hanson feeling ill-used. In any case, the project languished for a decade, to be taken up again when the party of Thomas Jefferson gained control of the state government. In Maryland the emerging party first styled as "Democratic" and then as "Democratic-Republican," and finally, simply "Republican," had from its beginnings been antagonistic toward lawyers and anything with a patina of English tradition and authority. Partisan anti-lawyer invective was a well-established *modus operandi* by the elections of 1800.[28]

Rising Republican member of the House of Delegates, Theodorick Bland (later a Maryland district court judge, a U. S. district court judge, and a chancellor of Maryland), moved what became known as "Resolution No. 12" in the November 1809 session of the General Assembly. Similar to the earlier plan, this resolution directed the chancellor and the judges of the Court of Appeals "to make a report of all such parts of the English Statutes as were proper to be introduced and incorporated into the body of the Statute law of the State." The result of this revived initiative was the famous, and long influential *Report of All English Statutes* . . . , the work of Chancellor Kilty.[29]

Kilty, who had replaced Hanson as chancellor in 1806, methodically combed through published editions of the British statues from Magna Carta down to 1773 and analyzed their possible extension to Maryland. His *Report* was published in 1811, only a year after the charge had been given by the legislature, so he had almost certainly studied the subject extensively before being specifically appointed to the task. He was a meticulous legal scholar and had a good sense for organizing complex material. (His editions of the laws of Maryland, much better received and more widely used than Hanson's, became the standard reference.) Kilty used the logic of Article 3 to classify statutes, and portions of statutes, into one of three groups:

> [1] English Statutes existing at the time of the first emigration of the people of this State, . . . *not . . . found, by experience, applicable to their circumstances,*
>
> [2] Statutes and parts of statutes *found applicable, but . . . not proper to be incorporated,*
>
> [3] Statutes and parts of statutes . . . *found applicable and . . . proper to be introduced and incorporated* into the body of the statute law of this state (from the Introduction to the *Report,* emphasis added).

A careful historian as well as a good lawyer, Kilty cautioned in his introduction that the logic of incorporation should not be applied too mechanically, and could vary for different statutes or portions of statutes. Kilty also quietly diminished the

significance of the pre-settlement / post settlement distinction between the statutes. It was *applicability* that mattered. Kilty not only identified specific sections of statutes that were to be understood as in force in Maryland and other sections from the same statutes that were not, he warned that "it must be observed, that many statutes relating to rights and rules of property have been tacitly and without contest acquiesced in, and that many have been used and practised under without the sanction of any express decision of the courts." He set all of the criminal statutes aside, explaining his different treatment of them as a matter of the historical reality of Maryland practice in colonial times as well as a result of the passage of a major "Penitentiary Law" a year earlier.[30] The modernization of Maryland's criminal law voided the use of many English statutes even if they had formerly been recognized. The *Report* was a remarkable and highly useful achievement, but it would not be the last word.

For reasons that are not clear, Bland, who had sponsored the legislation, opposed adopting the *Report* or its contents as a statute. Talk of war with Britain broke out in 1810, and in 1811 anti-British feeling was escalating toward the War of 1812, which may have given Bland second thoughts about the political wisdom of enshrining a huge chunk of old British law. Or perhaps, like Jefferson, he might have decided it unwise to adopt Kilty's lists of the various statutes and parts of statutes as definitive. In any case, Kilty's *Report* was never re-framed as a statute, though it was given the status of an official state document. The substance of the work was foundational, and both the courts and legal scholars built upon it in the nineteenth century. Julian J. Alexander's two-volume *British Statutes* updated Kilty's work shortly after the Civil War, aiming in part he said, at reconnecting the legal profession of his day with the fullness of Maryland's legal history. Alexander's work was in turn annotated and modernized by Ward Baldwin Coe at the turn of the century and is still referenced from time to time by Maryland courts.[31]

The question of the British Statutes would, of course, also play out in litigation. In 1822 Maryland's Court of Appeals was asked to rule on whether an influential Elizabethan statute governing charitable bequests was part of Maryland law. The decision in *Dashiell et al. v. The Attorney General* came on an appeal from the "Baltimore county court sitting as a court of Equity." James Corrie left an elaborate will with specific instructions for the administration of his estate. After providing for his daughter, Mary, he allocated "the residue of the income" of the estate to charitable purposes. The vagueness of the language identifying the charitable purposes and the beneficiaries was used by the trustees, one of whom, George Dashiell, had since married Mary Corrie, as grounds not to honor the bequest. The statute known as

Overleaf: Chancellor William Kilty (1757–1821) methodically identified the English statutes he believed properly incorporated in Maryland's legal code. He went on to produce multiple editions of the influential and respected Laws of Maryland. *(William Kilty,* A Report of all such English Statutes as Existent at the Time of the First Emigration of the People of Maryland *[Annapolis: printed by Jehu Chandler, 1811.])*

A LIST OF THE

ENGLISH STATUTES

WHICH WERE APPLICABLE TO THE PROVINCE,

AND ARE PROPER TO BE INCORPORATED.

Magna Charta, 9 Hen. 3.—A. D. 1225.

CHAP. 7. A widow shall have her marriage inheritance and quarentine.—The king's widow, &c. (Part.)

CHAP. 8. How sureties shall be charged to the king.

CHAP. 18. The king's debtor dying, the king shall be first paid.

CHAP. 25. There shall be but one measure throughout the realm.

Statute of Merton, 20 Hen. 3.—1235.

CHAP. 1. A woman shall recover damages in a writ of dower.

CHAP. 2. Widows may bequeath the crop of their lands.

CHAP. 9. He is a bastard that is born before the marriage of his parents.

The statute de Anno Bissextili, 21 Hen. 3.—1236.

The day of the leap year, and the day before, shall be holden for one day.

The statute de districtione saccarii, 51 Hen. 3, St. 4.—1266.

What distress shall be taken for the king's debts, and how it shall be used. (Part.)

Statute of Marlbridge, 52 Hen. 3.—1267.

CHAP. 4. A distress shall not be driven out of the county, and it shall be reasonable.

CHAP. 15. In what places a distress shall not be taken.

CHAP. 23. A remedy against accomptants.—Fermors shall make no waste.

Statute of Westminster 1, 3 Edw. 1.—1275.

CHAP. 15. Which persons be mainpernable, and which not.—The penalty for unlawful bailment. (Part.)

CHAP. 16. None shall distrain out of his fee, nor drive the distress out of the county.

CHAP. 17. The remedy, if a distress is impounded in a castle or fortress.

CHAP. 49. The tenants plea in a writ of dower.

A statute de officio coronatoris, 4 Edw. 1. St. 2.—1276.

Of what things a coroner shall enquire.

The statute of bigamy, 4 Edw. 1, St. 3.—1276.

CHAP. 6. By what words in a feoffment, a feoffor shall be bound to warranty.

Statute of Gloucester, 6 Edw. 1.—1278.

CHAP. 1. Several actions in which damages are to be recovered.

CHAP. 5. Several tenants, against whom an action of waste is maintainable.

CHAP. 7. A writ of entry in *casu proviso*, upon a woman's alienation of dower.

e statute of Westminster 2, 13 Edw. 1, St. 1.—1285.

Chap. 1. In gifts in tail, the donor's will shall be served.—The form of a formedon. (Part.)

Chap. 2. A Recordare to remove a plaint.—ges to prosecute a suit.—Second deliverance. rt.)

Chap. 7. Admeasurement of dower for the dian and the heir; and the process thereon.

Chap. 11. The master's remedy against their ants and accomptants. (Part.)

Chap. 14. The process in an action of waste.—rit to enquire of waste.

Chap. 15. An infant eloigned may sue by *pro-n ami*.

Chap. 22. Waste maintainable by one tenant, ommon against another.

Chap. 24. A writ of measure of a house, &c. ed and aliened to another.—A *quod permittat ventrum* for a parson of a church.—In like ca-like writs be grantable. (Part.)

Chap 31. An exception to a plea shall be ed by the justices.

Chap. 34. It is felony to commit a rape.—A ried woman elopeth with an advowterer.—The alty for carrying a nun from her house. (Part.)

Chap. 37. No distress shall be taken but by ffs known and sworn.

Chap. 45. The process of exception of things ded within the year, or afterwards.

e statute of Winchester, 13 Edw. 1. St. 2.—1285.

Chap. 1. Fresh suit shall be made after felons robbers from town to town.

Chap 4. At what time the gates of great towns ll be shut.—And when the night watch shall gin and end.

n ordinance for inquests, 33 Edw. 1, St. 4.—1304.

He that challengeth a jury or juror for the king, all shew cause.

An ordinance for measuring of land, 33 Edw. 1, St. 6.—1305.

Stat. de frangentibus prisonam, 1 Edw. 2, St. 2.—1307.

In what cases it is felony to break prison, in what not.

Stat. de carleol de finibus, 15 Edw. 2.—1322.

The connusor of a fine shall come personally before the justices.—Where a commission shall be awarded to take a fine.—Who may admit attornies. (Part.)

Prerogativa regis, 17 Edw. 2, St. 1.—1334.

Chap. 9. His prerogative in the custody of lands of idiots. (Part.)

Chap. 10. His prerogative in the preservation of the lands of lunatics.

1 Edw. 3, St 2.—1327.

Chap. 16. Who shall be assigned justices and keepers of the peace.

4 Edw. 3.—1330.

Chap. 2. The authority of justices of assize, gaol delivery, and of the peace. (Part.)

14 Edw. 3, St. 1.—1340.

Chap. 6. A record which is defective by the misprision of a clerk shall be amended.

Chap. 10 Sheriffs shall have the keeping of gaols.—A prisoner by duress becometh an approver. (Part.)

Chap. 12. Weights and measures.

25 Edw. 3, St. 5.—1350.

Chap. 2. A declaration which offences shall be adjudged treason. (Part.)

Chap. 3. No indictor shall be put upon the inquest of the party indicted.

Chap. 10. Every measure shall be according to the king's standard; and shall be striked without heaps.—Saving the rents of lords. (Part.)

"The Statute of Charitable Uses," 43 Eliz. c. 4 (1601), created special exceptions for reviewing vague bequests in courts of equity when bequests were to charities.

The three questions on appeal were 1) whether "the devise in Corrie's will, intended for the benefit of the relators, was void for uncertainty," 2) whether it "was cured by the statute 43 Eliz. c. 4, for regulating charitable uses," and 3) whether "that statute was in force" in Maryland. The Court of Appeals agreed that the language of the charitable bequest to aid "the poor children belonging to the congregation of St. Peter's Protestant Episcopal church . . . in Baltimore," and "the poor children of Caroline county . . . [attending the school at] Hillsborough" was too "vague and indefinite" to be judicially enforceable. As to "whether the statute of Elizabeth is in force" (and therefore set a different standard for review), the court said that the answer "depends entirely on the construction to be given to the third section of the bill of rights [i.e., Article 3], and the evidence furnished by Chancellor Kilty's Report of the Statutes." The opinion, by Judge Buchanan, cited the text of Article 3 and provided his gloss on its meaning.[32]

Buchanan found, to begin with, that the "inhabitants of the state are declared to be entitled to the common law, without any restrictive words being used, and thus the common law is adopted in mass" with the only caveat that any such entitlement could not be inconsistent with the principles of the state constitution itself or "the nature of our political institutions." He then deconstructed the clauses in Article 3 on the English statutes. Statutes from the reign of Elizabeth fell into the category of "such of the English statutes as existed at the time of their first emigration, and which, by experience had, at the time of the declaration of rights, been found to be applicable to their local and other circumstances." For Buchanan the presence of the second category of British statutes, "made after the emigration, . . . [and] introduced, used, and practiced by the courts of law or equity" was highly illuminating and significant. He reasoned that the use of the past tense—"introduced, used, and practiced"—was "intended to be restrictive," and therefore it would be "difficult to ascribe to the [framers of Article 3 at the] convention a difference of intention in relation to the other [pre-settlement statutes]."

This was a subtle but important point, and it amplified a view articulated in an earlier case, by J. T. Chase in 1802 when he was chief judge of the General Court. There, Chase described his understanding of political and legal authority under Maryland's Constitution as follows:

> The Bill of Rights [i.e., Declaration of Rights] and form of government compose the Constitution of Maryland, and is a compact made by the people of Maryland among themselves, through the agency of a convention selected and appointed for that important purpose. This compact is founded on the principle that the people being the source of power, all government of right originates from them.[33]

It followed under such an arrangement, Chase argued, that the legislature and the judiciary were equally bound by the state's constitution, and no English statutes were "adopted by the constitution of Maryland, and incorporated with the laws, but such as have been found by experience applicable to our local and other circumstances." Courts, therefore, were bound by the language of Article 3 that required any statute to be incorporated to have "been used and practised under in this state" (*Whittington v. Polk*, 250).

Buchanan elaborated this analysis, arguing that the founders of Maryland in 1776 (i.e., convention delegates) could not have intended that "all the statutes, then existing [at the moment of founding], should be and continue in force, which might by courts be deemed applicable to our local and other circumstances" or they would not have declared "such of them to be in force as had by experience been found applicable." The usage and applicability requirement was absolute and underscored in Buchanan's mind by the different language adopted in relationship to the statutes on the one hand and the common law on the other. The framers clearly "entertained different views with respect to them." In other words, the logic of Article 3 provided rules for exclusion as well as for incorporation. Buchanan insisted that "if there were any [English or British] statutes about the extension of which no doubts were entertained, it must have been those which, by experience, had been found applicable" and therefore "there was no necessity for declaring the inhabitants of the state to be entitled to their benefit, unless it was the intention to prohibit the use of all such as had not by experience been found applicable" (*Dashiell*, 402–3).

Buchanan then turned to Kilty's *Report* for definitive evidence as to which statutes "had by experience been found applicable" in Maryland, noting that the *Report* had been "compiled, printed, and distributed, under the sanction of the state, for the use of its officers" and was therefore "a safe guide in exploring an otherwise very dubious path" (ibid., 403). The statute of 43 Elizabeth c. 4 was not among those found to be applicable, and therefore the court was prohibited, as a matter of constitutional law, from applying it directly to this case.

THE CONTINUING LIFE of English law in Maryland law after the 1820s is beyond our purpose, but we can say that interpretations of Article 3 by J. T. Chase, William Kilty, and John Buchanan did much to keep English law alive in Maryland. Buchanan served on the Court of Appeals until 1844, replacing J. T. Chase as chief judge in 1824. Born in 1772, he had scarcely participated in the Revolution. His interpretation of the *intention* of the "framers" of Article 3 with respect to the common law was a logical construct, not a memory. But Chase had been part of the fight for Anglo-Maryland legal continuity since 1776, and when his views were elaborated and supported by Buchanan while both were on the Court of Appeals, they became controlling. Maryland judges were not free to pick and choose among the British statutes at their own discretion, and Chancellor Kilty's research was elevated to some-

thing close to the definitive enumeration that the General Assembly had originally requested. In contrast, the Court of Appeals' expansive view of the authority of the common law, and its willingness to see Article 3 as permitting the introduction of rules or principles that may have long lain dormant, elevated the power of Maryland's judiciary, and gave the state's law, especially its criminal law, many elements of its unique trajectory.

More broadly, the history surrounding Article 3 in Maryland helps us understand that legal continuity, not just the formal authority of specific legal precedents and the specific rights enshrined in "declarations of rights," defined for many leaders of the early Republic a proper understanding of the rule of law. At a time when the authority of the people as legislators had achieved almost sacred status, Article 3 captured the historical realities of legal development and embedded them in constitutional principles that would endure. The judicial branch of government would include a public space for learned lawyers and appellate judges to engage in deep, historically informed legal analysis, somewhat independent of the sway of electoral politics. While this created a tension between democracy and the rule of law, Maryland judges, at least until 1822, honored the limits of this authority as defined by the "compact made by the people of Maryland among themselves" in 1776.

NOTES

1. The literature on the importance of popular sovereignty as a justification for the Revolution is vast. See especially, Jack P. Greene, *The Constitutional Origins of the American Revolution* (Cambridge: Cambridge University Press, 2011), 149–90; Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W.W. Norton and Company, 1988), 13–15, 55–77; Sophia Rosenfeld, *Common Sense: A Political History* (Cambridge: Harvard University Press, 2011), 136–80; Benjamin H. Irwin, *Clothed in Robes of Sovereignty: The Continental Congress and the People Out of Doors* (New York: Oxford University Press, 2011), 129ff.; and Gordon S. Wood, *Representation in the American Revolution*, rev. ed. (Charlottesville: University Press of Virginia, 2008). For a summary of the incorporation of English law into colonial law in stages, see Peter Charles Hoffer, *Law and People in Colonial America*, rev. ed. (Baltimore: Johns Hopkins University Press, 1998), 1–49, 92–126; and James A. Henretta, "Magistrates, Common Law Lawyers, Legislators: The Three Legal Systems of British America" in *The Cambridge History of Law in America*, edited by Michael Grossberg and Christopher Tomlins, vol. 1 (Cambridge: Cambridge University Press, 2008), 555–92.
2. Edward C. Papenfuse and Gregory A. Stiverson, ed. and intro. *A Decisive Blow is Struck* (Annapolis: State of Maryland, 1977), http://msa.maryland.gov/msa/speccol/sc2200/sc2221/000004/000000/html/00000004.html [with a revised version of the "Introduction"]; and H. H. Walker Lewis, *The Maryland Constitution: 1776* (Baltimore: Maryland State Bar Association, 1976).
3. Elizabeth Gaspar Brown, *British Statutes in American Law, 1776–1836* (1964, repr.; New York: Da Capo Press, 1974), 21 [citing the Journals of the Continental Congress]. For Virginia's solution to legal continuity, see W. Hamilton Bryson, *Bryson on Virginia Civil Procedure*, 4th

ed. (LexisNexis, 2005), 2–4; and "Draft Constitution for Virginia, June 1776," http://avalon.law.yale.edu/18th_century/jeffcons.asp.

4. Brown, *British Statutes*, 24.

5. On the longevity of Article 3, see Dan Friedman, "The History, Development, and Interpretation of the Maryland Declaration of Rights," *Temple Law Review*, 71 (1998): 637–709, at 650; and still useful after all these years, Bernard C. Steiner, "The Adoption of English Law in Maryland," *Yale Law Review* (1899): 355–61.

6. The conservatism of Maryland is emphasized in Ronald J. Hoffman, *A Spirit of Dissension: Economics, Politics, and the Revolution in Maryland* (Baltimore: Johns Hopkins University Press, 1973), 152–95 (see especially 169–84). The term "local legal history" is used in this context to suggest additional dimensions to the well-documented concern of Revolutionary leaders to link their state constitutions to classic sources of legitimacy and legality. See Donald S. Lutz, *The Origins of American Constitutionalism* (Baton Rouge: Louisiana State University Press, 1988), 96–110.

7. For the proceedings of the convention, see *Proceedings of the Convention of the Province of Maryland held . . . June 21, 1776* (Annapolis: Frederick Green, 1776), http://msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/003145/html/m3145-0175.html. This article references, hereafter, Volume 78 of the *Archives of Maryland Online*, a digital reproduction of *Proceedings of the Conventions of the Province of Maryland, held at the City of Annapolis, in 1774, 1775 & 1776* (Baltimore and Annapolis, 1836), http://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000078/html/am78--207.html. Quoted text of the July 3 Resolution [emphasis added] is at *Proceedings of the Convention, . . . 1776 (Arch. Md.* 78:184).

8. David Curtis Skaggs, "Origins of the Maryland Party System: The Constitutional Convention of 1776," *Maryland Historical Magazine*, 75 (1980): 98–100.

9. *Proceedings of the Convention, . . . 1776 (Arch. Md.* 78:220ff.). The convention resolved that all votes would be given orally and "exploded" (recorded by the secretary for each member) except when voting on committee membership or when functioning as a committee of the whole.

10. This was a high-level debate over the nature of legal authority within the British Empire, despite its tedious, pseudo-oratorical style. See Peter S. Onuf, ed., *Maryland and the Empire, 1773: The Antilon-First Citizen Letters* (Baltimore: Johns Hopkins University Press, 1974), 13–39. On Carroll of Carrollton's education, see Ronald J. Hoffman in collaboration with Sally D. Mason, *Princes of Ireland, Planters of Maryland: A Carroll Saga, 1500–1782* (Chapel Hill: Omohundro Institute of Early American History and Culture and University of North Carolina Press, 2000), 163–69.

11. *Proceedings of the Convention, . . . 1776* (*Arch. Md.* 78:290–300). Once the draft of the constitution was under consideration for adoption, considerable deliberation and debate remained off the record from October 10 until October 31. See Skaggs, "Origins of the Maryland Party System," 102.

12. *Proceedings of the Convention, . . . 1776* (*Arch. Md.* 78:301).

13. Walker Lewis, *Maryland Constitution*, 42–45 and "The Constitution and Form of Government," Articles, 2, 15, 25, 30, 42. On property qualifications, see Robert J. Brugger, *Maryland: A Middle Temperament: 1634–1980* (Baltimore: Johns Hopkins University Press for the Maryland Historical Society, 1988), 121–22 (referencing studies showing that in most counties, the number of white male property owners permitted to vote expanded by about 10 percent). See also Hoffman, *Spirit of Dissension*, 179–84. Table 5 illustrates an analysis of eligibility for the legislature by county showing that only about 10.9 percent of free white males would have qualified for election to the House of Delegates. Council members also

had to meet high qualifications for office: twenty-five years or older, resident of the state for three years, freehold property holding above the value of £1,000 current money.

14. John Carroll Byrnes, "Evolution of the Circuit Court for Baltimore City, 1632–1997," in *Histories of the Bench and Bar of Baltimore City* (Baltimore: Baltimore Courthouse and Law Museum Foundation, 1997), 2–13, gives a general overview of the evolution of the courts. On the divesting of general jurisdiction from the General Court to the county courts, see Jeffrey K. Sawyer, "Distrust of the Legal Establishment in Perspective: Maryland During the Early National Years," *Georgia Journal of Southern Legal History* 2/1&2 (1993): 1–40.

15. In characterizing this opposition, Skaggs focused in great detail on any general ideological alignments revealed by patterns of voting, "Origins of the Maryland Party System," 98–100. Hoffman's *Spirit of Dissension*, 169–95, and Walker Lewis's *Maryland Constitution*, 22–27 focus more on political opportunities and tactics.

16. Walker Lewis, *Maryland Constitution*, 58.

17. Forty-three delegates voted to retain this article. The fourteen delegates who voted to strike it were Fitzhugh, J. Mackall, Williams, Ridgely, Cockey Deye, Stevenson, Shepherd, Bond, H. Wilson, Love, Archer (all members of hard-core opposition), joined by Ewing, Schriver, and Fisher. *Proceedings of the Convention, . . . 1776* (*Arch. Md.* 78:301–2).

18. *Proceedings of the Convention, . . . 1776* (*Arch. Md.* 78:304ff.) On November 6, Fitzhugh led another attempt to limit lawyers' compensation. The anti-lawyer block performed true to form, but failed in a procedural vote, 16-32, even to bring the matter to a vote (ibid., 78:340–41). On the tenure of judges in England, see Ann Lyon, *Constitutional History of the United Kingdom* (London: Cavendish, 2003), 261–63.

19. For a similar summary of the provisions of Article 3, see Garrett Power, "Adoption of English Law in Maryland," in *Digital Commons@UM Carey Law* (2011), http://digitalcommons.law.umaryland.edu/mlh_pubs/25/. Power's article covers ground similar to this article from a somewhat more presentist perspective and with material on the law of property not included here.

20. For Coke's views, see Steve Sheppard, ed., *The Selected Writings of Sir Edward Coke*, 3 vols. (Indianapolis: Liberty Fund, 2003), 3:64–69. Jefferson's perfunctory remarks in *Notes on the State of Virginia*, ed. by William Peden (New York: W. W. Norton, 1972), 137, have to be understood in the context provided by David Thomas Konig, "Legal Fictions and the Rule(s) of Law: The Jeffersonian Critique of Common-Law Adjudication," in Christopher L. Tomlins and Bruce H. Mann, eds., *The Many Legalities of Early America* (Chapel Hill: University of North Carolina Press for the Omohundro Institute of Early American History and Culture, 2001), 97–117. For another expansive view of the common law as an amorphous omnipresence consisting, in addition to known laws and precedents, of unwritten, ancient, immemorial maxims, "jus commune," "folk-right," etc., see the comments of Jefferson's learned contemporary, Henry St. George Tucker in his authoritative American edition and analysis of William Blackstone's *Commentaries on the Laws of England*, that is *Blackstone's Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States; and of the Common Wealth of Virginia*, 5 vols. (Philadelphia, 1803), 1:378, "Note E" (on whether the common law is part of the law of the United States).

21. A more detailed study of the circumstances and people surrounding the case is available in Jeffrey K. Sawyer, "Women, Law, and the Pursuit of Happiness in Early Harford County," *Harford Historical Bulletin*, 81 (Summer 1999): 3–41.

22. On the strict settlement and other evolutions in English law in these matters, see J.H. Baker, *An Introduction to English Legal History*, 4th ed. (London: Butterworths, 2002), 126–32, 293–97, 379–87.

23. The [Maryland] act of 1715 (c. 39) being referenced was a comprehensive statute on testamentary matters with forty-two sections, and the act of 1729 (c. 24) a supplement. Section 10 of the latter explicitly gave the widow a right to "her thirds" in order to clear up "doubts . . . concerning the rights of Widows." However that act also required the widow to make a choice whether to accept the provisions of the will as to personal property or to demand her lawful third. See Thomas Bacon, *Laws of Maryland* . . . . (Annapolis, 1765), available in the *Archives of Maryland*, vol. 75, http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000075/html/am75, at pp. 240ff. and 392ff.

24. "An Act for amending, and reducing into a system, the laws and regulations concerning last wills and testaments, the duties of executors, administrators and guardians, and the rights of other representatives of deceased persons," *Laws of Maryland*, 1798, c. 101.

25. Many of these details are in the reported case. Others can be found in Robert Goodloe Harper, *A Report of the Conspiracy Cases . . . tried at Harford County Court in Maryland* (Baltimore, 1823) and David S. Bogen, "The Scandal of Smith & Buchanan: The Skeletons in the McCulloch vs. Maryland Closet," *Maryland Law Forum*, 9, no. 4 (June 1985), 125–32, in "Six Significant Maryland Appellate Cases" digital *Documents for the Classroom* series, (Maryland State Archives, 1999). Despite the variation in spelling, M'Culloh in the Maryland case is the same manager of the bank as the McCulloch in the federal case of *McCulloch v. Maryland*.

26. "Note to *State v. Buchanan*," 5 H. & J., 500.

27. *Votes and Proceedings of the Senate of Maryland, November Session, 1794*, http://msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/003185/html/m3185-1260.html> (November 22, 1794) and ibid., at ...1280.html (December 16, 1794).

28. On Democratic/Republican lawyer bashing, see Sawyer, "Distrust of the Legal Establishment." In an Introduction Hanson indicates he was very much distressed by the reaction to his work in some quarters. See Alexander Contee Hanson, ed., *Laws of Maryland : made since . . . [1763] Consisting of Acts of Assembly Under the Proprietary government, Resolves of Convention, the Declaration of Rights, the Constitution and Form of Government, the Articles of Confederation, and, Acts of Assembly Since the Revolution* (Annapolis, 1787).

29. William Kilty, *A report of all such English statutes as existed at the time of the first emigration of the people of Maryland, and which by experience have been found applicable to their local and other circumstances; and of such others as have since been made in England or Great-Britain, and have been introduced, used and practised, by the courts of law or equity; . . . [etc.]* (Annapolis, 1811), available online in *Archives of Maryland,* vol. 143, http://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000143/html.

30. "An Act Concerning Crimes and Punishements," 1809 Md. Laws 138; see Virgil Maxcy, ed., *The Laws of Maryland* (Baltimore, 1811), vol. 4.

31. Julian J. Alexander, *A collection of the British statutes in force in Maryland, according to the report thereof made to the General Assembly by the late Chancellor Kilty: with notes and references to the acts of Assembly and the Code, and to the principal English and Maryland cases*, 2 vols. (Baltimore, 1870) and *British statutes in force in Maryland according to the report thereof made to the General Assembly by the late Chancellor Kilty; with notes and references to the acts of Assembly and the Code, and to the principal English and Maryland cases, by Julian J. Alexander*, 2 vols., 2d ed., rev. and annotated Ward Baldwin Coe (Baltimore, 1912). It should be noted that specific statutes and sections of Maryland's Annotated Code sometimes explicitly repeal the English and British statutes listed in these works.

32. Dashiell et al. vs. The Attorney General, 5 H. & J. 392 (1822).

33. Whittington v. Polk, 1 H. & J. 236 (1802), 242. Note: this was a complicated case, similar

to Marbury v. Madison, 5 U.S. 137 (1803), that raised several important issues outside the scope of the present discussion. With respect to English law and Article 3, the Maryland court ruled that a duly commissioned judge could not use the old English action of *novel disseisin* to recover any property rights in a public office against the man appointed to replace him (allegedly unlawfully) after the legislature re-wrote the law governing Maryland's judicial districts. The question was also raised whether Maryland's high courts might strike down an act of the Maryland legislature if it violated the state's constitution. Chase argued that the Maryland constitution had to be interpreted as vesting the judiciary with the power to "safeguard" against "unintentional infringements of the Constitution." The legislature could not police itself and the power could not conceivably be exercised by the people at large because there was no mechanism "by which they can express their will." But the court declined to take any such action in this case.

Ancestral Faiths: Albert Taylor Bledsoe and the *Southern Review*

TERRY A. BARNHART

Writing to Robert E. Lee in August 1866, Albert Taylor Bledsoe informed his old West Point schoolmate of his plans to establish a southern literary and historical magazine called the *Southern Review.* The new quarterly would be edited and published at Baltimore and dedicated to "the despised, the disfranchised, and the down-trodden people of the South." Lee's response was supportive but characteristically measured. "I have not been unmindful of the subject of which it treats." He wished Bledsoe success in the venture but cautioned him to be temperate in the expression of his views. "I am glad to learn that you propose to devote yourself to the discussion of literature and history, and hope that through the . . . Southern Review, they will be presented to the American people in an agreeable and convincing manner. I feel assured that this end can be best accomplished by the exhibition of moderation, forbearance, and truth." Lee marked his man well. While Lee epitomized restraint and temperance Bledsoe possessed few of those qualities himself. Lee made his peace with the war after Appomattox, but Bledsoe never did. His voice would not be one of sectional reconciliation. Reconstruction for Bledsoe was a mocking spectacle of the malice and despotism he attributed to the Radical Republicans. He reviled the radicals as the vindictive despoilers of a world that no longer ran in its former courses.[1]

Other well-wishers were more effusive in their enthusiasm for the prospective journal than the taciturn Lee. The Episcopal Bishop Richard Hooker Wilmer of Mobile, Alabama—whom Bledsoe described as "an old, and intimate, and dearly loved friend"—wrote him in warm support of the proposed magazine in November 1866. Like many southern clergymen Wilmer was an ardent southern nationalist during the war and a defender of the Lost Cause afterwards. "With all my heart I greet you and with all my strength I will aid you." The principles for which they had struggled were "true and right." God would one day pass judgment in the matter of the Confederate cause however it should please him. Wilmer had no doubt, though, that both God and posterity would render a favorable verdict on its justness. "I believe in the resurrection of the dead." The memory of fallen compatriots should not be disgraced but remain "ever green and fresh." Those who died honorably in the cause

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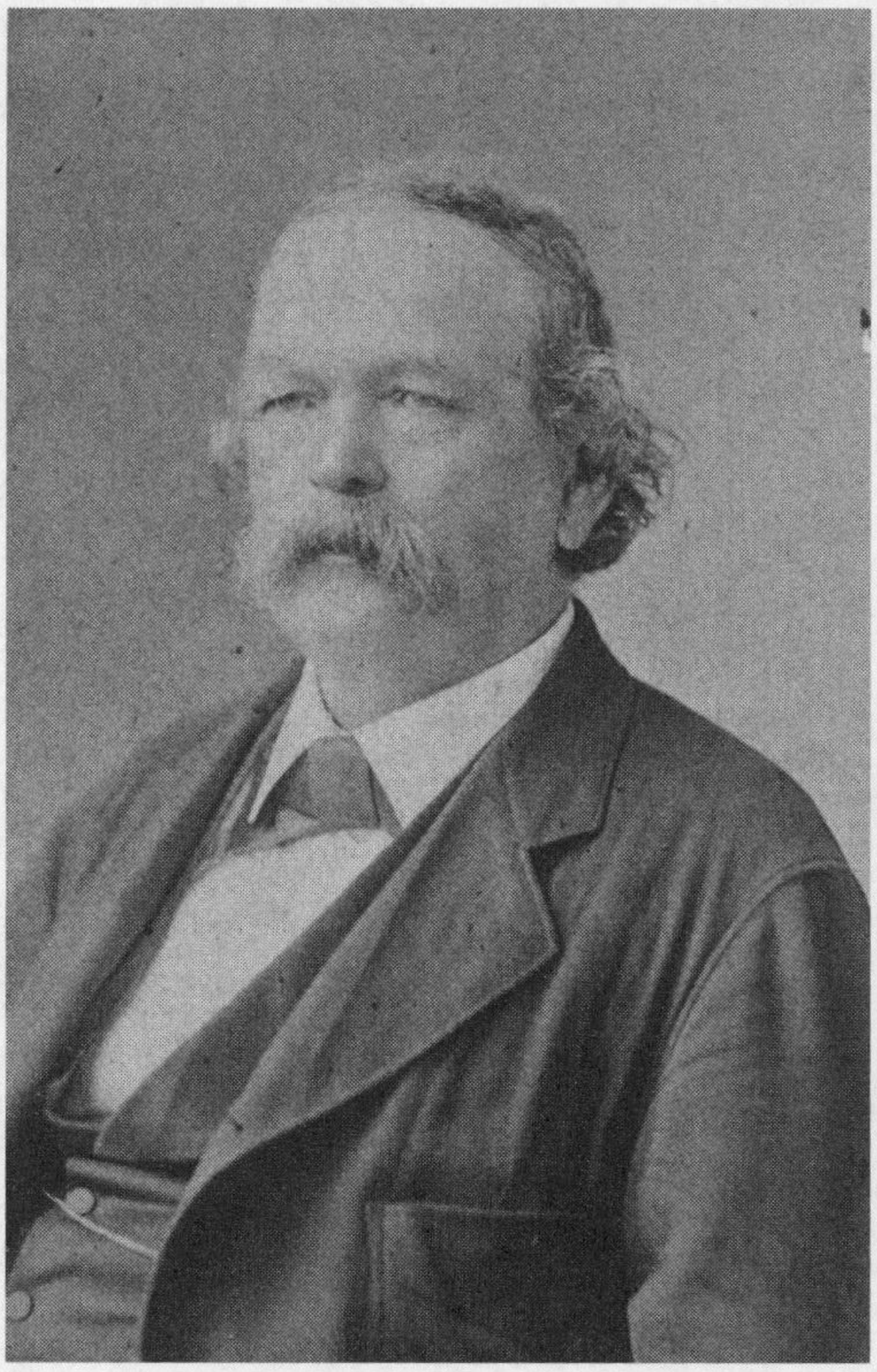
of southern independence gave only their lives. Their ideals and deeds lived on in the recollections of the survivors of the war who would pay homage to their selfless sacrifices.[2] Bledsoe would echo Wilmer's sentiments many times over as the editor of the *Southern Review*. The views of Wilmer and Bledsoe are instructive of how the Lost Cause took on the trappings of a civil religion.[3]

Bledsoe became the editor and proprietor of the *Southern Review* relatively late in life, after a truly remarkable series of prior experiences. His was not an uneventful life, nor was his circuitous trajectory predictable.[4] Bledsoe was born at Frankfort, Kentucky, on November 9, 1809 and entered the United States Military Academy in 1825. West Point examiners had cadet Bledsoe enter the next incoming class (the Class of 1830) in January 1826 due to a deficiency in French. He made steady progress in his studies thereafter, graduating sixteenth in a class of forty-two and second in his class in mathematics. Bledsoe continued to distinguish himself in mathematics as a teacher and a theoretician in later life. His years at West Point, indeed, were truly formative experiences. There he made the acquaintance of cadets Robert Edward Lee, Jefferson Davis, Albert Sidney Johnston, Joseph Eggleston Johnston, Leonidas Polk, and William Nelson Pendleton—all of whom were destined to play conspicuous roles in the American Civil War. At one time Bledsoe and Leonidas Polk of North Carolina were roommates, and they remained cherished friends. Bledsoe and Jefferson Davis likewise continued to pass in and out of each other's lives after their years together at West Point. Those warm attachments no doubt influenced Bledsoe's later advocacy of the Confederate cause, notwithstanding the oath of loyalty that West Pointers had pledged to uphold, and the relatively restrained positions he took on sectional issues before 1861. He respected the character of those southern cadets and in time defended their honor as well as his own against the charge of treason and rebellion.

Bledsoe graduated West Point on July 1, 1830 as a brevet-second lieutenant in the Seventh Infantry. He served the two years of military service required of West Pointers at Fort Gibson in the Indian Territory and resigned his commission on August 31, 1832. Bledsoe greatly valued the rigors of his education and training but decided against a career in the military in favor of a durable vocation. He read law at Richmond, Virginia, under the tutelage of his maternal uncle Samuel Taylor Jr., the practice of law being a tradition on both sides of his family. Other interests and opportunities soon diverted him, however, as they continued to do in later periods of life as well. He entered the theological seminary of the Protestant Episcopal Church at Kenyon College in Gambier, Ohio, in either 1833 or '34, where he also taught mathematics and tutored in French. He also briefly taught mathematics at Miami University in Oxford, Ohio, where he unwisely became embroiled in a controversy between President Robert Hamilton Bishop and professor William Holmes McGuffey that led to the resignations of both Bledsoe and McGuffey. Bledsoe and McGuffey were later reunited as faculty members at the University of Virginia.



Albert Taylor Bledsoe, ca. 1870, editor and proprietor of the Southern Review *from 1867 to 1877. Kuhn and Cummins, Photographers, Baltimore, Maryland. (Courtesy, The Schlesinger Library, Radcliff Institute, Harvard University.)*

Ever restless in his early years, Bledsoe next undertook a short-lived career as an Episcopal clergyman. When he became troubled over doctrinal matters relating to infant baptism as proscribed in the Thirty-Nine Articles—and wearied by poverty and painful periods of separation from his wife Harriet Coxe Bledsoe and their young daughter Sophia—he determined that he could no longer in good conscience remain an ordained minister of the Episcopal Church. The diocese of Ohio displaced him from the clergy at his own request in 1839 for causes not affecting his moral character, although he remained a communicant in the Protestant Episcopal Church until he became a Methodist in 1870. Yet Bledsoe never abandoned his love of metaphysical and theological inquiries—consuming interests that cut across distinct junctures of his life. He wrote on various issues and problems pertaining to those subjects between 1837 and his death in 1877. Yet his most original contributions to American philosophy were *An Examination of President Edwards' Inquiry into the Freedom of the Will* (1845) and *A Theodicy; Or, Vindication of the Divine Glory, As Manifested in the Constitution and Government of the Moral World* (1853).

After resigning from the Episcopal clergy, Bledsoe briefly joined his family in Carrollton, Illinois, which had left Kentucky sometime after he entered West Point in 1825. He passed the Illinois bar in 1839 and practiced law at Springfield from 1840 to 1848, where he opposed Lincoln in several cases. Bledsoe's law partner

was Edwin Dickenson Baker, one of Lincoln's closest political cronies and friends. Bledsoe, Baker, and Lincoln were dedicated Whigs, and Bledsoe and Lincoln shared more political views and opinions in those days than not. As young Whig partisans they campaigned together for Henry Clay during the presidential contest of 1844. Bledsoe, Lincoln, and Steven Trigg Logan coauthored an "Address to the People of Illinois" in March 1843. The campaign circular explained the Whig Party platform and outlined the party's formula for national prosperity.[5] Bledsoe's convictions as a Whig were further cemented when he became a co-editor of the *Illinois Journal* at Springfield, the official Whig organ of the state, where he strongly opposed the Mexican-American War. He so resolutely opposed the war that he appears to have followed northern Whigs in supporting the Wilmot Proviso, even though a decade later he maintained that Congress had no authority to either establish or ban slavery. The question of slavery, Bledsoe later insisted, could only be rightly decided by the sovereign people of each state or territory.[6]

The seedtime in the development of Bledsoe's sectionalism occurred during his tenures at the University of Mississippi and the University of Virginia. He served as chair of mathematics and astronomy at Oxford from 1848 to 1854, where he also lectured on the history of astronomy and rational mechanics (specifically the theory of motion). He joined the faculty as chair of mathematics at the University of Virginia in 1854 and held that prestigious appointment until the outbreak of the war. Apart from teaching the usual courses in higher math at Charlottesville, Bledsoe also taught a course in the history and philosophy of mathematics. The course was innovative for the time and may well have been the first such course in the history of mathematics ever offered in an American college or university. Bledsoe's interest in the subject eventually led to the publication of *The Philosophy of Mathematics* (1868), an inquiry into the origin and development of geometry and the infinitesimal mathematics or calculus. It was an original work and the sum of his experiences as a mathematician dating to his days as a West Point cadet.[7]

The mounting controversy over slavery immersed Bledsoe and other southern academicians in the ideology of slavery and the doctrine of states' rights. Those concerns were clearly reflected in a defensive movement by southerners to teach themselves as a means of containing the spread of northern ideas regarding slavery and the nature of the federal Union. Most white southerners placed a premium upon orthodoxy regarding the institution of slavery and states' rights, regardless of whether they were slaveholders or non-slaveholders like Bledsoe. They expected southern educators to validate prevailing attitudes and accepted beliefs regarding the righteousness of both causes. Northern resistance to the enforcement of the new Fugitive Slave Law, the repeal of the Missouri Compromise under the Kansas-Nebraska Act, the refusal of northern legislatures to repeal their personal liberty laws pertaining to fugitive slaves, and southern anxieties attending the birth of the Republican Party prompted white southerners to call upon professors as well as politicians to defend

southern rights and interests. Bledsoe's initial response to those events and expectations was *An Essay on Liberty and Slavery* (1856)—a biblical, ethical, philosophical, and constitutional defense of southern slavery—that established his reputation as a southern spokesman.

Defending slavery and subscribing to states' rights doctrine did not *ipso facto* make one an ardent secessionist in 1860 and early '61—at least initially. It only imparted a predisposition to side with the cause of southern independence under the right set of circumstances. Like many former Whigs, and southerners generally, Bledsoe remained a Unionist at least as late as the presidential election of 1860. His hopes for sectional reconciliation led him to cast his ballot for the Constitutional Union Party in that contest and reject the extremism of the Republican Party and the southern wing of the Democratic Party. He beheld the groundswell of secessionism but only cautiously moved with it. Bledsoe was a moderate on secession before 1861 despite his earlier defense of slavery and his later vindication of the right of secession both during and after the war. There were many moderate southerners like Bledsoe—especially in Virginia, North Carolina, and Tennessee—who only became radicalized in the eleventh hour of the Union. He was at no time a southern fire-eater before the war, even though he has sometimes been incorrectly described as an ardent secessionist.

The secession of Virginia in April 1861 forced the issue with Bledsoe as it did for many Virginians. Once he cast his lot with the cause of southern independence, he never looked back in doubt. Colonel Bledsoe spent a contentious and frustrating fourteen months in the Confederate War Department at Richmond from May 1861 to September 1862—first as the chief of the Bureau of War (a subsection of the war department) and then as the assistant secretary of war—before resigning his position and briefly returning to the University of Virginia. He next embarked on a new mission in the cause of southern independence and one for which he was much better suited. As a Confederate publicist in London from October 1863 until the fall of Richmond in April 1865, Bledsoe joined other Confederates in their efforts to sway British public opinion in favor of the cause of secession and recognition of the Confederacy as an independent and sovereign nation. The fourth estate was an important theater of the war both at home and abroad. Bledsoe contributed articles on the causes of the American war in the London *Index*, a Confederate organ, and a substantive series on secession written for the London *Evening Herald*.[8] Those obscure articles were the genesis of what became *Is Davis a Traitor? Or Was Secession a Constitutional Right Previous to 1861?* (1866) and several articles on the origin and meaning of the war in the *Southern Review*. Bledsoe's quixotic literary mission to London, however ineffective in saving the Confederacy, was nonetheless an essential period in elaborating his creed as a southern nationalist and formulating his historical and constitutional defense of the right of secession. It was, indeed, his most important contribution to the Confederate cause.

Bledsoe returned to the United States in the early part of 1866 and published *Is*

Davis a Traitor? at Baltimore in the fall of that year. The impassioned defense of secession he made in that work placed him in the front ranks of Lost Cause apologists. Alongside Edward Alfred Pollard's *Lost Cause* (also published in 1866) and Alexander H. Stephens's two-volume *A Constitutional View of the Late War Between the States* (1868, 1870) Bledsoe's offering in defense of secession and southern honor is a foundational text in the ideology of the Lost Cause. Some writers like Bledsoe and Bernard Janin Sage, in fact, actually began to develop several of its central tenets during the war. Sage was the author of *The Republic of Republics: Or, American Federal Liberty*, which he wrote under the pseudonym "P. C. Centz, Barrister"—a pun for "Public Common Sense." Sage's *Republic of Republics* appeared in five editions between 1865 and 1881. The aim of the first and second editions of Sage's work, published as *Davis and Lee* in 1865 and 1866, was to demonstrate that Confederate leaders were not traitors and could not be lawfully punished as such.[9] Bledsoe made essentially the same argument in *Is Davis a Traitor?* and in his earlier writings on the war and secession in the London press. He was determined to write the history of the war from the perspective of the losers and continued to do so until the end of his days.

Historians have long recognized the significance of *Is Davis a Traitor?* as a statement of the Confederate interpretation of the war. As David W. Blight has noted, Bledsoe "led the diehards in the defense of secession." Charles Regan Wilson recognized *Is Davis a Traitor?* as the most important constitutional defense of the South's right to secede, while Douglas Southall Freeman described it as "that brief classic of American political argument."[10] It is more closely argued than either Stephens's two-volume *A Constitutional View of the Late War* or the equally discursive two volumes of Jefferson Davis's *The Rise and Fall of the Confederate Government* (1881), even though the respective works of Stephens and Davis were better known in Bledsoe's own day and since. Bledsoe's exegesis into the history of the Constitution, what he called the "northern" (nationalist) and "southern" (states' rights) constructions of the Constitution, demonstrates the significance of those rival theories of American federalism from the founding of the republic through the Civil War. Nowhere are the divergent views on the origin, nature, and meaning of the American Union and the causes of the Civil War more clearly delineated than in the meticulously argued pages of *Is Davis a Traitor?* The work still bears reading for its philosophical acumen and the thoroughness of its legalistic arguments, regardless of whether one agrees with Bledsoe's premises and conclusions regarding the constitutionality of secession. Nor does one have to accept his audacious and oft-repeated claim that the book prevented Davis from being brought to trial for treason to still appreciate Bledsoe's talents as a polemicist.

The Great Hope and Refuge

Efforts to resurrect southern literature in the aftermath of the war resulted in what Edwin Mims has called "a perfect avalanche of magazine writing."[11] By far the most

significant of those efforts occurred at Baltimore, which emerged as a publishing center for books and periodicals aimed at a southern clientele. Baltimore was also a haven for expatriated Virginians. Bledsoe, Basil Lanneau Gildersleeve, the attorney and former Confederate congressman Charles Wells Russell, and several of their mutual acquaintances took up residence there after the war. As Bledsoe noted in eulogizing his friend Russell (1818–1867) they left Virginia in order to escape "the awful scenes of a once glorious, but now ruined, country," as well as "the reign of injustice, and tyranny, and wrong" he attributed to Republican rule.[12] Baltimore, said Gildersleeve, was "the great hope and refuge" of former Confederates who sought a congenial place where they could begin life anew. And it was to Baltimore that those of us who were trying to rebuild the waste places of the Old Dominion turned when the cherished project of creating a Southern literature was resumed."[13] The establishment of the *Southern Review* at Baltimore in January 1867 was a significant part of that endeavor.

Bledsoe's partner in that enterprise was William Hand Browne (1828–1912), who joined him as co-editor and co-publisher. Browne was educated at the University of Maryland as a physician, but after graduation and a brief period of medical practice he dedicated himself to literary and historical pursuits. At the time he joined Bledsoe at the *Southern Review* he was editing the short-lived *Statesman*, a weekly newspaper published at Baltimore by the Maryland Democratic Association. Bledsoe and Browne launched the *Southern Review* in an attempt to give voice to southern authors, interests, and concerns. Literature, politics, history, education, art, science, philosophy, and other subjects of general interest were brought within its scope. Putting their best foot forward, Bledsoe and Browne declared their purposes. "We desire this REVIEW to represent the South, not as a party, but as a people." The causes and consequences of the late war would be "temperately discussed; not with the view of awakening acrimonious or vindictive feeling, but of drawing profit from the experience of the past." The subject of education would also receive prominent attention. "The Southern people are awake to the fact that we can no longer trust the mental and moral training of our sons and daughters to teachers and books imported from abroad."[14] The perceived need for a distinctive southern educational system and literature resonated loudly as a sectional issue before the war, and its advocates marched under that same banner with renewed commitment during Reconstruction. Bledsoe and Browne were among them.

Browne co-edited and published the *Southern Review* with Bledsoe from January 1867 to October 1868. Bledsoe was the founder and senior editor and Browne the junior editor. After ending his association with Bledsoe at the *Southern Review* in 1868, Browne established and edited the *New Eclectic* at Baltimore. He renamed the magazine the *Southern Magazine* in December 1870. The *Southern Magazine* continued until 1875, and in 1878 Browne became professor of English literature at the Johns Hopkins University. After Browne's departure from the *Southern Review,*

two friends assisted Bledsoe as associate editors: Richard M. Venable, a Baltimore attorney, lent a hand in 1869, and the Reverend Edward J. Stearns, a classical scholar and a "high-toned gentleman," helped in 1870. Stearns taught Latin and Greek at the Collegiate Institute for Young Ladies in Baltimore (formerly the Louisa School for Young Ladies) run by Bledsoe's daughter Sophia Bledsoe Herrick, and was also the associate principal and head of languages and philosophy at the Cambridge Military Academy in Cambridge, Maryland. Thereafter Bledsoe was the sole editor of the *Southern Review* until Sophia joined him as associate editor in January 1875.[15]

Nothing is known about the relationship between Bledsoe and Browne during their two-year association at the *Southern Review*, but judging from Browne's later attitudes toward Bledsoe, it was likely contentious. Writing to the Georgia poet, essayist, and former editor of *Russell's Magazine* Paul Hamilton Hayne in November 1870, Browne suggested that there was no love lost between himself and Bledsoe. When Browne once reprinted an article from the *Southern Review* in the *New Eclectic* he acknowledged the source but apparently did not ask Bledsoe's permission to reprint it. Bledsoe became so indignant and altogether insulting toward Browne in the matter that he had little to do with Bledsoe or anything good to say about him thereafter. Bledsoe's characteristic brusqueness with those who annoyed or ran afoul of him apparently alienated others, too. Writing Hayne again in September 1871, Browne said that Bledsoe had fallen into disfavor within the literary circle of Baltimore. "He has outlived, or outworn his popularity here; made enemies and estranged friends." Browne most certainly was one of the adversarial and alienated parties.[16]

On another occasion Browne sympathized with Hayne regarding his unsuccessful attempt to receive payment for a contribution he made to the *Southern Review*. Browne suggested that he write Bledsoe's publishers, suggesting that they would pay any claims on him to which he was willing to admit. But Browne cautioned Hayne not to be overly optimistic. "Just at present they [Bledsoe's publishers] think him not only a Sage but a Saint." Browne further observed to Hayne, both gratuitously and incorrectly, that Bledsoe's credentials as a Southerner were suspect. "I suppose you know B. is not of our stock. He is a native of Illinois."[17] The statement suggests that Bledsoe and Browne had never been close, and probably never cared much for each other during their brief association at the *Southern Review*. It is doubtful that Browne's disdainful opinion of Bledsoe would have changed even if he had known that he was a native of Kentucky and not of Illinois; Bledsoe had lived in Illinois long enough to be tainted in Browne's partisan eyes regardless of his actual nativity. His dislike of Bledsoe appears to have run as deep as his distrust of anyone not of southern birth, or at least as he supposed. Hayne once disapprovingly commented on Browne's "petulant habit of crying down all genius and reputation 'north of the Potomac,' or at least, north of Maryland." He found such prejudice "childish" and altogether unworthy of a man like Browne who otherwise possessed good sense and intellectual vision.[18]

Browne's sectional bigotry appears to have run even deeper than that of his

erstwhile partner Bledsoe. As he confessed to Hayne "My most ardent wish—or dream—is to see Southern men of letters drawn into an appreciation—all acting in concert with the good of the whole people in view. Then would they be a power in the land and a power abroad. Then we could defy Yankee influences that are poisoning the whole country." Browne's anti-Yankee diatribes were not infrequent, especially when it came to the literary aspirations of the South. He was just as chauvinistic as Bledsoe in that respect and made equally overdrawn distinctions between the presumed character of southerners and Yankees. "I rage internally," Browne wrote Hayne, "when I see Southern people—my brothers and yours—meekly admitting the Yankee's claim to have all the culture, all the talent, all the genius of the country." Yankees could not come close to southerners in "manliness, in magnanimity, in honesty, and clearness of soul."[19] Those attitudes and assumptions led Browne to join Bledsoe in launching the *Southern Review* in 1867 and continued to sustain Browne's subsequent literary efforts at the *Southern Magazine*.

Contributions from Bledsoe's pen constituted a substantial amount of each issue of the *Southern Review*. All articles are anonymous, but internal evidence in most instances leaves little doubt as to which contributions are his. As James Wood Davidson observed in *Living Writers of the South* (1869) "The *Review* is like its chief editor—fearless, able, bold, gloveless, scholarly, and distinctly Southern, though not belligerently sectional. The tone and manner are sometimes felt to be severe, and these features are hardly accidental."[20] One may agree with the first part of that assessment and demur from the second. Bledsoe was often "belligerently sectional," especially when reviewing northern histories of the war. The publication of the first volume of John William Draper's *History of the American Civil War* (1867), for instance, called forth his righteous indignation: "No carcase [carcass], perhaps, ever swarmed with living things more abundantly, than Dr. Draper's book with loathsome lies." Nor was he any gentler in his treatment of Davis's detractors among former Confederates. Bledsoe defended his old friend's character and leadership during the war in "Davis and Lee" against the "unmitigated abuse" and "calumnies" set forth against him in James Dabney McCabe Jr.'s *Life and Campaigns of General Robert E. Lee* (1867).[21]

Bledsoe continued to take strong positions on the origins and meaning of the Civil War in the *Southern Review*. He censured what he disparaged as one-sided Yankee histories of the conflict and was contemptuous in his criticisms of those with whom he disagreed about the war, even with fellow apologists. Bledsoe ridiculed several of the opinions expressed in the first volume of Stephens's *Constitutional View of the Late War Between the States* in an intemperate critique that appeared in the *Southern Review* for October 1868.[22] Richard Malcolm Johnston and William Hand Browne, Stephens's first biographers, have fairly said that Bledsoe wrote the review "with much asperity and personal feeling."[23] Bledsoe criticized Stephens for overemphasizing the constitutional issue of states' rights versus consolidation in the federal government as a cause of the conflict. He did not deny Stephens's contention that a

contest between those opposing constitutional principles was a source of sectional discord. Bledsoe, indeed, had made the same argument in his own writings. Yet he believed that Stephens "magnified" the importance of those doctrines as a cause of the war at the expense of the slavery controversy and the tariff issue, especially the former. "The conflict in regard to slavery was, in our opinion, a more powerful cause of the war, than one exclusively patronized by his [Stephens's] philosophy." The idea that northerners and southerners had waged war against one another over two conflicting interpretations of the Constitution was an absurdity. "A fight between two game-cocks would have done more to arouse their warlike passions, than a conflict between two political theories about which they knew little, and cared less."

A divergence of opinion as to the nature of the federal Union, said Bledsoe, existed from the foundation of the republic to the commencement of hostilities in 1861, yet it neither caused war nor any sign of it until the issues of tariffs and slavery became the focus of sectional strife. "Is it not wonderful that, with all these facts before him, Mr. Stephens should have concluded that the conflict between the two theories of the Constitution alone and not the conflict about slavery produced the great war of 1861?"[24] Bledsoe deemphasized the relative importance of the slavery issue as a cause of the war in his own writings both during the conflict and afterward. He expressed the opinion in the *Southern Review* for April 1867, for example, that the most superficial observers of all were those who insisted that the institution of slavery alone was the cause of the war.[25] Yet Bledsoe never denied that the controversy over slavery was one of several converging causes of the war. It would have been difficult indeed for the author of *An Essay on Liberty and Slavery* to maintain any other ground. He contended in his feud with Stephens that slavery was a more important cause of the war than rival theories of the Constitution, yet the fact that the slavery controversy was inseparable from states' rights doctrine and quarrels about the nature of the Constitution and Union is an historical reality that neither Bledsoe nor Stephens adequately addressed in the respective writings. Both polemicists were determined to represent the Confederate cause in the best possible light, but as a relative statement Bledsoe addressed the slavery issue as a cause of the war more candidly than did Stephens.

Bledsoe further arraigned Stephens for inconsistency in the sentiments he expressed on the subject of secession before and after the war. He cited Stephens's "Union Speech" delivered in the Georgia legislature on November 14, 1860, and later statements made in *A Constitutional View of the Late War* as supporting evidence. Stephens opposed secession in the speech, but in *A Constitutional View of the Late War* it appeared to Bledsoe that he now tacked a different course by maintaining that he had always supported the right of secession. He quoted Stephens's Union Speech to show that the northern critics who accused Stephens of having opposed secession before the war were not wrong, that in his postwar apology Stephens misrepresented and even denied his opposition to secession. Bledsoe demonstrated

the contradiction with solid evidence. In contrast, Bledsoe frankly acknowledged that he had changed his own opinion on the constitutionality of secession. He was "as profoundly ignorant" of the right of secession in 1860 as any old-line Whig, not excepting Stephens himself, but he had been "most grievously in error." Stephens, he insisted, should have adopted the same course. Bledsoe appealed to the adage that while a wise man sometimes changes his mind a fool never does.[26]

Stephens first learned of Bledsoe's scathing review from a book notice appearing in the Baltimore *Leader* on October 3, 1868. Writing to his longtime acquaintance and future biographer Richard Malcolm Johnston, the enraged Stephens promised retaliation but assured him that he would do so in a studied, temperate manner. "While the occasion and provocation might justify considerable passion, yet he shall see that I can and will show up his outrages on me with as much *cold-bloodedness* as that with which I have exhibited toward the enormous and infamous wrongs of those who wielded the Federal authority in the subjugation of the Southern States." Stephens's vindication of his views against Bledsoe's "assertions and misrepresentations," he assured Johnston, would be as full and as complete as his vindications of the southern cause of independence in his *Constitutional Views of the Late War*, and they would be "equally temperate in manner and expression."[27] Stephens's retaliation fully rose to the occasion. He wrote his response to Bledsoe on October 22 as a letter to the editors of the *Statesman*, where he vindicated himself against the "perversions," the "extraordinary feats," and the "pretended extracts" of his assailant.

The well-known fact that he had opposed secession as a *means* of redressing southern grievances in his Union Speech, said Stephens, was something he had never denied, but he made an important distinction. He opposed the policy of secession but not the right itself. As an alternative to the draconian measure of secession he had called for a state convention in Georgia, which should draft a formal list of grievances to be sent to the legislative, executive, and judicial branches of the northern states and to the northern people themselves in the press. It should explicitly state that the refusal to comply with the Fugitive Slave Clause of the Constitution and the efforts of northern legislatures to nullify the Fugitive Slave Law through the passage of personal liberty laws were repudiations of their constitutional obligations. The convention should further stipulate that the repeal of those "obnoxious laws" was a necessary condition for Georgia to remain within the Union. If those protests were disregarded then the case for secession would only be strengthened. Yet he had never denied, or ever doubted, that the right of secession existed, Bledsoe's claim to the contrary notwithstanding.[28]

Bledsoe quickly retorted in the *Statesman*. He repeated his original charges and held Stephens's feet to the fire regarding his alleged prevarications and rationalizations concerning his actual views on secession before the war. Stephens's brother Linton Stephens sent him a copy of Bledsoe's rejoinder, along with another unidentified clipping regarding the controversy that Linton thought bore the marks of someone

whom "either belongs or wishes to be considered as belonging to the Davis circle." Linton believed, though, that his brother's advantage over Bledsoe would have been improved had he "carefully repressed all exhibition of passion or irritation," yet he admitted that Bledsoe's goading in the matter "was immense and the difficulty of calmness proportional." Linton was certain that his brother had the better part of the argument notwithstanding his relative lack of restraint. "As to Bledsoe's last piece it is infamous—either infamously stupid or infamously false. I think it needs no answer and might not be dignified by one." Stephens's friends gave him the nod for having displayed the more "*gentlemanly* tone and *temper*" in his controversy with Bledsoe. Baltimore attorney Severn Teackle Wallis is said to have found Bledsoe's performance in the controversy to be "juvenile, as that of professors often is—They write as if there was nobody in the *world* but boys of seventeen years old and *spankable*."[29]

The Bledsoe-Stephens controversy renewed four years later when Stephens published his *Reviewers Reviewed* (1872). Bledsoe was furious that Stephens did not reprint his critique of *A Constitutional View* but only Stephens's response to it. Nor did Stephens acknowledge Bledsoe's rejoinder in the *Statesman*. Bledsoe wanted his readers to have a complete understanding of their differences and leave the judgment to them as to who had the better part of the argument. He also defended himself against Stephens's criticism of how the Confederate War Department had been run during his tenure as chief of the Bureau of War and assistant secretary of war. Stephens was quite pointed and personal in his censure. "Had the Doctor, and those associated with him in the War Department at Richmond, during our late struggle, been governed more by calm good sense, and less by mere fierce and fiery passion and personal prejudices (such as he still exhibits), our present position might have been infinitely better than it is!"[30] Bledsoe sardonically stated his regrets that Stephens's admonishment concerning passion and prejudice had not come in time to save the beleaguered Confederacy. He confessed that he had led "several indignation meetings—of *one*" at Richmond, but had no idea that his personal "tempests in a teapot" had helped to shake the Confederacy to its very foundations until first learning of it from Stephens. There was, in truth, much needless pettiness and posturing on the part of both belligerents in the Bledsoe-Stephens controversy. But their exchange of views and opinions on the causes of the war, quite apart from their dislike of each other, is far from lacking in substance. Consensus on the causes and meaning of the war among southerners was often more apparent than real, except for affirmations of the righteousness of the unrequited aspirations of southern nationalism.

Reconstruction for many former Confederates was a strange brew of irony and vindictiveness—a forced contrition and painful repudiation of supposedly sacred truths regarding slavery and secession. It was not otherwise with Bledsoe. Even in the former slaveholding states that did not secede from the Union life was different under Republican rule. Slavery no longer existed and, according to Bledsoe, neither did public virtue. He occasionally traveled to St. Louis, Missouri, to visit family and

Alexander Hamilton Stephens, 1866, former vice president of the Confederate States of America and Bledsoe's nemesis as a lost cause apologist. (Courtesy, Library of Congress.)

attend to business connected with publishing the *Southern Review*. After one such trip in April 1870 he expressed astonishment to Jefferson Davis at the venal character he attributed to some of the local and federal officeholders at St. Louis. "There are, no doubt, many better men in the penitentiaries than many of those who are now high in office. Has not the world been turned up-side down? I think so, and this is some consolation to me, who now find myself at the bottom of all things, and almost ground to powder. I do not complain. *The war has not ruined me. It has made me; and though I now die daily, I will live hereafter.*" As he observed on another occasion the war was "a revolution that shook the foundations of the world, and turned all things else out of their courses."[31]

The beatification of Abraham Lincoln after the war was another bitter pill for many former Confederates. Bledsoe was no exception. His former association with Lincoln in Springfield was still a vivid memory when Ward Hill Lamon, an attorney and one of Lincoln's former law partners, published his *Life of Abraham Lincoln* in 1872. Bledsoe reviewed the work in the *Southern Review* for April 1873, where he rendered a judgment on Lincoln's life, character, and how his biographers had treated their subject.[32] Despite Bledsoe's personal knowledge of Lincoln, and his pious profession about seeking only the truth about the martyred president, he nonetheless accepted several popular fictions concerning Lincoln's early life in Lamon's biography at face value. He uncritically passed on Lamon's assertion that Nancy Hanks and Thomas Lincoln had never married, that Lincoln was contemptuous toward the memory of his mother, that Thomas Lincoln left Kentucky not to escape the odium of slavery

but to escape the law after a fight in which he allegedly cut off one of his challenger's ears, and that Thomas was an atheist. The jaded Bledsoe seized upon these rumors with avidity. They seemed to explain some of the less admirable traits he attributed to Lincoln's character, his supposed infidelity, and his astonishing trajectory as "the low-born" Kentuckian who incredibly became the wonder of the world.

Bledsoe's views are those of an embittered ex-Confederate. Yet notwithstanding that fact they are as remarkably even-handed in certain particulars as they are unduly harsh and biased in others. "Some persons will think it a great honor, and some a great disgrace, that we have lived eight long years in the same region with Abraham Lincoln, and held almost daily intercourse with him at the Bar. We think it neither an honor nor a disgrace." Bledsoe regarded it, quite to the contrary, as simply "a piece of good fortune." His years at Springfield had provided him "the opportunity of seeing, scrutinizing, and forming an opinion of one of the most extraordinary human beings that has figured in history. The world will, perhaps, know him a little better because we have known him."[33] Bledsoe confessed that Lincoln was "one of the most incomprehensible personages we have ever known." He was so little like other men that other men could not "penetrate the mystery of his peculiar make and mode of being." Bledsoe denounced William H. Herndon (Lincoln's third law partner and biographer) and other Illinois writers who donned the role of "great oracles" and presumed to instruct the world about "what manner of man Abraham Lincoln was." Those accounts overemphasized Lincoln's faults and shortcomings, while there was much about him "that reached beyond the range of their vision."

Lincoln's life and character struck Bledsoe as being "a bundle of contradictions," and he frankly admitted he was "confounded by the mysteries of the single monad, 'Honest Old Abe.'" He had the opportunity to observe Lincoln quite often in the courtroom and at political meetings and rallies between 1840 and Lincoln's election to Congress in 1846, and was also personally acquainted with him outside of those settings. If he did not know Lincoln as well as Herndon and Lamon, he believed he knew his essence better. Lincoln possessed many attributes and abilities that Bledsoe admired, not the least of which was an untrained but "powerful intellect" that made him extremely astute in arguing the law and effective at giving political speeches. Bledsoe ridiculed the rumor that Lincoln's speeches had been ghost written, especially those in which he opposed Stephen A. Douglas. "No other man in Illinois could have done that work for him. . . . He was a full match for Mr. Douglas, or for any other man of the day, on the stump or before the people."

Bledsoe's severest criticism of Lincoln concerned his character and alleged infidelity. What he most disliked about Lincoln was his alleged pride, hunger for distinction, and laziness that sometimes resulted in "dishonest measures" designed to achieve his ends. His overarching political ambition often led him to disguise his true disposition on an issue; a talent that Bledsoe believed was natural and spontaneous rather than calculated. "His most intimate friends and professed admirers

admit that his apparent 'simplicity and candor' were put on for effect with the people." One of Lincoln's favorite political maxims, said Bledsoe, was that " 'we must fight the devil with fire'; that is with his own weapons." He also lived by the precept that all was fair in politics. By the time Bledsoe wrote those lines the years of sectional strife had clouded his judgment and fairness. Lincoln now appeared to him as the personification of the demagogues whose agitations were so fatal to the stability of republics. Bledsoe had once embraced that democracy himself and did so at Lincoln's side during the presidential campaigns of 1840 and 1844. He regarded those elections in later life as an unfortunate time in the nation's past, when it seemed that the whole world had gone mad.[34]

Bledsoe had watched Lincoln's rise to the presidency in utter amazement. He knew him when not even the poorest soul would show him reverence, only to see his image in the storefronts of London. "How marvelous." Lincoln's remarkable ascension from humble and obscure origins to the pinnacle of power and fame had been "the wonder of all nations, and will, perhaps, be the wonder of all ages." Looking back on that extraordinary phenomenon, Bledsoe described Lincoln as the proverbial right man in the right place. "No man fitter than he, indeed, to represent the Northern Demos; or, as Wendell Phillips has it, the 'party of the North pledged against the party of the South.' " And who better to lead that party in its work of destruction than "the talented, but the low, ignorant and vulgar, rail-splitter of Illinois?"[35] Bledsoe never forgave Lincoln for the steeled determination with which he fought to preserve the Union and brought the exhausted and dispirited Confederacy to its knees. He had not always been such a harsh judge of Lincoln's character and politics.

A Guilty Indifference

Defending the Lost Cause was not the sole purpose of the *Southern Review,* although it was a singularly significant one. Another important consideration was promoting the writings of southern authors. Bledsoe was quick to take offense when he believed that southern literature had been slighted. He was altogether contemptuous of James Wood Davidson's *Living Writers of the South* (1869). Why the author and his publishers entertained such "deadly malice against" southern authors was beyond his comprehension. Bledsoe considered the book a "miserable production" and lambasted the author for his factual blunders and alleged slurs against certain writers. Davidson was "a mere pigmy" compared to some upon whom he presumed to sit in judgment. He could not find it within himself to say anything praiseworthy about "the literary lubrications" of Davidson, whom he summarily dismissed as an "ignoramus." Bledsoe acknowledged that some would think him ungrateful to write so harsh a critique inasmuch as his own writings received favorable notice, but no amount of praise for his own works could bring him to spare such "an insult to Southern Literature" from the scorn it deserved.[36]

Supporting the cause of southern literature for Bledsoe came with a hefty price.

He persevered at the *Southern Review* in the face of many difficulties and discouragements that often drove him to despair. The history of that enterprise, he said, demonstrated two contrary phenomena: that the intelligence and cultivation of southern authors were fully equal to the challenge of producing a first-class literary periodical, and that those who were in a position to support southern literature were not disposed to do so. Though the *Southern Review* was a literary success, it had financially languished and limped its way forward from the start. "If, as we have often said to ourselves, we only had a machine to convert golden opinions into greenbacks, how splendid, in all respects, would be the success of the SOUTHERN REVIEW!" Even so great a literary figure as Dr. Samuel Johnson, Bledsoe complained, would starve in Baltimore. He candidly confessed that a want of sufficient patronage and support for the *Review* had created considerable financial hardship: "Our life in Baltimore has been a terrible servitude." William Hand Browne observed to Paul Hamilton Hayne in August 1871 that "As for Bledsoe, I am afraid it is a hopeless case." Browne had heard firsthand from a lawyer that "B. has no tangible assets and there were already a lot of judgments against him."[37]

A lack of support for the *Southern Review* made it impossible to pay contributors for their labors and caused no end of financial hardships for Bledsoe and his family. It was "more in sorrow than in anger" that he accused southerners of "a guilty indifference" to their own literature. "The proof of this melancholy fact, as exhibited in the history of Southern books, and Southern periodicals, is as absolutely overwhelming as it is disgraceful." Nor did Bledsoe accept the plea that the southern people were too impoverished to subscribe to literary reviews. That apology was "more specious than solid." Southerners were too poor to patronize southern periodicals but not northern ones. If as many copies of the *Southern Review* were sold in the city of Baltimore alone as were sold of *Harper's Monthly Magazine*, said the irritated editor, his pecuniary success would have been assured. Equally fatal was the unremitting problem of non-paying subscribers, which became so acute that in April 1876 he and his daughter Sophia Bledsoe Herrick struck more than a hundred names from the subscription list for non-payment. Non-payers were "worse than the locusts of Egypt on the periodical literature of the South." They overwhelmed with praise but gave no solid backing. When a friend and warm supporter of the *Review* assured Bledsoe that after he was dead the Methodists of the South would erect a monument to his memory he was unimpressed. If so, he joked, he hoped that the epitaph engraved on his memorial would not be the same as that conferred upon Kepler: "They refused him *bread* while living, but they gave him a *stone* after he was dead." Bledsoe's former partner William Hand Browne registered the same grievance with Hayne. If southerners would only give southern periodicals as much support as they bestowed upon *Harper's* "vile" calumniations, then southern editors and publishers could pay contributors as they wished to do. "They can help us and themselves through us if they choose: But they don't choose."[38]

During his early years at Baltimore Bledsoe was largely dependent for his own

support and that of his family on the income that his daughters Sophia Bledsoe Herrick and Elizabeth McMurtrie Bledsoe earned from the Louisa School for Young Ladies. Sophia established the school at Baltimore in 1868 and initially ran it as the principal and later as vice-principal until it closed in 1872. "These two women," an admiring father wrote, "by teaching a school for young ladies, have contributed far more largely than ourselves to the support of our family, while we, almost gratuitously, have labored in the great cause of the South."[39] The Louisa School was very much a family concern. Sophia taught arithmetic, algebra, geometry, and natural philosophy; her mother Harriet Coxe Bledsoe taught English grammar, geography, and history; and her sister Elizabeth taught Latin, French, and German. Another sister, Anna or "Annie," eventually taught there as well. Sophia's father reportedly taught moral philosophy, rhetoric, belles letters, English and English composition, and occasionally gave semimonthly evening lectures to invited audiences. Given the demands of editing the *Southern Review*, it is uncertain how much teaching and lecturing Bledsoe actually did, but he at least occasionally taught and did some private tutoring.[40]

Editing the *Southern Review* was "a labor of love" and an "intense delight," but the details regarding its management tried Bledsoe's patience and wearied his soul. Correcting proofs, dealing with the alleged dishonesty of literary agents, and getting tardy subscribers to pay up was an intolerable burden. He did all those things for many years but never well. Many of Bledsoe's problems at the *Southern Review* were directly attributable to his chronic neglect of correspondence and business concerns. Keeping account of subscriptions, donations, and printing expenses was as mind-numbing as writing was agreeable. There was also the contentious and sometimes embarrassing issue of not being able to pay contributors. Whether those authors were promised money by Bledsoe personally or merely expected it by custom is uncertain. Either way it was an awkward and mortifying situation since some of them were old acquaintances and close friends. George Frederick Holmes, for example, never received the two hundred dollars he believed he would receive for his contributions. When Bledsoe visited him in August 1873, Holmes was surprised and disappointed to learn that he would not be paid. Aggrieved, he quipped in his diary: "I should not have *Bled-soe.*"[41]

It was Bledsoe's greatest desire that he could be relieved of such vexations so he could devote himself exclusively to editing. He was convinced that he must either rid himself of the magazine's business department or else abandon the entire enterprise as being too much to manage. "But to abandon the *Southern Review* would be like the pang of death to me. It is the child of my affections." Making money had never been his purpose in founding the magazine, but even the most disinterested person could not live upon ideals alone. "I am willing to work for the South; nay, I am willing to be a slave for the South, but I am not willing to be worked to death in such servitude, without something like a reasonable compensation for my labor."[42] When Bledsoe learned in April 1870 that the General Conference of the Methodist

Episcopal Church, South—which was about to be held in Memphis—would seriously consider the establishment of a quarterly magazine, he suggested that it adopt the *Southern Review* instead. Bledsoe hoped by that means to be relieved of the business department and to also obtain a salary as the editor. He had been contemplating the introduction of theology into the *Review* for some time, and, since his Arminian views on free will more fully accorded with the doctrines of Methodism than with those of any other denomination, a publishing partnership seemed a natural alliance of mutual needs and interests. He broached the subject with the Reverend John Poisal, the publisher of the *Baltimore Episcopal Methodist*, who was receptive to the idea. Poisal laid the proposed affiliation before the General Conference at Memphis in May 1870.

Bledsoe received advice and assistance in the matter from his old friend Lucius Q. C. Lamar, who was then practicing law in Memphis. Lamar, who wrote Mississippi's ordinance of secession, had been Bledsoe's assistant in the mathematics department at the University of Mississippi. He and Bledsoe had not seen each other since October 1864, when they parted company in London, yet both men still held each other in the highest personal regard. Lamar spoke of Bledsoe fondly. "I have never, since our separation in England, in feeling, thought, or outward deed swerved or wavered in the sentiment which a loyal friend always feels for his loyal friend." Lamar assisted in negotiating an arrangement with the General Conference by which Bledsoe would be delivered from "the mechanical drudgery" and business details connected with publishing the *Southern Review,* yet would continue to edit the journal at Baltimore. He warned Bledsoe however, that there was considerable opposition to the proposal among some of the members from St. Louis. Those objections, though vague, appear to have reflected resentment over the exclusiveness of Nashville publishers, who were not sufficiently large to meet the needs of the Methodist Conference upon their own resources but with enough influence to jealously exclude all others from meeting that demand. Lamar suggested that the objection might be overcome if Bledsoe would agree to have the *Southern Review* published at St. Louis.

Those interested in the proposed affiliation asked Lamar to advise Bledsoe regarding certain financial matters that would be involved in such a partnership. Lamar agreed to do so but only with a good deal of trepidation. "I told them that if there was anything from me that you would be likely to disregard or laugh at, it would be my advice about business—that you did not think me overstocked with common sense (the only mistake I have ever caught you in) but that I would write to you and recommend you to consider the matter before you took any final step."[43] The details regarding the printing and management of the *Southern Review* were ironed out between Bledsoe and his new publishing partner, and the periodical began a new era in its existence. The Reverend John Poisal and the Reverend S. S. Roswell, who had previously published the *Review* at Baltimore, agreed to manage the periodical and pay Bledsoe a regular salary as editor. Beginning with the July

1871 number, the Southwestern Book and Publishing Company printed the *Southern Review* at St. Louis under the auspices of the Methodist Episcopal Church, South, but provided no additional financial support. Bledsoe continued to edit the magazine at Baltimore and strengthened the new association with the Methodist Conference when he was admitted into the Methodist Church in 1870 after many years of being a communicant in the Protestant Episcopal Church. He furthered his commitment to Methodism when he became an ordained minister in either 1871 or 18'72 , which was the fulfillment of a longstanding goal. He noted in October 1870 that he had unsuccessfully sought entry into the ministry of the Methodist Episcopal Church "more than twenty five years ago," or about 1845.[44]

Not everyone was pleased that the *Southern Review* was now affiliated with the Methodist Episcopal Church, South. Some subscribers cancelled their subscriptions because they had no interest in receiving a Methodist publication. Yet Bledsoe had made his decision. "We concluded that if we had to write for our own pleasure [i.e., with little or no compensation] we would write on those subjects which are the most agreeable to us. Hence our minds, deeply impressed with the vanity of all earthly things, reverted to our first love, the study of Theology, which Lord Bacon so properly calls, 'the Queen of the Sciences.' "[45] William Hand Browne, although no longer connected with the *Review*, was dismayed at the new affiliation. Everything that he and Bledsoe had accomplished at the *Review* would now presumably be sacrificed to theology. The only literary productions that were apt to find a place would be those that did "not disagree with the Methodist digestion and palate." Browne was certain the new arrangement would be "the death-blow to the Review." The quarterly in all likelihood would "dwindle to a purely theological paper, publishing the Rev. So-and-So's lucubrations on Original Sin: and the Rev. Somebody Else's Doctrine on Free Will."[46]

Browne's gloomy prediction was premature. The *Southern Review* did not expire after its association with the Methodist Church, nor did it become an exclusively theological publication. It continued for another eight years even though religious subjects became its primary focus after 1871, just as Browne predicted. Bledsoe was sensitive about how his affiliation with the Methodist Conference might be perceived and was determined not to allow religious concerns to close out other subjects. He understood that some might think the affiliation of the *Southern Review* with Methodism was nothing more than a calculated means of enlarging his subscription list—that he had "turned Methodist" as a matter of expediency instead of conscience. Although Bledsoe did devote an increasing amount of attention to theological and ecclesiastical matters, he continued to publish articles and reviews on politics, literature, education, and other subjects of general interest. When some of his readers and critics complained that politics should be excluded from the magazine's pages because of its Methodist affiliation, an unwavering Bledsoe addressed the issue directly. It had to be explicitly known and understood that even though it was edited

by a Methodist and published under the auspices of the Methodist Episcopal Church, South, the *Southern Review* was still an independent journal.

When the General Conference met at Memphis in 1870, it recommended the *Southern Review* to the confidence and support of Methodists but left the matter of content entirely to the discretion of the editor and proprietor. The General Conference was neither responsible for the views expressed in the journal nor for its financial support. Those who believed that it should divorce itself from political issues because it was "a church periodical" labored under a false impression. Bledsoe acknowledged that when the Methodist Conference initially endorsed the *Review* it recommended that all "party politics" should be excluded from its pages, but he made it clear that he had respectfully declined to make any such commitment. The *Southern Review* was a forum of opinion and not a pulpit or mouthpiece of a denomination. He informed his readers why he had declined the suggestion of the Methodist Conference that political issues should be avoided. He did not believe that there ever had been what, properly speaking, could be called "party politics" in its pages. Speaking in the third person he maintained that "He was not then, and he is not now, a party man." He did not belong to any political party and was as independently minded in politics as in religion. Politically speaking "He had determined, once and for all, to 'leave the dead to bury their dead,' and devote all his energies, such as they are, to the great moral, social, political, and religious questions, which have a deep and vital connection with the issues of time and eternity." That included politics and the late war.

Bledsoe explicitly refused to exclude discussion of the leading questions relating the causes and consequences of the war, which had been one of the principal objects for which the *Southern Review* had been established. He had devoted more than ten years of close investigation to the causes and nature of the war, and his views were based upon "convictions which were, and still are, infinitely dearer to him than life itself." His identity and the issues of the conflict were inseparable: "His principles did not cave in with the Confederacy." What was it, after all, that his critics were asking of him? Was he to deny himself and all he held sacred because some of his readers might not share his views? "Shall we, then, remain silent? Shall we look on, and listen, 'like the dumb dogs of Israel,' and say never a word in reply? Shall we bury, in the grave of the grandest cause that has ever perished on earth, all the little stories of history and philosophy which not an altogether idle life had enabled us to amass, and so leave the just cause, merely because it is fallen, to go without our humble advocacy? We would rather die." The great issues of the late war would continue to find a place in the pages of the *Southern Review* so long he was the editor and proprietor.

Bledsoe's mission in the *Southern Review* regarding the war was a very personal one. "If there were no other reason (though there are many others), the last words of Robert E. Lee to us would render such a cowardly defection of principle, such a shameless disregard of the most sacred of duties utterly repugnant to the convictions and feelings of our very inmost soul." Bledsoe could never forget Lee's final words to

him. "As he pressed our hand in his, for the last time, he said, with no little emotion: "Doctor, you must take care of yourself; you have a great work to do; we all look to you for our vindication." Bledsoe resolved that they would not look in vain. "On the contrary, however humble our abilities, they shall all be exerted to repel and roll back the floods of vituperation and abuse with which a rampant North would fain cover the names and memories of our illustrious dead." And who, asked Bledsoe, were the northern saints who so adamantly demanded atonement from southern sinners? "Precisely those pure and disinterested patriots who stand highest in the holy communion of the 'Credit Mobilier.'" None other than flag-waivers so immaculate and chaste that they could "take bribes without corruption, and steep themselves in perjury without pollution!"[47] Silence in the face of such hypocrisy was asking far too much of him. Articles on the war continued to find a place in the *Southern Review* even as late in Bledsoe's life as January 1876.[48] He still clung to the faltering hope that he would live long enough to bring forward a history of the war. Such was not his good fortune. The inexorable demands of competing interests, obligations, priorities, and time ultimately took their toll on Bledsoe's unfinished history of the war.[49]

Most former Confederates appreciated Bledsoe's zealous efforts at sanctifying the Lost Cause. The South Carolinian Wade Hampton III, formerly a lieutenant-general of Confederate cavalry, wrote Bledsoe in February 1871, "Like every other true Southern man who had seen them, I have read with great pleasure many of the able articles you have written since the war." He wanted to purchase as many back issues of the *Southern Review* as possible, and was particularly interested in the articles relating to Lee's campaigns, since the Survivors of the Confederate Army and Navy at Baltimore had invited him to deliver an address on Lee's life and character. Hampton was then the president of the Confederate Survivors Association of South Carolina, a vice president and agent of the Southern Historical Society, and a popular speaker among Confederate veteran associations. He later held high office in the United Confederate Veterans and became a veritable icon of the Lost Cause.[50] There were few individuals whose opinions on the war Bledsoe valued more. Hampton's request for back issues of the *Southern Review* to assist his public speaking engagement was particularly gratifying. Both men did much within their respective spheres to shape the collective memory about the war among former Confederates.

Bledsoe proudly announced to his readers in the January 1875 number of the *Southern Review* the he was being joined in the journal's editing by his daughter Sophia Bledsoe Herrick. He was beginning to feel his years and told his wife Harriet Coxe Bledsoe that he wanted to devote the remainder of his life to preparing his works for publication and his soul for eternity. As associate editor Sophia assumed responsibility for most of the editing and all of the management of the *Southern Review*. She had already contributed several able articles during the previous eighteen months, amounting to more than one-fifth of the journal's contents. She further assisted with the writing of book notices and attended to all correspondence and subscriptions.

Bledsoe continued to contribute articles and made the final decision about the acceptance of manuscripts, while Sophia continued to write her own contributions and appears to have done nearly everything else.[51] Sophia was a strong and confident woman who overcame many conflicts and difficulties in her personal life. She had married the Reverend James Burton Herrick in June 1860 and resided with him in his mission parish at New York. The couple separated in 1868, apparently owing to James's social views and growing interest in the Oneida Community and, though never divorced, remained estranged for the rest of their lives. Sophia raised their three children and reunited with her mother and father at Baltimore.[52]

Working for such an independent and irascible character as her father was not smooth sailing, but there is no question that Sophia greatly eased his burdens during the last years of his life and made a notable contribution to keeping the *Southern Review* a going concern. That was especially true after Bledsoe and Herrick notified their readers in the April 1875 issue that they once again had the *Southern Review* exclusively back into their own hands, though it continued to appear under the auspices of the Methodist Episcopal Church, South. When Bledsoe had sought a partnership with the church in 1870, it was in the hope of being delivered from the business of the *Review* so he could devote his time and attention exclusively to editing and writing. He received the relief he sought but the new arrangement brought new discomforts and troubles: "The worry was far worse than the work." He had less to do but had given up a measure of control and for several years desired "to be put back in the frying-pan again. This has at last been accomplished." Sophia shouldered the additional responsibilities and Bledsoe had every confidence that her proven abilities would soon end complaints about the journal's management.[53]

Not the least of Sophia's frustrations was dealing with her father's aversion to correspondence. Such negligence sometimes brought complaints from those who wrote unanswered letters concerning non-payment for contributions and unreturned manuscripts. She often interceded in such matters but was never comfortable in doing so. Sophia attended to the unanswered letters that accumulated in an immense pile upon her father's desk and made explanations to chagrined correspondents as best she could. "He hates writing letters," she wrote Hayne in July 1877, "and has indulged the dislike 'till it has become an unconquerable repugnance to him." Bledsoe once confessed to Jefferson Davis, by way of apology, that writing letters was a nuisance and a distraction that often made him a poor correspondent. "But this weakness, this habit, has its roots partly in my strength, *which is a perfect absorption in the labors of the brain*. . . . I have often said, as well as felt to my sorrow, that it is easier for me to write a book than to write a letter. Especially is this true, if the subject of the book is one which has long occupied my mind, heart, and soul, as more than one subject has done."[54]

Bledsoe spent his final days among family and friends at Alexandria, Virginia, where he had been residing for several years. He was stricken with an attack of paralysis on November 9, 1877, his sixty-eighth birthday, while listening to an evangelist

Sophia Bledsoe Herrick, ca. 1875, associate editor of the Southern Review *from 1875 to 1877. (Courtesy, The Schlesinger Library, Radcliff Institute, Harvard University.)*

at Christ Church in Alexandra. Bledsoe was in his last days and knew it. His physical condition worsened over the next four weeks until he finally lost consciousness. He died quietly at his home in Alexandria at 11:00 on the evening of December 8, 1877, surrounded by his wife, children, and longtime friend Lucius Q. C. Lamar. A few days later the senior mathematics class at the University of Virginia bore him to his grave in the university cemetery. It was Bledsoe's request that he be buried on campus, where he was interred next to the grave of his old friend William Holmes McGuffey.[55] One of Bledsoe's former students at the University of Virginia anonymously paid him a fitting eulogy in a letter to the editor of the Richmond newspaper *The State*, John Hampden Chamberlayne. The old Roman had finally come home after the close of a long campaign.

> . . . as an old student's thoughts traveled back to the time when you, Mr. Editor, and I were working for mathematical honors under the spur of his rigorous teaching, there seemed a fitting sadness in thus bringing back the body of the strong, but weary old man, after so many vicissitudes of labor and life, after so many fierce struggles against fate, after so much of passionate excitement, and of combat, to rest here within the sound of his own familiar lecture bell, amid the quiet scenes where he had lived his happiest life, and had done, if not the most famous, at least the most useful and enduring part of his life's work.[56]

Bledsoe's ten years at the helm of the *Southern Review* were his most prolific as a writer though not necessarily his most original. The periodical appeared in twenty-six volumes and fifty-one numbers over the eleven-and-a-half years of its existence, a very respectable run in the evanescent world of nineteenth-century periodicals. Even though the magazine's circulation probably never exceeded three thousand copies, it most certainly reached more than just a southern readership.[57] Trubner and Company published the *Southern Review* at London from April 1870 until the appearance of its final issue in July 1879. After Bledsoe's death, Sophia continued to edit the magazine by herself from January to October 1878, at which time she resigned her position. C. J. Griffith edited the final two numbers at Richmond in January and July 1879 when it finally succumbed to indifference. Sophia subsequently became an accomplished editor and author in her own right. She was an assistant editor at *Scribner's Monthly* in 1879, which later became *Century Magazine*. Sophia continued her editorial work at *Century* until her retirement in 1906. She died in 1919. All who knew Sophia (or "Sophie") were impressed with her learning, literary abilities, and strength of character. Bledsoe's old friend Lucius Q. C. Lamar said of her in March 1890: "Sophie has a rich and powerful nature, and my mind and character have never come in contact with her without imbibing a conscious enrichment and increase of moral strength." Robert Underwood Johnson, an editor at *Century Magazine*, described her in his memoirs as "one of the wisest and best women I ever knew." She was "an intellectual woman."[58]

The legacy of the war for many white southerners was a disconcerting and resentful one. There was little if anything about the new social and political order that Bledsoe liked but much he feared. As he told his readers in January 1873, "Our hopes have fled, and we sit in darkness. The lights which once seemed to guide us safely, and to cheer us on our way, have gone out; and the ground, once apparently so firm under our feet, is still unsettled and heaving from the mighty volcanic throes of the late revolution." Uncertainty about the present and future produced a general sense of "distrust, anxiety, and discontent." Doubt and disappointment "sits and broods, like an awful incubus, on the minds, hearts, and imagination of all thinking men." Yet even so reactionary and disgruntled a figure as Bledsoe understood that southerners faced hard decisions regarding their future course. "Shall we, then, take 'our ancestral faiths' along with us into the new era? We should neither take all, nor leave all." Instead, southerners should carefully examine those beliefs and determine which were true and which false. In considering such grave matters they should above all adopt the motto of the *Southern Review*: "Prove all things, and hold fast the good."[59]

When Bledsoe wrote those lines he was a man decidedly out of season. The emerging imperatives of the New South had little room for one so wedded to the ideas and values of the Old South. As the editor of the *Southern Review* he personified obstinacy in the face of change. Bledsoe decried attempts to remake the South in the image of the North and continued to write jeremiads against the egalitarian ideas of the Enlightenment that had unleashed the dogs of democracy against the social order of

the South.[60] He was decidedly hostile to the idea of equal political rights for women and his views on that subject have aged no better than those on slavery and black suffrage.[61] But if there are healing benefits in making defeat seem honorable, valorous, and justifiable then Bledsoe fulfilled his partisan mission as the unremorseful and quarrelsome editor of the *Southern Review*. Recognition of that fact does not give him and his fellow apologists the first or last word on the causes of the war or the disputed right of secession. But it does more clearly position Bledsoe within the tradition of southern conservatism of which he and the *Southern Review* were so significant a part. When he spoke of ancestral faiths to his reader in the *Review*, it should not be supposed that he spoke for himself alone.

NOTES

An earlier version of this essay appeared as a chapter in the author's *Albert Taylor Bledsoe: Defender of the Old South and Architect of the Lost Cause,* published by the Louisiana State University Press in 2011.

1. Robert E. Lee to Bledsoe, October 8, 1866, Robert E. Lee Papers, accession #3461, box 2, Special Collections, University of Virginia Libraries. Lee was responding to a letter received from Bledsoe on August 27, 1866. A copy of Lee's letter is in the Letters of Albert Taylor Bledsoe, MSS 3461, Albert and Shirley Small Special Collections Library, University of Virginia, Charlottesville [cited hereafter as SCLUV]. Bledsoe and Browne's prospectus for the *Southern Review* appeared in "Literariana. American," *The Roundtable*, 4 (December 8, 1866), 312 and elsewhere. *The Roundtable*—a weekly review of politics, finance, literature, society and art published in New York—welcomed the *Southern Review* into the literary world but regretted that the prospectus for the new periodical exhibited the spirit "of violent partisanship rather than of temperate and philosophical scholarship." *The Roundtable* also wished an end to "the petty tyranny which the dominant [Republican] party now seems disposed to exercise toward the recovered states," but it failed to see how "the power of radical zealotry" could be abated, and the cause of southern literature advanced, if southern periodicals were established upon "a basis of sectional and exclusive prejudice." It was a fair statement and one that fully accorded with Lee's advice to Bledsoe.

2. Bledsoe, "Memorandum Book," Entry No. 8, SCLUV and R. H. Wilmer to Bledsoe, Mobile, Alabama, November 13, 1866, Letters of Albert Taylor Bledsoe, MSS 3461, SCLUV. Wilmer sounded a similar refrain in January 1867 during his memorial sermon for Bishop Stephen Elliott, which he delivered at Christ Church in Savannah. Elliott, like Wilmer, was among Bledsoe's most esteemed acquaintances. "We bury our dead," said Wilmer, "but they are not forgotten, nor shall their tombs be dishonored." He spoke of the resurrection of "our buried hopes" and future recompense for the dishonor of defeat in the late war. Richard H. Wilmer, *In Memoriam. A Sermon in Commemoration of the Life and Labors of the Rt. Rev. Stephen Elliot, D. D. (Late Bishop of Georgia), Delivered in Christ Church, Savannah, Ga., On Sunday, January 27, 1867, Published by Request of the Vestry* (Mobile, 1867), 15–16. Wilmer returned to that theme and other matters connected with the Confederate defeat in his published memoirs, *The Recent Past from a Southern Standpoint: Reminiscences of a Grandfather* (New York, 1887), 5–6, 12, 14, 16–48, and 275.

3. See Gaines M. Foster, *Ghosts of the Confederacy: Defeat, the Lost Cause, and the Emerg-*

ing South, 1865 to 1913 (New York: Oxford University Press, 1987); Charles Reagan Wilson, *Baptized in Blood: The Religion of the Lost Cause, 1865–1920* (Athens: University of Georgia Press, 1980); and Rollin G. Osterweis, *The Myth of the Lost Cause, 1865–1900* (Hamden, Conn.: Archon Books, 1973). The reactions of southern white Christians and others to the Confederate defeat are examined in Daniel W. Stowell, *Rebuilding Zion: The Religious Reconstruction, 1863–1877* (New York: Oxford University Press, 2001). See also Eugene D. Genovese, *A Consuming Fire: The Fall of the Confederacy in the Mind of the White Christian South* (Athens: University of Georgia Press, 1998).

4. See Terry A. Barnhart, *Albert Taylor Bledsoe: Defender of the Old South and Architect of the Lost Cause* (Baton Rouge: Louisiana State University Press, 2011).

5. A. Lincoln, S. T. Logan, and A. T. Bledsoe, "Address to the People of Illinois," campaign circular, March 4, 1843 in Roy P. Basler, ed., *Collected Works of Abraham Lincoln*, 9 vols. (New Brunswick: Rutgers University Press, 1953–55), 1:309–18. The "Address" originally appeared in Whig papers across the state. The original source of the document was probably the *Extra Journal*—a Whig campaign paper printed for the 1843 elections by Simeon Francis at the office of the *Sangamo Journal*. The address appeared in the first issue of the *Extra*. See Mark E. Neely Jr., *The Extra Journal: Rallying the Whigs of Illinois* (Fort Wayne, Ind.: Louis A. Warren Lincoln Library and Museum, 1982).

6. Bledsoe, *An Essay on Liberty and Slavery* (Philadelphia, 1856), 322–23n.

7. Bledsoe, *A Brief Sketch of the Rise and Progress of Astronomy, In Three Lectures* (Philadelphia, 1854); *Three Lectures on Rational Mechanics; Or, The Theory of Motion* (Philadelphia, 1854); and *The Philosophy of Mathematics, with Special Reference to the Elements of Geometry and the Infinitesimal Method* (Philadelphia, 1868).

8. Bledsoe, "The Causes of the American War," *The Index* [London] December 10, 1863, 518–19; December 17, 1863, 539; December 31, 1863, 571–72; and January 7, 1864, 11; and "Secession," *The Evening Herald* [London], October 25, 1864, 6–7; December 19, 1864, 3; December 26, 1864, 2; January 2, 1865, 2; January 6, 1865, 7; January 12, 1865, 2; January 26, 1865, 2; January 31, 1865, 7; and April 15, 1865, 3. The three articles by Bledsoe on causes of the war in the *Index* are signed while those on secession in the *Evening Herald*, more in keeping with editorial practice, are unsigned. But there can be no question as to Bledsoe's authorship of the unsigned articles on secession. They follow the same progression of argument found in corresponding sections of *Is Davis a Traitor?* and several paragraphs read word-for-word the same.

9. C. Mitchell and Company published the original edition of Sage's *A Republic of Republics* in London as an eighty-page pamphlet in the summer of 1865 under the title of *Davis and Lee*, while Van Evrie, Horton and Company issued a second edition under the same title at New York in the winter of 1866. A third and greatly revised edition appeared at New York and Philadelphia as *The Republic of Republics* in 1878. A fourth and a fifth edition appeared at New York in 1881 by which time Sage's apologia had swelled to 606 pages.

10. David W. Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge: Belknap Press of Harvard University, 2001), 261; Wilson, *Baptized in Blood*, 141; and Douglas Southall Freeman, *The South to Posterity: An Introduction to the Writing of Confederate History* (New York: Charles Scribner's Sons, 1939), 33.

11. Edwin Mims, "Southern Magazines" in *The South in the Building of the Nation,* Volume 7, *History of the Literary and Intellectual Life of the South*, John Bell Henneman, ed. (Richmond, Va.: The Southern Historical Publication Society, 1909), 457.

12. Bledsoe, "Biographical Notice" in *Roebuck; A Novel, By the Late Hon. Charles Wells Russell, With A Biographical Notice of the Author, by Prof. A. T. Bledsoe* (Baltimore: Henry Taylor

and Company, 1868), iii. Russell, whose law office was on St. Paul Street in Baltimore, was an anonymous contributor to the *Southern Review* before his death on November 22, 1867. Bledsoe stated his intention of preparing an account of Russell's life and writings, presumably for the *Southern Review*, but never completed the project. He did, however, express his admiration of Russell's character in an obituary that appeared in the *Baltimore Gazette* (November 30, 1867), 1, which he reprinted in the *Southern Review*. See Bledsoe, "Book Notices. Roebuck," *Southern Review,* 3 (April 1868): 507–8.

13. Basil Gildersleeve in James Wilson Bright, "In Memoriam. William Hand Browne, 1828–1912," *The Johns Hopkins University Circular,* no. 2 n.s. (February 1913), 19.

14. Albert Taylor Bledsoe and William Hand Browne, Baltimore, January 1, 1867, "The Southern Review," *Southern Review,* 1 (January 1867), [258], back cover.

15. Bright, "In Memoriam. William Hand Browne, 1828–1912," 6, 6n4, and 9; William F. Messner, "Southern Magazine, 1868–1875" in *The Conservative Press in Eighteenth and Nineteenth-Century America*, Ronald Lora and William Henry Longton, eds. (Westport, Conn.: Greenwood Press, 1999), 268; Bledsoe, "Notices of Books," *Southern Review,* 6 (July 1869), 247n; "Collegiate Institute for Young Ladies," advertisement, *Southern Review,* 6 (July 1869), x; "Cambridge Military Academy," advertisement, *Southern Review,* 2 (October 1867), xviii; and Bledsoe, "The First Eight Volumes of the Southern Review. From January 1867 to January 1871," *Southern Review,* 8 (October 1870), 419. Browne identified himself as the former "junior editor" of the *Southern Review* in William Hand Browne to Paul Hamilton Hayne, Baltimore, November 4, 1870, Hayne Papers, Rare Book, Manuscript, and Special Collections Libraries, Duke University, Durham, North Carolina. Cited hereafter as SCLDU.

16. Browne to Paul Hamilton Hayne, Baltimore, November 4, 1870 and September 11, 1871, Hayne Papers, SCLDU. It should not be supposed in light of Browne's statement that Bledsoe had no friends in Baltimore or lived a lonely existence. The Baltimore schoolteacher Thomas Eldridge Ayres (1847–1874), for example, wrote about his friendship with Bledsoe and members of his family in the entries of his diary. Ayres taught at George Gibson Carey's School for Boys, became an ordained Methodist in July 1872, and died of tuberculosis at Baltimore in 1874. See Thomas Eldridge Ayres, Diary, 1870–71, MS 2581, Mimeographed Typescript, Special Collections, Maryland Historical Society Library, Baltimore. John Ayres Greenlee of Fairfax Station, Virginia, made the typescript of the Ayres' diary in 1982. The original diary for 1870–71 and two additional volumes for January 1872–August 1874 are in the possession of Paul Richard White Sr. of Nashville, Tennessee. I am indebted to John Ayres Greenlee for information about the Ayres diary and his friendship with Bledsoe. Ayres was a former student at the University of Virginia. He left the university in June 1863 at age sixteen when he enlisted as a private in Cabell's Battalion of the 1st Richmond Howitzers. Ayers first saw action at Gettysburg, was with Lee at Appomattox, and surrendered again with Johnston in North Carolina.

17. Browne to Paul Hamilton Hayne, Baltimore, August 18, 1871, Hayne Papers, SCLDU.

18. Paul Hamilton Hayne to "My Dear Friend" [Margaret Junkin Preston], April 9, 1872, Hayne Papers, SCLDU.

19. Browne to Paul Hamilton Hayne, Baltimore, July 11, 1870 and September 11, 1871, Hayne Papers, SCLDU.

20. James Wood Davidson, *The Living Writers of the South* (New York, 1869), 52.

21. Bledsoe, "Davis and Lee," *Southern Review,* 2 (July 1867), 231–42 and "Draper's History of the War," ibid., 3 (January 1868), 41. See also "The New America of Mr. Dixon," *Southern Review,* 1 (April 1867), 462–93 and "School Histories of the United States," ibid., 3 (January 1868), 155–79.

22. Bledsoe, "Alexander H. Stephens on the War," *Southern Review,* 4 (October 1868), 249–300.
23. Richard Malcolm Johnston and William Hand Browne, *Life of Alexander H. Stephens* (Philadelphia, 1878), 495.
24. Bledsoe, "Alexander H. Stephens on the War," 260.
25. Bledsoe, "The Origin of the Late War," *Southern Review,* 1 (April 1867), 259.
26. Bledsoe, "Alexander H. Stephens on the War," 270.
27. Stephens to Browne, n.p., n.d. [October, 1868] as cited in Johnston and Browne, *Life of Alexander H. Stephens*, 495–96.
28. Alexander H. Stephens, *The Reviewers Reviewed; A Supplement to the "War between the States," etc., With an Appendix in Review of "Reconstruction," So Called* (New York, 1872). 12–17. Stephens's publisher printed his reply to Bledsoe as a pamphlet after it originally appeared in the Baltimore *Leader*. See Stephens, *The Reviewer Reviewed. Reply of Hon. Alexander H. Stephens to the Baltimore Leader's Notice of the "Review" of the "War Between the States, etc." by Albert Taylor Bledsoe, LL. D.* (Philadelphia, 1868).
29. Linton Stephens to Alexander H. Stephens, Sparta, Georgia, December 18, 1868, and Mrs. Slater to Alexander H. Stephens, n.p., n.d. [June, 1870], Alexander H. Stephens Papers, Brady Memorial Library, Manhattanville College, Purchase, New York. The letter from Mrs. Slater quoting the opinion of Severn Teackle Wallis is enclosed in a letter from Linton Stephens to Alexander H. Stephens written at Sparta, Georgia and is dated June 10, 1870.
30. Stephens, *Reviewers Reviewed*, 22.
31. Bledsoe to Jefferson Davis, Baltimore, April 26, 1870, Jefferson Davis Family Collection, box 4, Eleanor S. Brockenbrough Library, Museum of the Confederacy, Richmond, Virginia, cited hereafter as BLMC, and Bledsoe, "Biographical Notice" in Charles Wells Russell, *Roebuck; A Novel*, x.
32. Ward H. Lamon, *The Life of Abraham Lincoln, From His Birth to His Inauguration as President* (Boston, 1872) and Albert Taylor Bledsoe, "Lamon's Life of Lincoln," *Southern Review,* 12 (April 1873), 328–68. Lamon's *Life of Abraham Lincoln* was ghost-written by Chauncey F. Black.
33. Bledsoe, "Lamon's Life of Lincoln," 328.
34. Ibid., 360–61.
35. Ibid., 364.
36. Bledsoe, "Notices of Books," *Southern Review,* 7 (April 1870), 499–500 and ibid., 8 (July 1870), 224–25.
37. Bledsoe, "The First Eight Volumes of the Southern Review," 420 and 440 and Browne to Paul Hamilton Hayne, Baltimore, August 18, 1871, Hayne Papers, SCLDU.
38. Bledsoe, "The First Eight Volumes of the Southern Review," 442; "Miscellany, Business Notices, *Southern Review,* 18 (April 1876), 494; "Miscellany. One More Appeal," ibid., 20 (October 1876), 495; William Hand Browne to Paul Hayne, Baltimore, July 11, 1870, Hayne Papers, SCLDU.
39. "The First Eight Volumes of the Southern Review," 441.
40. "Louisa School for Young Ladies," advertisement, *Southern Review*, 4 (October 1868), x; ibid., 5 (April 1869), v; and "Biographical Notes and Memos," Emily Wayland Dinwiddie Materials, MSS 5:9 D6195:1, VHS. The Louisa School changed its name to the Collegiate Institute for Young Ladies sometime between April and July 1869. The following year the name changed again to Bledsoe's Collegiate Institute for Young Ladies, with Bledsoe as the principal and Sophia as the vice-principal. "Collegiate Institute for Young Ladies," advertisement, *Southern Review,* 6 (July, 1869), x and "Bledsoe's Collegiate Institute for Young Ladies,"

advertisement, *Southern Review,* 7 (January 1870), i; 8 (July 1870), i; and 9 (April 1871), ii.

41. Paul Hamilton Hayne to Margaret Junkin Preston, January 16, 1873, Hayne Papers, SCLDU; Francis Henry Smith to John Albert Broadus, University of Virginia, October 9, and December 11, 1873, Letters to the Rev. Broadus, MSS 3458, SCLUV; and George Frederick Holmes, "Diary, 1873," Entry for August 23, 1873, George Frederick Holmes Papers, SCLDU.

42. Bledsoe, "The First Eight Volumes of the Southern Review," 421 and 422.

43. Ibid., 422–29 and Lamar to Bledsoe, Memphis, May 29 and 30, 1870, Letters of Albert Taylor Bledsoe, MSS 3461, SCLUV. A photostatic copy of this letter is in the Papers of James Dodson Barbee and David Rankin Barbee, box 9, Manuscript Division, Library of Congress, Washington, D.C. Cited hereafter as MDLC.

44. "Religious News and Gossip," *New York Times* (December 25, 1870), 5; Bledsoe, "The First Eight Volumes of the Southern Review," 426; and Sophia Bledsoe Herrick, "Personal Recollections of My Father and Mr. Lincoln and Mr. Davis," *Methodist Quarterly Review*, 64 (October 1915), 667.

45. Bledsoe, "The First Eight Volumes of the Southern Review," 422 and 430–31.

46. Browne to Paul Hamilton Hayne, Baltimore, July 11, 1870, Hayne Papers, SCLDU.

47. Bledsoe, "Notice of Books," *Southern Review,* 12 (April 1873), 497–98 and 502. The quote regarding Lee's last words to Bledsoe appears on page 502. Bledsoe made the same declaration regarding Lee's charge to him in Bledsoe to William Wilson Corcoran, Baltimore, December 3, 1872, Corcoran Papers, vol. 19, Manuscript Division, Library of Congress, Washington, D.C. Cited hereafter as MDLC.

48. Bledsoe, "History of the Late War," *Southern Review,* 19 (January 1876), 1–47. See also his earlier writings on the subject in the *Southern Review*: "The Origin of the Late War," 1 (April 1867), 257–73; "The North and the South," 2 (July 1867), 122–46; "The North and the South in the Convention of 1787," 2 (October 1867), 358–87; and "The Legislation of 1787," 11 (April 1872), 249–72. Of related interest is "De Tocqueville and the Sovereignty of the People," 1 (April 1867), 302–52 and "New England and Secession," 9 (January 1871), 95–123.

49. There are many unanswered questions regarding Bledsoe's projected two-volume "History of the Late War" and why he never completed it. That time simply ran out on him appears to be the best explanation. See Bledsoe to Jefferson Davis, Baltimore, April 14, 1872, Jefferson Davis Family Collection, box 4, BLMC; Bledsoe to William Wilson Corcoran, Baltimore, December 3, 1872, Corcoran Papers, vol. 19, MDLC; "A Few Words to Our Readers," *Southern Review,* 18 (October 1875), 493; and Sophia Bledsoe Herrick, "Albert Taylor Bledsoe, 1809–1877" in *Library of Southern Literature* (Atlanta: The Martin and Hoyt Co., 1929), 1:397–98.

50. Wade Hampton to Bledsoe, Millwood, February 13, 1871, Letters of Albert Taylor Bledsoe, MSS 3461, SCLUV and Foster, *Ghosts of the Confederacy*, 50, 54, 61, 109, and 228n45. See also Charles J. Holden, "'Is Our Love of Wade Hampton Foolish?': South Carolina and the Lost Cause," in Gary W. Gallagher and Alan T. Nolan, eds., *The Myth of the Lost Cause and Civil War History* (Bloomington: Indiana University Press, 2000), 60–88.

51. A. T. Bledsoe, "Notice," *Southern Review,* 16 (January 1875), 243–44 and Bledsoe to Harriet Coxe Bledsoe, Alexandria, Virginia, September 24, [1875], Bledsoe-Herrick Family Papers, MC 290, SLHU.

52. Sophia established the Louisa School for Young Ladies at Baltimore from 1868 to 1872, intending that it would be her livelihood and means of supporting her children. Sophia's biographer, Rebecca Starr, has likened her private life and secret relationship with Allen C. Redwood between 1870 and 1877, of whom Bledsoe did not approve, to a private civil war. Redwood was a former Confederate officer who later became the illustrator of the popular "Battles and Leaders of the Civil War" series that appeared in *Century Magazine* between 1884

and 1887. See Rebecca Starr, "'What the Heart Arranged': The Civil War of Sophie Bledsoe Herrick, 1870–1877" in *Ways of Remembering: Revisiting North American Sources and Documents, Canada and the United States*, Roberto Marccarini, ed. (Silene Edizioni: University of Genoa, Center for Euro-Atlantic Studies, 2006), 65–81, and Stephen Davis and Robert Pollard III, "Allen C. Redwood and Sophia Bledsoe Herrick: The Discovery of a Secret, Significant Relationship," *Maryland Historical Magazine,* 85 (Fall 1990), 256–63.

53. Bledsoe and Herrick, "A Word to Our Readers," *Southern Review,* 17 (April 1875), 491–92.

54. Sophia Bledsoe Herrick to Paul Hamilton Hayne, Greenwood Depot, Albemarle County, Virginia, July 9, [1877], Hayne Papers, SCLDU and Bledsoe to Jefferson Davis, Baltimore, April 26, 1870, Jefferson Davis Family Collection, box 4, BLMC.

55. John N. Waddel, *Memorials of Academic Life: Being An Historical Sketch of the Waddel Family* (Richmond, Va.: Presbyterian Committee of Publication, 1891), 282; Wilbur F. Tillett, "Albert Taylor Bledsoe," *Quarterly Review of the Methodist Episcopal Church, South* n.s. 14 (July 1893), 241–42; Sophia Bledsoe Herrick, "Personal Recollections of My Father and Mr. Lincoln and Mr. Davis," *Methodist Quarterly Review,* 64 (1915): 679; Bessie W. Dinwiddie to Louise Herrick Wall, February 14, 1934, Dinwiddie Papers, VHS, and T. V. R. [T. Vernon Rankin] to Harry E. Pratt, University of Virginia, March 6, 1934, Pratt Papers, box 1, folder 4, Abraham Lincoln Presidential Library and Museum, Springfield, Illinois.

56. "The Late Dr. Bledsoe," *The State*, Richmond, Virginia, undated press clipping [December, 1877] in the A. B. Dinwiddie Scrapbook, Dinwiddie Family Papers, 1846–1937, MSS 2808, SCLUV. A copy of the clipping is in the David Rankin Barbee Collection, Microfilm 517, 3311, SCLUV.

57. Sophia Bledsoe Herrick, "Albert Taylor Bledsoe," *The University of Virginia Alumni Bulletin*, 6 (May 1899), 6.

58. L. Q. C. Lamar to Anna Bledsoe, Washington, D.C., March 24, 1890, photostatic copy, Albert Taylor Bledsoe Correspondence in the James D. and David R. Barbee Papers, box 9, MDLC and Robert Underwood Johnson, *Remembered Yesterdays* (Boston: Little, Brown and Co., 1923), 121 and 126.

59. Bledsoe, "The Present Crisis," *Southern Review,* 13 (January 1873), 1–2, 12, and 39. Bledsoe adopted the command of St. Paul to "Prove all things, and hold fast the good" as the motto of the *Southern Review*. The maxim appeared on the cover of the *Review* in the original Greek for the first time in April 1870.

60. See Bledsoe, "The Great Error of the Eighteenth Century," *Southern Review,* 5 (January 1869), 1–18.

61. Bledsoe, "The Mission of Woman," *Southern Review,* 10 (October 1871), 923–42. Bledsoe originally delivered this essay as an annual address before the Lee and Jackson Literary Society of the Wesleyan Female College at Staunton, Virginia, on June 14, 1871. Senator Benjamin R. Tillman of South Carolina reprinted Bledsoe's "The Mission of Woman" in July 1913 during his opposition to the women's suffrage movement. When several senators objected that the views expressed in Bledsoe's article were insulting to women they were expunged from the *Congressional Record*. See "Recent Attack on Women," *New York Times,* July 30, 1913, 1, and *The Mission of Women, An Article* (Washington, D.C.: Government Printing Office, 1913). U.S. Senate Document No. 174, 63rd Congress, 1st Session. See also Bledsoe, "The Education and Influence of Woman," *Southern Review,* 8 (October 1870), 406–19.

Research Notes & Maryland Miscellany

Negotiating the Legal Tradition: Juries of Matrons in Seventeenth-Century Maryland

AMANDA LEA MIRACLE

In seventeenth-century Maryland, as in other English and European colonies, propertied men of high social and political standing held positions of privilege and authority that entitled them to vote, sit on juries, and serve as justices. Men made and enforced laws, adjudicated criminal trials, prosecuted the accused, and rendered verdicts, yet in cases of witchcraft, newborn murder, illicit pregnancy, and rape, courts generally relied on women's testimony and expertise and made decisions based on their knowledge. In Maryland and elsewhere, a broad spectrum of women in some instances held implicit power over other women's lives.

In England, courts traditionally solicited relevant testimony from midwives and "juries of matrons" recruited from those present in a courtroom or courthouse. The "matrons" were respectable women of social status within the community, whose personal knowledge of pregnancy, lactation, and other subjects relating to female anatomy qualified them to conduct intimate inspections of women defendants. No statutory treatment of the jury of matrons existed, either in England or in its colonies, nor was there a comprehensive list from which juries of matrons could be drawn. Matrons were exempt from the property requirements imposed upon male jurors and did not follow the same procedures. Midwives could sit on those juries, but no legal mechanism mandated their presence.[1]

Ostensibly, juries of matrons were to be composed of "discreet women" drawn from the courtroom. They were understood to exclude young, single women because they had never been married and could claim no legitimate experience of pregnancy or labor and delivery, but the random nature of the pool of women available in a courtroom on any given day meant that a jury of matrons' composition often bore little resemblance to the ideal.[2]

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John Ogilby, Nova Terrae-Mariae tabula, 1635. (Maryland Historical Society.)

Maryland's legal system tried to operate in much the same fashion. As in England, Maryland men working within the judicial system deferred to women's knowledge of the female body. Typically excluded from the experiences of labor and birth, they relied on women's testimony for signs of pregnancy and recent delivery. Contemporary Marylanders believed that women, regardless of marital status or social class, knew more about female bodies, and justices and jurors accepted their testimony in cases that turned on questions about a defendant's pregnancy.

To make up their juries of matrons, Maryland courts relied on the women available in the courtroom at a given trial, but the colony's frontier setting and relatively small population—about three thousand Europeans by 1700—required a broadening of that jury pool and an increased reliance on non-traditional female experts who lacked the social status of their counterparts in England. Maryland courts relied on midwives in some cases, and at other times accepted the testimony of ordinary women and even of indentured female servants in pretrial investigations and in rendering verdicts.

Between 1634 and 1689, the proprietary years of the colony, the courts heard numerous cases involving women's bodies, but juries of matrons met just four times.[3] This small number indicates that these matrons shared their court-recognized au-

thority, albeit implicitly, with others. This essay seeks to identify those others and to delineate their actions through the eleven murder cases tried and recorded between 1634 and 1689 that involved newborn infants. The records contain varying degrees of detail. Five cases include no testimony; others recorded a great deal. Thus the following essay examines a variety of individuals in Maryland who offered relevant expert testimony in cases involving women defendants and the effect their testimony had on court proceedings.

In 1656, Maryland's Provincial Court, the highest in the province, hearing the case against Judith Catchpole, ordered "a jury of able women to be impaneled and to give in their verdict to the best of their judgment whether she the said Judith had a child or not." An unnamed witness, whom the court referred to as "William Bramhall's dead servant," had prior to his death accused Judith of several serious crimes, ranging from witchcraft to murdering a newborn child and secretly disposing of the body. The jury of matrons testified that Catchpole had not been pregnant and the court dismissed all associated charges. The women's presumed ability to read the signs of sexual encounter and recent birth led the court to conclude that as "the said Judith had not had any child within the time charged . . . it appearing to this court by several testimonies that the party accusing was not in sound Mind, whereby it is concerned the said Judith Catchpole is not indictable . . . and be acquitted."[4]

Propriety and men's presumed limited knowledge relating to pregnancy left the judiciary dependent on women for information. Still, such knowledge and how much of it was fully understood by men and even women themselves was limited. Midwives and those who had given birth knew what to expect because they had experienced it personally or made it their business to know how to care for women.[5]

As in England, when the jury of matrons testified, their conclusions corresponded to verdicts handed down by the judiciary. In 1668, twelve years after the Catchpole case, another jury of matrons sat in the newborn murder trial of Hannah Jenkins. Again, the matrons determined that the woman had, to the best of their knowledge, never been pregnant, and the justices declared Jenkins free "by proclamation." In 1657 a jury of women met to examine Elizabeth Robins, a married woman suspected of illicit sex because she was reportedly pregnant and supposedly separated from her husband. The women found signs suggesting pregnancy and that she was in a "very sad condition not like to other women." They also testified that Robins claimed to have unintentionally terminated her pregnancy by ingesting a drug that had caused her to abort but that if she were pregnant, her husband was the father. The immediate result was that the court ordered Robert Robins to take Elizabeth as his wife again and provide for her and the child. In a 1662 case involving another accusation of illegitimate pregnancy, Mary Stedhed's master, John Ereckson, issued a complaint that Mathew Reade had impregnated his servant woman. Stedhed stated she had become pregnant on "Candlemuse" or Candlemas (in early February) and affirmed

the paternity, but the jury of matrons could not determine if she was indeed expecting a child. The court decided to postpone a verdict until labor and delivery, when they would interrogate the servant as to the child's father—if there was a child. Meanwhile, the court ordered Reade to pay a surety in the event she named him.[6]

Interestingly, only in one of these four cases was the jury composed of twelve—the 1668 case against Hannah Jenkins, George Harris's stepdaughter. That jury declared that "the said Hannah Jenkins is clear from child bearing and never had a child to the best of their knowledge." The forewoman, who was married to one of the justices, announced the defendant's physical condition by which the court then cleared her. The other cases had varying numbers of women jurors. The 1656 newborn murder case sat eleven, the 1657 pregnancy investigation sat only six, and even in Mary Stedhed's 1662 case involving the alleged illicit pregnancy of an indentured servant, just nine.

The larger size of the jury in the Jenkins case may have been due at least in part to the defendant's social class. Her jury sat twelve and included wives of the justices hearing the case. Present were: Captain John Vicaris, Richard Blunt, Morgan Williams, Thomas Osborne, Matthew Read, and John Dabb. Mary Vicaris, Ann Blunt, Dorothy Williams, Kathorine Osborne, and Hannah Dabb and seven others examined Jenkins' body as the jury of women.[7]

Juries of matrons varied greatly in their social composition. In the Judith Catchpole case seven women bore titles (the two Mistresses Brooke, and Mistresses Cannady, Becher, Bussey, Chaplin, and Battin), and four did not: Rose Smith, Elizabeth Claxton, Elizabeth Potter, and Dorothy Day. The title "Mistress" denoted a married woman of property and is an important marker of the group's composition. The fact that some members bore that title and others did not indicates that participants came from diverse backgrounds.[8]

Eleven cases of suspected newborn murder appeared before the judiciary, cases in which a child was alleged to have been born alive and then murdered. A jury of matrons, which could have been called for all of these cases, was called for only two. In the other nine, the justices or the jury appear to have been influenced by the testimony of one woman or by an unofficial, self-appointed group of women, not a formally constituted jury of matrons.

Courts in England not only requested juries of matrons, they also called upon midwives for expert testimony. The four Maryland cases in which juries of matrons testified all involved pregnancy, but the courts tried other pregnancy-related cases without them. Occasionally it was testimony from a midwife that swayed the court's opinion. The 1664 case against Elizabeth Green, in which a midwife acted in lieu of a jury of matrons, also illustrates the different kinds of testimony men and women offered. Male witnesses were asked questions of context: "Do you know Elizabeth Green?" "Did you know she was with child?" "Did you hear anything cry with a voice in the likeness of a child?"[9] Men were also asked questions about circumstances and

the location of a body, if known. The female witness testified concerning the accused woman's body. Witnesses William Wheeler and Thomas Taylor sought out Grace Parker, acknowledging that they believed she was an expert on women's bodies, and brought her to examine Greene. Parker swore before the court that "she was a stranger to the wench and did not see her above one all the time she was with child and that she did search her breast and the wench denied she was [with] child but there was milk in her breasts and it was going away."[10] Directly upon hearing the damning evidence that Grace Parker had found Greene lactating, the court ordered a petit jury of twelve men, who declared Greene guilty and summarily sentenced her to be executed.[11] Courts looked to men and women for different kinds of testimony: men testified about context and circumstance. Women testified about female physiology, and that testimony could be damning.

Though Parker's actions and the community's regard for her suggest that she may have been a midwife, the court did not record her as such in the Greene case or in another in which she served as one of a group—the 1670 case against Joane College. In that case, partly as the result of this group's testimony, the court condemned the accused, but the women were apparently dissatisfied with the verdict and successfully challenged it. The sentence was not carried out; Joane College did not hang from a scaffold. That a group of community women could change the outcome of a case is an example of how men and women jointly negotiated the legal system.

Records of the College trial name the witnesses against the defendant but do not present their actual testimony. They do indicate, though, that various community women interceded on her behalf. The women who offered testimony the court found condemning were the same ones who obtained a stay of execution after her conviction. More than seven people—"Elizabth Rousby, Mary Keene, Ellinor Smith, Ann Dorrington, Mary Larking, Grace Parker, Mary Williams, and sundry other persons"—petitioned the court to suspend "the exaction of the said Joane College until such time as his lordship, the lord proprietary's further will and pleasure should be known touching the granting of her pardon."[12]

The women of the College jury, acting without official recognition, nevertheless performed the jury of matrons' traditional role when they sought to delay the condemned woman's execution. Though the court recorder did not refer to their intervention as "pleading the belly" (suggesting that the defendant might be pregnant), delays of this nature were commonly granted for just that reason. As a woman, Joane College could not plead "benefit of clergy"—a means of ameliorating a sentence that was an exclusively male prerogative. "Benefit of clergy" harkened back to the medieval period, when clergy were tried in ecclesiastical courts, and held that if a man was found guilty of a "clergyable" offense, such as theft, but could read a passage from scripture in court, the justices traded execution for branding him with a "T" on his hand. By the seventeenth century, it had come to mean that if a man, not necessarily a clergyman, could read or memorize a passage from the

Bible, he could obtain a lesser punishment for a capital offense—but only for a first offense. The corresponding measure taken by a woman was to persuade the justices that she might be pregnant. Though the court condemned College on December 18, the women won her a ten-month reprieve, thereby giving her more than ample time to leave the colony. No further mention of her is found in the court records, indicating that they may have saved her life by giving her the opportunity to escape the cruelties of the law.[13]

In two other cases, self-appointed groups of women, none of them identified as midwives, helped to determine the outcomes of a trial in keeping with the prerogatives of the jury of matrons, though the court did not officially ask them to assemble. In 1659 the unsolicited testimony of Anne House, Joane Ward, and Anne Biggs explained the bruising and dark marks on a dead child and the lack of blood around the body. Combined with that of a male witness, their testimony confirmed that the defendant had sought to care for the child, who had died without malicious intent on her part. Although the court ordered the accused whipped for having given birth to a bastard, she was not hanged as a murderer.[14]

In the 1660 trial of Elizabeth Harris, accused of having murdered her infant three years earlier, the outcome was influenced by the testimony of an indentured servant woman. Two men, Robert Joyner and John Gee, testified that they had seen Elizabeth Harris dispose of her infant's body. They swore before the court that they had found the woman and asked to see the contents of the bundle she carried, "a bundle of lyninnen and out of it hung a thing much like unto fish guts," and had asked the woman to identify its contents. She replied that it was indeed fish guts. But, they testified, when they asked for a closer look, she kept it from them and tried to throw it in the water. The pair retrieved it and opened it for a closer look, both swearing in court that within the bundle there "appeared the face of a dead child it being black in the face." The men presented what they believed was positive evidence of a dead baby, a woman who was trying to cover up the fact that she had an illicit child and that it was dead, and that there were signs of harm done to the child.[15]

But fellow servant Margaret Marshguy, who lived in the same household with the accused and had even shared her bed, testified that at no point since coming into the colony had she suspected Harris was pregnant. Moreover, she said, no one so much as mentioned to her the possibility that Harris might be with child. To underscore her claim, Marshguy swore that she knew of no time in which Harris had even been sick. In seventeenth-century Maryland, the testimony of a never-married servant woman could wield great influence when the case involved knowledge about women's bodies. After hearing her testimony, the jury returned a verdict of not guilty, suggesting that Marshguy's testimony, in concert with other evidence, outweighed that of the two men. Perhaps more importantly, the court's response to Marshguy seems to be an implicit acknowledgement of ordinary women's ability to act as expert witnesses.[16]

The Maryland Colony in English Context

Juries of matrons long held a place in English legal tradition and flourished in the British Empire in the seventeenth and early eighteenth centuries. Their responsibilities included examining a woman for evidence of witchcraft or any sexual activity deemed illicit. It was generally understood that a jury of matrons was to consist of twelve women who had personally experienced childbirth. This group also served another function, establishing "benefit of belly" or "pleading the belly" as a means by which a woman condemned of a capital crime might obtain a stay of execution. If the condemned suggested she was pregnant, and if the jury of matrons found that to be true, execution had to wait until the woman delivered the unborn child. Certain conditions had to be met. First, a jury of twelve matrons examined the defendant for signs of pregnancy. Second, the woman must be "quick with child," roughly four months pregnant, enough to feel the fetus move. Lastly, if granted, this reprieve could not be repeated in the event the woman was acquitted of the first charge and became pregnant again. Once the jury of matrons rendered its opinion, the court generally delayed execution until the next session.

By the time the Maryland cases under discussion appeared in the courtroom, the jury of matrons was an ingrained part of English common law and was drawn upon in a wide variety of cases. But the role of the jury of matrons peaked during the proprietorship. The eighteenth century saw a shift in which by century's end even midwives had forfeited their authority, as the courts and neighbors increasingly turned to male physicians.[17]

Juries of matrons were a major part of the English legal system throughout the early colonial period. According to legal scholar James Oldham, the seventeenth century saw an expanding popular awareness that juries of matrons were determining questions regarding the female body. In addition to cases involving illicit pregnancy and recent delivery, they were a common feature of witchcraft trials conducted in England and the American colonies between the fifteenth and eighteenth centuries. When jury members were responsible for inspecting private parts of an accused woman's body in a search of marks that were believed to be signs of communion with the Devil, the women again held special prerogative over other women's bodies, and effectively their lives.

Although a jury of matrons might cause a defendant to fear for her life, in fact the matrons often ameliorated otherwise harsh sentences. One of their responsibilities, in both civil and criminal matters, was to determine if a woman was or was not "quick with child," pregnant with a fetus roughly twenty weeks old and showing signs of movement. Only after this stage of development, when the child was considered to be alive, did contemporaries believe they had to save the mother for the child's sake. At a time when roughly half of convicted female felons claimed to be pregnant, a sizeable segment of English society encountered a jury of matrons.[18] Markus Eder suggests that women who successfully pled "benefit of the belly" were increasingly

abortion became a criminal offense perhaps, McLaren concludes, "because an aborting woman might have been perceived as treasonably depriving either her husband or the community of a child." Yet, though criminal, it was not a serious offense. Both Coke and Hale refer to the practice as on par with such non-capital offenses as bribing a witness. Abortion could be considered a social evil if it permitted illicit behavior such as infidelity or general promiscuity to go undetected. If an unmarried woman aborted a fetus, the question of whether the child had come to term, been born, and then been destroyed by the mother became far more significant, for then she could be accused of infanticide.[22]

Juries of matrons and other interested female parties—neighbors, friends, relatives, and female employers—examined women's breasts for signs of recent pregnancy. Laura Gowing observes that juries of matrons examined a woman to determine if she was lactating by massaging her breasts, a practice considered a formal test for pregnancy. Female employers believed they had the exclusive rights to search the bodies of their female servants, a right that, if they felt inclined to protect their servants, they could withhold from others. Kathleen Brown finds that "groups of women usually performed a search only at the request of a local court. Their authority to glean information through physical examination rarely crossed gender lines and they did not usually initiate a search without official backing. Thus, throughout the empire, it was common practice for women to examine, both formally and informally, other women. In England and Maryland, men could only observe leakage on a woman's clothing—they could go no further.[23]

Not every jury of matrons executed its responsibilities in accordance with the desires of the legal system. Some cared very little about properly performing their duty. Others, though fully intending to fulfill what was expected of them, were simply unable to do so. Moreover, particularly clever defendants could dupe even well-intentioned matrons. As Pierre Cazeaux notes, "Some females, from the desire to simulate pregnancy, have acquired the power of contracting their abdominal muscles in so singular a manner, that many able accouchers [midwives] have been deceived and, believing that they felt fetal movements, have consequently pronounced them pregnant." Others tried drinking large amounts of new ale in order to artificially swell their bellies, or took other creative measures to fool the matrons. It is hardly surprising that juries of matrons sometimes stated that they simply could not reach a decision.[24]

At times, midwives and juries of matrons were far from impartial and fabricated or misrepresented evidence for the benefit of the accused. As with the Joan College case in Maryland, in which community women obtained a reprieve for a woman condemned, women in England actively worked to change the outcome of court decisions they found unpalatable. Laura Gowing suggests that women in early modern England knew how to work the system to their advantage. Though helping an unmarried woman through labor and delivery was a criminal act, court records indicate that midwives and community women did that and more, helping women

maintain secrecy even when the law dictated otherwise. Agnes Goddard, for example, was prosecuted for delivering a single woman "without enquiring her name and who the father thereof . . . made arrangements for conveying away the child, offering it to a woman whose husband had begun to take dislike to her because she was barren." This story supports the conclusion that some midwives, community women, and juries of matrons found ways to help single women thwart the legal system, and shows that ordinary women knew about these networks of extralegal assistance and made use of them. English women at home or in the colonies were not simply passive observers of a male-controlled courtroom. Instead, acting as juries of matrons, as midwives, and as a community, they sought to influence trial proceedings in ways commensurate with their own desired outcomes.[25]

ESTABLISHED IN THE 1630S, Maryland witnessed throughout the seventeenth century an increased emphasis on maintaining social stability, prohibiting lawlessness, and under-girding the authority of the elite, yet frontier conditions made it impossible for colonial leaders to strictly adhere to English legal practices. Maryland justices had to adapt to address their social concerns. The record reveals that judgments in cases of newborn murder were influenced by the testimony of individual women in the community slightly more often than by juries of matrons or midwives. However, as a whole, the evidence suggests the possibility that an even larger percentage of cases were influenced by the findings of community women outside the traditional categories of authority.[26]

Between 1634 and 1689, an official jury of women met twice in Maryland cases involving newborn murder. In both, their findings corresponded with the outcome of the trial. Female witnesses from the community are known to have offered testimony on three other occasions, and to have interceded to delay execution once. In six out of eleven infanticide cases, women offered expert testimony and influenced the outcome of a trial. Although this may be insufficient to establish a pattern, it does suggest an answer to the question posed at the beginning of this essay: who in seventeenth-century Maryland had a right to testify about women's bodies? The answer appears to be that, in an expansion beyond traditions in England, a variety of women, not only those traditionally regarded as "respectable," had a hand in shaping the outcome of court cases and, by extension, creating a distinctive legal culture in the colony.

Juries of women appeared in Maryland only in cases involving pregnancy, not in cases of rape or illicit sex where a baby was not in question. They appeared in cases of suspected newborn murder when that was the sole crime charged or one of several charges, and in cases of illicit sex in which a baby had been born or was about to be born. Because juries of women were court-sanctioned bodies, they appeared only when called. Yet, there were several instances in which individual women and groups of women from the community performed the functions of a jury of women

on their own initiative, without being summoned by the court. Those women, acting of their own accord and generally at the request of male witnesses who sought their expertise, investigated suspicious activity and appeared in the courtroom more often than did an official jury of women.

NOTES

1. James Oldham, *Trial by Jury: The Seventh Amendment and Anglo American Special Juries* (New York: New York University Press, 2006), 93.
2. Ibid., 98.
3. One in 1656 for newborn murder, one in 1657 for pregnancy while the wife was estranged from husband, one in 1662 for illicit pregnancy, and one in 1668 for newborn murder. *Judicial and Testamentary Business of the Provincial Court 1649/50–1657,* Archives of Maryland Online (hereinafter cited *ArchMd Online),* 10:457; *Proceedings of the County Courts of Kent (1648–1676), Talbot (1662–1674), and Somerset (1665–1668), ArchMd Online*, 54:250; *Proceedings of the County Courts of Kent (1648–1676), Talbot (1662–1674), and Somerset (1665–1668), ArchMd Online*, 54:233; *Judicial and Testamentary Business of the Provincial Court 1649/50–1657, ArchMd Online*, 10:555; As in England and New England, the vast majority of defendants in these crimes were single women. Peter C. Hoffer and N. E. H. Hull, *Murdering Mothers: Infanticide in England and New England 1558–1803* (New York: New York University Press, 1984), 98–101.
4. *Judicial and Testamentary Business of the Provincial Court, 1649/50—1657, ArchMd Online* 10:456, 458.
5. Anthony Fletcher, *Gender, Sex, and Subordination in England,1500–1800* (New Haven: Yale University Press, 1995), 30–66; Laurel Thatcher Ulrich, *A Midwife's Tale: The Life of Martha Ballard Based on Her Diary 1785–1812* (New York: Knopf, 1990), 125.
6. *Judicial and Testamentary Business of the Provincial Court 1649/50–1657, ArchMd Online,* 10:458, 555; *Proceedings of the Provincial Court 1658–1662, ArchMd Online,* 41:20; *Proceedings of the County Court of Charles County, 1658–1666, ArchMd Online* 53:4; *Proceedings of the County Courts of Kent (1648–1676), Talbot (1662–1674), and Somerset (1665–1668), ArchMd Online*, 54:233.
7. *Proceedings of the County Courts of Kent (1648–1676), Talbot (1662–1674), and Somerset (1665–1668), ArchMd Online*, 54:250.
8. *Judicial and Testamentary Business of the Provincial Court 1649/50–1657, ArchMd Online,* 10:457.
9. *Proceedings of the Provincial Court, 1663–1666, ArchMd Online*, 49:233.
10. Ibid., 49:233.
11. Ibid., 49:235
12. Ibid., 57:599.
13. Jeffrey K. Sawyer, "Benefit of Clergy," *The American Journal of Legal History,* 34, (1990): 49–68.
14. *Proceedings of the Provincial Court, 1658–1662, ArchMd Online*, 41:330–31.
15. Ibid., 41:431.
16. Ibid., 41:432.
17. Thomas R. Forbes, "A Jury of Matrons," *Medical History,* 32 (1988): 26; Matthew Hale, *The History of the Please of the Crown, Volumes 1 and 2* (Dublin, 1778). According to Mark

Jackson, by the eighteenth century English juries of matrons only occasionally performed the role of medical experts in these crimes, and they did so mainly in the north. Moreover, rather than relying on members of the public, "the physical examination of a suspect was performed by midwives or by male medical practitioners." Mark Jackson, *New-Born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England* (New York: Manchester University Press, 1996), 70.

18. James Oldham, *Trial by Jury: The Seventh Amendment and Anglo American Special Juries* (New York: New York University Press, 2006), 80–82, 87; James Cockburn, *Calendar of Assize Records: Home Circuit Indictments Eliz. I and James I* (London: HMSO, 1985), introduction.

19. Marcus Eder, "*At the Instigation of the Devil": Capital Punishment and the Assize in the Early Modern England, 1670–1730* (Hilgertshausen-Tandern, Germany: M. Eder, 2009), 39; Cockburn, *Calendar of Assize Records*, introduction, and John M. Beattie, *Crime and the Courts in England 1660–1800* (Oxford: Clarendon, 1986), 431.

20. David Harley, "The Scope of Legal Medicine in Lancashire and Cheshire, 1660–1760," in *Legal Medicine in History,* eds. Michael Clark and Catherine Crawford (New York: Cambridge University Press, 1994), 53–54, 64.

21. Harley, "The Scope of Legal Medicine in Lancashire and Cheshire," 47, 54.

22. Angus McLaren, *Reproductive Rituals: The Perception of Fertility in England from the Sixteenth Century to the Nineteenth Century* (New York: Methuen, 1984), 105, 107, 122.

23. Laura Gowing, "Secret Birth and Infanticide in Seventeenth-Century England," *Past and Present*, 156 (1997): 91; Kathleen M. Brown, "'Changed . . . into the Fashion of Man': The Politics of Sexual Difference in a Seventeenth-Century Anglo-American Settlement," *Journal of the History of Sexuality,* 6 (1995): 182.

24. Pierre Cazeaux, *A Theoretical and Practical Treatise on Midwifery, Including the Diseases of Pregnancy and Parturition,* 5th American Edition from the 7th French Edition, edited by William R. Bullock (London: H. K. Lewis, 1871), 252; Oldham, *Trial by Jury,* 108.

25. Quoted in Laura Gowing, "Giving Birth at the Magistrate's Gate: Single Mothers in the Early Modern City," in *Women, Identities and Communities in Early Modern Europe,* eds. Stephanie Taebin and Susan Broomhall (Burlington, Vt.: Ashgate Publishing Co., 2008), 141.

26. *Proceedings of the County Courts of Kent (1648–1676), Talbot (1662–1674), and Somerset (1665–1668), ArchMd Online*, 54:250, 395; *Judicial and Testamentary Business of the Provincial Court 1649/50–1657, ArchMd Online*, 10:456; *Proceedings of the Provincial Court, 1658–1662, ArchMd Online*, 41:330–32; *Proceedings of the Provincial Court, 1663–1666, ArchMd Online*, 49:233; *Proceedings of the Provincial Court, 1666–1670, ArchMd Online*, 57:599.

A Naval Surgeon Under Sail

LOUIS ARTHUR NORTON

Good medical care should be available during military engagements especially onboard a naval ship where treatment options, by necessity, may be limited. Dr. Amos Alexander Evans, the United States Navy's first Fleet Surgeon, become a role model as a navy surgeon during the last days of the age of the sailing navy. Evans, a volunteer surgeon about whom there are substantial records, was born November 26, 1785, about five miles north of Elkton, Maryland, the oldest son of John Evans and Mary Alexander. Young Evans was sent to the Academy at Newark, Delaware, a noted private school at the time. There he diligently studied, showing talent in English literature and the Greek and Latin classics. He also excelled in the sciences. In March 1804, as a nineteen-year-old, he began the study of medicine with Dr. George E. Mitchell, a respected practicing Elkton physician. After three years under Mitchell's tutelage, Evans attended the lectures of the celebrated Dr. Benjamin Rush and other professors at the nearby University of Pennsylvania. Three volumes of his notes taken from Dr. Rush's lectures plus a volume of lecture notes from Boston's Dr. James Jackson are still preserved.[1]

Evans received the endorsement of his mentors and passed the examination by the board of medical officers. Therefore he was licensed to practice his profession by the medical and chirurgical faculty [board] of the state of Maryland. He was then appointed surgeon's mate to the 49th Regiment of Maryland militia in 1807. On September 1, 1808, President Thomas Jefferson appointed Evans an assistant surgeon in the United States Navy. On October 25, he sailed from Baltimore for New Orleans in the brig *Adherbal*. On April 20, 1810, he was commissioned to the rank of surgeon. Evans served in Louisiana at Bay St. Louis and New Orleans, at Natchez, Mississippi, St. Manes, Georgia, and several other stations until 1811. Yellow fever or "the American Plague" was raging in the region. According to the young doctor, he avoided contracting the disease by going into the sunshine only when covered by an umbrella, avoiding the night air as much as duty would permit, and practicing temperate habits, not knowing that it was a mosquito-borne (*Aedes aegypti*) disease. Finally he received orders that would allow him to return home but was shipwrecked during this voyage on the coast of North Carolina. Fortunately he escaped unhurt and ultimately found his way back to Virginia and on to Washington.

In order to put the duties of the surgeon in perspective, the following scene

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might be typical during an action: After boarding the enemy ship that had struck, "we threw 63 overboard, that were dead, & several that were wounded, that it would have been a mercy to do the same to, for the surgeons only being able to amputate two limbs at a time, these poor creatures were laying about with their limbs shattered, & sometimes quite shot off, weltered in their blood, & no one to assist them. . . . There were 44 amputations that night."[2]

An enemy round shot ripped through the ship's hull, a wall of oak more than a foot thick. A sailor standing nearby was showered with sharp splinters blown in-board from the ball's point of entry. The injured crewman, covered in blood and screaming in pain, was dragged from the gun-deck, then carried below by stretcher to where a naval surgeon waited. Known as the cockpit and/or sickbay, it was located so as to provide the shortest and safest route to carry the wounded during a battle.[3] Found near the after hatchway of the berth deck just below the gun deck or spar deck, the cockpit was below the waterline to make these quarters impervious to cannon fire.

The surgeon and his mate worked in these cramped quarters while the din of cannon fire, destruction, and general mayhem continued above them. The entry (ante-room) to the cockpit was usually covered with canvas that could be removed and washed when it became covered with blood or bodily wastes.[4] The surgical area beyond, however, was painted red so the blood would not show, and sand was strewn on the decking to prevent those walking about from slipping. After surgical procedures were completed, the contaminated sand was swept up and flushed overboard.

Recovering patients restricted to sickbay in smaller vessels might be confined to conventional hammocks. More likely they would be placed in one of four or more hanging wooden platforms. The sides of these platforms were raised so that its occupants would be relatively secure in heavy seas. If they were extremely sick and the warship had good carpenters, they were placed in makeshift cribs with side-to-side rockers.

If necessary, the sickbay area could be expanded or separated by wooden or sailcloth partitions, but all ventilation was indirect. Candles or horn-paned lanterns (lanthorns) dimly lit the cockpit in the dark bowels of the vessel. They illuminated the bottled medicines in a medicine chest and boxed instruments that were usually the property of the surgeon and not the navy. Also found in the cockpit was a desk for keeping the "hurt or sick" log.

The primary duty of a naval surgeon during the age of sail was to care for men wounded in battle, but battles were relatively rare. Much of his surgical skill was employed in treating occupational traumas such as fractures and dislocations. Also common were hernias, infections, and food poisoning. More serious were outbreaks of contagious disease. The medical officer was also charged with making recommendations to the captain leading to corrections of general hygiene problems. The American Naval Regulations issued in January 1802 regarding their responsibilities are summarized as follows:

Inspect and take care of the medical necessities on board.

Visit the sick on board twice daily or more often.

Consult with the surgeon of the squadron on difficult cases.

Submit a report to the captain daily.

Always be prepared for an engagement.

Keep a daybook of activities and the names and treatment of those sick and dead.

Requisition stores whose expenditures he is responsible for such as medicines, equipment and instruments.[5]

The first procedure in treating battle wounds or those incurred during routine shipboard life was the removal of foreign objects. Typically the surgeon's kit contained knives, scalpels, bone nippers, trephines, forceps, retractors, and screw tourniquets. The latter were to control bleeding. In addition, threaded needles, ligatures, bandages, lint compresses, linen, skin plasters, tape, splints and gags supplemented the kit.[6] The immediate site(s) of the wounds were debrided, but with non-sterile instruments. The application of a dressing often increased microbiologic problems, resulting in postoperative infections. In some cases a "bladder was used to slip over amputation stumps as a waterproof dressing that could collect discharges of pus and blood."[7] The nature of the bladder is not described, but it was probably of animal origin. An early book on wound care described the use of bovine or porcine bladders as pressure dressings to control bleeding in amputation wounds.[8]

General anesthesia would not be demonstrated until the mid-nineteenth century, therefore pain was made tolerable by tightly applying tourniquets thus cutting off circulation and, in effect, creating local anesthesia.[9] Patient fainting was the surgeon's friend, as was the gag or liberal doses of grog or, if available, cordial, brandy, and hard liquor. Opium-based laudanum also helped before surgery and was commonly used during the recovery phase. Operations were performed in marginal light and, since the wounds were often complex with concomitant nerve damage, phantom pains followed amputations and continued for many years thereafter.[10] Naval surgeons instituted wound treatment swiftly to prevent shock and decrease loss of blood. It was naval tradition, however, that the order of those to be treated was dictated by when they reached the surgeon (first come—first served). Without a triage system, many seamen bled to death who otherwise might have been saved.[11]

The contemporary shipboard standard of care could be summarized as follows:

> When you are entering on any capital operation, you should use your utmost endeavours to encourage the patient (if he is sensible) by promising him, in the softest terms, to treat him tenderly, and to finish with the utmost expedition; and indeed you should use expedition but not hurry: you should not make more

United States Navy surgeon William Swift (1779–1864) used these instruments during the War of 1812. (Courtesy, Massachusetts Historical Society.)

> haste than the care requires, nor cut less than is necessary, or leave any mischief unremedied; . . . In regard to the wounded, you should act in all respects as if you were entirely unaffected by their groans and complaints; but at the same time I would have you behave with such caution, as not to proceed rashly or cruelly, and be particularly careful to avoid unnecessary pain.[12]

Surgeons learned most of their trade through on-the-job training. A medical degree was not necessary, and the skills were learned and honed by years spent working as

an apprentice.[13] Beginning in 1709, British naval surgeons were required to undergo a qualifying course, but this examination became less rigorous over time, largely because of the shortage of qualified surgeons and the need for them within an expanding fleet.[14] When the United States Navy was founded in 1794, a qualifying examination was not initially required. Some shore-based training was useful, but the naval ritual was that one was to serve as a surgeon's mate for an unspecified period before qualifying for the rank of surgeon, a shipboard warrant officer. Surgeons and pursers were sea officers with warrants and considered to be "gentlemen," as were chaplains.[15]

A skilled surgeon could remove an arm or leg within two minutes, but his medical training was rudimentary by most standards. Usually the curriculum included anatomy, hygiene, osteology, pathology, physiology, surgical techniques, and therapeutics. The length of time in study was not set, but the student was required to pass a non-standardized examination to be granted the title of surgeon. The more prestigious title of physician required rigorous academic training and the passage of formal examinations, usually university based.

The naval surgeon's duties were independent of and not connected with those of line officers. Charged with the care and treatment of sick and injured seamen, performing surgery on the wounded, and seeing that sufficient medicines, drugs, and medical supplies were available for the voyage, he also kept a journal of those who were sick and their treatment for the captain. In addition, he supervised the general health of the entire ship's company. The surgeon received regular pay, but the remuneration was relatively poor by civilian standards. Still, he shared in the distribution of prize money from captured vessels, approximating that given to lieutenants, master's mates, boatswains, and chaplains.

Until the War of 1812, routines for medical care aboard American and British warships were shaped largely by custom, since there were no formal naval regulations. The surgeon would be on call any time there was a serious injury or illness. But routinely the surgeon's mate and the loblolly boy (roughly, a non-uniformed orderly) gathered at mainmast or in sickbay in foul weather to examine those who daily reported with medical complaints. The mate prepared the medicines and administered them in sickbay, cleaned and dressed wounds, maintained the surgical instruments, and kept records of medicines and medically related expenditures. The purser or his assistant dispensed drugs or tended to other special health-related needs. The surgeon visited all inpatient "rounds" at least twice a day and kept his own meticulous treatment records.[16]

Hierarchy of rank and differences of opinion can, upon occasion, produce animosity, even outright hostility. At Port Jackson, Sidney Harbor, Australia, two British surgeons had the task of tending to the sick ashore in an emergency, in timber hospital huts. In August 1788 tensions between Edinburgh-educated Chief Naval Surgeon William Balmain and surgeon John White rose to the point that they fought a duel. As related by Lt. Ralph Clark:

> I am Sorry to Say Wm. that the Seeds of animosity is budding out very fast amonst the Juniors as well as it was amonst the Seniors. . . . White and Balmain in the Evening in course of Conversation Quarled about Some duty and the[y] went out in the Middle of the night to decid it with pistols without any Seconds. . . . Balmain received a Small flesh wound in the Right thigh a little above the Knee. . . . the Govr. taking the matter in hand . . . Convinced the two Sons of Escalipious [Aesculapius] that it was much better to draw Blood with the point of there lance from the Arm of there patients than to doe it with pistol Balls from each other. [17]

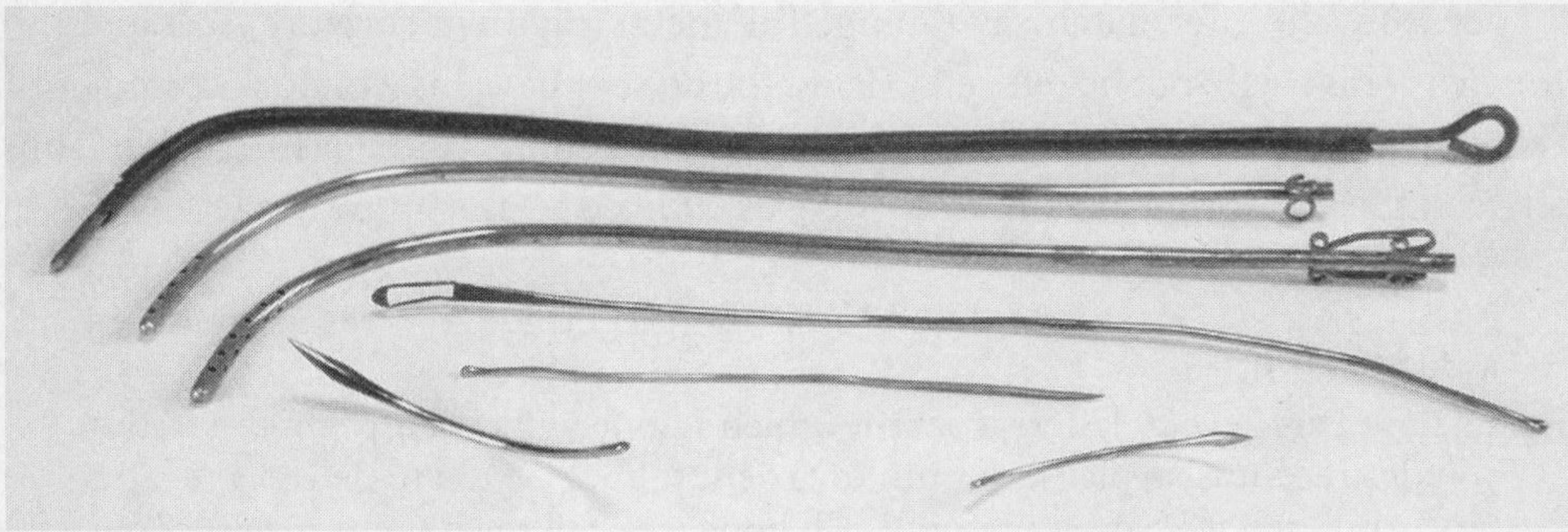
War at Sea

When the United States declared war on Britain on June 18, 1812, the American naval fleet consisted of seven frigates, nine schooners and brigs, and three unserviceable vessels. Each was authorized to carry one surgeon and one or two surgeon's mates.[18] Volunteer surgeons were eligible to obtain a commission having completed apprentice training of up to a year, but having a medical degree was rare.

Upon Evans's return from the South, he was appointed surgeon aboard the frigate *Constitution,* then docked at Washington, D.C. He embarked upon his first cruise on the vessel on June 11, 1812. From June 16 to 19, the well-known slow-motion pursuit of the *Constitution* by the British fleet took place.[19] Evans's journal narrated the event and gracefully concluded: "thus terminates a disagreeable chase of nearly three days attended with inexpressible anxiety, and alternate elevation and depression of spirits, as the winds were propitious or otherwise; we had many times given over all expectation of making our escape, and had it not been for uncommon exertion we must inevitably have fallen a prey to the superiority of our enemy."[20]

Unscathed, *Constitution* survived the chase and anchored in Boston harbor. The frigate put to sea once again and on Wednesday, August 19, 1812, closed in action with the British frigate *Guerriere. Constitution* fired its first shot at fifteen minutes after five in the afternoon.

> At 2 P. M. discovered a large sail to seaward, made sail and stood down for her. At 4 we discovered her to be a large Frigate; when we were within about 2 or 2 and a half miles, she hoisted the English colours and fired a gun. We stood towards her without showing our colours, she then commenced firing and gave us several broadsides, without much effect. Before we commenced firing she kept wavering several times, with a view probably of trying to get the weather gauge of us, which we averted by wavering also. We hoisted our colours and fired the first gun fifteen minutes past 5 o'clock P.M. but did not come into close action until about 6 o'clock, and after 25 minutes from the time we were closely engaged, she struck, having previously lost all three of her masts, hull was much injured. Several of her guns were dismantled, or otherwise rendered useless on



More instruments from William Swift's medical kit (Courtesy, Massachusetts Historical Society.)

> the gun deck. By one shot she had 15 men killed and 62 wounded, most of them very dangerously, immense mischief and destruction having been done by our grape and canister shot.[21]

The battle with *Guerriere* was fully engaged at six o'clock; she struck her colors twenty-five minutes afterwards. The entire action lasted an hour and ten minutes. *Guerriere* was severely damaged, and it was difficult to keep her afloat. Because of the threat of other British cruisers being nearby, Capt. Isaac Hull determined it was wiser to destroy her than to take the chance that the hulk might fall into British hands again.

On August 14, five days before her encounter with *Guerriere*, *Constitution* had a fire on board. While trying to enter the site of the fire, Evans badly injured his right hand when it was jammed under a crowbar while he tried to open a locked door.[22] In spite of the injury, the surgeon tended to the American and British wounded, and managed to write his daily journal with his left hand.

At three or four o'clock on the morning after the action, *Guerriere* was set on fire. The surgeon's journal account graphically narrated the purposeful conflagration at sea with the following graceful prose: "Having got all the men from the *Guerriere*, we set her on fire and before the officer had time to get on board our ship with the boat, she blew up, presenting a sight, the most incomparably grand and magnificent I have ever experienced. No painter, no poet or historian, could give on canvas or paper, any description that could do justice to the scene."[23]

On September 15, "Captain Hull resigned the command of the '*Constitution*' to Captain Bainbridge. The crew expressed much dissatisfaction at the change, and gave Captain Hull 3 hearty cheers as he left the ship. The scene was most affecting."[24] There is no evidence of a personal bond between Evans and Hull, but the fact that the surgeon mentioned the crew's sadness upon Hull's departure implies that he shared their feelings. On Tuesday, October 27, 1812, the frigate stood to sea once again. On December 29, off the coast of Brazil, *Constitution* captured HMS *Java*. Her captain, Henry Lambert, was killed in action, and Bainbridge was wounded by a piece of

copper from the after-hatchway railing. The metal fragment severely lacerated the muscles of his thigh, but he refused to leave the deck or have his wounds dressed until well after the action came to a close. Evans attended him, and a lasting friendship between these distinguished men ensued, as evinced by the following letter:

DR. EVANS, Surgeon U.S. Navy, 25th March, 1813

My DEAR SIR:
Enclosed are several letters from me which I hope will procure you the station you desire, and also pleasure from my friends. I beg of you to deliver the letters. Although we part at present I still hope we shall meet on service at some future day; at all events, I pray you to be assured of one truth—that in me you have a warm and affectionate friend, and at all times I sincerely hope you will consider me as such; recollect the promise I made to you. At any time when you require the fulfillment of it, command it without reserve. May you be as happy as I sincerely wish you. In great haste but sincerely yours,
WILLIAM BAINBRIDGE[25]

Congress presented Evans with two silver medals for his service, one for the *Guerriere* and the other for the *Java*. The medals are about two and a half inches in diameter. One contains a portrait bust of Hull and the other a similar bust of Bainbridge. The reverse of each depicts a highly artistic representation of the vessels engaged in action. Only twenty-six medals have ever been given by vote of Congress. The following letter accompanied the medal in commemoration of the capture of *Guerriere* from the secretary of the navy:

DR. AMOS A. EVANS,
Surgeon U. States Navy, Elkton, Md.
NAVY DEPARTMENT, February 10th, 1820.
Sir:
In compliance with a resolution of the Congress of the United States, the President directs me to present to you a silver medal in testimony of the high sense entertained by Congress of your gallantry, good conduct, and services in the conflict with the British Frigate Guerriere.
I have the Honor to be very respectfully your obt. servt,
SMITH THOMPSON[26]

In May 1813, while visiting relatives near Elkton, Evans volunteered as a surgeon with the Maryland militia in the fort at Frenchtown, not knowing that the British were nearby. After spending the night at his father's house on the Big Elk River, Evans heard cannon fire and musketry the next morning. He mounted his horse and rode cross-country to the banks of the river. There he joined several others who had acquired a boat. The small band rowed downriver to Frenchtown and went on foot toward the fort. Meanwhile the British were disembarking from their barges. When the redcoats saw the Americans they fired a swivel gun at the militiamen. The gun's ball struck the ground nearby and scattered gravel over their uniforms, but no

Marylander was injured. This was as close as Evans got to being wounded in battle. Ironically it occurred on land rather than at sea.

LATER DURING THE WAR, Evans was stationed at Charlestown Navy Yard, the home-port of *Constitution*. Having ample time and close proximity to Harvard University, he took the opportunity to attend the medical lectures there, graduating with a *Medicinae Doctor* degree on August 30, 1814.

Evans was promoted to the rank of Fleet Surgeon, the first man to hold that rank in the United States Navy.[27] The appointment was likely helped by his bond with Bainbridge, formed when he attended the captain's wound after *Constitution*'s defeat of *Java*. There is no evidence in any naval documents that other naval surgeons were also in contention for this post, nor the qualifications used in making the selection. Other naval surgeons who served with distinction were recognized in naval records during the War of 1812, such as Drs. James Indewyck of *Argus* under William Howard Allen, Usher Parsons of *Niagara* under Oliver Hazard Perry, and Richard Hoffman and Alexander Montgomery of *Essex* under David Porter. On July 2, 1815, Doctor Evans sailed with Bainbridge on the *Independence*, a new seventy-four-gun ship-of-the-line, to participate in the second part of the Barbary States War, this time against the Algerines (Algerians).

After the war with the Barbary States, Evans returned to his former post at the Charlestown Navy Yard. While there he met Miss Mary Oliver of Boston, a lovely, cultured, well-educated lady. They were married on March 28, 1816. Some time later he was relieved from duty at the navy yard. He retained his naval commission but, while on leave, he entered the practice of medicine in Elkton. This appears strange today, but it comported with the customs of the times. Now home, he was asked to run for governor of Maryland and other honorable political positions, but he declined all offers and honors, preferring to relieve the sufferings of his numerous patients as their physician and friend.

In 1823 Evans was recalled to resume his naval duties at the Philadelphia Navy Yard. He declined, perhaps preferring his life and better fortune in private practice. Evans resigned his commission in 1824. The secretary of the navy and his colleagues in the Navy Department expressed disappointment, but were understanding.

Amos Alexander Evans died in Elkton on January 15, 1848. He was so beloved and respected in his community that all the town's businesses voluntarily closed upon the occasion of his funeral. Mrs. Evans survived her husband by many years. She died in Baltimore on January 4, 1881, leaving behind three progeny, Alexander Evans, Andrew W. Evans, and Mary Evans.[28]

Evans lived an eventful and historically important life, achieving the esteem and respect of his patients and peers. Maryland's Amos Alexander Evans was prototypical of the American naval surgeon during the age of sail.

NOTES

1. Amos A. Evans, *Journal Kept on Board the Frigate Constitution, 1812* (repr.; Philadelphia: Independence Seaport Museum, 1967), and the Amos A. Evans Collection at the William L. Clements Library, University of Michigan, Ann Arbor [hereinafter Evans Papers]. M. Howard Ash, "Extracts from the Diary of Dr. Amos Alexander Evans 1812–1813, Surgeon United States Navy," *The Patriotic Marylander*, vol. 3, no. 3, March 1917, 177–86.
2. John Rieske, ed., *Hunting the Essex: A Journal of the Voyage of HMS Phoebe 1813–1814 by Midshipman Allen Gardiner* (Barnsley, Yorkshire: Seaforth Publishing, 2013), 134.
3. Brian Lavery, *Nelson's Navy: The Ships, Men and Organization, 1793–1815* (Annapolis: Naval Institute Press, 1989), 212.
4. Kevin Brown, *Poxed and Scurvied: The Story of Sickness and Health at Sea* (Annapolis: Naval Institute Press, 2011), 52.
5. J. Worth Estes, *Naval Surgeon* (Canton, Mass.: Science History Publications, 1998), 85–86.
6. Zachary B. Friedenberg, *Medicine Under Sail* (Annapolis: Naval Institute Press, 2002), 124.
7. Brown, *Poxed and Scurvied*, 52.
8. Ira M. Rutkow, *Surgery: An Illustrated History* (St. Louis: Mosby-Year Book, Inc., 1993) 148. (Translated from Hans von Gersdorff, *Feldbtbuch Der Wundartzney*.)
9. Nitrous oxide (laughing gas), a general anesthesia, was first demonstrated by dentist Horace Wells in Hartford, Connecticut, in 1844 and the more effective ethoxyethane (ether) by surgeon Crawford Long in 1842 and by dentist William T. G. Morton publically in Boston in 1846.
10. Friedenberg, *Medicine under Sail*, 136.
11. N. A. M. Rodger, *The Command of the Ocean: A Naval History of Britain, 1646–1815* (New York: W. W. Norton and Company, 2004) 487.
12. William Northcote, *The Diseases Incident to Armies: With the Method of Cure by Baron Van Swieten: Extracts from "The Marine Practice of Physic and Surgery"* (Philadelphia: Robert Bell, 1776) 135–36.
13. Lavery, *Nelson's Navy*, 101.
14. Rodger, *Command of the Ocean*, 196.
15. Ibid., 392.
16. Friedenberg, *Medicine Under Sail*, 126.
17. [Ralph] Clark to [William] Collins, Sydney Cove, Port Jackson, September 30, 1788, in *Journals of the First Fleet: Ralph Clark (1755–1794)*, State Library of New South Wales.
18. Friedenberg, *Medicine Under Sail*, 136.
19. Louis Arthur Norton, "The Constitution's Great Escape," *Naval History*, 26:3 (2012): 32–35,
20. Evans, "Journal Kept on Board," entry for June 11, 1812.
21. Ibid., August 19, 1812.
22. Ibid., August 14, 1812.
23. Ibid., August 20, 1812.
24. Ibid., September 15, 1812.
25. Bainbridge to Evans, March 25, 1813, Evans Papers.
26. Smith Thompson to Evans, February 10, 1820, Evans Papers.

27. The current title of the chief medical officer of the navy is Surgeon General United States Navy with the rank of vice admiral.
28. George Johnston, *History of Cecil County, Maryland and the Early Settlements Around the Head of Chesapeake Bay and on the Delaware River* (Elkton, Md.: The author, 1881), Chapter 28.

Book Reviews

Planting an Empire: The Early Chesapeake in British North America. By Jean B. Russo and J. Elliot Russo. (Baltimore: The Johns Hopkins University Press, 2012. 240 pages. Illustrations, maps, notes, index. Paperback, $25.00/Cloth, $50.00.)

Colonial Maryland rarely receives the attention it deserves. Smaller, younger, and less prosperous than Virginia, Maryland often finds itself ill-regarded or unmentioned in histories of the colonial Chesapeake. Jean B. and J. Elliot Russo recognize this historiographical trend in their synthetic narrative of the region, *Planting an Empire*, drawing attention in the work's introduction to the seventeenth-century tendency to treat the two colonies as metaphorical sisters, or as "two parts of a whole; to understand one was to appreciate the essence of both" (5). They then go on to refute that notion, writing a skillfully composed account of the similarities and differences between the two "sisters," portraying a boisterous and buxom Virginia alongside a savvy and crafty Maryland. Whereas other historians may be drawn to Virginia's bounty, the Russos do due diligence to both colonies, allowing each equal time and reflection. In the process, readers appreciate the similarities the two colonies shared, while at the same time examining the unique impacts of political machinations and economic diversification in each colony.

Planting an Empire, as a narrative history of the Chesapeake region, does not advance any new historical ideas or concepts. The story of the two colonies' formation and development hit all the major points and provide a thorough and even account of the key events: the settlement of Jamestown, the conflicts with Native Americans, the unique nature of Maryland's founding as a proprietary colony, conflict between Virginia and Maryland, and the rebellions that rocked both colonies during the last quarter of the seventeenth century. Events in England, the Russos demonstrate, affected the Chesapeake on a grand scale, exploding the notion that the North American colonies existed apart from the mother country and did not experience Britain's chaotic rise to global prominence. The work expertly maps out the winding path that Maryland, established as a Catholic colony with an unstated policy of religious toleration, trod as the Glorious Revolution ended the periodic paroxysms of religious conflict in England. One could look for a long time and not find a more succinct and cogent description of the Protestant Revolution that ended Catholic socio-political domination in Maryland during the 1690s.

Political events do not wholly drive the work's narrative, however. The authors provide ample space to analyze the society and culture of the two colonies, using concrete, first-person examples to illustrate the complexities of life in the colonial Chesapeake. Native American religion and culture come alive throughout the text,

and the Russos manage to navigate the labyrinthine jumble of names and peculiarities that make up the numerous tribes within the region. The book's description of the variance between native and European cultures accomplishes effectively in a few pages what some works stumble over and fail to achieve in hundreds. Later in the text, *Planting an Empire* claims that "creole" colonials—families that settled over several generations within the Chesapeake—created a stratified society based on accumulated wealth and political connections and quickly threw off the mantle of "colonial." The book comes closest to advancing a potentially contentious supposition at this point, yet does an expert job showing how families, through intermarriage and economic speculation, rose to the top of Maryland and Virginia society.

For all the plaudits the Russos deserve for their ability to write a Chesapeake history that encompasses both colonies equally, the book's treatment of slavery may leave some readers wanting more. The book devotes an entire chapter to examining slavery (entitled "An Enslaved Society"), but slavery's general absence from the description of the development of creole/white society is striking and gives a minor perception that the two entities existed in a bifurcated world in which one part did not affect the other. This move by the authors may reflect their attempt to remove historiographical debate from the narrative. *Planting an Empire* presents Bacon's Rebellion, most famously treated as an example of racial solidarity and nascent class warfare in Edmund Morgan's *American Slavery, American Freedom*, as a "just the facts, ma'am"-style account, foregoing any controversial historiographical issues. As the Russos point out, "The variety of interpretations and vigor of scholarly discussion surrounding them reflect the disorder of the event itself," and go on to claim that, "Bacon's Rebellion provides scope for debate because so many different threads of colonial history . . . became intertwined during the summer of 1676" (117–18).

Planting an Empire does not challenge any historiographical cornerstones of the colonial Chesapeake. Nor should it; Jean B. and J. Elliot Russo have crafted one of the best narrative histories of the region to come out in years. Their book should quickly become standard reading in undergraduate classes focusing on colonial North America, broadly, and the region, specifically. Not only that, the work's ease of reading and fair length provide a ready resource for historians to ascertain a rapid background of events without wading through forced jargon. And to sweeten the deal, the work presents Maryland as a unique colony with its own contextual background—almost too good to be true!

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Maryland Women in the Civil War: Unionists, Rebels, Slaves, & Spies. By Claudia Floyd. (Charleston, S.C.: The History Press, 2013. 142 pages. Illustrations, notes, bibliography, index. Paper, $19.99.)

Claudia Floyd provides a glimpse into the Civil War experiences of selected Maryland women, in their own words. The organization of this slim volume is not chronological but topical, and is divided into an introduction and seven chapters. Published by the History Press, the book is aimed at general readers and local and regional history enthusiasts, but not necessarily American history scholars. Nevertheless, since no other book-length studies have been previously published specifically on Maryland women's roles in the Civil War, this book represents an appeal for a more nuanced discussion and generates inspiration for further research into this topic.

Chapter 1, "Geography and Destiny," introduces the reader to Maryland's unique situation during the Civil War and how Maryland's geographic location influenced wartime events. This chapter forms a solid argument for why Marylanders had particular difficulty dealing with the increasingly blurred lines of battlefield and home front. Although this first chapter gives a broad overview for the entire state, much of the rest of the volume focuses on the experiences of women in and around Baltimore, Annapolis, and western Maryland. More geographic, class, and racial diversity in the primary sources cited in this work would have made the narrative more interesting, but understandably would also have represented very challenging research. For example, while famous Marylander and former slave Harriet Tubman is discussed at length in Chapter 2: "Free, Slave, and In-Between," there are few glimpses of the perspectives of less obvious free black and slave women in this book. A lack of first-hand accounts by free blacks and slaves in archival repositories makes providing this kind of perspective a challenge, even though there is increasingly more information available about them. Floyd does briefly mention slave women refugees from the South but does not go into detail about their experiences or those of women who served as cooks, laundresses, hospital workers, and in other capacities during the war. Floyd devotes the last third of Chapter 2 to the perspectives of white women of slave-holding families and of women abolitionists.

The greater part of the book attempts to balance Confederate viewpoints with those of Unionist women but provides more sources related to secessionist women. The title of Chapter 3, "The Despot's Heel: The Union Occupation," illustrates the focus in this chapter on the experiences of secessionist families as federal troops "occupied" cities such as Baltimore and Annapolis. This chapter emphasizes the Confederate point of view, and though it does discuss the polarization of Maryland's population its divided loyalties, there is only a brief mention of how Union or neutral women felt about martial law in the final paragraph. Chapter 5, "The She Rebels: Maryland's Confederate Women," also discusses women who sympathized with the Confederacy, but this time the focus is on four in particular: Phoebe Key

Howard, Harriet Petit Floyd, Catherine Markell, and Jane Johnson. In Chapter 6, "Three Shades of Red, White, and Blue: Maryland's Unionist Women;" the pendulum finally moves in the other direction with a discussion of Anna Ella Carroll, Almira Hart Lincoln Phelps, and Adeline Blanchard Tyler. These three were chosen in order to "illustrate the diverse modes of participation in the war efforts chosen by unionist women and exemplify the range of motives that drew them to become involved," but then also notes all three were "mature, matronly, and conservative and cautious in nature" (100–101). Though the lives of these women are interesting and informative, many are mentioned several times throughout the book, especially Howard. It would have been more insightful to use additional historical materials rather than the letters and diaries of a select few. In addition, the unearthing of a more varied array of unpublished sources from archival repositories beyond the Maryland Historical Society, the core foundation of Floyd's research, would have solidified the importance of this book.

Chapter 4 on "Women's Political Participation" is one of the better chapters in the volume and follows women's reactions to a highly divided political climate, as well as a discussion of gender-based stereotypes. Floyd uses sources relating to educated middle- and upper-class white women because it was they who participated in politically charged activities such as sanitary fairs, collecting petitions, writing, and nursing. Even within this decidedly feminist chapter and with the overall aim of the book to celebrate women and women's experiences, one odd word choice throughout the entire work is to employ the term "females" to refer to "women." While not grammatically incorrect, the use of the noun "females" in place of "women" is at the very least outdated and at the worst decidedly antifeminist. "The Aftermath," the final chapter, briefly concludes the work and delves into general observations about attitudes in Maryland after the war, including the fact that women likely did not believe in the "universality of human rights" or see themselves as trailblazers for elevating the status of women (119).

In sum, *Maryland Women in the Civil War* does not present entirely new historical research or demonstrate significant new historical sources, but that was not exactly the objective of this work. Obviously, this brief introductory volume was not intended to provide an exhaustive study or answer some of the deeper questions surrounding the topic of Maryland women and the American Civil War, rather it was meant to convey a stimulating overview of the topic and to outline some of the basic issues and general sources related to women's lives during the time period. In this general purpose the work succeeds.

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America's First Great Depression: Economic Crisis and Political Disorder after the Panic of 1837. By Alasdair Roberts. (Ithaca: Cornell University Press, 2013. 255 pages. Charts, notes, index. Cloth, $26.00.)

Alasdair Roberts argues that the Panic of 1837 and the ensuing depression underscored U.S. vulnerability to global financial policies, as is true today. In the 1830s and 1840s the United States depended on British investors for capital. Today Americans look to China as the buyer of U.S. Treasury bonds. The author notes perceptively that the period between 1945 and 2000, when the United States was a superpower, was an anomaly in American history. For much of its history and again today, the United States was and is beholden to other nations. Roberts admits that by economic measures alone the Panic of 1837 and its aftermath do not rise to the level of the Great Depression of the 1930s. Yet he calls the Panic of 1837 the country's First Great Depression, a confusing label that he tries to justify by noting that the political and social fallout between late 1836 and 1848 warrant the contention that these years were on par with the misery of the 1930s.

To test this claim, one must know the severity of the Panic of 1837. Roberts cautions that this is difficult because economic indicators are a modern construct. They were not available to the people who lived through the crises of the 1830s and 1840s. That said, Roberts treats the Panic of 1837 in financial and political terms. He notes the integration of U.S. cotton growers into the British textile industry. He targets the importance of the Bank of England. In late 1836, the bank, responding to a financial crisis in Ireland, found itself with little money to invest in U.S. enterprises at a time when inflation was beginning to bite and land was overvalued. The collapse of land speculation ushered in the Panic of 1837.

As Roberts tells the story, the Panic of 1837 appears to have been an urban phenomenon that caused desperate people to become irrational. The unemployed burned steamships in hopes of winning the job of rebuilding them. But it is more difficult to see how the larger economy fared. Agriculture was then the chief economic activity, yet one must hunt for details of its fate. One learns that the plantation economy of the South suffered. Cotton growers were in particular trouble, though one wonders about the fate of other plantation systems. Did rice, tobacco, and indigo likewise suffer? What was the fate of corn and wheat farmers in Ohio, Indiana, and Illinois? Roberts gives the impression that commodity prices fell. In periods of low commodity prices corn growers could always convert their crop into meat and pork, though the prices of these commodities likewise appear to have declined.

Roberts mentions that plantation owners in distress sold slaves to pay the bills, but inexplicably tells the reader nothing else about African Americans. Because racism was strong, African Americans must have suffered disproportionately from the Panic of 1837. Their fate deserved inclusion in this book.

The author tends to see economic matters in political rather than human terms,

which is not always a useful exercise. Curiously this approach makes sense to the historian studying the Great Depression and New Deal, but it appears unsuited to a study of the Panic of 1837, a time when the federal government was not robust. Although he focuses on the role of the federal government, Roberts also examines the states, and in this regard the student of Maryland history has something to learn. Maryland was among a handful of states to default on its obligations to creditors, many of them London investors. This predicament was worse because Maryland did not tax property and so could not raise adequate revenues. Realizing the defect of this policy, Maryland instituted a property tax and enacted a measure forbidding the state from borrowing money without raising taxes to be sure of repaying its debts. Matters did not go smoothly. Many residents evaded taxes because Maryland did not have enough civil servants to enforce compliance, yet by 1848 Maryland had resumed payment of its creditors.

Roberts ends *America's First Great Depression* with the controversial statement that the Mexican-American War was an effect of the Panic of 1837. One might judge the acquisition of Texas to have been the proximate cause of war, and military historians do not generally name the Panic of 1837 a cause. The author's strength and the place of *America's First Great Depression* in the literature lie in the connection of the events of the 1830s and 1840s with those of today. This accomplishment makes the book timely.

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War on the Waters: The Union and Confederate Navies, 1861–1865. By James M. McPherson. (Chapel Hill: University of North Carolina Press, 2012. 285 pages. Illustrations, maps, notes, index. Cloth, $29.95.)

"To say that the Union navy won the Civil War would state the case much too strongly. But it is accurate to say that the war could not have been won without the contributions of the navy" (226). With these words, renowned Civil War historian James M. McPherson neatly summarizes the central argument of his latest book, *War on the Waters*. It largely focuses on "Uncle Sam's Web-feet," mainly because they dwarfed Confederate forces by more than ten-to-one, but McPherson does not give the southern navy short shrift (1). He repeatedly notes its reliance on foreign-built ships, technology, and innovations, such as "torpedoes" (naval mines) to offset northern numbers. McPherson organizes his work chronologically and suggests that the main contours of the war on the waters corresponded to the ebbs and flows in the conflict as a whole. When northern forces enjoyed success, for example in the late winter and early spring of 1862, the navy played a major role in it. Conversely, naval setbacks on the high seas and on inland waterways often contributed to periods when the Union cause suffered reversals.

A number of definite themes appear in this relatively short, but action-packed book, the first of which is the inter-service rivalry that existed between the Union army and navy. It originated at the highest levels and at times hampered the northern war effort. Assistant Secretary of the Navy, Gustavus V. Fox, badgered an officer into an unsuccessful attack on Charleston by writing, "I feel that my duties are twofold; first, to beat our southern friends, second, to beat the Army" (141). Still, McPherson notes that some commanders, such as Ulysses S. Grant, successfully cooperated with their naval counterparts to achieve key victories at Fort Donelson and Vicksburg. Another theme is the varied roles the Union navy played throughout the war. In addition to battling ironclads and commerce raiders, the navy transported provisions, showed the flag in Texas to discourage Napoleon III's venture in Mexico, and even disrupted John Hunt Morgan's 1863 raid into Indiana. Equally important, the navy emancipated tens of thousands of slaves, as its vessels seized enclaves on the South Atlantic coast and penetrated major rivers in the Eastern and Western theaters. Many of those African Americans enlisted in the navy and eventually composed about 17 percent of it, approximately twice the percentage of blacks serving in the army (136). Interestingly, such experiences converted many naval personnel into abolitionists, a phenomenon that historians have observed among Union troops.

McPherson rightly devotes much of his book to assessing the blockade and strongly disagrees with those who assert that that it was ineffective. As the war progressed, the Union successfully closed Hatteras Inlet, Port Royal, New Orleans, and other ports to interdict the blockade-runners who exchanged southern cotton for military supplies and consumer products. The author argues that although 8,000 ships eluded the Union navy during the course of the war, this represents only 40 percent of the prewar number that cleared southern ports. Beyond this, southern cotton exports plummeted more than 90 percent (225). This reduction of trade placed greater strains on the Confederate military and economy and markedly contributed to the ultimate northern victory.

One of this book's real strengths is McPherson's discussion of the personalities who fought the war on the water. Secretary of the Navy Gideon Welles and his Confederate counterpart Stephen R. Mallory play prominent roles in the narrative and are credited with adroitly administering their respective fleets. McPherson obviously admires southern-born Admiral David Glasgow Farragut, whose victory at Mobile Bay in August 1864 helped assure Abraham Lincoln's reelection. He also recognizes the contributions of inventors John Ericsson and Charles Ellet Jr., whose turreted ironclads and naval rams, respectively, helped the North secure the high seas and the Mississippi River. The author discusses lesser known but equally important naval officers, including David Dixon Porter, pro-slavery advocate Raphael Semmes, and Franklin Buchanan. A forty-five year veteran of the United States Navy, Buchanan resigned his commission when he believed that his native Maryland would secede. When this did not occur, Buchanan attempted to rescind his resignation, but Welles

refused, doubting his loyalty. Instead, Buchanan went on the command the CSS *Virginia* in its famous encounter with the *Monitor*.

This is an outstanding book. McPherson has delved deeply into the *Official Records of the Union and Confederate Navies*, congressional reports, and the papers of many of the major personalities to bring the war on the waters alive. His clear, concise prose makes vivid reading that is hard to put down. McPherson has also sprinkled the text with illustrations and detailed maps that greatly enhance the reader's experience. This book takes its place among a list of recent works on the often overlooked naval side of the Civil War, and it will become a standard for many years. General readers and scholars alike will enjoy reading *The War on the Waters*.

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Kutztown University

Ruined by This Miserable War: The Dispatches of Charles Prosper Fauconnet, a French Diplomat in New Orleans, 1863–1868. Edited by Carl A. Brasseaux and Katherine Carmines Mooney. (Knoxville: University of Tennessee Press, 2012. 266 pages. Illustrations, notes, index. Cloth, $37.95.)

In 2007, Yale University acquired the papers of Charles Prosper Fauconnet, acting French consul in New Orleans between 1863 and 1868. In *Ruined by This Miserable War*, editors Carl A. Brasseaux (retired professor of history, Louisiana State–Lafayette) and Katherine Carmines Mooney (PhD, Yale University) present Fauconnet's official correspondence to the French government in Paris. This rich manuscript, which Brasseaux translated, meticulously recounts the political, social, and economic intricacies of the Civil War and Reconstruction in Louisiana during Fauconnet's tenure. "Fauconnet's observational acuity, broad vision, and cultural insights," the editors assert, "are not at all commonplace among contemporary observers of wartime New Orleans. . . . they are extraordinary and result in no small part from the diplomat's long service in Mexico and the American South" (xi). Brasseaux and Mooney further believe that the range of information contained in these dispatches will enable a fuller understanding of wartime Louisiana, offsetting the scarcity of local primary sources and the language barriers posed by French documents.

Fauconnet opens a window on the forces at play in Louisiana during the Civil War and its aftermath in a number of ways. First, he highlighted Louisiana's centrality during the war and Reconstruction. As one of the first areas under Union control in the Deep South and a port city with important Caribbean trade relationships, it was a highly contested territory. Fauconnet explained military campaigns, described uneven reception of Union initiatives, and recorded his personal observations of such Federalist leaders as Generals Banks and Canby. Particularly useful was his knack for supplementing official news with rumors or hearsay that aptly conveyed the mood within the city. An integral part of his reportage focused on evolving conceptions of

race, democracy, and citizenship, from proposals for the new Louisiana constitution to treatment of resident aliens. Moreover, Fauconnet detailed contentious debates over the transition to a paid labor economy and the place of former slaves in the nation, which underscored the tensions that these issues generated in a locale dependent upon cotton production and sales. Although he strove for objective professionalism, Fauconnet nevertheless communicated his increasing wariness of certain Union authorities and emancipated slaves' political activities. "Regulations protecting the freedmen and the abandoned lands," Fauconnet for instance wrote in September 1865, "continue to be interpreted in Louisiana in the most radical manner, and they thus serve to perpetuate among blacks grandiose thoughts of liberty and equality that can only bring about the most appalling consequences for themselves and the country" (121).

As a foreign national embedded in the New Orleans political scene, Fauconnet's unique perspective situates Louisiana in a transnational context and sheds light on French social and political mores. His critiques especially reflect France's history of slavery, which, after 1794, was reinstated in colonial territories under Napoleon I and finally abolished in 1848. These writings also make clear that France dedicated ongoing attention to its former colonial territory for a variety of reasons. By 1863, for instance, France's presence in Mexico complicated its relationship with the United States. Consequently, Paris kept a close watch on military developments in the American south. Fauconnet furthermore draws attention to the ways that diverse political initiatives affected French nationals in New Orleans. After a new policy suspended business for merchants in occupied parishes unless they swore loyalty to the Union and agreed to "suppress the rebellion" in their daily lives, for example, the French Creole quarter was mired in poverty (63–64). Local officials, moreover, sought to reduce French influence through educational reforms that minimized French language learning. In fact, Fauconnet dedicated much time to protecting the interests of fellow French nationals who were aware of their shifting status and worried about their livelihoods. Ultimately, his writings indicate that French and American affairs remained discernibly interconnected, even if at times tense, during the second half of the nineteenth century.

Brasseaux and Mooney preface the manuscript with a brief description of Fauconnet, his writings, and their importance. The editors organize the collection chronologically, with most of the dispatches dating from 1863 to 1865. Within each year, however, they arrange Fauconnet's writings by topic, which allows the reader a better sense of his views on specific issues. The text also includes images of key figures and events discussed in the correspondence, including political cartoons. The Fauconnet collection provides valuable insight on the Civil War and Reconstruction that underlines ideas of democracy and race and highlights enduring French connections in the Western Hemisphere.

Meredith Scott-Weaver
Bloomsburg University

Reforming Jim Crow: Southern Politics and State in the Age before Brown. By Kimberly Johnson. (New York: Oxford University Press, 2010. 326 pages. Bibliography, notes, index. Cloth, $35.00.)

Refuting widely held historiographical conceptions of the Jim Crow era, Kimberley Johnson finds that black and white southern Progressives, cognizant of the South's modernization efforts, carefully implemented social, political and educational reforms within the region's racial caste system, creating the conditions which eventually led to southern segregation's demise in postwar America. She contends that these white and black reformers, working to improve public order and stability within southern governments and the Jim Crow order, established critical precedents that subtly transformed the South's racial and class dimensions in the early twentieth century.

Although most civil rights scholars rightly credit African American activists for helping to dismantle the South's segregationist features in the 1950s and 1960s, Johnson departs from conventional wisdom about how and why the Jim Crow order fell apart. She unearths new evidence that points to early twentieth-century white and black progressive initiatives that not only ushered in vital reforms within the South's racially divisive socioeconomic, political, and legal frameworks, but also established important civil rights ideas that would eventually embolden postwar African American activists to challenge and uproot the South's racial folkways and the very meaning of southern citizenship.

Deftly untangling the socioeconomic and legal implications behind class, race, and political relationships in the South, Johnson first examines white reformers' efforts and failures to rehabilitate state authority and power in addressing racial violence. In doing so, she observes how white reformers vigorously attempted to regulate lower-class whites' physical reprisals against blacks by instituting stricter law enforcement measures, which would effectively empower southern state officials to monitor unsavory racial transgressions, especially lynching. As a result, white reformers, seeking to ameliorate blacks' inequitable social and political conditions, believed resuscitating the South's poor national reputation on race matters would require an assertive state presence to curb non-elite whites' local power over class and racial disputes.

Beyond addressing matters of racial violence, Jim Crow reformers also worked in conjunction with New Deal administrators to modernize the South's beleaguered economic infrastructure, devising national policy initiatives to reform "southern stateways" (67). Drawing on social-scientific research and northern financial assistance, New Deal reformers, along with the CIC (Commission on Interracial Cooperation), sought to transform Jim Crow's established economic parameters by eliminating poll tax statutes, which had effectively reduced lower-class whites' and blacks' access to full political citizenship. Although Progressive ideas and New

Deal policies faced innumerable hurdles within southern state regimes, Johnson appropriately notes that "the democratic promise of the CIC and the southern New Deal activities could not be contained" (90).

Johnson further describes how African Americans, challenging the "equalization" strategies of white reformers, forcefully pursued educational improvements throughout southern states in the 1930s and 1940s, noting their persistent campaigns to equate this aspect of social citizenship with other forms of early black political activism in the Jim Crow order. In drawing these invaluable correlations, she demonstrates the profound political implications of southern educational reform on nascent civil rights battles, for it granted "blacks . . . formal contact with a political establishment that had largely excised them from the southern polity" (16). She points out, though, that African American educational activists met resistance from white Jim Crow reformers. While many of the latter decried African Americans' deplorable educational environments, they still relied on northern foundation money, especially the Rosenwald Foundation, to broaden the South's segregated education structure in the 1920s. These white reformers, moreover, encouraged southern colleges and universities to adopt their plan for increased vertical segregation, and even convinced some middle-class blacks, eager for racial harmony, in positions of educational prominence to embrace their social-scientific solutions for amicable race relations in southern society. In the late 1940s, many African American teachers and administrators, however, vociferously pushed for racial integration in southern educational facilities and openly questioned the racial logic behind the Jim Crow reformers' ambitious designs, as they yearned for, in Johnson's estimation, "the strengthening of southern black social capital and social citizenship" (170).

One infamous court case, *Sweatt v. Painter* (1950), effectively disestablished the "equalization" efforts of white reformers, who had rushed to create a separate law school for blacks in Texas. The Supreme Court ruled, however, that the all-black facility lacked many of the educational amenities found in the all-white University of Texas Law School, destabilizing white reformers "equalization" platform for southern higher and primary education. For Johnson, the NAACP, which argued the Sweatt case, and its visible legal presence, undermined the racial gradualism of white and black Jim Crow reformers and spurred wider campaigns to achieve full blown racial integration and social citizenship across the South.

Creating a dynamic storyline about the unfolding evolution of southern race relations in the early twentieth century, Johnson draws on a remarkable array of research materials, including various African American periodicals, oral history collections, and numerous government and personal manuscript files, to illustrate the social, economic, and legal components of racial reform initiatives within the Jim Crow order among southern whites and blacks. Her careful balance between white and black voices in her research demonstrates, moreover, the centrality of both race and class within the broader context of Jim Crow reform. In paying close attention to

the racial and class complexities of southern race relations, she unequivocally forces fellow southern scholars to reconsider the broader impulses which led to Jim Crow's demise and the civil rights movement's ascendancy in the postwar South.

Johnson's book powerfully proves how white and black reformers' actions also generated larger debates about the meaning of social and political citizenship, for both whites and blacks, during Jim Crow's tumultuous reign. In exposing Jim Crow's calamitous dimensions, she unmasks invaluable insights about southern citizenship's changing features and its profound importance in shaping the civil rights movement's greatest political, social and legal accomplishments.

MATTHEW SMALARZ
University of Rochester

Race, Riots and Roller Coasters: The Struggle over Segregated Recreation in America. By Victoria W. Wolcott. (Philadelphia: University of Pennsylvania Press, 2012. 328 pages. Notes, illustrations, index. $34.95 cloth.)

Destination Dixie: Tourism & Southern History. Edited by Karen L. Cox. (Gainesville: University Press of Florida, 2012. 320 pages. Notes, illustrations, index. $39.95 paper.)

Although *Destination Dixie* is a collection while *Race, Riots, and Roller Coasters* is a single-authored history, and although the former deals with public accommodations and the latter with museums and historical sites, the two books share a common theme. Both deal with inclusion and exclusion. *Race, Riots, and Roller Coasters* addresses the efforts to desegregate places of amusement during the years between World War II and the Johnson-era civil rights acts. The author makes clear that segregated facilities were not just a southern phenomenon but were in fact common throughout the United States. The 1919 Chicago beachfront riot was far from the South and far from the 1960s. She devotes a chapter to the struggles in Buffalo, New York, for access to an amusement park located on the Canadian side. She also lays out the types of facilities involved.

Whites-only was the pattern for amusement parks from the beginning of commercial amusements in the late nineteenth century. It was the norm for bowling alleys, even those sanctioned by the American Bowling Congress. It was the rule in skating rinks. Private businesses claimed the right to discriminate. So did public facilities – parks, swimming pools, golf courses, and the like.

When confronted with pressure to desegregate (and the author differentiated between desegregation and integration, the former, defined as equal access to the same facilities, being the black preference over sharing and intermingling with whites), as was the case with schools and other facilities, community governments elected to shut down, to privatize, to sell facilities at rock bottom prices to private

organizations that reopened whites-only facilities. Parks and rinks had a harder time, but they had help from white youth whose numbers and animosity meant that black entry into the facilities was a perilous undertaking. Pools and beaches were most likely sites of severe violence, and once desegregated quickly re-segregated as whites abandoned them.

The 1964 civil rights act seemed a turning point but merely reinforced laws that had been mostly ignored for over half a century. Blacks did attend the recreational facilities in larger numbers after the Second Reconstruction culminated, and militant black activism led to greater confrontation—black riots rather than the white riots that previously had characterized public amusement areas. But avoidance if not downright defiance remained common. A park outside Lawton, Oklahoma, opened only under pressure in 1968, and it remained a hostile environment for blacks into the mid-1980s when it finally closed.

White perceptions and memories changed, and the golden age of amusement parks and skating rinks was past, done in by black assertion of rights, white fear of black violence and nostalgia for a lost age, and a changing society as whites abandoned the neighborhoods that had formerly provided customers for the parks, seeking instead the new recreations that were not on the bus line, not accessible except by private auto. Disneyland became the norm, and Palisades Park faded to something more glorious than it ever was.

The work covers a wide range of geographic territory over a twenty-year period but it manages to avoid becoming superficial by selecting carefully appropriate examples and developing them in some detail. The author reiterates often her basic arguments, tying each instance back to her thesis. Documentation is solid. The work provides a supplement to the standard concept of civil rights as a matter of schools and lunch counters, and it reminds us that the black request, then demand, was not to join the white world but to enter into a race-neutral world on an equal basis with whites.

The other work, *Destination Dixie*, at first glance has little in common with *Race, Riots, and Roller Coasters*. Rather than developing one story over time, as a collection it brings together various stories with a common theme. Among the dozen sites addressed in the articles include Stone Mountain, Georgia, the Margaret Mitchell house in Atlanta, and New Orleans as defined by tour leaders, with the note that the black tours are markedly different from the white. The geographic coverage is pretty much the South, but the first article stretches the South into Missouri as it discusses the Mark Twain influence in Hannibal. It's interesting in that it shows how fictional characters and real people can compete for pride of place in heritage tourist sites. It also sets the tone of unhappiness to anger that that prevails when heritage sites in the South consistently overlook the economic underwear of the plantation myth. Tom and Becky and Huck and Jim and even Mark Twain are presented outside the slave society in which they lived.

And there's the link. Museums and other heritage tourism sites are, like roller rinks and roller coasters, sites of exclusion, places of myth instead of history.

However, the authors in this collected work seem to conflate history and heritage. All are professionals, most are academics, but consistently they express negative feelings for their sites, sites that tell a partial story, a white story, and overlook or gloss over the black stories that took place in the same sites at the same time. They seem to forget that memorials and museums, even history itself, are sites of selectivity. The winners write the history, as the old saw would have it. And the plantations and battlefields and cities described in this work were white then, are white now. A minority, even numerically a majority, has a hard time getting access to a majority-controlled setting unless the majority either allows entry or abandons the site. For heritage tourism, alternative tours and token inclusion are the rule. For parks and pools, abandonment and resegregation are more likely.

The seeming at-first-glance outlier in the collection is the Tupelo, Mississippi, birthplace of Elvis Presley. Although one method of reestablishing the white dominance in the last quarter of the nineteenth century was to call for white unity across class, to give the low-class whites somebody to look down upon as a means of diverting their attention from those looking down on them, there was never all that much white solidarity. Tupelo never did come to terms with being the birthplace of the uncomfortably white trash Elvis, his early years in poverty and in proximity to the poor blacks of the town. It did not fit the story that the better sorts in Tupelo and throughout the South wanted to tell about their past. It is not the black narrative that is shunted aside but a white one with similarities. Other seeming outliers come later in the work; the final two entries deal with the Great Smoky National Park and the Seminoles of Florida.

In Appalachia the park service narrative is mythmaking at its best, a natural Disneyland as it were. The land for the park was occupied, exploited, an area of farmers, miners, loggers, some of them ecologically irresponsible. When the service bought the land, it removed railroad tracks, roads, all signs of habitation, trying to create a scenic marvel from a cutover forest. Even when the service decided the natural wonder needed a human face, it selected the stereotypical mountaineers of a brief period in the late nineteenth century, and when the forests returned to the cutover areas and blocked meadow views, the service brought in farmers to recreate the scenic view.

The case of the Seminoles is similar, with the difference that the Seminoles became their own mythologizers, accepted the imposed story and made it true by adopting white-defined practices and styles. Whites wanted alligator wrestling; Seminoles became alligator wrestlers. Whites wanted Indian dances; Seminoles danced. Whites wanted plains garbed Indians; Seminoles dressed as Sioux. Even as they became well fixed due to casinos and other businesses, they retained the gimcrack tourist traffic that whites expected.

Most dynamic and impassioned is the story of what Anniston, Alabama, chooses to commemorate. The article notes that the iron works restored was never involved in producing for the Confederacy, the battle commemorated was several miles away and not all that significant, and the truly significant event, the bus-burning on the Freedom Rides, has been literally paved over, with a highway obliterating the actual site and no notice paid by the locals to this significant episode on the freedom trail.

The quality of the research is solid, the authors are competent to address their subjects, and generally the writing holds together. The editor's introduction helps to explain the overall themes, the structural arrangement, and the need for the work. Not only is *Destination Dixie* suitable for classroom use but it is also accessible to and of potential interest to the casual reader.

Both works are broader than Maryland history, but both contain sufficient Maryland material to be of interest. Whether on a roller coaster or in the Florida Everglades historical sites, blacks are not asking to be white, to mingle with whites, but simply to be in the places that whites enjoy, the places whites have for so long preserved for themselves. These books differ in style and content, but they share the common theme of desegregation, not necessarily integration.

JOHN H. BARNHILL
Houston, Texas

Imprisoned in a Luminous Glare: Photography and the African American Freedom Struggle. By Leigh Raiford. (Chapel Hill: University of North Carolina Press, 2011. 312 pages. Illustrations, notes, bibliography, index. Cloth, $45.00.)

The images associated with the civil rights movement of the 1950s and 1960s are at once familiar and impossible to forget: Emmett Till's bruised and beaten body, protesters recoiling beneath the blast of a fire hose in Montgomery, marchers walking across the Pettus bridge in Selma. Movement photography, the subject of Leigh Raiford's *Imprisoned in a Luminous Glare,* undeniably altered "public opinion about the violent entrenchment of white supremacy in the South" and, as such, was "as effective as bus boycotts and as righteous as nonviolence" (2). But the relationship between the black freedom struggle in the twentieth century and photography was a complex one, and Raiford plumbs its depths in this monograph. Raiford traces the enlistment of photography by three African American civil rights organizations: the NAACP, specifically through its anti-lynching campaigns before World War II; the Student Nonviolent Coordinating Committee (SNCC); and the Black Panther Party (BPP). In each case, she finds that photography, thanks to the long history of pejorative social constructions of blackness, never functioned as simple documentary for activists. Instead, photography interacted with African Americans' collective memory and goals, not only for political equality, but also for self-representation and authenticity. "African American social movements," Raiford contends, "have

profoundly shaped the ways we understand the politics of photography specifically and of black visuality more broadly" (7).

Raiford's chronological sweep places the NAACP of the 1920s and 1930s in the same conversation with SNCC and the BPP in the 1960s and 1970s. This is a welcome addition to scholarship that understands these organizations to be part of the same "long African American freedom struggle" (6) rather than assuming that the capital-C Civil Rights Movement started with the Montgomery bus boycott in 1955. Students of the NAACP's history will be familiar with most of the terrain Raiford covers in the first chapter on the anti-lynching campaign (a subject well covered by Robert Zangrando's *The NAACP Crusade against Lynching, 1909–1950* [Philadelphia: Temple University Press, 1980]). The organization publicized photographs of lynchings, often reproduced as postcards and sent to family members by spectators without much apparent self-consciousness, in order to expose lynching as a common social practice and secure federal legislation against it. The conundrum of lynching photography as a movement tool, Raiford argues, was that it "compounded the violence of lynching and has served to anesthetize audiences to black pain and suffering . . . [keeping] the tale of the black male rapist/criminal . . . alive and well and circulating in our cultural and political imaginary" (65).

Raiford sees more positive potential in the photography created by SNCC activists in the 1960s. SNCC consciously hired staff photographers and publicized images of protests and white backlash as part of its communications strategy. Like so many other elements of SNCC, the uses and meaning of movement photography were swept up in the organization's evolution after Freedom Summer in 1964, when hundreds of northern and white volunteers joined the organization. As SNCC asked itself questions about the place of white activists and women in its ranks, photographs "became compasses for exploring as well as challenging ideas, aesthetics, personal and political relationships, and individual and collective freedom" (74). When SNCC made its final embrace of black nationalism in the second half of the 1960s, its photography reflected a focus on "black audiences as both subjects and spectators . . . creating images of black people for themselves" (121, 123).

The folk emphasis of SNCC photography gave way in the Black Panther Party to lionization of the organization's leaders. Portraits of Huey Newton and Bobby Seale wearing berets and carrying guns, reproduced in Panther publications and hung in college dorm rooms across the country, gave the party national publicity but also obscured the BPP's community programs. All too often, particularly in the national press, it was difficult even to talk about the Black Panthers without visual recourse to the stereotypical wardrobe of leather jacket, afro, sunglasses, and weaponry. In a memorable interview, Panther photographer Stephen Shames tells Raiford that *Newsweek* magazine refused to publish a cover photo about the BPP in 1970 that featured party members conservatively dressed in coats and ties. "If you don't wear the leather jackets," *Newsweek* reportedly demanded, "you won't be on the cover" (166).

Far from a conventional history, *Imprisoned in a Luminous Glare* is part African American history, part art history, part theory, and part art criticism. It seeks to accomplish each of these tasks, and with such an ambitious agenda, it succeeds in some areas better than in others. The chapter on SNCC is an especially important contribution to the historiography of this organization, particularly Raiford's discussion of the relationships between SNCC and technology and mass media. Her close readings/critiques of individual photographs are less helpful, bogged down as they often are in theoretical jargon that makes this book a more appropriate selection for graduate students. Raiford closes by describing three recent exhibitions of movement photography in the first decade of the twenty-first century, demonstrating the continued relevance of these images in our own time. Raiford compels us to ask how photography has contributed to the political goals of the black freedom struggle. Most importantly, she underscores the political significance of these artistic expressions. Far from being the creation of the solitary artist in a vacuum, these photographs reflect the fraught world that civil rights activists and their constituents inhabited.

FRANCESCA GAMBER
Baltimore, Maryland

Archaeology, Narrative and the Politics of the Past: The View from Southern Maryland. By Julia A. King. (Knoxville: University of Tennessee Press, 2012. 287 pages. Illustrations, notes, bibliography, index. Cloth, $57.00.)

Julia King's study of three historic southern Maryland landscapes explores how residents have used these sites to understand their own social and cultural worlds. (Southern Maryland includes the present-day Maryland counties of St. Mary's, Charles, and Calvert.) The author, an archeologist working in the Chesapeake region, focuses on how differences of race and other identities affect the ways the region's past is remembered and narrated through the agency of the landscapes themselves. The sites King chose to study are Susquehanna, an antebellum tobacco plantation obliterated by the Patuxent River Naval Air Station; Historic St. Mary's City, first capital of the Maryland Colony, now preserved as a state museum; and Point Lookout, a state recreational park on the Chesapeake Bay, once the site of a Union Army Civil War prison camp.

King addresses her subject through what she describes as "interpretive historic archeology." Going beyond verifiable archeological data, this approach uses narrative developed from documentary sources to mediate space in the historic landscape and either gives voice to a diversity of views or silences all but the dominant voices in the process. A landscape modified by man becomes a cultural artifact that can be investigated to understand the beliefs of its makers and the larger society to which

they belong. As she examines each selected historic landscape, King explores the relationship between its narratives and the material culture in evidence.

First, King examines how divergent narratives of Susquehanna's past were created based on the same relics and ruins. Unlike other sections of the state, southern Maryland did not enjoy an expanding manufacturing economy or rapidly increasing population after the War of 1812. It remained in the control of elite families committed to the production of tobacco based on slave labor, experiencing a long period of economic decline.

In 1987 the author was commissioned to conduct a study supporting a new historical interpretation of the site of Susquehanna's 1832 plantation house, the structure itself having been moved away in the 1940s. King's team discovered the buried brick foundation of a smaller dwelling in a clear space close to the parlor end of the 1832 structure. According to tax records, the earlier house was already in a state of disrepair by 1798. The archeological crew found evidence of demolition in the foundation's cellar, but, intriguingly, its datable artifacts revealed that the cellar had not been filled until the 1880s, some fifty years after the newer dwelling had been built.

The way of life of the proprietors of Susquehanna, the Carroll family, was increasingly threatened over the nineteenth century. Maintaining social control over the large, restive, enslaved workforce would have been challenging in such an economically precarious setting. Rather than fill it in, the Carrolls had chosen to preserve the ruin in their yard as "indisputable evidence of the Carroll family's long association with the land," a statement of entitlement for all its residents to witness (45). The agricultural economy context King develops plus tax records revealed the meaning of the disjuncture in the physical remains.

John Pendleton Kennedy, a prominent Baltimore author, visited Susquehanna in 1836. Later, he published accounts of his visit, including his exchange with an elderly slave who guided Kennedy's party around the property. The guide's narration of the plantation's history, as recorded by Kennedy, aligned the enslaved worker with the Carroll family's perspective, King conjectures, perhaps as a subversive attempt to protect his status as a permanent resident and guard against being sold off the property. On the other hand, author Kennedy, a romantic, was looking for evidence that the southern Maryland landscape was firmly rooted in the colonial past. Any reformed agricultural practices or nineteenth-century occupants of southern Maryland as such were invisible to him in the face of its ruins, relics, and legends' ability to evoke the "character and manners" of the early settlers and to legitimize the political authority of their successors (41).

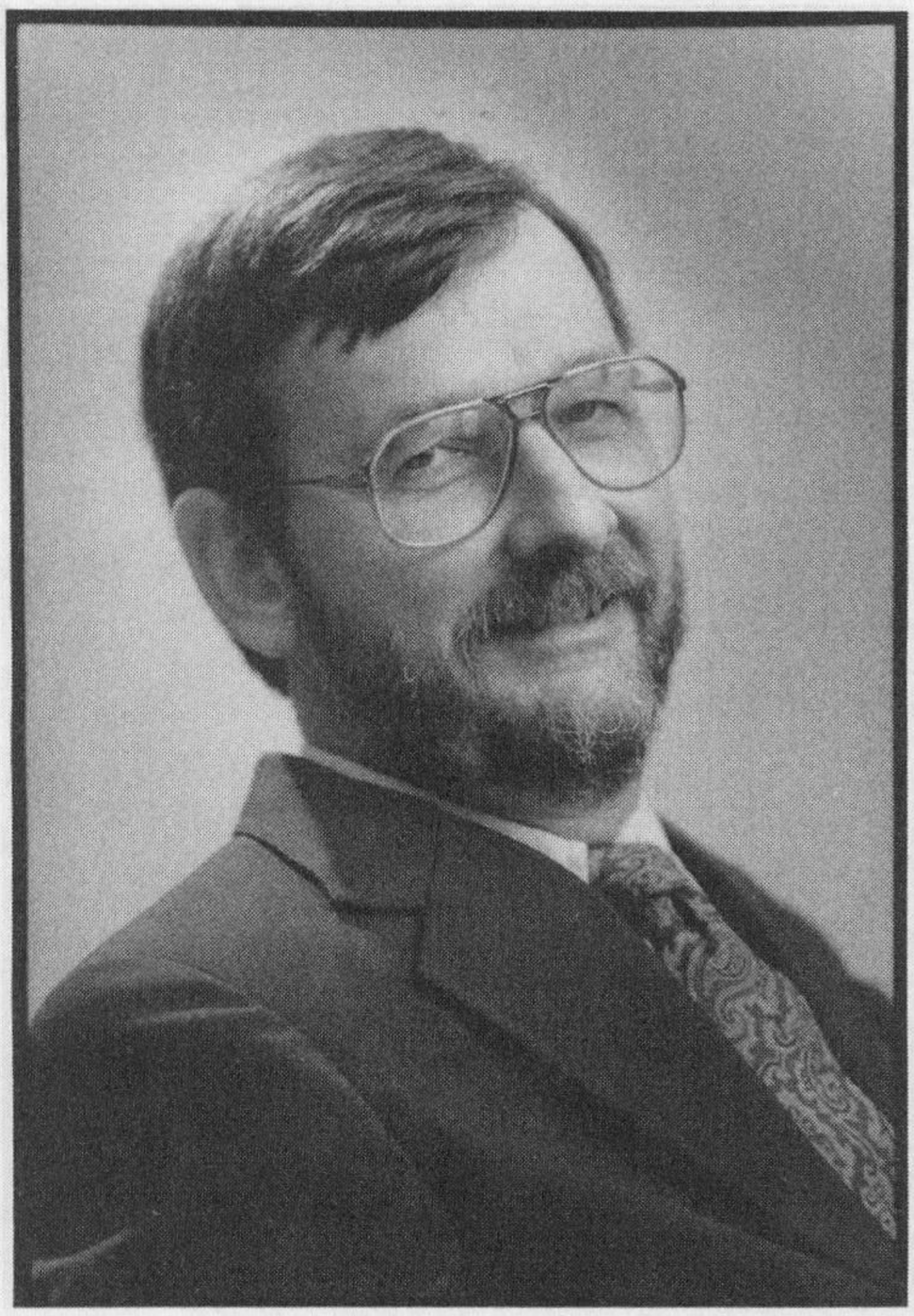
Susquehanna has disappeared from the collective memory of southern Maryland, its land subsumed into the naval air station property at Patuxent and its structures demolished or moved. In contrast, the familiar Historic St. Mary's City, despite it tranquil setting, has been the subject of an epic, unresolved struggle to

control its narrative, resulting in what King sees as not just a baroque village but the battleground of an ideological struggle where "the state's founding memory is negotiated" and anxieties about suburban growth and the future of the region are confronted (136).

At Point Lookout, a state recreational park that is also the historic site of a Union Army Civil War prison camp, visitors are scarcely aware of the muted cacophony of historical and contemporary voices King has identified competing to be heard there: the ghosts of 50,000 white Confederate prisoners who passed through the prison tent community; their prison guards, some of them black Union soldiers who were former slaves; the spirits of 4,000 prisoners who died there of whom 3,400 never left; the management of the Veterans Administration cemetery where they are buried struggling with the aggressive POW descendants group that wants the Confederate flag displayed year round; and the cautious Maryland state park officials, presenting the factual story while avoiding the "larger political and interpretive questions about the [Civil War]" (147).

King lays out her methodology in the introductory chapter and expressly reserves the book's last chapter for specialists "interested in the broader theoretical and methodological issues raised by the interpretation of these Maryland landscapes" (14). A general reader with no grounding in material culture vocabulary or concepts would have benefited from a somewhat more accessible introduction or, space permitting, a short primer on material culture and suggestions for further reading in the book's back matter. Nonetheless, the chapters that address the three subject sites are not impenetrable. Any reader who is willing to accept the challenge will be greatly rewarded by King's unique insights into early Maryland history, her painstaking and highly intellectual methodology, and the fascinating and nuanced accounts of the competition for ideological control of the sites' narratives.

Royanne Chipps Bailey
Independent Scholar



Joseph L. Arnold Prize

for Outstanding Writing on Baltimore's History in **2013**

Submission Deadline: February 1, 2014

Thanks to the generosity of the Byrnes Family in Memory of Joseph R. and Anne S. Byrnes, the Baltimore City Historical Society presents an annual Joseph L. Arnold Prize for Outstanding Writing on Baltimore's History, in the amount of $500.

Joseph L. Arnold, Professor of History at the University of Maryland, Baltimore County, died in 2004, at the age of sixty-six. He was a vital and enormously important member of the UMBC faculty for some three and a half decades as well as a leading historian of urban and planning history. He also played an active and often leading role with a variety of private and public historical institutions in the Baltimore area and at his death was hailed as the "dean of Baltimore historians."

Entries should be unpublished manuscripts between 15 and 45 double-spaced pages in length (including footnotes/endnotes). Entries should be submitted via email as attachments in MS Word or PC-convertible format. If illustrations are to be included they should be submitted along with the text in either J-peg or TIF format.

There will be a "blind judging" of entries by a panel of historians. Criteria for selection are: significance, originality, quality of research and clarity of presentation. The winner will be announced in Spring 2014. The *BCHS* reserves the right not to award the prize. The winning entry will be posted to the *BCHS* webpage and considered for publication in the *Maryland Historical Magazine*.

Further inquiries may be addressed to: baltimorehistory@law.umaryland.edu.

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14. Issue Date for Circulation Data Below: SPRING 2013

15. Extent and Nature of Circulation		Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies *(Net press run)*		3,071	3,570
b. Paid Circulation *(By Mail and Outside the Mail)*	(1) Mailed Outside-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	2,823	3,320
	(2) Mailed In-County Paid Subscriptions Stated on PS Form 3541 *(Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)*		
	(3) Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS®		
	(4) Paid Distribution by Other Classes of Mail Through the USPS (e.g., First-Class Mail®)		
c. Total Paid Distribution *(Sum of 15b (1), (2), (3), and (4))* ▶		2,823	3,320
d. Free or Nominal Rate Distribution *(By Mail and Outside the Mail)*	(1) Free or Nominal Rate Outside-County Copies included on PS Form 3541		
	(2) Free or Nominal Rate In-County Copies Included on PS Form 3541		
	(3) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (e.g., First-Class Mail)		
	(4) Free or Nominal Rate Distribution Outside the Mail *(Carriers or other means)*		
e. Total Free or Nominal Rate Distribution *(Sum of 15d (1), (2), (3) and (4))*		14	14
f. Total Distribution *(Sum of 15c and 15e)* ▶			
g. Copies not Distributed *(See Instructions to Publishers #4 (page #3))* ▶		234	236
h. Total *(Sum of 15f and g)*		3,071	3,570
i. Percent Paid *(15c divided by 15f times 100)* ▶		91.92	92.9

16. ☐ **Total circulation includes electronic copies. Report circulation on PS Form 3526-X worksheet.**

17. Publication of Statement of Ownership
☑ If the publication is a general publication, publication of this statement is required. Will be printed in the FALL 2013 issue of this publication. ☐ Publication not required.

18. Signature and Title of Editor, Publisher, Business Manager, or Owner	Date
DIRECTOR OF PUBLICATIONS + LIBRARY SERVICES	9/26/13

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