CONSIDERING WILLIAM AND MARY’S HISTORY WITH SLAVERY: THE CASE OF PRESIDENT THOMAS RODERICK DEW

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ABSTRACT

Amidst the recent apologies for slavery from the legislatures of Virginia, Maryland, North Carolina, Alabama, New Jersey, and Florida, there is significant controversy over the wisdom of investigations of institutions' connections to slavery and apologies for those connections.¹ The divide over attitudes toward apologies falls along racial lines. This Article briefly looks to the controversy on both sides of the apology debates.

Among those questions about investigations of the past, universities occupy a special place. Efforts at recovery of their connections to slavery include a study released by graduate students at Yale University in 2001, a report by Brown University’s Steering Committee on Slavery and Justice, and the University of Virginia’s Board of Visitors’ spring 2007 apology for that institution’s connections to slavery.

These efforts lead to a question about whether other schools ought to consider self-investigations. The College of William and Mary is a particularly good place to ask such questions. This Article focuses on Thomas R. Dew, first a professor, then president at William and Mary from 1828 to his early death in 1846. Dew is the author of Review of the Debates in the Virginia Legislature of 1831 and 1832, one of the most reprinted arguments on slavery in the years leading into the Civil War. He is also the author of one of the most comprehensive and important histories published in the United States in the nineteenth century, A Digest of the Laws, Customs, Manners, and Institutions of the Ancient and Modern Nations. Through Dew we can gauge the intellectual connections to slavery, and then ask the important question: what—if anything—is an appropriate institutional response today? We can use Dew’s thought to begin a discussion of the virtues and pitfalls of apologies and to assess the value of talk of the connections to the past.

Introduction

In 1836, Nathaniel Beverley Tucker, recently appointed professor of law at William and Mary, published the novel George Balcombe to much acclaim. It tells the story of a graduate of William and Mary, William Napier, who went to Missouri to find a lost will that would allow him to recover his inheritance. He seeks to recover...
the money owed to him, but the novel is also about preserving a memory of his family and recovering connections with the past. For example, at one point George Balcombe realizes that he was once a friend of Napier’s family and even knew Napier as a child. Balcombe explains, “So goes the world! We love, we toil, we fight, we give our heart, and purse, and blood for those who presently forget us, and whom we forget.” Even within an individual’s lifetime—to say nothing of across generations—there is the struggle to remember. Issues of truth commissions and apologies seek a similar reconciliation with the past: like the hero of Tucker’s novel, they are both forward- and backward-looking, and they seek a memory and an understanding of the connections of our common humanity.

There is much talk these days of the connections between universities, businesses, and the government to the sins of slavery and Jim Crow segregation. Historians have told us much about the violence that supports claims for reparations and their modest subset, truth commissions and apologies. Yet there is important work that needs to be done on the moral case. Some of the issues that must still be addressed are the connections of the government to slavery, the ways those crimes continue to have an impact today, and the reasons why the entire community might have some responsibility for these crimes.

Even aside from the moral case—or perhaps because of the questions associated with it—there is substantial opposition. Poll data reveal that reparations advocates have a very long way to go to win public support. When the Mobile Register polled on reparations for slavery in 2002, the paper found it was the most racially divisive issue it had ever polled on. Something like sixty-seven percent of black Alabamians

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7 See id.
8 Id. at 69.
9 Id. at 70.
10 Many of us think of apologies as a form of reparations, as a form of attempting to make amends for historic injustice. See, e.g., ALFRED L. BROPHY, REPARATIONS: PRO & CON (2006).
were in favor, whereas something like five percent of white Alabamians were in favor.\textsuperscript{13} It is “something like,” because some white people became so enraged at the mere suggestion of reparations that they could not complete the poll.\textsuperscript{14} As a result, it was difficult to get an accurate sample.\textsuperscript{15} There have been some recent changes, however, in poll data on apologies for slavery. While in 2002 fewer than one in four white Alabamians supported an apology for slavery, by 2007 that figure had increased; apparently, more than forty percent then supported an apology.\textsuperscript{16} While fifty-six percent of white Alabamians still opposed an apology, over five years the public became more accepting of apologies.\textsuperscript{17}

There is a conflict, then, in how to deal with the collective memory of slavery. Part of this relates to our self-image as Americans: do we view our country as a place of unbounded opportunity or of oppression? There is a question, then, of how to bridge this chasm. How can this discussion be effected? That leads to some very practical questions. What can schools, businesses, and individuals do now that will be most positive? How can actions be positive and still be significant?

\textsuperscript{13} Hodges, \textit{supra} note 12.

\textsuperscript{14} Id.

\textsuperscript{15} See Brophy, \textit{supra} note 12, at 1182.


Some of the progress in support for apologies (and presumably truth commissions) may correlate with legal academics’ seemingly changing focus from reparations to truth commissions. This changing focus appears from a comparison of searches for the term “slavery” in the same sentence as “reparations” with searches for the phrases “truth commission” and “transitional justice” in the Westlaw journals database from 2000 to 2007, as the following table reveals:

<table>
<thead>
<tr>
<th>Year</th>
<th>Slavery /s reparations</th>
<th>Slavery /s truth commission</th>
<th>Slavery /s transitional justice</th>
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<tr>
<td>2000</td>
<td>14</td>
<td>61</td>
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<td>2001</td>
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<td>2004</td>
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<td>2006</td>
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<td>115</td>
<td>111</td>
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<tr>
<td>2007</td>
<td>52</td>
<td>99</td>
<td>132</td>
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</table>

(Search completed on Mar. 28, 2008).

So, although references to slavery reparations peaked in 2004 and declined by half since then, references to truth commissions have stayed relatively constant since 2002. References to transitional justice have also increased dramatically over this time and were twice as common beginning in 2005 as references to slavery reparations.

\textsuperscript{17} Kitchen, \textit{supra} note 16.
I. Truth Commissions and Apologies Past

We live in an age of apology and of redemption as well. Apologies from states, as well as individuals, are now commonplace. There have been apologies from the United States government for long-past events, such as from Congress for the deprivation of Hawaiian sovereignty, from the President for the Tuskegee syphilis experiments, and from the Senate for its failure to pass anti-lynching legislation. Individual states have apologized for tragedies like the Tulsa riot of 1921, and now six states for their participation in slavery. There have been apologies for the actions of non-government bodies as well, such as the Southern Baptist Convention’s 1995 apology for the sins of racism, the Presbyterian General Assembly’s apology for its connections to slavery, the *Hartford Courant*’s apology for running advertisements for the sale of slaves, and apologies from Aetna for insuring slaves and JP Morgan Chase for its predecessors’ roles in the mortgaging of humans.

Those apologies run alongside the increasing investigations of our past by truth commissions like those established to study the Wilmington riot of 1898, the Tulsa

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22 See supra note 1 and accompanying text.
riot of 1921, the 1979 Greensboro massacre, and Brown University’s connections to slavery. Despite setbacks in the legal case for reparations, there is continuing discussion of them. Much of the work has been local, such as the Chicago City Council’s Slavery Era Disclosure Ordinance, which led to apologies by companies including JP Morgan Chase; the California insurance disclosure legislation, which led to the “Slavery Era Insurance Registry,” a registry of the names of slaves who were insured by companies doing business in California today and the slave owners who insured them; and Maryland legislation supporting a bill to study slavery’s effect on our country. Native Hawaiians received an apology from the federal government in 1993, which was subsequently used as a basis for granting relief in a case involving a trust for Hawaiian children. In 2007 and 2008, legislatures in Virginia, Maryland, North Carolina, Alabama, New Jersey, and Florida apologized for their connections to slavery. In spring 2007, following the Virginia legislature’s apology, the University of Virginia’s Board of Visitors apologized for the university’s connections to slavery.

31 See Brown Univ. Steering Comm. on Slavery & Justice, supra note 3, passim.
32 See, e.g., Richard A. Epstein, The Case Against Black Reparations, 84 B.U. L. Rev. 1177, 1177 (2004) (“The legal case for black reparations has been rejected. The political struggle for black reparations continues.”). Professor Epstein is certainly correct that the lawsuits for reparations for slavery and Jim Crow have been defeated. See, e.g., In re African American Slave Descendants Litigation, 471 F.3d 754 (7th Cir. 2006), cert. denied, 128 S. Ct. 92 (2007); Alexander v. Oklahoma, 382 F.3d 1206 (10th Cir. 2004), cert. denied, 544 U.S. 1044 (2005).
38 See Doe v. Kamehameha Sch., 470 F.3d 827, 845 (9th Cir. 2006), cert. denied, 127 S. Ct. 2160 (2007).
39 See supra note 1 and accompanying text.
40 See Kinzie, supra note 4. The action by the Board of Visitors built on a previous call by students for an apology. See Maura O’Keefe & LaQuisha Banks, Forum Addresses History
II. GOALS OF TRUTH COMMISSIONS AND APOLOGIES

Why is it that people and institutions engage in these difficult self-examinations? What is it that we might want from truth commissions and apologies? Perhaps there is a way to move forward, in a positive way.

At a basic level, there is a desire to address the public memory and understanding of our history which respects the contributions of African Americans and respects and understands the suffering and disability that is the legacy of slavery and Jim Crow. We have an exceedingly long way to go in bringing to the public an understanding of the basic facts of American history—like the horror that was slavery, as well as the role of slavery in impelling the South towards Civil War. To take one example, there is a dispute at Sewanee, the University of the South, about the meaning of the university’s connections to the Confederacy.\footnote{41} Sewanee had multiple representations of Confederate generals, including a monument for Edmund Kirby-Smith placed in the early twentieth century by the United Daughters of the Confederacy and a mace given by a donor in 1964, which features a Confederate battle flag; the mace is dedicated to Nathan Bedford Forrest, a founder of the Ku Klux Klan.\footnote{42} Kirby-Smith was a professor at Sewanee, but Bedford Forrest had no connection with the university.\footnote{43}

The \textit{New York Times} provided extensive coverage of the controversies in November 2005, which included the university’s downplaying of its connections to the Confederacy.\footnote{44} It no longer uses the mace.\footnote{45} Some fear that the school may go further.\footnote{46} One outraged alumnus wrote a manifesto to defend what he calls Sewanee’s “provincialism.”\footnote{47} Among the things that he said in defense of the Confederate symbols on the campus is that slavery was a benign Christian institution:

\begin{quote}
The Nazis had a very different relationship with the Jews than the slave owners had with their legal property, whom they fed, clothed, housed, and lovingly baptized into Christ’s redeeming
\end{quote}

\begin{footnotes}
\item[42] Id.
\item[43] Id.
\item[44] See id.
\item[45] Id.
\item[46] Id.
\item[47] Prescott N. Dunbar, \textit{A Manifesto of Justice for Louise Claiborne-Armstrong, Benefactress of the University of the South, Sewanee, Tennessee}, Jan. 24, 2006, http://www.justicemanifesto.net (“Sewanee’s allure is its provincialism; the students express it through the standing traditions, and the Domain advertises it through Confederate memorials.”).
\end{footnotes}
salvation. On the Old South plantation, the Master and his Lady and the servants and the field hands constituted an interdependent family community, and when most successful, it was noted for mutual affection and shared devotion.\textsuperscript{48}

While many slaveholders embraced such paternalistic ideals, this description has more to do with the moonlight and magnolia school and the plantation school of literature than with what happened on the plantations of the Old South. The moonlight and magnolia school has deep roots in American culture; it existed before the Civil War in proslavery sentimental novels such as Caroline Hentz’s 1854 novel \textit{The Planter’s Northern Bride}.\textsuperscript{49} Another example appears in Hentz’s long-neglected short story \textit{The Stolen Child}.\textsuperscript{50} In that story, a college president takes action to help return a young, free black boy to his mother after he is kidnapped by a slave trader.\textsuperscript{51} In that way, Hentz portrays affluent white southerners as beneficent and concerned with the welfare of blacks, even if they have no property interest in them.\textsuperscript{52}

Related to the moonlight and magnolia school was scholarship that looked to the idea that Reconstruction was a disastrous result of the breakdown of the rule of law. Some examples of this are Thomas Dixon’s 1902 book \textit{The Leopard’s Spots: A Romance of the White Man’s Burden}\textsuperscript{53} and his 1905 book \textit{The Clansman}, which appeared about the same time that southern states were passing constitutional amendments to disenfranchise black men.\textsuperscript{54} Dixon’s books and D.W. Griffith’s movie rendition of \textit{The Clansman, Birth of a Nation},\textsuperscript{55} are outstanding ways to see how all these diverse ideas fit together: the charges that a foolish, blundering generation brought us into Civil War, the breakdown of the rule of law during Reconstruction, and the “redemption” of the South from those silly and corrupt Yankees and Negroes.\textsuperscript{56}

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\textsuperscript{48} Id.

\textsuperscript{49} Caroline Lee Hentz, \textit{The Planter’s Northern Bride} (Kessinger Publ’g 2004) (1854).


\textsuperscript{51} Hentz, supra note 50, at 47.

\textsuperscript{52} See id.

\textsuperscript{53} Thomas Dixon, Jr., \textit{The Leopard’s Spots: A Romance of the White Man’s Burden—1865–1900} (Pelian Pub’g Co. 2001) (1902).

\textsuperscript{54} Thomas Dixon, Jr., \textit{The Clansman: An Historical Romance of the Ku Klux Klan} (Pelian Pub’g Co. 2005) (1905).

\textsuperscript{55} The \textit{Birth of a Nation} (D.W. Griffith Corp. 1915).

\textsuperscript{56} See, e.g., Claude G. Bowers, \textit{The Tragic Era: The Revolution After Lincoln} (1929).
This is the kind of historical misinformation with which our nation all too often must deal. It informs and structures how voters, legislators, and judges respond to issues of race. If one thinks that Reconstruction was an era of corrupt black politicians and Yankees, then one is unlikely to have a favorable view of the Reconstruction-era amendments, or of the need for federal protection of voting rights, or of the need for civil rights legislation, or of any kind of social programs.

All of this invokes important questions about how ideology relates to action. Much could be written about the connections of college history professors to the dissemination of a false (or incomplete or incorrect) history. Southern interpretations of war and Reconstruction helped win the hearts and minds of Americans in the era of Jim Crow, such that by 1896 it was almost unthinkable for the United States Supreme Court to uphold even a limited right of integration.57

In essence, what we need is a more complete understanding of the past. This is what one might call “applied legal history.”58 That is, a history of law—of court decisions, statutes, and the practices of law enforcement—that is both accurate and relevant to understanding questions we have today.

III. UNIVERSITY HISTORIES

As we increasingly revisit the past, however, it is important to ask questions about the wisdom of doing so. Is discussion of the past a bad idea? It destabilizes, of course. So people who are in power are unlikely to want that discussion at all.59 Universities, because of their function and their power and because they rely on

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57 See Plessy v. Ferguson, 163 U.S. 537 (1896).

There has been relatively little attention focused on the intellectual monuments left in the judicial opinions—the ways that courts attempted to channel and settle disputes and to portray the scientific and moral correctness of Jim Crow.

tradition, are good places to discuss such issues. Brown University is the school that has accomplished the most. Its Steering Committee on Slavery and Justice, under the direction of Professor James T. Campbell, has conducted an intensive study of Brown University’s connections to slavery and antislavery, as well as Rhode Island’s connections to slavery.\footnote{Brown Univ. Steering Comm. on Slavery & Justice, supra note 3, passim.} Then it moved further to investigate how other institutions have dealt with legacies of violence and injustice.\footnote{Id. at 33–57.} Emory University’s Transforming Community Project, which is funded in part by the Ford Foundation’s Difficult Dialogues Initiative,\footnote{Difficult Dialogues Initiative, Promoting Pluralism & Academic Freedom on Campus, http://www.difficultdialogues.org/ (last visited Feb. 2, 2008).} is focused on reconciliation on its campus, as well as its history.\footnote{Leslie M. Harris, (Re)Writing the History of Race at Emory, Academe Online, July–Aug. 2006, http://www.aaup.org/AAUP/pubres/academe/2006/JA/feat/Harr.htm. On the University of North Carolina at Chapel Hill’s process, see Press Release, Kelly Ochs, UNC News Service, UNC Exhibit, Discussion Explore Early University Ties to Slavery (Oct. 7, 2005), available at http://www.unc.edu/news/archives/oct05/slavery100705.htm.} There are substantial limitations, of course, on universities’ power. They are dependent on the goodwill of many people and institutions in their community—alumni, donors, members of the legislature, and corporations, as we were reminded during the controversy over the cross in the Wren Chapel.\footnote{See, e.g., Austin Wright, Donor Pulls $12 Million over Wren Cross Policy, Flat Hat (Wm. & Mary), Feb. 28, 2007, available at http://www.flathatnews.com/news/449/new-cross-policy-costs-college-12-million-donor.} Schools’ historically close connection to the powerful accounts in part for their compliance with the wishes of the powerful. But schools have an independence too, which allows them to explore alternative paths.

Ralph Waldo Emerson’s 1837 Phi Beta Kappa Address, American Scholar, spoke of the independence of scholars.\footnote{Ralph Waldo Emerson, The American Scholar (1837), reprinted in Kenneth S. Sacks, Understanding Emerson: “The American Scholar” and His Struggle for Self-Reliance 131 (2003).} Emerson assigns scholars, by which he mostly means students (and one supposes faculty if they have the ability to act the part of scholars rather than pedants), the task of looking through to the truth: The scholar is the world’s eye. He is the world’s heart. He is to resist the vulgar prosperity that retrogrades ever to barbarism, by preserving and communicating heroic sentiments, noble biographies, melodious verse, and the conclusions of history. Whatsoever oracles the human heart in all emergencies, in all solemn hours has uttered as its commentary on the world of actions,—these he shall
receive and impart. And whatsoever new verdict Reason from her inviolable seat pronounces on the passing men and events of to-day,—this he shall hear and promulgate. 66

Scholars in the South in Emerson’s time, likewise, saw their special role in society. University of Alabama Professor Henry Tutwiler’s Address to the Erosophic Society, delivered when he was twenty-six, urged similar activity for his audience. 67 “We must think for ourselves, and not be the mere passive receptacles of the thoughts of others.” 68 That independence of thought allows a student to grow. 69 One example of the need for independence and questioning appears among readers of books, for Tutwiler thought:

Books have now become one of the most important sources of information; but they may be, and no doubt often are, productive of evil instead of good . . . so unreflecting persons . . . are disposed to believe every thing which they read, when it does not conflict with a previously formed opinion. Now to read any book and adopt what is in it as mere matter of authority, will not only lead to confirmed ignorance, but is positively hurtful to the mind. 70

Tutwiler’s was an optimistic address, concluding with a celebration of moral progress. 71 Tutwiler, born in 1807 in Harrisonburg, Virginia, was educated at the University of Virginia in the 1820s. 72 He represented a final glimmer of the Enlightenment in antebellum Tuscaloosa, for he was a member of the American Colonization Society and worked with others in Tuscaloosa to end slavery while a professor at the University of Alabama from 1831 to 1837. 73

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66 Id. at 140.
67 See [Henry] Tutwiler, Address Delivered Before the Erosophic Society, at the University of Alabama, Aug. 9, 1834 (Tuscaloosa, Ala., Robinson & Davenport 1834).
69 See Tutwiler, supra note 67, at 11.
70 Id. at 11–12.
72 Tutwiler was, along with University of Alabama trustee James Birney, a member of the American Colonization Society. See John Quist, Restless Visionaries: The Social Roots of Antebellum Reform in Alabama and Michigan 317–18 (1998). Birney subsequently ran for President of the United States on the Liberty Party ticket in 1840 and 1844. Id. at 317.
There may be reason for study and action from students and faculty at other schools, such as the University of South Carolina (formerly South Carolina College),\textsuperscript{74} the University of North Alabama,\textsuperscript{75} Randolph-Macon College,\textsuperscript{76} and Transylvania University,\textsuperscript{77} to name several schools that had faculty who wrote proslavery treatises or delivered proslavery speeches in the antebellum period. Those were all schools where proslavery thought was an important part of the curriculum and the public discussion. There remains, of course, much to explore in northern schools as well. Even a cursory inspection of the speeches given at Harvard and Yale in the wake of the Fugitive Slave Act of 1850 discloses much support for the law and little sympathy for the slaves.\textsuperscript{78} Given the connections of the powerful to proslavery interests at the time, their behavior is more than understandable. Universities were connected to the wealthy and the powerful in that era, and the idea of academic freedom had not yet even begun to emerge. Moreover, one may reasonably argue that, by supporting


\textsuperscript{75} See R.H. Rivers, Elements of Moral Philosophy (Thomas O. Summers ed., Nashville, A.H. Redford 1871) (containing lectures given by the president of Alabama Wesleyan College, now University of North Alabama).

\textsuperscript{76} William A. Smith, Lectures on the Philosophy and Practice of Slavery (Thomas O. Summers ed., Nashville, Stevenson & Evans 1856) (containing lectures given by the president of Randolph-Macon College).

\textsuperscript{77} Transylvania’s lengthy and complex history is illustrated by an 1834 speech by law professor George Robertson, who acknowledged the immorality of slavery while employing a utilitarian calculus of the harm to society of emancipation as against the harm to individual slaves. See George Robertson, Address on Behalf of the Deinologist Society, of Centre College, Delivered at Danville on the 4th of July, 1834, in Scrap Book on Law and Politics, Men and Times 160, 164 (Lexington, Ky., A.W. Elder 1855); see also Introductory Lecture, Delivered in the Chapel of Morrison College, on the 7th of November, 1835, in id. at 171, 173 (“[T]he greatest attainable good of the greatest number is the ultimate object of political association . . . .”). See generally Paul D. Carrington, Teaching Law and Virtue at Transylvania University: The George Wythe Tradition in the Antebellum Years, 41 Mercer L. Rev. 673, 696–98 (1990) (emphasizing ambivalence of Transylvania’s law professors to slavery); Alfred L. Brophy, Considering Transylvania University’s Connections to Slavery (unpublished manuscript, on file with author).

\textsuperscript{78} See, e.g., Daniel Lord, On the Extra-Professional Influence of the Pulpit and the Bar: An Oration Delivered at New Haven, Before the Phi Beta Kappa Society of Yale College at Their Anniversary Meeting, July 30, 1851 (N.Y., S.S. Chatterton 1851); Timothy Walker, The Reform Spirit of the Day: An Oration Before the Phi Beta Kappa Society of Harvard University, July 18, 1850 (Boston, James Munroe & Co. 1850); see also Alfred L. Brophy, The Rule of Law in Antebellum College Literary Addresses: The Case of William Greene, 31 Cumb. L. Rev. 231 (2001) (exploring William Greene’s 1851 address at Brown University which supported the Fugitive Slave Act of 1850).
the Fugitive Slave Act, emancipation became more likely a decade later. These are all issues worth substantial discussion.

Support for the status quo came to popular fruition in Senator James Henry Hammond’s “mud-sill” theory of slavery, which taught that there must be a class of people who did the work to make it possible for others to do the thinking. It has particular relevance to apologies and reparations for universities:

In all social systems there must be a class to do the mean duties, to perform the drudgery of life. That is, a class requiring but a low order of intellect and but little skill. Its requisites are vigor, docility, fidelity. Such a class you must have, or you would not have that other class which leads progress, refinement and civilization. It constitutes the very mud-sills of society and of political government; and you might as well attempt to build a house in the air, as to build either the one or the other, except on the mud-sills. Fortunately for the South, she found a race adapted to that purpose to her hand. A race inferior to herself, but eminently qualified in temper, in vigor, in docility, in capacity to stand the climate, to answer all her purposes. We use them for the purpose, and call them slaves.

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79 See Carrington, supra note 77, at 696–98 (suggesting contributions of Transylvania University’s law school to the rule of law and thus to emancipation). As Professor David Potter explained, in what remains the leading work on the coming of the Civil War, The Impending Crisis, the Compromise of 1850 gave the Union enough time to become both strong enough and resolved enough to fight slavery, therefore allowing our nation to end slavery, though that result was not so predictable in 1850. David M. Potter, The Impending Crisis, 1848–1861, at 118 (Don E. Fehrenbacher ed., 1976). As Potter phrased it:

Even as for antislavery, it is difficult to see that the Compromise ultimately served the purpose of the antislavery idealists less well than it served those who cared primarily for peace and union, though it is easy to see why antislavery men found the medicine more distasteful. If, as Lincoln believed, the cause of freedom was linked with the cause of Union, a policy which dealt recklessly with the destiny of the Union could hardly have promoted the cause of freedom.

Id. at 119.


82 Id.
Although Hammond is speaking in general terms, this sentiment gained particular force in intellectual and literary contexts—as in the inaugural issue of the *Southern Literary Messenger*—where the South was seen, ideally, as better positioned than the North to contribute to Western civilization because its thinking members—white men and women—were released from menial labor and freed to pursue higher intellectual and artistic callings. If, as antebellum southerners argued, the intellectual and cultural pursuits that define universities were underwritten, indeed made possible, by slave labor, then certainly there is an acknowledgment to be made, if not a debt to be paid.

Some of the story that remains to be recovered is of opposition to slavery at antebellum colleges. North Carolina Supreme Court Justice William A. Gaston openly questioned slavery in an 1832 address to two student literary societies at the University of North Carolina. For he told the students:

> Disguise the truth as we may, and throw the blame where we will, it is Slavery which, more than any other cause, keeps us back in the career of improvement. It stifes industry and represses enterprize—it is fatal to economy and providence—it discourages skill—impairs our strength as a community, and poisons morals at the fountain head. How this evil is to be encountered, how subdued, is indeed a difficult and delicate enquiry, which this is not the time to examine, nor the occasion to discuss. I felt, however, that I could not discharge my duty, without referring to this subject, as one which ought to engage the prudence, moderation and firmness of those who, sooner or later, must act decisively upon it.

At Brown University, President Francis Wayland served as a staunch supporter of the antislavery cause. These stories need much further exploration.

And, as we look deeply at our history, we see how complex it is. For example, at the University of Mississippi, Chancellor Frederick Barnard expelled a student who assaulted one of his female slaves and was subsequently investigated by the Board of Trustees for taking the testimony of the slave against the student. Barnard’s

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83 H., *Southern Literature*, 1 S. Literary Messenger 1–3 (1834) (attributed to James E. Heath).
85 See William Gaston, *Address Delivered Before the Philanthropic and Dialectic Societies at Chapel-Hill, June 20, 1832* (Raleigh, N.C., Jos. Gales & Son 1832).
86 *Id.* at 14.
87 See Domestic Slavery Considered as a Scriptural Institution: In a Correspondence Between the Rev. Richard Fuller, of Beaufort, S.C., and the Rev. Francis Wayland, of Providence, R.I. (N.Y., Lewis Colby & Co. 5th ed. 1847).
88 *Record of the Testimony and Proceedings, in the Matter of the Investigation*
relationship with slavery is complex. While a professor at the University of Alabama, he gave a Fourth of July speech on the virtues of union, which many took to be anti-slavery. Yet, he also owned a number of humans. Thus, universities’ problematic relationship to slavery and the enslaved cannot be reduced to one of exclusion. Far from being outside universities, slaves did much of the physical labor that kept them running. Far from needing to be “reincorporated” into such institutions, it is African Americans’ very presence that needs acknowledgment.

We need to be careful to make the moral and political case and to be measured in our rhetoric and our demands. In that process of consideration we must examine whether a college apology makes sense, which involves a careful consideration of and respect for the case against truth commissions and apologies. Universities have both an ability and a duty to discuss such issues. And the need for discussion is illustrated by the extraordinary response to initial newspaper reports that William and Mary students are asking for investigation.

IV. The Benefits and Pitfalls of an Apology?

Amidst the apologizing and talk of apologies, it is important to ask: what good are apologies? And that question is particularly apt now, when other schools are considering them. Proponents have the burden of proof here. They must suggest
some reasons why we should dredge up unpleasant acts from our past, particularly acts that hold the potential to misrepresent our culpability. This is particularly so when we are talking about investigations of an institution’s past. For by talking about a single institution’s history—and only a piece of that history at that—we run the risk of distorting the past. We may also anger people upon whose goodwill we depend. A discussion for an apology will likely meet with two key arguments: the current generation is not responsible for prior crimes and an apology is, therefore, meaningless; and an apology dishonors the memory of the college or the South more generally, or at least distorts the role of slavery in the college’s history. Such a problem with historical context is particularly great with a school like William and Mary, where William Small taught Thomas Jefferson moral philosophy and where the humanitarian George Wythe (who was also Jefferson’s law teacher) held our country’s first chair in law.92 The Enlightenment ideas that helped free our nation were nurtured here.93 St. George Tucker, a leading antislavery advocate, lawyer, and judge, taught at William and Mary.94 Tucker’s edition of Blackstone’s Commentaries included his proposed plan for the gradual abolition of slavery.95 Yet Tucker’s son, Nathaniel Beverley Tucker, who began teaching law at William and Mary in 1834, criticized Blackstone’s treatment of slavery.96 There was a world of possibility, which was overwhelmed

96 Note to Blackstone’s Commentaries, Vol. 1, Page 423, 1 S. LITERARY MESSENGER 227 (1835) (attributed to Nathaniel Beverley Tucker). An anonymous response the next month expressed surprise at Tucker’s argument that slavery was correct and natural and expressed skepticism about Dew’s statement that people could sell themselves into slavery. A Virginian, Remarks on a Note to Blackstone’s Commentaries, Vol. 1, Page 423, 1 S. LITERARY MESSENGER 266, 269 (1835).

The transition from George Wythe to St. George Tucker to Nathaniel Beverley Tucker correlates with the changes in legal thought more generally, from an Enlightenment republicanism of the late eighteenth century to proslavery philosophy. See Paul Finkelman, Exploring Southern Legal History, 64 N.C. L. REV. 77, 91 (1985) (“Virginia gradually moved toward slavery on a case-by-case basis, with little planning or forethought.”). The changes at William and Mary track changes in the southern courts—from Judges Wythe and Roane to Judges Carr, Brockenbrough, and Ruffin. See, e.g., Phalen v. Commonwealth, 40 Va. (1 Rob.) 713 (1842); Tuckahoe Canal Co. v. Tuckahoe & James River R.R. Co., 38 Va. (11 Leigh) 43 (1840); James River & Kanawha Co. v. Turner, 36 Va. (9 Leigh) 313 (1838); Crenshaw v. Slate River Co., 27 Va. (6 Rand.) 271 (1828).
in the grim years leading into the Civil War. The institution’s enormous contributions to the cause of antislavery are in danger of being lost amidst talk of slavery at William and Mary.

There are other arguments against apologies as well, including that they inappropriately portray African Americans as victims and are, therefore, divisive. One of the most dispassionate editorials opposing apologies came from University of Georgia History Professor James Cobb. He said that apologies distract legislatures and those who ask for them from more pressing business. Such politically divisive measures may end up costing more than the good they produce.

Opponents of the University of Alabama’s 2004 slavery apology urged that the university move on instead of looking backward to past injustices; they felt that the current university was not responsible for the crimes of the university in the past. The most prominent faculty opponent of the apology argued that those asking for an apology were using the apology for political purposes. In fact, the desire to be freed of responsibility for the past is the central feature of the opposition. Thus, fear of permanent loss of political power, however unlikely in practice, underlay a refusal to apologize.

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98 On arguments against apologies and truth commissions, see Epstein, supra note 32, passim.
99 James C. Cobb, Official Slavery Apologies Are Bad for Blacks, New Republic, Apr. 9, 2007, excerpt available at http://hnn.us/roundup/archives/11/2007/4/37474 (“[T]he vague, half-hearted expressions of regret that the apology initiatives have thus far managed to extract hardly bespeak significant influence, and black leaders run the risk of expending their political capital on an issue that will have little tangible effect.”).
100 Id.
101 Id.
103 Id. For more on the University of Alabama’s slavery apology, see Alfred L. Brophy, Reparations Talk in College, 11 Mich. J. Race & L. 195, 198 n.12 (2005) (reviewing David Horowitz, Uncivil Wars: The Controversy over Reparations for Slavery (2002)).
105 Johnson, supra note 102 (noting that demands for an apology “are meant to beguile us into a false sense of comradeship that we may be led down the garden path to admitting fundamental flaws, incurable weakness and permanent unworthiness of citizenship”).
So truth commissions and the apologies attendant to them must be justified and thought through extremely carefully. Anyone seeking one will need to be able to answer in fairly concise terms and to various audiences, why? Particularly when offered in the wake of a thorough historical investigation, they promise a point of reconciliation. They are places where people who have been left outside of the memory of our country’s institutions can be reincorporated. One person descended from people who had been enslaved wrote in response to a Montgomery Advertiser editorial that criticized the apology,

I find your editorials devaluing the importance of an apology to descendants of African-Americans whose forebears were forced into slavery at the University of Alabama dehumanizing. I have traced my paternal family history from 1835. My forebears without a doubt were forced into slavery. An apology from the descendants and institutions who “owned” my ancestors would mean much to me. Much could come from this contemporary reconciliation as a pledge that present white descendants will not engage forever white-skin privilege of the horror of racism, exploitation, discrimination, injustice, inequality and the variations thereof that we still, unfortunately, experience today.106

Apologies are part of recognizing and honoring the contributions of people who have been left outside of (or misrepresented by) our historical narratives. They are part of rebalancing our historical narrative; they offer a form of honesty and a basis for making forward-looking decisions about what other corrective action (if any) is appropriate. One of the classic grounds for race-based affirmative action is evidence of past discrimination by the institution taking action.107

I am less convinced than Cobb108 that apologies are distracting. I see little evidence that if a legislature—or school—abandoned a truth commission that it would use that energy and time for some more worthwhile purpose. The cost may be relatively small, just as the benefit may be relatively modest. Apologies are not a cure for all that ails us. They may, however, have some beneficial effects. More important than an apology, however, is the discussion of the connections of the past to the present.

Truth commissions and apologies that may follow in their wake are part of shifting the framework of thinking and discussion. President Bush’s 2003 speech at


108 See supra notes 99–101 and accompanying text.
Goree Island, a main point of embarkation for slave ships bound for the Americas, acknowledged the hard work our country still has ahead of it. President Bush also cited the progress made possible by the human spirit’s desire for freedom:

For 250 years the captives endured an assault on their culture and their dignity. The spirit of Africans in America did not break. Yet the spirit of their captors was corrupted. Small men took on the powers and airs of tyrants and masters. Years of unpunished brutality and bullying and rape produced a dullness and hardness of conscience. Christian men and women became blind to the clearest commands of their faith and added hypocrisy to injustice. A republic founded on equality for all became a prison for millions. And yet in the words of the African proverb, “no fist is big enough to hide the sky.” All the generations of oppression under the laws of man could not crush the hope of freedom and defeat the purposes of God.

President Bush’s speech may be a product of the movement for apologies and reparations for the eras of slavery and Jim Crow. While many will see it as too little, it may be a positive step towards acknowledgment of work left undone and a promise towards trying to do more.

So as we begin to think about moving forward in small steps, we ought to think about the footholds and pitfalls of apologies. We ought to proceed with modest steps and in an effort to listen and to understand. This is a goal of William and Mary, and if anyone can have a dialogue and can talk about the connections of the past to the present and their meaning, it ought to be those in the academy. Moreover, even some of the staunchest opponents of reparations for slavery are proponents of apologies.

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109 President George W. Bush, Remarks by the President on Goree Island, Senegal (July 8, 2003), transcript available at http://www.whitehouse.gov/news/releases/2003/07/20030708-1.html (“My nation’s journey toward justice has not been easy and it is not over. The racial bigotry fed by slavery did not end with slavery or with segregation. And many of the issues that still trouble America have roots in the bitter experience of other times. But however long the journey, our destination is set: liberty and justice for all.”).

110 Id.

111 See Andy Garden, SA Bill Apologizes for Slavery, FLAT HAT (Wm. & Mary), Dec. 7, 2007, available at http://www.flatthatnews.com/news/1656/sa-bill-apologizes-for-slavery (discussing William and Mary Student Assembly’s passage of a bill to initiate research into the College’s connection with slavery in order to encourage the Board of Visitors to issue an apology).

112 See, e.g., Carol M. Swain, An Apology for Slavery, WASH. POST, July 16, 2005, at A17. Professor Swain has argued passionately against reparations for slavery. In New White Nationalism, she states, “Current reparations talk inflames the white electorate, undermines the bridge-building process across racial lines, fuels white nationalist sentiments, and is insuffi-
There are, then, some things that may warrant discussion in regard to Thomas Roderick Dew. President Dew is identified on the William and Mary website as “Graduate of William and Mary. Political economist; educator; author; professor of history and political law.”[113] But that does not begin to do justice to Dew’s importance to antebellum thought. He was born in 1802 in King and Queen County, Virginia, then educated at William and Mary beginning in 1818.[114] Following his graduation with a master’s degree, he spent several years studying in Europe.[115] He returned home in 1826 and was appointed a professor at William and Mary.[116] He ascended to the presidency in 1836.[117] He died, prematurely, while visiting France in 1846 on his honeymoon.[118]

Dew’s first book, *Lectures on the Restrictive System*, published in 1829, is a work of political economy emphasizing both the virtues of the market and the greed of humans.[119] His second book, *Review of the Debate in the Virginia Legislature of 1831 and 1832 (Review)*, was his most influential.[120] It purported to be a review sufficiently targeted in its aims to help those members of minority groups who are most in need...
of several works on the Virginia legislature’s debate over a plan for the gradual abolition of slavery, which it considered in the wake of the August 1831 Nat Turner Rebellion.\(^{121}\) Turner and a few of his band of co-conspirators gathered together and killed his owner and several members of his owner’s family in the early morning of August 22, 1831, in Southampton, Virginia.\(^{122}\) The rebellion did not last long. Turner and his co-conspirators killed fewer than sixty white people before being stopped less than two days after the rebellion began.\(^{123}\) Turner eluded capture until October when he was caught,\(^{124}\) and then sentenced to death; he was executed on November 11, 1831.\(^{125}\)

That short-lived rebellion led to a serious rethinking in Virginia about what to do with the institution of slavery. It opened an extraordinary debate in the Virginia House of Delegates in December 1831 about a resolution regarding the expediency of terminating slavery through a gradual abolition bill; by the end of January, the resolution on a gradual abolition plan became a plan for deportation of African Americans freed since 1806.\(^{126}\) It was indefinitely postponed in the Senate.\(^{127}\) But more important

An earlier, shorter version appeared in *Abolition of Negro Slavery*, 12 Am. Q. Rev. 189 (1832), and was summarized in *Professor Dew’s Article on Slavery*, Richmond Enquirer, Mar. 12, 1833, at 2. It was reprinted in *The Ideology of Slavery: Proslavery Thought in the Antebellum South*, 1830–1860, at 23 (Drew Gilpin Faust ed., 1981). Subsequent references in this Article are to the 1852 edition, *supra*, because it is conveniently available on the Internet.


\(^{122}\) See Gray, *supra* note 121, at 293.

\(^{123}\) *Id.* at 297, 301; French, *supra* note 121, at 3.

\(^{124}\) Gray, *supra* note 121, at 298.

\(^{125}\) *Id.* at 301; French, *supra* note 121, at 49–50.

\(^{126}\) See French, *supra* note 121, at 56–58.

than what the House voted on was the nature of the debate: what should be done about slavery?

Dew’s Review was more than a recitation of the debates, however; it was an attack on the idea of abolition. It was a book-length treatment of the history of slavery and a defense of its place in Virginian society.\(^\text{128}\) That famous debate marked the final point in the Old South of the viability and efficacy of the institution of slavery.\(^\text{129}\) Afterwards, slavery was no longer questioned so openly in public in the South.\(^\text{130}\) Particularly after abolitionists employed the United States mails to distribute literature throughout the South in 1835, southerners no longer abided public abolition talk.\(^\text{131}\)

The Review was one of the leading proslavery works in the forty years leading into the Civil War. The Review (also known as Dew’s Essay on Slavery) was reprinted numerous times, including in 1849 as a freestanding pamphlet and again in the 1852 volume, The Pro-Slavery Argument.\(^\text{132}\) Shortly thereafter, Dew published several pamphlets and numerous periodical articles.\(^\text{133}\) In the 1850s, other Virginians took up the proslavery argument—President William A. Smith of Randolph-Macon College,\(^\text{134}\) Albert Taylor Bledsoe of the University of Virginia,\(^\text{135}\) George Frederick

\(^\text{128}\) See Dew, Professor Dew on Slavery, supra note 120, at 287.

\(^\text{129}\) See Alison Goodyear Frehling, Drift Toward Dissolution: The Virginia Slavery Debate of 1831–1832, at 203 (1982) (“Historians have traditionally cited Dew’s 1832 Review as a crucial watershed in Virginia history—a turning away from avowed anti-slavery principles of the revolutionary generation to adoption of a thoroughgoing ‘pro-slavery’ philosophy.”).

\(^\text{130}\) Id.; French, supra note 121, at 67.

\(^\text{131}\) French, supra note 121, at 72.

\(^\text{132}\) See supra note 120.


\(^\text{135}\) See Albert Taylor Bledsoe, An Essay on Liberty and Slavery (Phila., J.B. Lippincott & Co. 1856); Bledsoe, Albert Taylor, Documenting the American South,
Holmes of the University of Virginia (also of William and Mary and the University of Mississippi), 136 and Thornton Stringfellow 137—more forcefully than Dew. Dew’s largest work, A Digest of the Laws, Customs, Manners, and Institutions of the Ancient and Modern Nations, his lectures to his students at William and Mary, 138 was published posthumously, though major pieces of it appeared in the southern periodical press during his life and much of his thinking on property, feudalism, and the market appeared in the Review. 139 It stands as one of the most comprehensive interpretations of history in the entire nineteenth century, a great window into Dew’s thought and that of his contemporaries. 140

VI. UNDERSTANDING DEW’S THOUGHT

It is Dew’s Review that probably ought to concern us most for present purposes, for it gives us a window into Dew’s mind, a sense of the proslavery ideas in circulation at antebellum William and Mary, and shows the contributions that William and Mary made to the defense of slavery. William and Mary Law Professor Nathaniel Beverley Tucker told students that “[i]n this reading age . . . ‘he who writes a people’s books, need not care who makes their laws.’” 141 And in the years leading into the


136 See Harvey Wish, George Frederick Holmes and Southern Periodical Literature of the Mid-Nineteenth Century, 7 J. S. Hist. 343 (1941) (discussing the life and largely anonymous publications of Holmes).


138 Thomas Dew, A Digest of the Laws, Customs, Manners, and Institutions of the Ancient and Modern Nations (N.Y., D. Appleton & Co. 1870) [hereinafter Dew, A Digest].

139 See French Revolution, 5 S.Q. Rev. 1 (1844) (attributed to Thomas R. Dew); Dew, Professor Dew on Slavery, supra note 120, at 287.


The responses to Dew and the 1832 debate remind us how controversial his view was even within Virginia at the time and how many alternative, though not triumphant, visions appeared in Virginia. See, e.g., Jefferson, To the People of Eastern Virginia, Richmond Enquirer, Feb. 16, 1832 (responding to Appomattox, supra note 127); Jefferson, To the People of Eastern Virginia, Richmond Enquirer, Mar. 10, 1832 (same); York, supra note 121 (same).

Civil War, southerners frequently spoke of the need for southern literature, particularly in southern colleges. Dew is proof of the utility of such literature and of the phenomenon that Tucker described.

Dew’s Review harnessed fear of change—the impracticality of change—along with a narrative of the benefits of slavery for the slaveowners, non-slaveowners, and the slaves, too. We learn that slavery is central to America in the very first line: “In looking to the texture of the population of our country, there is nothing so well calculated to arrest the attention of the observer, as the existence of negro slavery throughout a large portion of the confederacy.”

In a countermove to the classic works that undermine order and hierarchy, like Thomas Paine’s Common Sense which began by de-legitimizing the British crown (“A French bastard landing with an armed banditti, and establishing himself king of England against the consent of the natives, is in plain terms a very paltry rascally original—it certainly hath no divinity in it.”), Dew began his task by legitimizing slavery. He found the origins of slavery in response to war—conquered people were enslaved rather than killed. And he even, surprisingly, invoked Voltaire for that proposition; although Voltaire said “slavery is as ancient as war, and war as human nature,” Dew thought Voltaire did not do slavery justice, “for many wars have been too cruel to admit of slavery.” In that way, slavery joined self-interest to help conquer the spirit of revenge. Thus, Dew found that slavery, even at its origins, was

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142 See, e.g., JNO. R. THOMPSON, EDUCATION AND LITERATURE IN VIRGINIA: AN ADDRESS DELIVERED BEFORE THE LITERARY SOCIETIES OF WASHINGTON COLLEGE, LEXINGTON, VIRGINIA, 18 JUNE, 1850, at 32 (Richmond, Va., H.K. Ellyson 1850) (asking for a southern literature “of our own, informed with the conservative spirit, the love of order and justice, that constitutes the most striking characteristic of the Southern mind”).

143 Dew, Professor Dew on Slavery, supra note 120, at 287.


145 Dew, Professor Dew on Slavery, supra note 120, at 300–01.

146 Id. at 304.
about civilization: “[s]lavery was established and sanctioned by divine authority,”
and its near universal nature are signs of its growth in conjunction with civilization.\textsuperscript{147}

Dew began with emphasis on “reason”\textsuperscript{148} (however much we may now see things
differently). He tried to slow emancipation talk and action by simply noting that
slavery would require enormous—and likely insurmountable effort—to end.\textsuperscript{149} “The
evil of yesterday’s growth may be extirpated \textit{to-day}, and the vigor of society may
heal the wound; but that which is the growth of \textit{ages}, may require \textit{ages} to remove.”\textsuperscript{150}
One only needed to look around to other emancipation—Haiti—to see the destruction
that would come to the white community.\textsuperscript{151} He urged calm in response to Nat
Turner’s rebellion.\textsuperscript{152} He asked for the return of the “empire of reason” to govern
subsequent policy.\textsuperscript{153} Dew wrote of reason and mathematical proofs.\textsuperscript{154} He con-
cluded that emancipation was “totally impracticable.”\textsuperscript{155} Impracticability ended
debate and might have masked Dew’s ideas about slavery.

But he saw emancipation plans as increasing the problems—increasing misery.
“[T]he great question of abolition,” Dew thought, would come down to emancipation
and then allowing the newly freed people to stay in Virginia.\textsuperscript{156} “[W]e think,” he con-
cluded, such a plan “can easily be shown to be utterly subversive of the interests,
security and happiness of both the blacks and whites, and consequently, hostile to
every principle of expediency, morality, and religion.”\textsuperscript{157} Because he thought that
even discussion of such a plan was improvident, he had avoided it “in consequence
of the injurious effects which might be produced on the slave population.”\textsuperscript{158} That
is, Dew and others understood that the mere discussion of freedom might open the
minds of enslaved people to the idea of freedom and spur additional bloodshed.\textsuperscript{159}
And they could not run the risk of such possibilities. Yet, in the wake of the Virginia
legislature’s discussion, Dew turned to the question of abolition, for “[t]he seal has
now been broken,”\textsuperscript{160} and Dew pushed aside prudential concerns against discussion
of emancipation:

\begin{footnotesize}
\begin{enumerate}
\item[147]\textit{Id.} at 295.
\item[148]\textit{Id.} at 290.
\item[149]\textit{Id.} at 288.
\item[150]\textit{Id.}
\item[151]\textit{Id.} at 288–89.
\item[152]\textit{Id.} at 290.
\item[153]\textit{Id.} at 291.
\item[154]\textit{Id.} at 292.
\item[155]\textit{Id.} at 291–92.
\item[156]\textit{Id.} at 293.
\item[157]\textit{Id.}
\item[158]\textit{Id.}
\item[159]\textit{Id.} at 289–90.
\item[160]\textit{Id.} at 293.
\end{enumerate}
\end{footnotesize}
We shall . . . waive all considerations of a prudential character, which have hitherto restrained us, and boldly grapple with the abolitionists and this great question. We fear not the result, so far as truth, justice and expediency alone are concerned. But we must be permitted to say that we do most deeply dread the effects of misguided philanthropy, and the marked, and, we had like to have said, impertinent intrusion in this matter, of those who have no interest at stake, and who have not intimate and minute knowledge of the whole subject, so absolutely necessary to wise action.\textsuperscript{161}

Dew invoked common phrases used against antislavery advocates. He spoke of their “misguided philanthropy” and then spoke of his own to look to calculations of “truth, justice and expediency.”\textsuperscript{162} The rest of the Review was organized around three themes: (1) “Origin of Slavery, and its Effects on the Progress of Civilization”—by which Dew meant the multiple ways in which slavery was recognized throughout human history, how slavery was recognized by the Bible, and how slavery contributed to the growth of civilization;\textsuperscript{163} (2) “Plans for the Abolition of Negro Slavery,” including “The Impossibility of Colonizing the Blacks;”\textsuperscript{164} and (3) “Injustice and Evils of Slavery,” which Dew discussed in order to minimize them.\textsuperscript{165}

Let us turn, then, to those three components of his Review, with the goal of understanding Dew’s mind and the contributions he made to the cause of support for slavery—the origins of slavery and its effect on civilization, the impracticality of plans for abolition, and a critique of arguments on the evils and injustice of slavery.

A. “Origin of Slavery, and its Effects on the Progress of Civilization”

The longest section was on the origin of slavery and its effects on civilization, which demonstrated the biblical support for slavery, as well as slavery’s origins in war.\textsuperscript{166} It portrayed slavery as a humane alternative to war and, indeed, as a civilizer itself.\textsuperscript{167} Two pieces of the argument are particularly important for understanding Dew’s thought. First is the centrality of property and of the market to purchasing freedom. Dew believed that the protection of property was central, for he stated that “[t]he character of the government, in spite of all its forms, depends more on the condition of property, than on any one circumstance beside.”\textsuperscript{168} How we moved from
feudalism to capitalism was a major component of his argument (though it was not indispensable to it), and it presaged a major section of his Digest of the Laws, Customs, Manners, and Institutions of the Ancient and Modern Nations, which emphasized the centrality of property rights in breaking down feudalism by allowing the middle class to purchase its independence from the English monarchy. 169 Property (and particularly property in humans) was central to Dew’s world, for it was necessary for the progress of civilization. Slavery was perhaps divinely intended, Dew declared, as “the principal means for impelling forward the civilization of mankind.”170

Dew went on to establish the virtues of slavery in bringing about civilization. It led people to go from a state of hunter-gatherers to farmers, for slavery necessarily leads on to the taming and rearing of numerous flocks, and to the cultivation of the soil. Hunting can never support slavery. Agriculture first suggests the notion of servitude, and, as often happens in the politico-economical world, the effect becomes, in turn, a powerfully operating cause. Slavery gradually fells the forest, and thereby destroys the haunts of the wild beasts; it gives rise to agricultural production, and thereby renders mankind less dependent on the precarious and diminishing production . . . ; it converts the idler and the wanderer into the man of business and the agriculturist. 171

So, slavery brings about civilization. Dew even saw this among the Native Americans who adopted slavery. “[W]hat are the causes of this dawn of civilization among the Cherokees?” he asked. 172 Why, the adoption of slavery, of course, which allowed the tribes to indulge their natural laziness. 173 It was an extraordinary acknowledgment of the benefits that slavery conferred on a people—the ability to have someone else to do their labor for them. And this argument in particular resonated with later arguments regarding slavery, like South Carolina Senator James Henry Hammond’s 1858 “mud sill speech.” 174

But here, as elsewhere, Dew cautioned against abstract theories of right or justice like “all men are born equal,” “slavery in the abstract is wrong,” and “the slave has a natural right to regain his liberty.” 175 “No set of legislators ever have,” he thought, “or ever can, legislate upon purely abstract principles, entirely independent of circumstances, without the ruin of the body politic.” 176

169 See Dew, A Digest, supra note 138, at 515.
170 Dew, Professor Dew on Slavery, supra note 120, at 325.
171 Id. at 326–27.
172 Id. at 335.
173 Id. at 335–36.
174 See supra notes 81–82 and accompanying text.
175 Dew, Professor Dew on Slavery, supra note 120, at 354–55.
176 Id. at 355.
B. “Plans for the Abolition of Negro Slavery”

Having spent so much time discussing the benefits of slavery, Dew then turned to the impracticality of abolition. The value of humans as property simply would not allow it. Some had proposed elaborate colonization schemes, but they were doomed to failure. Virginia’s 470,000 enslaved people were worth approximately $100,000,000—about one-third of the state’s wealth. Slavery was simply too important economically to contemplate its end:

Now, do not these very simple statistics speak volumes upon this subject? It is gravely recommended to the State of Virginia to give up a species of property which constitutes nearly one-third of the wealth of the whole State, and almost one-half of that of Lower Virginia, and with the remaining two-thirds to encounter the additional enormous expense of transportation and colonization on the coast of Africa. But the loss of $100,000,000 of property is scarcely the half of what Virginia would lose, if the immutable laws of nature could suffer (as fortunately they cannot) this tremendous scheme of colonization to be carried into full effect. Is it not population which makes our lands and houses valuable? Why are lots in Paris and London worth more than the silver dollars which it might take to cover them? Why are lands of equal fertility in England and France, worth more than those of our Northern States, and those again worth more than Southern soils, and those in turn worth more than the soils of the distant West? It is the presence or absence of population which alone can explain the fact.

And if slaves were emancipated and sent away, there would be no one left to do the work of the laboring class. Dew grimly concluded, after more pages of argument, “Virginia will be a desert.”

177 Id. at 355–450.
178 See id.
179 Id. at 356.
180 Id. at 357.
181 Id. at 357–58.
182 Id. at 365–66 (“And thus do we find, by an investigation of this subject, that if we should introduce, by any means, free labor in the stead of slave labor deported to Africa, that it will be certain to deteriorate by association with slave labor, until it sinks down to and even below its level.”).
183 Id. at 384.
At this point, having established the practical reasons for the impossibility of abolition, Dew turned to “the most dangerous of all the wild doctrines advanced by the abolitionists in the Virginia Legislature”: “that property is the creature of civil society, and is subject to action, even to destruction.” By singling out the attack on property as the “most dangerous” of the abolitionists’ arguments, Dew connected political theory regarding property in a concrete way to proslavery thought.

Dew was responding to abolitionists who argued that slavery was not constitutionally protected private property, that the state could regulate or even abolish property rights in slaves. Representative McDowell, from western Virginia, provided in a speech acclaimed by some as the best one favoring abolition, a forceful statement of the power of the state to abolish slavery without paying compensation, based on the harm that slave property caused:

[W]hen [property] loses its utility, when it no longer contributes to the personal benefits and wants of its holders in any equal degree with the expense or the risk, or the danger of keeping it, much more when it jeopardizes the security of the public,—when this is the case, then the original purpose for which it is authorized is lost, its character of property in the just and beneficial sense of it is gone, and it may be regulated without private injustice, in any manner which the general good of the community, by whose laws it was licensed, may require.

McDowell’s argument, advanced by other speakers as well, was a restatement of the common law doctrine that the state may regulate dangerous property, like gunpowder. In this case, the analogy was that human property was dangerous to society and thus subject to extensive regulation.

184    Id.
185    Id. at 384–86.
187    Dew, Professor Dew on Slavery, supra note 120, at 386 (quoting McDowell’s Speech, Richmond Whig, Mar. 24, 1832) (alteration in original).
188    See id. at 384 (“[P]roperty is the creature of civil society. So long as that property is not dangerous to the good order of society, it may and will be tolerated. But, sir, so soon as it is ascertained to jeopardize the peace, the happiness, the good order, nay the very existence of society, from that moment the right by which they hold their property is gone, society ceases to give its consent, the condition upon which they are permitted to hold it is violated, their right ceases.” (quoting Representative Faulker of Berkeley)); see also William W. Freehling, The Road to Disunion: Secessionists at Bay, 1776–1854, at 139 (1990) (discussing the argument that slaves are property and slavery is, therefore, constitutionally protected).
Dew’s vision of political theory did not treat property so lightly. “The doctrine of these gentlemen,” Dew thought, “so far from being true in its application, is not true in theory.” Property is the foundation of government, and the “object of government is the protection of property;—from the days of the patriarchs down to the present time, the great desideratum has been to find out the most efficient mode of protecting property.” Contemporary history supported Dew’s argument: “There is not a government at this moment in Christendom, whose peculiar practical character is not the result of the state of property.” In Dew’s view, it was property that preceded and created government, not the other way around: “The great difficulty in forming the government of any country arises almost universally from the state of property, and the necessity of making it to conform to that state . . . .” As the recent state constitutional convention demonstrated, Virginia’s government was constituted and affected by slavery.

Certainly eminent domain might be used to take property “for the general weal,” but that required at least just compensation, which the abolitionists in the Virginia legislature did not appear willing to pay. They reasoned that slave property was a nuisance, which should be abated without compensation. The common law reasoning of the abolitionists, Dew thought, was flawed. Despite the argument that a state could abate a nuisance, slaves were not nuisances, as their value in the marketplace testified. Dew concluded that the interests of all white Virginians were related to slave property:

[A]ll the great interests of society, are really interwoven with one another—they form an indissoluble chain; a blow at any part quickly vibrates through the whole length—the destruction of one interest involves another. Destroy agriculture, destroy tillage, and the ruin of the farmer will draw down ruin upon the mechanic, the merchant, the sailor and the manufacturer—they must all flee together from the land of desolation.

\[190\] Dew, *Professor Dew on Slavery*, supra note 120, at 386–87.
\[191\] Id. at 387.
\[192\] Id.
\[193\] Id.
\[194\] Id.
\[195\] Id.
\[196\] See id.
\[197\] Id. at 384–85.
\[198\] Id. at 385.
\[199\] Id. at 385–86.
\[200\] See supra notes 178–81 and accompanying text.
\[201\] Dew, *Professor Dew on Slavery*, supra note 120, at 391.
Moreover, slaves were unfit for freedom, economically and morally. Dew looked around to other countries and times and found that emancipation would lead to the degradation of blacks and whites: “It is always easier to descend than ascend, and nothing will prevent the facilis descensus but slavery.” And even the discussion of abolition would lead to further revolts. Dew did not believe that they would be successful—“[p]ower can never be dislodged from the hands of the intelligent, the wealthy, and the courageous, by any plans that can be formed by the poor, the ignorant, and the habitually subservient; history scarce furnishes such an example”—but the revolts would lead to much bloodshed. When Dew looked to the West Indies, he found that the “slave cannot be converted into free labor without imminent danger to the prosperity and wealth of the country where the change takes place.” And, in the aftermath of the French Revolution, as slavery was reasserted in some of the West Indies, “generally the re-establishment of slavery was attended with the most happy consequences, and even courted by the negroes themselves, who became heartily tired of their short-lived liberty.”

Slavery is a step on the way to civilization and is important as a piece of progress. This view of slavery as part of progress appears in the writings of some southern judges. Justice Henry Lumpkin of the Georgia Supreme Court, for instance, linked continued slavery with the happiness of both slaves and owners. In limiting a gift of humans to the American Colonization Society and thus keeping those people in continued slavery, Lumpkin wrote that efforts at the abolition of slavery had been a failure and would continue to be:

I was once, in common with the great body of my fellow citizens of the South, the friend and patron of this enterprise. I now regard it as a failure, if not something worse; as I do every effort that has been made, for the abolition of negro slavery, at home or abroad. Liberia was formed of emancipated slaves, many of them partially trained and prepared for the change, and sent thousands of miles from all contact with the superior race; and given a home in a country where their ancestors were natives, and supposed to be suited to their physical condition. Arrived there, they

202  Id. at 422–23; see also Dorothy Ross, The Origins of American Social Science 31–32 (1991) (discussing Dew’s economic thought).
203  Dew, Professor Dew on Slavery, supra note 120, at 443–44.
204  Id. at 444.
205  Id.
206  Id. at 424–25.
207  Id. at 426.
208  Genovese, supra note 140, at 10–20 (discussing Dew’s and other nineteenth-century southern intellectuals’ views on slavery).
have been for a number of years in a state of pupilage to the Colonization Society, in order that they might learn “to walk alone and by themselves.” And at the end of a half a century what do we see? A few thousand thriftless, lazy semi-savages, dying of famine, because they will not work! To inculcate care and industry upon the descendants of Ham, is to preach to the idle winds. To be the “servant of servants” is the judicial curse pronounced upon their race. And this Divine decree is irreversible. It will run on parallel with time itself. And heaven and earth shall sooner pass away, than one jot or tittle of it shall abate. Under the superior race and nowhere else, do they attain to the highest degree of civilization; and any experiment, whether made in the British West India Islands, the coast of Africa, or elsewhere, will demonstrate that it is a vain thing for fanaticism, a false philanthropy, or anything else, to fight against the Almighty. His ways are higher than ours; and humble submission is our best wisdom, as well as our first duty! Let our women and old men, and persons of weak and infirm minds, be disabused of the false and unfounded notion that slavery is sinful, and that they will peril their souls if they do not disinherit their offspring by emancipating their slaves!210

While some may see the linking of technological and economic progress with the institution of slavery as in some ways contradictory, it made sense to Dew. He linked progress, the market, and slavery, so in his worldview all of those went together; progress was made possible through respect for property.211

C. “Injustice and Evils of Slavery”

The final major section, then, returned to the topic of the supposed evils of slavery.212 Dew brought the argument back home with the suggestion that slavery was not so bad.213 This was an attempt to minimize the problem. He looked around, for instance, to Haiti where slaves had freed themselves in the 1790s, and found horrible destruction of slaveholders, but he also thought that freedom had not benefitted the formerly enslaved: “The negroes have gained nothing by their bloody revolution.”214 And in doing so he formulated an important statement on the virtues of slavery. It was a bold statement of the positive goods that sprung from slavery—the benefits

210 Id. at 464–65.
211 See Genovese, supra note 140, at 17–18.
212 Dew, Professor Dew on Slavery, supra note 120, at 451–90.
213 See id.
214 Id. at 440.
to the enslaved as well as the slaveholder—and he happily concluded that “we have no doubt but that [slaves] form the happiest portion of our society. A merrier being does not exist on the face of the globe, than the negro slave of the U. States.”

For one who believed slaves happy, then, it made sense to oppose the termination of such a system that brought so much good. Why should there be this abolitionist agitation—this false philanthropy? Dew asked,

Why, then, since the slave is happy, and happiness is the great object of all animated creation, should we endeavor to disturb his contentment by infusing into his mind a vain and indefinite desire for liberty—a something which he cannot comprehend, and which must inevitably dry up the very sources of his happiness.

More talk of abolition would just court further insurrections. In closing, Dew wrote that he believed he had proven his case “almost as conclusively as the demonstrations of the mathematician . . . that the time for emancipation has not yet arrived, and perhaps it never will.” Our country had preserved liberty for some while still employing slavery:

We must recollect . . . that our own country has waded through two dangerous wars—that the thrilling eloquence of the Demosthenes of our land has been heard with rapture, exhorting to death, rather than slavery,—that the most liberal principles have ever been promulgated and sustained, in our deliberate bodies, and before our judicial tribunals—and the whole has passed by without breaking or tearing asunder the elements of our social fabric.

His final words in the Review were those of opposition to change: “Let us . . . learn wisdom from experience; and know that the relations of society, generated by the lapse of ages, cannot be altered in a day.”

D. Dew’s Thought After the Review

Dew expanded on the themes of his Review in his 1836 address to the Virginia Historical Society, The Influence of the Federative Republican System of Government upon Literature and the Development of Character. In that speech, he explored in

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215 Id. at 459.
216 Id. at 459–60.
217 See id. at 467.
218 Id. at 489.
219 Id. at 490.
220 Id.
221 Dew, Influence of the Federative Republican System, supra note 133; see also Shearer
greater depth than in the *Review* slavery’s virtues for stabilizing American society.\footnote{Dew, *Influence of the Federative Republican System*, supra note 133.}

Dew told of the threat of excessive democracy—perhaps a topic better suited to the Virginia Historical Society than the wider audience of the *Review*.\footnote{See id.} He saw slave societies as capable of warding off the dangers of democracy, for they had a class of people who would labor but not vote:

> [T]he framework of our Southern society is better calculated to ward off the evils of this agrarian spirit, which is so destructive to morals, to mind and to liberty, than any other mentioned in the annals of history. Domestic slavery, such as ours, is the only institution which I know of, that can secure that spirit of equality among freemen, so necessary to the true and genuine feeling of republicanism, without propelling the body politic at the same time into the dangerous vices of agrarianism, and legislative intermeddling between the laborer and the capitalist.\footnote{Dew, *Influence of the Federative Republican System*, supra note 133, at 277.}

The institution of slavery made republicanism workable.\footnote{See id.} Far from corrupting masters, as Thomas Jefferson had charged in the *Notes on the State of Virginia*,\footnote{See *Notes on the State of Virginia*, supra note 141.} slavery gave a certain equality.\footnote{See id. at 278–79.}

This provides perspective on the dilemma of slavery and freedom. Slavery may have taught slaveholders about the evils of slavery and dependence and thus made them more jealous of freedom.\footnote{See id. at 278.} It also facilitated a sort of hierarchy, which placed white male voters at the top.\footnote{See id. at 279.} There was enough hierarchy that there could then be a subset of freedom and equality.\footnote{Id. at 279.} From that he concluded that “[e]xpediency, morality and religion, alike demand [slavery’s] continuance; and perhaps I would not hazard too much in the prediction that the day will come when the whole confederacy will regard it as the sheet anchor of our country’s liberty.”\footnote{Id. at 279. A more limited version of this appeared in the *Review*. See *Dew, Professor Dew on Slavery*, supra note 120, at 461–62.}
Dew presented a similar—though not as developed—theme in his inaugural lecture to students at William and Mary in 1836.\textsuperscript{232} He used his place as president to nurture his students as defenders of slavery.\textsuperscript{233} He told the students at William and Mary about the special place that they occupied in Virginia slave society and the role their education could play in helping them defend slavery:

\begin{quotation}
You are slaveholders, or the sons of slaveholders, and as such your duties and responsibilities are greatly increased. He who governs and directs the action of others, needs especially intelligence and virtue. . . . Then can we exhibit to the world the most convincing evidence of the justice of our cause; then may we stand up with boldness and confidence against the frowns of the world; and if the demon of fanaticism shall at last array its thousands of deluded victims against us, threatening to involve us in universal ruin by the overthrow of our institutions, we may rally under our principles undivided and undismayed—firm and resolute as the Spartan band at Thermopylae; and such a spirit, guided by that intelligence which should be possessed by slaveholders, will ever insure the triumph of our cause.\textsuperscript{234}
\end{quotation}

Dew’s vision in that inaugural address led to confrontation with others in the state who thought the College’s emphasis should be less on teaching moral and political philosophy than the physical sciences.\textsuperscript{235} That conflict reminds us that many in Virginia sought a very practical education, whereas political and moral philosophers like Dew sought to make themselves more relevant. It also testifies to the centrality of Dew’s advocacy for slavery. Although Dew rarely appears in Drew Faust’s study of antebellum southern intellectuals, \textit{A Sacred Circle}, he certainly fits with her picture of intellectuals employing the proslavery argument to make themselves more relevant.\textsuperscript{236} But I have often thought that is a rather sad portrait of Old South intellectuals, one that denies them agency. It is not so clear to me that Dew turned to proslavery because he wanted to make himself relevant. Rather, Dew was relevant because he was a spokesman for slavery.\textsuperscript{237}

\textsuperscript{232} Dew, \textit{An Address Delivered Before the Students of William and Mary}, supra note 133.
\textsuperscript{233} See id.
\textsuperscript{234} Id. at 765.
\textsuperscript{235} See, e.g., \textit{Review of President Dew’s Address}, 3 S. Literary Messenger 130 (1837). But see To Our Readers: "Review of President Dew’s Address," 3 S. Literary Messenger 268 (1837) (perhaps by Edgar Allan Poe) (defending the teaching of moral and political philosophy).
\textsuperscript{237} William Freehling makes a parallel point about Abel Upshur. Freehling, supra note 188, at 607 n.8.
Dew’s work extended well beyond the Review. In 1852, Appleton published, posthumously, Dew’s William and Mary lectures on world history under the title *A Digest of the Laws, Customs, Manners, and Institutions of the Ancient and Modern Nations*. That work provides important insight into Dew’s worldview—what he called “the whole system.” Slavery occupied a subordinate role in the picture, for the work set out to illustrate the springs behind the growth (and decline) of great nations, as well as the reasons why some do not progress. Slavery was a piece of that picture, as were property rights more generally.

VII. **Trying to Understand Dew**

Dew’s *Review* serves as something of a Rorschach inkblot test: some see him as the transition to the argument that slavery is a positive good; others link him

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239 Id. at 78.
240 See id. passim.
241 Id. at 78.
242 Clement Eaton, *The Freedom-of-Thought Struggle in the Old South* 30 & n.95 (Harper & Row 1964) (1940) (stating Dew was “one of the first big guns in the proslavery argument that held slavery to be a positive good” but also “[t]he significance of Dew’s work has probably been overemphasized”). Herbert Baxter Adams’s earlier assessment gave Dew more credit. See Herbert B. Adams, *Contributions to American Educational History: The College of William and Mary, with Suggestions for the National Promotion of Higher Education* 55–56 & n.1 (D.C., Gov’t Prtg. Office 1887) (“John Quincy Adams regarded Dew’s argument on domestic slavery (1833) as inaugurating a new era in the history of this country. It is said to have prevented emancipation in Virginia. . . . No unprejudiced student can examine this work without coming to the conviction that the author, in his use of the scholastic method of treating history in distinct theses, in well-rounded periods and compact sentences, knew precisely what he was about and lectured in such a way that students could catch his points. . . . De Bow, in his *Industrial Resources of the Southern States*, iii, 454, touches another side of President Dew’s influence, when he says that his ‘able essay on the institution of slavery entitles him to the lasting gratitude of the whole South.’ The future historian will need to study the teaching and preaching, the political philosophy and the sociology of the South, before he can understand De Bow’s honest opinion.”).

more to an earlier strain of reasoning, justifying slavery as necessary. Several recent commentators emphasize Dew’s (relative) moderation. William Freehling began his discussion of Dew by noting that Dew “reiterated what had passed for ‘proslavery’ in the debate itself, which was never defense of perpetual slavery.” That Dew did not extend to a defense of perpetual slavery is not robustly tested by the debate, for what was on the table was—at most—a plan for gradual abolition. Anything that tended to defeat the plan was useful to Dew, and much of the Review, thus, needed only to show that even gradual abolition was “totally impracticable.”

To gauge how Dew altered the intellectual landscape, it is helpful to see how his contemporaries responded to him. Jesse Harrison published a response to Dew in the December 1832 American Quarterly Review, the same journal where Dew published the first version of his Review. Harrison was, like Dew, a young man. He was twenty-seven in 1832 and had been educated at Hampden Sydney College, then Harvard Law School. His essay was ostensibly a review of Thomas Marshall’s moderately antislavery speech (Marshall was the son of United States Supreme Court Chief Justice John Marshall.) Harrison characterized the debate as one about fundamental questions of slavery and policy: “Every thing tells of a spirit that is busy inspecting the very foundations of society in Virginia—a spirit new, suddenly created, and vaster in its grasp than any hitherto called forth in her history.”


244 FREEHLING, supra note 188, at 191. Freehling further stated that “[t]he trouble with seeing Dew as transitional is that no transition took place. The professor did not lead a school of his Virginia contemporaries halfway towards the 1850s. In his state, he worked largely alone.” Id. at 193. This follows Alison Goodyear Freehling. See FREEHLING, supra note 129, at 203.

245 See Dew, Professor Dew on Slavery, supra note 120, at 292.


247 See supra note 120.


249 Slavery Question in Virginia, supra note 246.


251 Slavery Question in Virginia, supra note 246, at 379. Harrison’s literary address to Hampden Sydney College in 1827, delivered two years after he graduated from Harvard Law School, displayed a working knowledge of a range of literature and also celebrated the increasing democracy in Virginia politics since the Revolution, while lamenting a decline in classical studies in colleges. See J.B. Harrison, A Discourse on the Prospects of Letters and Taste in Virginia, Pronounced Before the Literary and Philosophical Society
began a question of gradual emancipation and then expulsion of the newly freed people from the state.\(^{252}\) Moreover, Dew’s contemporaries believed that he occupied a central position in opposing slavery—and supporting its necessity. Jesse Harrison’s direct response to Dew in the *American Quarterly Review* alluded to how far Dew had migrated from the usual position of Virginians.\(^{253}\) While most Virginia masters believed slaves should be emancipated if “it could be done to the advantage of the slave, and without greater injury to the master than is implied in the continuance of the bondage,” Dew held another more positive view of slavery. Harrison urged the rejection of Dew’s views and noted how extreme they were:

> [I]f an anti-abolitionist who regards domestic slavery as the optimum among good institutions, while asserting the benign and sacred character of the relation of master and slave as observed in Virginia, should boast that Virginia is “in fact a negro raising State for other States,” and that “she produces enough for her own supply and six thousand for sale,” we must say that this is a material subtraction from the truth of his picture of the sanctity of the relation. It would be well to recall it and thrust it out of view.\(^{254}\)

Michael O’Brien’s magisterial two volume history of intellectual thought in the Old South makes Dew out to be a clerk, calculating the value of slavery and abolition and thus showing why abolition is impossible.\(^{255}\) Dew concentrated on the “practical

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\(^{252}\) *Slavery Question in Virginia*, supra note 246, at 400 (“We are fully persuaded ourselves that the emancipation of the slaves, and their transportation out of the limits of the State, will be the only mode of action on the subject which will be beneficial either to the blacks or the whites.”).

\(^{253}\) *Id.* at 403.

\(^{254}\) *Id.* at 404 (quoting without attribution and with alterations *Dew, Professor Dew on Slavery*, supra note 120, at 359).

of the Positive Good Thesis (unpublished Ph.D. dissertation, Claremont University, 2006) (focusing on Dew’s philosophy and locating him as a romantic and follower of Hegel, emphasizing historical contingency in Dew’s thought and individual setting more than the universal truths).

257 **Harriet Beecher Stowe**, *Dred: A Tale of the Great Dismal Swamp* 31 (AMS Press 1970) (1856); Alfred L. Brophy, *Humanity, Utility, and Logic in Southern Legal Thought: Harriet Beecher Stowe’s Vision in Dred: A Tale of the Great Dismal Swamp*, 78 B.U.L.REV. 1113 (1998) (discussing utilitarian, proslavery views); see also Harper on Slavery, in *The Pro-Slavery Argument*, supra note 120, at 1, 17–18 (“If, after the most careful examination of consequences that we are able to make, with due distrust of ourselves, we impartially, and in good faith, decide for that which appears likely to produce the greatest good, we are free from moral guilt. And I would impress most earnestly, that with our imperfect and limited faculties, and short-sighted as we are to the future, we can rarely, very rarely indeed, be justified in producing considerable present evil or suffering, in the expectation of remote future good—if indeed this can ever be justified.”).

Chancellor Harper acknowledged the differences between utility as he and other southerners employed it and the idea of utilitarianism as commonly employed:

> If we should refer to the common moral sense of mankind, as determined by their conduct in all ages and countries, for a standard of morality, it would seem to be in favor of Slavery. The will of God, as determined by utility, would be an infallible standard, if we had an unerring measure of utility. The utilitarian philosophy, as it is commonly understood, referring only to the animal wants and employments, and physical condition of man, is utterly false and degrading. If a sufficiently extended definition be given to utility, so as to include every thing that may be a source of enjoyment or suffering, it is for the most part useless.

*Id.* at 17.

George Robertson wrote to refute such utilitarian, proslavery arguments:

> Domestic slavery cannot be suddenly abolished in all the States, consistently with the welfare of either the black man or the white. A premature effort of inconsiderate humanity, might be disastrous, and would certainly tend to defeat or retard the ultimate object of every good and wise man—universal emancipation. . . .

> But these slight blemishes . . . are but the spots on the sun; and though the microscopic vision of misanthropy may magnify them, they are lost in the great panorama which our country presents to the eye of an instructed and comprehensive patriotism. Could Boone and Harrod and Logan—when, in this once “land of blood,” they first trod in the tracks of the Indian and the Buffaloe—have dreamed that what we now behold in this smiling West, would so soon have succeeded their adventurous footsteps, how would such a vision have cheered them amidst the solitude and perils which they encountered in aiding to plant civilization in the wilderness!

like many others in his day, would not condone an act if it led to greater harm. But we perhaps should also consider that the centerpiece of Dew’s argument is that slavery ought not to be terminated now—and perhaps never should be. Pieces of his argument went well beyond the argument against gradual abolition to conclude that slavery was a sign of civilization and that it was the best state of society possible for the enslaved. And so, while others were arguing for gradual abolition through, for instance, colonization, Dew was using his intellectual might to argue against any change in the institution of slavery.

Dew was present at a crossroads at a time when there were many in his state who proudly and openly defended an antislavery spirit, while others, who would live until the Civil War, were also robustly defending slavery. Dew drew upon other proslavery arguments—including Chancellor Harper’s 1828 essay in the Southern Review. Sometimes, as with Harper’s essay, the influence appears from circumstantial evidence; Dew employed similar arguments. In other cases, we can see many of the influences on Dew because he credited his sources.

258 See Dew, Professor Dew on Slavery, supra note 120, at 422 (referring to John Stuart Mill); id. at 451 (“[A]ny question must be determined by its circumstances, and if, as really is the case, we cannot get rid of slavery without producing a greater injury to both the masters and slaves, there is no rule of conscience or revealed law of God which can condemn us.”).
259 See supra Part VI.
260 See supra notes 126–27 and accompanying text.
262 See O’Brien, supra note 256, at 946 n.19 (“Many of the arguments in this essay anticipate Dew, whom Harper seems to have known and worked with.”).
263 Dew made surprising use of contemporary histories, including Wallace’s Dissertation on the Numbers of Mankind, Dew, Professor Dew on Slavery, supra note 120, at 294, 447, 485; Hallam’s Middle Ages, id. at 295, 313–14; William Robertson’s Histories (of England and the Americas), id. at 295, 297–99, 302, 313–16, 326–29, 337–38, 350, 393, 425; Bryan Edwards’s West Indies, id. at 303, 331–32, 350, 369, 456; Mitford’s Greece, id. at 305, 340; Walsh’s Appeal, id. at 353–54; Park’s Travels into the Interior of Africa, id. at 320, 323–24, 395–96; Humboldt’s New Spain, id. at 333–35; Marshall’s Life of Washington, id. at 343, 472; Brougham’s Colonial Policy, id. at 423–24; Clarkson’s Slavery, id. at 426; Dunn’s Sketches of Guatemala, id. at 445; Poinsett’s Notes on Mexico; id. at 487; and the American Colonization Society Fifteenth Annual Report, id. at 398, 404–05.

Dew used the sources that were readily available, as is shown by his reference of two volumes in publishers’ inexpensive collections. He used a volume in Harper’s Family Library on Discovery and Adventure in Africa, id. at 308, 330; and volume five in the Library of Entertaining Knowledge, The New Zealanders, id. at 337.

Dew also used more common texts in political thought, including Voltaire, id. at 304; Jefferson’s Notes on Virginia, id. at 454–55; Tucker’s Blackstone, id. at 310–11, 321; Locke’s On Civil Government, id. at 309; Gilbert Stuart’s History of Society, id. at 458; View of Society, id. at 340; Jones’s Political Economy, id. at 365–66; Josiah Child’s Discourse on Trade, id. at 403; McCulloch’s edition of Smith’s Wealth of Nations, id. at 403; Cooper’s Political
VIII. SEEKING EVIDENCE OF DEW’S IMPACT

Others, in turn, read Dew. When former President James Madison spoke about slavery, he commented on the adverse effects of antislavery agitation.\(^{264}\) The agitation led southerners to fasten the shackles of slavery more firmly and to adopt a more firmly proslavery position.\(^{265}\) Madison spoke of South Carolina Governor McDuffie’s proslavery speech, as well as Dew’s.\(^{266}\) While Madison praised Dew’s mind, he was somewhat skeptical of his conclusions.\(^{267}\) Former President John Quincy Adams was substantially more critical.\(^{268}\) In 1833, Adams and his granddaughter read Dew’s pamphlet.\(^{269}\) He recorded his thoughts in his diary.\(^{270}\) While Adams found much disturbing (“It is a monument of the intellectual perversion produced by the existence of slavery in a free community. To the mind of Mr. Dew, slavery is the source of all virtue in the heart of the master.”)\(^{271}\) and implausible (“Mr. Dew’s argument, that the danger of insurrection among the slaves is diminished in proportion as their relative numbers increase over those of the white masters, is an ingenious paradox, in which I have no faith.”)\(^{272}\), Adams also found pieces of it that rang true:

His argument against the practicability of abolishing slavery by means of colonization appears to me conclusive . . . . This pamphlet deserves grave meditation, and has in it the seeds of much profitable instruction. Slavery is, in all probability, the wedge which will ultimately split up this Union. It is the source of all the disaffection to it in both parts of the country—a disaffection deeply pervading Mr. Dew’s pamphlet.\(^{273}\)

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\(^{264}\) Economy, id. at 478; Aristotle’s Politics, id. at 306; Plutarch’s Lives, id.; Malthus’s Essay on the Principle of Population, id. at 345, 395, 400–01; and Hume’s Essay on the Populousness of Ancient Nations, id. at 371, 383.

\(^{265}\) Visit to Mr. Madison, New-Bedford Mercury, Sept. 16, 1836.

\(^{266}\) Id. (discussing Madison’s knowledge of McDuffie and Dew); see also supra text accompanying note 125.

\(^{267}\) Visit to Mr. Madison, supra note 264.


\(^{269}\) Memoirs of John Quincy Adams, Comprising Portions of His Diary from 1795 to 1848, at 23 (Charles Francis Adams ed., Phila., J.B. Lipincott & Co. 1876).

\(^{270}\) Id.

\(^{271}\) Id.

\(^{272}\) Id.

Dew’s facile prose crept into other works as well. When abolitionists began to use the United States mail to distribute abolitionist literature in 1835, proslavery writers responded. One widely discussed tract, *The South Vindicated from the Treason and Fanaticism of the Northern Abolitionists*, quoted from Dew’s *Review*:

> Let the wily philanthropist but come and whisper into the ear of such a slave that his situation is degrading and his lot a miserable one—let him but light up the dungeon in which he persuades the slave that he is caged—and that moment, like the serpent that entered the garden of Eden, he destroys his happiness and his usefulness.  

Dew’s contemporaries frequently praised his contribution to the debate—as the person whose work stopped the movement for emancipation with colonization and for colonization entirely. As Chancellor Harper said, “After President Dew, it is unnecessary to say a single word on the practicability of colonizing our slaves.” Whatever else people now think of him, Dew’s work came to stand for the proposition that slavery contributed much to Virginia. “President Dew,” Chancellor Harper wrote at the beginning of his essay, “has shewn that the institution of Slavery is a principal cause of civilization.” Harper’s next sentence then extended Dew: “Perhaps nothing can be more evident than that it is the sole cause.”

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274 See supra note 125 and accompanying text.

275 The South Vindicated from the Treason and Fanaticism of the Northern Abolitionists 75 (photo. reprint, Negro Univs. Press 1969) (1836) (attributed to William Drayton) (quoting Dew, Professor Dew on Slavery, supra note 120, at 460); see also id. at vii, vii, 74, 102–03, 110–11, 137, 245, 297–98 (mentioning Dew’s *Review*).

276 Harper on Slavery, supra note 257, at 88.

277 Id. at 3.

278 Id.; see also A SOUTHERN FARMER, BONDAGE A MORAL INSTITUTION, SANCTIONED BY THE SCRIPTURES OF THE OLD AND NEW TESTAMENTS, AND THE PREACHING AND PRACTICE OF THE SAVIOR AND HIS APOSTLES 51 (Macon, Ga., Griffin & Purse 1837); Slavery and the Abolitionists: Address of the Southern Delegates in Congress, January 15, 1849, 15 S.Q. Rev. 165, 215 (1849) (referring to Dew for comparisons of slavery and free white workers in the United Kingdom); Slavery in the Southern States, 8 S.Q. Rev. 317, 320 (1845) (“The South is indebted, we believe, to Professor Dew, for the first clear and comprehensive argument on the subject of slavery.”); White and Black Slavery, 6 S. LITERARY MESSENGER 193, 194 (1840) (“It is not our purpose to argue the question of slavery—a subject already discussed with signal ability by Mr Paulding the present Secretary of the Navy, Professor Dew, Chancellor Harper, and last, though not least, Judge Upshur . . . .”).
Nathaniel Beverley Tucker soberly—and revealingly—invoked Dew to demonstrate that slavery is, on balance, good:

Nothing is wanting but manly discussion to convince our own people at least, that in continuing to command the services of their slaves, they violate no law divine or human, and that in the faithful discharge of their reciprocal obligations lies their true duty. Let these be performed, and we believe (with our esteemed correspondent Professor Dew) that society in the South will derive much more of good than of evil from this much abused and partially-considered institution.  

Tucker recalled that the French Revolution’s attack on property began with an attack on slaves as property. Once property in humans was attacked, other attacks on property would likely follow, a warning to others that the abolitionists were the vanguard of an attack on all property: “in that war against property, the first object of attack was property in slaves; that in that war on behalf of the alleged right of man to be discharged from all control of law, the first triumph achieved was in the emancipation of slaves.”

Dew’s work continued to influence the terms of debate even after his death. In April 1850, the Southern Literary Messenger published a commentary on an 1849 edition of Dew’s Review, illustrating that people were reading Dew and drawing strength from him well after his death—even in that fateful year of the Compromise of 1850. De Bow’s Review reprinted pieces of it as well.

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279 Slavery, 2 S. Literary Messenger 336, 339 (1836) (reviewing J.K. Paulding, Slavery in the United States (1836) and The South Vindicated from the Treason and Fanaticism of the Northern Abolitionists, supra note 275). Although sometimes attributed to Edgar Allan Poe, the better opinion seems to be that the review was written by Tucker. See Whalen, supra note 5, at 116–17.

280 Slavery, supra note 279, at 337.

281 Id.

282 Observations on a Passage in the Politics of Aristotle Relative to Slavery, 16 S. Literary Messenger 193 (1850). Observations relied in part on a belief that slavery prevented a conflict between capital and labor because, in the slave South, agriculture and not industry was dominant. Id. at 199. Positions like that, developed at length by George Fitzhugh and later by Hinton Helper, have led historians to focus on the proslavery writing as anti-capitalist. See George Fitzhugh, Sociology for the South, or the Failure of Free Society (Richmond, A. Morris 1854); Hinton Rowan Helper, The Impending Crisis of the South: How to Meet It (N.Y., Burdick Bros. 1857). Eugene Genovese is one of the leaders of this theory. See Eugene D. Genovese, The World the Slaveholders Made: Two Essays in Interpretation 165–94 (1960).

In recent years, historians who have focused on the economic views of slaveholders generally, as well as earlier (and perhaps more representative) proslavery writers, have criticized
In the 1850s, as Reverend Slaughter looked back on the history of debate in Virginia about African colonization in his history of the American Colonization Society, he credited Dew with stopping the colonization sentiment:


One piece that remains missing here is an analysis of the views of southern jurists, for they hold out the possibility of gauging how proslavery ideas were put into action in places where they mattered. Preliminary analysis suggests those judges saw slavery as an integral part of economic and industrial advancement and that southern judges, like their northern counterparts at the time, supported the market. See, e.g., Timothy S. Huen, The Southern Judicial Tradition: State Judges and Sectional Distinctiveness, 1790–1890, at 70–98 (1999) (discussing Lumpkin’s decisions that supported a market economy and his pro-industrialization views); Alfred L. Brophy, Thomas Ruffin: Of Moral Philosophy and Monuments, 87 N.C. L. REV. (forthcoming 2008). The trope of progress may be a useful organizing principle for antebellum legal history. Many wrote of progress and the law’s adaptation to moral, economic, technological, and social progress. “Progress” helped antebellum judges frame their movements. The idea of “progress” provided the framework within which judges thought of what was happening, and that unified their thought and behavior, which is not so fraught with the complications of considerations of “instrumental conception” that have engaged legal historians for nearly two decades. Compare Morton J. Horwitz, The Transformation of American Law, 1780–1860 (1977) (attributing “instrumental conception” to antebellum judges, in which they self-consciously used law to promote economic growth), with Peter Karsten, Heart Versus Head: Judge-Made Law in Nineteenth-Century America (1997) (finding evidence of the opposite conception), and Mark E. Stein, An Honest Calling: The Law Practice of Abraham Lincoln (2006) (finding little evidence of instrumentalism in cases Lincoln argued). Among the many examples one might use here is Justice Withers’s dissent from the release of a debtor from prison in Breeze v. Elmore, which employed in one sentence the classic antebellum phrases duty, lights, progress, and reform: “I am not prepared for this innovation, and entertain the opinion that if we are to turn from Westminster and look to New York for our lights, in this particular path of duty, we are but in the infancy of progress in this department of law reform.” 38 S.C.L. (4 Rich.) 433, 458–59 (1851) (Withers, J., dissenting).

The Richmond Whig said that the debate in the House of Delegates was marked by an eloquence that would have illustrated the classic days of Athens. The columns of the Inquirer and of the Whig and other newspapers were illuminated with brilliant editorials and communications. Professor Dew from his retirement at William and Mary sent forth a pamphlet in justification of Slavery marked by uncommon powers of reasoning and great wealth of illustration. The gifted Jesse B. Harrison of Lynchburg responded, in the "American Quarterly," with great eloquence of diction and in the most calm and philosophical spirit of inquiry.

The effect of the general discussion elicited by the debate upon Abolition in the General Assembly, was a powerful reaction in public opinion upon the subject of slavery. The anti-slavery tide was arrested at its flood, and began rapidly to ebb. The document which chiefly contributed to this result was an Essay upon Slavery, by Professor Dew of William and Mary College, in which the whole subject was treated with profound ability, and illustrated with great wealth of learning. In this essay the folly of a general emancipation without deportation and the impracticability of deporting so large a population were clearly demonstrated.

Soon after the publication of Professor Dew's pamphlet, an article of signal ability appeared in the American Quarterly Review based on the speech of Thomas Marshall of Fauquier, designed to shew that slavery was the essential hindrance to the prosperity of the slave-holders, with particular reference to Virginia. . . . The verdict of the people after deliberately looking at both sides of the question as exhibited by these eloquent advocates, was decidedly in favor of the general principles maintained by President Dew. 283

283 P. Slaughter, The Virginian History of African Colonization 64 (Richmond, MacFarlane & Fergusson 1855). Slaughter also wrote:

We do not think that any impartial person can read these discussions, (now when the heat and smoke of the contest has given way to a serene atmosphere,) without seeing that the Pro-Slavery advocates had the best of the argument. The Emancipationists utterly failed to bring forward any national and practicable scheme of Abolition.

The result was a powerful reaction in the public mind, which involved in some degree of the odium attached to Abolition every scheme touching the colored race, however innocent it may have been. . . .

The only practical effect of all this excitement to be seen in the
Reverend Slaughter had good reasons for trying to make Dew look influential and to make colonization look unworkable. So, as with all evidence of historical causation—particularly when such difficult-to-trace concepts of influence of ideas are at issue—we have cause for suspicion. In fact, as Tucker wrote in an essay about two proslavery works in the *Southern Literary Messenger* in 1836, it is perhaps impossible to trace the exact causes of the evolution of thought. Even if we cannot trace the causes, we can make some inferences about the trajectory of that thought, much as we can trace the orbit of comets:

> However eccentric the orbit, the comet’s place in the heavens enables the enlightened astronomer to anticipate its future course, to tell when it will pass its perihelion, in what direction it will shoot away into the unfathomable abyss of infinite space, and at what period it will return. . . .

> Not less eccentric, and far more deeply interesting to us, is the orbit of the human mind.

Slaughter illustrates the multiple ways that people at the time credited Dew with stopping the antislavery movement. Other writers also credited Dew’s role in opposing even gradual abolition. An article in *De Bow’s Review* in 1856 referred to Dew as a “pioneer,” “the first able expounder of the views which now generally prevail in the southern States upon the relations of slavery to the community in which it exists, as well as with regard to the effect of that institution upon the races it subjugates.” And that author wrote of Dew’s logic in superlative terms: “as a pure specimen of inexorable logic, it would be difficult to find its equal or certainly its superior in the whole range of English literature.”

Another way to judge influence is to search beyond explicit references to the impact of ideas. These kinds of questions of influence, however, pose some of the greatest problems in historical method. How do we know that a person’s ideas mattered? Even sketching answers to those kinds of questions is enormously difficult.

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legislation of the session was a bill for the suppression of seditious writings and curtailing the privileges of the colored population bond and free.

Let the misguided Abolitionists hear that, and learn a lesson of humility and practical wisdom and humanity from experiment.

*Id.*

284 *Slavery, supra* note 279, at 337.

285 *Id.*


287 *Id.* at 645–46; see also *Liberia and the Colonization Society: No. 1, 26 De Bow’s Rev.* 415, 420 (1859) (attributed to Edmund Ruffin) (calling Dew’s Review “the earliest and also one among the ablest vindications of the institution that have yet been published”).

288 Historians have spent more energy tracing the unfolding of antislavery than of proslavery
What may be particularly important here is that Dew’s ideas helped to stop talk of gradual abolition; that is difficult to gauge, for sure. We know that after March 1832, the subject was not seriously discussed again. Part of this may be because abolitionists became more strident; however, part of it may be because people like Dew and Benjamin Watkins Leigh in the Virginia debates laid such powerful arguments (to southern minds) against gradual abolition.289 And then subsequent works from articles by Nathaniel Beverley Tucker, Henry Drayton, Chancellor William Harper, and Abel Upshur all appear to draw inspiration, in varying degrees, from Dew.290

Some sense of historians’ understanding of Dew’s influence and the power of his arguments comes from William E. Dodd’s entry on Dew in Walter Fleming’s 1909 Economic History of the South.291 William Dodd was one of the leading historians of the early twentieth century.292 He summarized Dew’s argument, then praised it.293 You will recall that he was writing in 1909—this suggests the power and duration of Dew’s argument. Dodd ably summarizes Dew’s argument and his contribution:

Dew cleared the ground by doing what few other Virginians would have done then or since, publicly: he declared that the doctrine of Jefferson, that “all men are born free and equal,” “that slavery is an evil,” “that the slave has a natural right to regain his liberty,” all “most pompously put forth,” was wrong. . . . While the negro slave is property he is yet “the happiest of the human race,” and finally he shows that slavery has become profitable to Virginians who can “raise cheaper than they can buy; in fact, it is one of their greatest sources of profit, for slaves multiply with
us more rapidly than in most of the Southern states.” Not only does he show that slavery is not wrong, that the slaves are happy, but that “the institution” is an economic blessing to Virginia and the South.

The remainder of the carefully and ably constructed treatise shows easily that colonization in some portion of Africa would be silly and ridiculous, and that emancipation without colonization would be, and then was, impossible.294

Dew was, obviously, a very smart and well-educated man, telling other very smart and well-educated people that what they were doing was right. And in this he seemed to have convinced a lot of people—including the generation that came afterwards and were the educators during the period of Jim Crow.295

**Conclusion**

As Terry Meyers’s work demonstrates, Dew is representative of William and Mary’s intellectual leaders who generated the arguments to support slavery.296 For example, Nathaniel Beverley Tucker’s address on slavery to law students in 1835 argued that slavery makes freedom possible for whites, for they otherwise could not abide universal democracy.297 Moreover, it kept the laboring class laboring and thus

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294 Id. at 570 (footnotes omitted).
295 See id. at 571–73.
297 Note to Blackstone’s Commentaries, Vol. 1, Page 423, supra note 101 at 230; see also supra notes 221–31 and accompanying text; *Slavery in the Southern States*, 8 S.Q. REV. 317 (1845) (attributed to William J. Grayson); A.P. Upshur, *Domestic Slavery*, 5 S. LITERARY MESSENGER 677 (1839).


Other addresses given at William and Mary include *ABEL P. UPHUR, ADDRESS TO THE LITERARY SOCIETIES OF WILLIAM AND MARY COLLEGE, VA... JULY 2D, 1841*, at 26 (Phila., A. Waldie 1841) (warning of “the ultra-democracy of the present day”); W.H. McFarland,
made it possible to have all white people above them voting. All of this testifies to the centrality of William and Mary to the support of slavery in antebellum Virginia and, indeed, to our country.

Still, we need to think about what this all means. Most of the past apologies for slavery have been based on institutions’ and businesses’ ownership of people or their role in the institution of slavery, such as Aetna’s apology for insuring slaves and thus reducing risk for slaveowners and the Hartford Courant’s apology for running advertisements to help recapture fugitive slaves. However, talk of William and Mary’s president’s contributions to the defense of slavery raises a different issue: whether we should atone for the teachings of our predecessors? In the case of William and Mary, there is a further question of what to make of the teachings of the College’s president, rather than the College’s ownership of humans? Dew was, to be sure, closely associated with the College in the minds of his contemporaries, and his advocacy of slavery both assisted the College and drew assistance from the College’s prestige.

In thinking about the College’s role in the intellectual history of our country, the College’s teachings led us towards Enlightenment at points and darkness at others. For, as Tucker told graduating students in 1847, “William and Mary is what Virginia made her. Virginia continues what she is in part because the spirit of her ancient chivalry continues to act on her through William and Mary. Each is at once cause and effect, and each is necessary to the other.” He asked of William and Mary students “only a love of truth and a sense of honor.” And so, the world leaves it to the goodwill and the wisdom of the students, faculty, administration, and alumni of William and Mary to consider the wisdom and efficacy of further investigations of this great institution’s past and its implications for our country’s future.

The Importance of a Literary Class, 13 S. & W. Literary Messenger & Rev. 570, 570–71 (1847) (literary address to William and Mary, contending that the present age “estimate[s] all things by their exchangeable value”). Upshur delivered his William and Mary address in the wake of an 1839 article linking slavery with democracy for whites, as well as an 1840 book praising slavery for the way that it made democracy workable (a theme Dew employed in 1832). See Abel P. Upshur, A Brief Enquiry into the True Nature and Character of Our Federal Government: Being a Review of Judge Story’s Commentaries on the Constitution of the United States (Phila., John Campbell 1863) (1840); Upshur, Domestic Slavery, supra, passim.

299 See supra note 26 and accompanying text.

299 See supra note 25 and accompanying text.

300 I particularly appreciate the questions of Davison Douglas and Terry Meyers about the connections between Dew’s writings and the College. These questions arise for Tucker as well.

301 Judge Tucker’s Address, 13 S. Literary Messenger 568, 569 (1847).

302 Id.