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## THINKING ABOUT SLAVERY AT THE COLLEGE OF WILLIAM AND MARY

Terry L. Meyers\*

### I. POST-RECONSTRUCTION AND ANTE-BELLUM

Distorting, eliding, falsifying . . . a university's memory can be as tricky as a person's. So it has been at the College of William and Mary, often in curious ways. For example, those delving into its history long overlooked the College's eighteenth century plantation worked by slaves for ninety years to raise tobacco.<sup>1</sup> Although it seems easy to understand that omission, it is harder to understand why the College's 1760 affiliation with a school for black children<sup>2</sup> was overlooked, or its president in 1807 being half-sympathetic to a black man seeking to sit in on science lectures,<sup>3</sup> or its awarding an honorary degree to the famous English abolitionist Granville Sharp in 1791,<sup>4</sup> all indications of forgotten anti-slavery thought at the College.

To account for these memory lapses, we must look to a pivotal time in the late-nineteenth and early-twentieth century when the College, Williamsburg, and Virginia

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<sup>1</sup> See Terry L. Meyers, *A First Look at the Worst: Slavery and Race Relations at the College of William and Mary*, 16 WM. & MARY BILL RTS. J. 1141, 1144–45 (2008). Further information developed in 2011 is available at *Nottoway Plantation*, SWEM SPECIAL COLLECTION RES. CENTER WIKI, [http://scrc.swem.wm.edu/wiki/index.php/Nottoway\\_plantation](http://scrc.swem.wm.edu/wiki/index.php/Nottoway_plantation) (last visited Apr. 16, 2013) (stating that the plantation was leased to others after 1777 and finally sold by the College in 1802).

<sup>2</sup> See Terry L. Meyers, *Benjamin Franklin, The College of William and Mary, and the Williamsburg Bray School*, 79 ANGLICAN & EPISCOPAL HIST. 368 (2010). The single best source for information on local slavery in the eighteenth century is a Colonial Williamsburg compilation of source documents: COLONIAL WILLIAMSBURG FOUND., *ENSLAVING VIRGINIA: BECOMING AMERICANS, OUR STRUGGLE TO BE BOTH FREE AND EQUAL* (1998).

<sup>3</sup> Letter from Bishop James Madison, President of the College of William and Mary, to William H. Cabell, Governor of Virginia (July 30, 1807) (on file with Earl Gregg Swem Library).

<sup>4</sup> WILLIAM GOODELL, *SLAVERY AND ANTI-SLAVERY; A HISTORY OF THE GREAT STRUGGLE IN BOTH HEMISPHERES; WITH A VIEW OF THE SLAVERY QUESTION IN THE UNITED STATES* 104 (N.Y.C., William Harned 1852).

urgently sought a new narrative of Southern history to restore the glory dimmed at Appomattox. It was fruitless in that bruised time after the Civil War and Reconstruction to recall the shameful ante-bellum years when William and Mary's President Thomas Roderick Dew (1802–1846) and its faculty argued for slavery, not as a peculiar institution or a necessary evil, but as an absolute and necessary good.<sup>5</sup>

Since then efforts to deal with the contentious issue of slavery in the College's past have seemed to waver among three possible narratives. One possibility was to walk away, suppressing the subject by silence.<sup>6</sup> A second was to mythologize slavery as beneficent and misunderstood.<sup>7</sup> And a third was to affirm what Alfred Brophy, in a 2008 article, called the College's "enormous contributions to the cause of antislavery [which today] are in danger of being lost amidst talk of slavery at William and Mary."<sup>8</sup> Brophy has in mind simply the anti-slavery views of two early and influential law professors at William and Mary, George Wythe (1726–1806) and St. George Tucker (1752–1827).

Each of these narratives has had its turn on the public stage. Silence endured for one hundred years and more, though it shared the stage for several decades with nostalgia for the reimagined ante-bellum years and, much more episodically, with a limited vision of "the cause of antislavery" which I reconstruct and enlarge here.<sup>9</sup>

I shall deal with each of these overlapping approaches, though of silence I need merely note that it appeared early in Reconstruction. An 1870 history of the College does not mention slavery and refers to "servants" only in citing a rule forbidding any except "those authorized by the Faculty" from entering "the College yard or building."<sup>10</sup>

<sup>5</sup> See Thomas R. Dew, *Professor Dew on Slavery*, in *THE PRO SLAVERY ARGUMENT* (Charleston, Walker, Richard, & Co. 1852).

<sup>6</sup> See, e.g., *THE HISTORY OF THE COLLEGE OF WILLIAM AND MARY FROM ITS FOUNDATION, 1693, TO 1870* (Balt., John Murphy & Co. 1870) [hereinafter *HISTORY OF WILLIAM AND MARY*] (discussing the history of the College in great detail, yet remaining silent on the issue of slavery).

<sup>7</sup> See, e.g., GODSON ET AL., *THE COLLEGE OF WILLIAM AND MARY* 257–58 (1993).

<sup>8</sup> Alfred L. Brophy, *Considering William and Mary's History with Slavery: The Case of Thomas Roderick Dew*, 16 *WM. & MARY BILL RTS. J.* 1091, 1106–07 (2008). Brophy's is the best single account of Thomas Roderick Dew and his pro-slavery teachings. Brophy briefly evokes the anti-slavery positions of George Wythe and St. George Tucker and suggests that an alternate history might have happened, "a world of possibility, which was overwhelmed in the grim years leading into the Civil War." *Id.*

<sup>9</sup> *Id.* at 1107.

<sup>10</sup> *HISTORY OF WILLIAM AND MARY*, *supra* note 6, at 161. In a 1924 fund-raising brochure, Wythe's views on slavery are absent from a sketch of him and a supportive letter from Robert E. Lee is featured. *THE ROMANCE AND RENAISSANCE OF THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA* 31, 44 (1924). St. George Tucker is pictured, but not characterized. *Id.* at 40. There is no mention of slavery or of St. George Tucker in a history of the College in its first yearbook. *THE COLONIAL ECHO '99* (Williamsburg, Students of William and Mary College 1899). Nor in the "Historical Notes" of a 1930 Bulletin. *The Founding of the College*, 24 *BULL. C. WM. & MARY*, June 1930, at 7. Tucker is celebrated on a "Roll of Fame" among "Poets." *Id.* at 21. A College brochure mentions nothing about slavery from its first edition, in 1921, through

But the other options, of idealizing slavery as it existed locally or honoring the earlier anti-slavery sentiment at William and Mary, require fuller examination.

To reconstruct a healing version of the College's and Williamsburg's glorious pasts (as was attempted after the Civil War) required inventing a history of how benign slavery had been, locally at least. Softening reality and tidying it up was almost as easy as silence—the narrative already had local sources in the ante-bellum idealization of slavery by another William and Mary law professor, Nathaniel Beverley Tucker (1784–1851), usually called Beverley, son of St. George Tucker. This option prevailed

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the online version. See *Historical Chronology of William & Mary*, WM.EDU, <http://www.wm.edu/about/history/chronology/index.php> (last visited Apr. 16, 2013).

James Barron Hope (1829–1887), W&M Class of 1847, wrote sympathetically of the South in the War, and, when describing the work of an imaginary future historian, he chose to celebrate the Union rejoined, praising Southern virtues, omitting Southern vices:

He will show the different habits born of different social codes,  
 He will show the Union riven, and the picture will deplore,  
 He will show it re-united and made stronger than before.  
 Slow and patient, fair and truthful must the coming teacher be  
 To show how the knife was sharpened that was ground to prune the tree.  
 He will hold the Scales of Justice, he will measure praise and blame.  
 And the South will stand the verdict, and will stand it without shame.

JAMES BARRON HOPE, *A WREATH OF VIRGINIA BAY LEAVES* 87–88 (Janey Hope Marr ed., Richmond, West, Johnston & Co. 1895). Slavery? Absent, as in Hope's pairing of Washington and Lee: "Who shall blame the social order / Which gave us men as great as these?" *Id.* at 151.

Slavery is also absent in Wilford Kale's accounts of Wythe and Tucker—and it does not appear in Kale's accounts of Thomas Roderick Dew and Beverley Tucker. See WILFORD KALE, *HARK UPON THE GALE: AN ILLUSTRATED HISTORY OF THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA* (1985). J. E. Morpurgo's detailed account of his exploration of William and Mary as a student in the 1930s says nothing of slavery. J.E. MORPURGO, *AMERICAN EXCURSION* (1959). In his commissioned history of the first centuries of the College, Morpurgo mentions black slavery only in connection with a Phi Beta Kappa debate and then metaphorically in characterizing Wythe's servitude in reading law with his uncle. See J.E. MORPURGO, *THEIR MAJESTIES' ROYALL COLLEDGE: WILLIAM AND MARY IN THE SEVENTEENTH AND EIGHTEENTH CENTURIES* 181, 195 (1976). The College's tercentenary history is more forthcoming about slavery, though like all earlier histories it overlooks the Nottoway Quarter. See GODSON ET AL., *supra* note 7.

On campus, Dew was honored in 1939, at the height of Jim Crow, when his remains were moved to the College chapel; an economics club bore his name in the 1930s. See John Stewart Bryan, President of the College of William and Mary in Virginia, Address at the Memorial Service of Thomas Roderick Dew, *in* 33 BULL. C. WM. & MARY, June 1939, at 3; THE COLONIAL ECHO OF 1938, at 207 (W.W. Woodbridge, Jr. ed., 1938). But he has no memorial in the Chapel and no building named after him. Wythe was hyphenated with John Marshall to name first, in the 1920s, a school (and then department) of jurisprudence, a building, and, more recently, the law school. VITAL FACTS: A CHRONOLOGY OF THE COLLEGE OF WILLIAM AND MARY (1995). Tucker was honored with a building name only in 1980. *Tucker Hall*, SWEM SPECIAL COLLECTIONS RES. CENTER WIKI, [http://scdb.swem.wm.edu/wiki/index.php/Tucker\\_Hall](http://scdb.swem.wm.edu/wiki/index.php/Tucker_Hall) (last visited Apr. 16, 2013).

most powerfully late in the nineteenth century and early in the twentieth when a number of people connected to the College affirmed it, but it was attractive enough to have a remarkable lasting influence.<sup>11</sup> Even in 2011, the *Virginia Gazette*, Williamsburg's newspaper, could mark the anniversary of the Battle of Williamsburg by claiming that "[w]hile slavery was a central point of the war, it was not much of an issue here in 1862."<sup>12</sup>

This manufactured fantasy of benign and happy slavery was part of the larger Southern mythology of moonlight and magnolias that framed the creation of the Association for the Preservation of Virginia Antiquities (APVA) in Williamsburg in 1889.<sup>13</sup> In his 1993 study, James Lindgren analyzes the surge of Reconstruction nostalgia in Virginia and the ideological motives underlying the origin of the APVA.<sup>14</sup> Lindgren traces elite Virginians' resistance to the aftermath of the war, a repudiation of that era's "political democracy, racial equality, and cultural change" so at odds with the old-line values of Virginia.<sup>15</sup> Intimating the course of Virginia towards Jim Crow and Massive Resistance, Lindgren notes, "The work of the APVA was no mere sentimental affair."<sup>16</sup>

William and Mary was instrumental in the formation of the APVA. Its founder, Cynthia Tucker Coleman (1832–1908), was the daughter of Beverley Tucker, and his views would have colored hers.<sup>17</sup> In organizing the APVA, the ladies of Williamsburg

<sup>11</sup> Bill O'Donovan, Editorial, *The Campaign*, VA. GAZETTE, May 4, 2011, at 22A.

<sup>12</sup> *Id.*

<sup>13</sup> See JAMES M. LINDGREN, PRESERVING THE OLD DOMINION 13 (1993).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Beverley Tucker's household would have colored Coleman's recollections of slavery and affected the views of other locals. A visitor to the Tucker home recalled a charmed evening and the skills of one of Tucker's slaves, "an elegant old negro servant . . . a grey-headed Ganymede." GODSON ET AL., *supra* note 7, at 257. Perhaps this was John Sparks, "Old John," Tucker's "dining room servant." ROBERT S. BRIGHT, MEMORIES OF WILLIAMSBURG AND STORIES OF MY FATHER 19, 20 (1941). The visitor felt he had stepped back to a nobler time, "steeped in dreamy traditions." GODSON ET AL., *supra* note 7, at 258. A faculty colleague said of Tucker's twenty slaves that they "were made as happy as dependents could possibly be":

Every want was attended to. [Tucker] was as courteous and polite to his servants as to his equals and took great care never to wound their feelings, thinking it especially mean to insult or abuse those who could not resent it. It was a beautiful sight to contemplate when he came from his room usually about ten o'clock in the morning and walked around his premises to see his servants at their several occupations. His long flowing gray hair, his handsome and venerable countenance beaming with benevolence, his cordial good morning to all reminded one of the patriarchs of Old. Slavery under such a master seemed no bondage and was not felt to be such. They never spoke of him but with veneration nor seemed for a moment to distrust either his wisdom or his goodness.

involved the faculty of the College, especially Lyon G. Tyler (1853–1935), president of the College and son of President John Tyler. Lindgren describes Lyon Tyler as Coleman’s “mouth piece” in promoting the APVA and its goals; “the rebirth of the town and its college became intertwined through their efforts.”<sup>18</sup> The minimally reconstructed Tyler created the *William and Mary Quarterly* in 1892 as an added weapon in support of the Lost Cause.<sup>19</sup>

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*Id.* For a broader evocation of the ante-bellum years, lived according to “the noblest traditions of blood and of culture,” see Edward S. Joynes, Professor, Address Before the Phi Beta Kappa Society (Alpha) of William and Mary (Feb. 19, 1903), in 8 WM. & MARY LITERARY MAG. 238 (1904).

Cynthia Tucker Coleman’s first husband was another faculty member at William and Mary, Henry Augustine Washington (1820–1858). Washington’s only skepticism about slavery was on economic grounds; otherwise, “the slave has reason to rejoice, rather than repine, over his lot. He is well fed, well clothed, well housed, and secure in the enjoyment of all the necessaries and many of the comforts of life.” See *The Social System of Virginia*, 14 S. LITERARY MESSENGER 65, 79 (1848).

<sup>18</sup> LINDGREN, *supra* note 13, at 47.

<sup>19</sup> As a man and a historian, Tyler believed that “the South had been a victim to widespread misrepresentations,” its “influence . . . dwarfed till little is conceded to it beyond a wicked identification with slavery.” Lyon G. Tyler, *Book Reviews*, 3 WM. & MARY Q. 282, 282 (1895) (reviewing J.L.M. CURRY, THE SOUTHERN STATES OF THE AMERICAN UNION (1895)). A racially charged exchange between Tyler and the editor of *The New Republic* shows, among other topics, Tyler contrasting the baleful condition of “the country near Williamsburg” and its gentry to that in ante-bellum days. See *The Example of Germany*, 27 WM. & MARY Q. 226, 228 (1919); see also Lyon G. Tyler, *The South and Self-Determination*, 27 WM. & MARY Q. 217 (1919). In an obituary, Tyler was recalled as referring to Lincoln in 1932 as the “boss slacker” and saying that no history by a northern writer should be allowed in Virginia schools. *Dr. Lyon Tyler, 82, Dead in Richmond*, N.Y. TIMES, Feb. 13, 1935, at 19. Michael Dorsey Clark mentions a “cantankerousness” in Tyler that made him seem sometimes “a caricature of the diehard Confederate.” MICHAEL D. CLARK, THE AMERICAN DISCOVERY OF TRADITION, 1865–1942, at 78–79 (2005). Nevertheless, in the constitutional debate in Virginia about restricting black suffrage and black education, Tyler held that since whites had introduced black people to America, whites had a moral obligation “to lend [the black man] a helping hand” in education; Tyler favored a restricted vote wherein the right to vote would “be based upon education, applying to all [blacks and whites] alike.” Lyon G. Tyler, Op-Ed., *Lend the Negro a Helping Hand*, PHILA. ENQUIRER, Mar. 4, 1901, at 5.

Tyler’s sketch of Joseph Bryan (1845–1908) is revealing of both Bryan and Tyler. Tyler wrote that Joseph Bryan

had seen only the gracious, kindly side of [slavery], as actually administered in Virginia and not as grotesquely caricatured in “Uncle Tom’s Cabin.” Like the great majority of gentle folk in Virginia, his family [which stretched back to include John and Richard Randolph and St. George Tucker] has long regarded slavery as wrong in principle, if beneficent in practice, and as an economic blunder, the remedy for which lay in gradual emancipation. . . . [H]e also remembered, with a sort of righteous indignation, and with a virile scorn, the mawkish maunderings

Robert Hughes, a William and Mary student when it reopened in 1871, recalled not just the battle damage, dilapidation, and poverty in the town, but, briefly, race relations that were “strained, though during my entire residence here no actual outbreak of any consequence occurred.”<sup>20</sup> And he remembered what, tellingly, is documented nowhere else, that during Reconstruction, Williamsburg, in the 1870s, had a black mayor, recalled only as Tucker.<sup>21</sup> Richard A. Wise (1843–1900), formerly in the Confederate Army and professor of chemistry (1869–1878) at William and Mary, remained bitter, telling a visitor in 1875 that “he did not acknowledge Virginia to be one of the United States.”<sup>22</sup> Beginning in 1871, he led Wise’s Light Brigade, which was manned by students from the College and was recorded as having “disrupted a racially-mixed Republican meeting in Williamsburg.”<sup>23</sup>

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of the self-righteous Pharisees, who, harping on the “blot of slavery,” derided Virginia’s claim to a high civilization. . . . His own relations with a large number of colored servants employed both at “Laburnum” and at his plantation, “Eagle Point,” were those of ante-bellum days, when the master was the friend, supporter and defender, and the servants (they were never called “slaves” by gentle-folk in the old days) proudly regarded themselves as members of the family. [They] simply worshipped “Mars’ Joe,” as they always called him (“freedom” or no “freedom”).

4 ENCYCLOPEDIA OF VIRGINIA BIOGRAPHY 64 (Lyon Gardiner Tyler ed., 1915). Bryan’s son John Stewart Bryan (1871–1944), the nineteenth President of William and Mary (1934–1942), at the height of Jim Crow, was the one who disinterred Thomas Roderick Dew from his grave in Paris and reinterred him with full honors in the crypt of the College chapel. His address on the occasion evokes Dew’s pro-slavery thinking, but also evokes Wythe, St. George Tucker, and Jefferson as being against slavery. Bryan, *supra* note 10, at 8.

<sup>20</sup> Robert M. Hughes, “S-I-X-T-Y Y-E-A-R-S A-G-O”: Baccalaureate Address of Robert M. Hughes at the College of William and Mary Final Day, June 12, 1933, *reprinted in* 13 WM. & MARY Q. 195, 196 (1933).

<sup>21</sup> *Id.* Another influential black man from Reconstruction is recalled more fairly in a biography by Julia Oxrieder. Samuel Harris, an entrepreneur, was Williamsburg’s richest man, so rich that the President of the College had borrowed money from him. One local story, fetching but undocumented, is that Harris loaned the College the money it needed to reopen after the War. JULIA WOODBRIDGE OXRIEDER, RICH, BLACK, AND SOUTHERN: THE HARRIS FAMILY OF WILLIAMSBURG (AND BOSTON) 9 (1998); *see also* Robert Russa Moton, *Poverty to Wealth: Samuel Harris Accumulated \$100,000 in a Country Village*, COLORED AMERICAN, July 23, 1904, at 4 (discussing Harris’s impact in developing Williamsburg).

<sup>22</sup> *See* E. Hinds, Letter to the Editor, *Rebuilding Virginia Colleges*, DAILY INTER-OCEAN (Chi.), Apr. 1, 1875, at 2.

<sup>23</sup> Anne W. Chapman, Benjamin Stoddert Ewell: A Biography 214 (1984) (unpublished Ph.D. dissertation, College of William and Mary) (available at William and Mary Digital Archives). My thinking Wise’s Light Brigade might have been something akin to the KKK is complicated by Benjamin Ewell’s countenancing the outfit as a “benefit to the Institution” and allowing it a room at the College to use as an armory. E.G. Swem, *Some Notes on the Four Forms of the Oldest Building of William and Mary College*, 8 WM. & MARY Q. 217, 304 (1928). Wilford Kale provides further evidence against seeing the Brigade as racially oppressive in his section on “The Wise Light Infantry” in his thesis. *See* Wilford Kale, The Student is

The resentment of Reconstruction lingered. As Virginia at the start of the twentieth century was restricting suffrage, one William and Mary student mourned the plight of whites:

[S]hackles more sore than the black man bore  
 Are worn by my mother's son. . . .  
 They ask us the ballot to give  
 To this black and barbarous man,  
 Who would bring a rule of wreck and strife  
 On our beloved land.

So we ask them *to let us alone*,  
 Our laws and systems to spread;  
 The Black may vote when we are gone,  
 And rule when our race is dead.<sup>24</sup>

Refashioning the past helped the healing from devastation, and several of the “Seven Wise Men,” the seven faculty members who reopened William and Mary in 1888 after it had closed in 1881, were involved.<sup>25</sup> One was John Lesslie Hall (1856–1928), Old English scholar, translator of *Beowulf*, and a poet. In his *Half-Hours in Southern History*,<sup>26</sup> Hall argued the Beverley Tucker view, the “bright side” of

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Converted into the Warrior: The College of William and Mary in Virginia and its Association with the Military from the French and Indian War to the Present Day 75–77 (2011) (unpublished M.Phil. Thesis, University of Leicester) (on file with Wilford Kale).

<sup>24</sup> J.A.C., *Let Us Alone: A Voice from the Black Belt*, WM. & MARY C. MONTHLY, Apr. 1903, at 308 (emphasis omitted) (“J.A.C.” is probably J. A. Carson, President the next year of the Phoenix Literary Society); see also A Plantation Echo, 8 WM. & MARY LITERARY MAG. 204 (1904) (mocking the “lazy black man”: “And dere you sits atalkin’ / At a mile er minit rate / ’Bout a blackman’s boun’ en duty / To de blackman’s canidate”). But, there is always complexity—about this time Williamsburg’s boys were learning carpentry and gardening from Jesse Cary, the school janitor and a graduate of Hampton Institute: “If there was any question about what he was doing teaching white children, I never heard about it.” GRACE BEALE MONCURE, I REMEMBER SCHOOLDAYS IN WILLIAMSBURG 14 (1971).

<sup>25</sup> See *William & Mary 1850–1899*, WM.EDU, <http://www.wm.edu/about/history/chronology/1850to1899/index.php> (last visited Apr. 16, 2013).

<sup>26</sup> JOHN LESSLIE HALL, *HALF-HOURS IN SOUTHERN HISTORY* (1907). A student sketch of Jefferson Davis published in 1903 stresses that the enslaved were dealt with “in the manner usual among Southern gentlemen, . . . kindly, humanely, considerately; rarely allowing them to be punished,” giving them generous provisions of food and clothing, and “making friends of them in every possible way.” *Jefferson Davis, President of the Confederacy*, WM. & MARY LITERARY MAG., Dec. 1903, at 79. In an essay illustrated by photographs, a student recounts growing up after the war but in ante-bellum plantation circumstances: all shared the “feeling of being members of one great family,” with contemporary black people “a muchly blessed people,” having moved quickly through light hardships now to enjoy “the blessings



slavery;<sup>27</sup> he attacked the views of Northern writers, especially Harriet Beecher Stowe, saying “[t]he false impression produced by one book has never been eradicated.”<sup>28</sup> Slavery, Hall averred, offered black people a good deal:

No agricultural laborer has ever had food so nutritious and so plentiful as the plantation negro. He had, as a rule, a kind and considerate master, self-interest and humanity combining to make his master feed him plentifully, clothe him comfortably, see that he was not overworked, and look after him in sickness. His working days were from two to four hours shorter than those of European laborers.<sup>29</sup>

Hall’s slaves would follow “Ole Marster” and “Ole Missis” “to the ends of creation” in gratitude because even “disabled by age, home, food, and clothing were still provided them.”<sup>30</sup> After all, Hall says, pointing to moral and mental improvements, “American slavery lifted the poor African out of his degradation.”<sup>31</sup> The “glory of old William and Mary College”<sup>32</sup> did not encompass Wythe or St. George Tucker, both absent from Hall’s history.

Other locals, many of whom also associated with the College, concurred with Hall.<sup>33</sup> In 1914, J.A.C. Chandler (1872–1934, President of William and Mary from 1919 to 1934), published an article in the *William and Mary Quarterly* that stressed the decorum of Eastern Virginia in matters of class and race.<sup>34</sup> He cited testimony

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that it has taken us hundreds of generations of civilization to secure.” *The Negro: Sketches*, 13 WM. & MARY LITERARY MAG. 337, 337, 341 (1904).

<sup>27</sup> HALL, *supra* note 26, at 131.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 132.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 26.

<sup>33</sup> However, a figure much revered in the history of William and Mary, Benjamin Ewell (1810–1894), the College’s sixteenth President (1855–1888), complicates the picture with his sympathy for the plight of black people in the nineteenth century. See Meyers, *supra* note 1, at 1153–56. When Lewis Wellington Wales (1860–1927), a local black minister, needed better access to theological materials, Ewell saw to it that he was able to use the College library and assured Wales of his “willingness to aid me when and wherever possible.” L. W. WALES, BRIEF AUTOBIOGRAPHICAL SKETCH OF THE LIFE AND LABORS OF REV. L. W. WALES 6 (1910). Rev. Wales recalled Ewell as “among the best friends the colored people had.” *Id.*

<sup>34</sup> See *Society in East Virginia*, 22 WM. & MARY Q. 221, 223–28 (1914) [hereinafter *Society in East Virginia*]; see also VIRGINIA FOLK LEGENDS 327 n.83 (Thomas E. Barden ed., 1991). In support of his respondents’ testimony, Chandler cites St. George Tucker as describing the slave owners of 1776 as “a race of harmless aristocrats.” *Society in East Virginia, supra*, at 223.

that he had solicited himself to the effect that well before secession Virginia gentlemen were courteous and polite to all, including “well-behaved colored men.”<sup>35</sup>

Thomas Jefferson Stubbs (1841–1915), professor of mathematics and another of the College’s Seven Wise Men, assured Chandler that the slave-owners were “ever hospitable, courteous, and polite to all classes of white men, and I might say to colored men and women.”<sup>36</sup> R. S. Thomas echoed this, saying that “negroes too” in days of yore were treated with courtesy and politeness.<sup>37</sup> Maryus Jones, a former mayor of nearby Newport News, Virginia, joined the chorus, claiming that “[even] the slaves themselves” were met with dignified treatment.<sup>38</sup> Captain C. B. Trevillian, from Williamsburg, affirmed that every one of “the large slave owners” he was raised among in Virginia were “Virginia Gentleman, courteous and polite to all,” including, according to Captain L. W. Lane, a former mayor of Williamsburg, “poor white men.”<sup>39</sup> Captain John Lamb said the same: “The large slave owners were courteous to all classes.”<sup>40</sup> Chandler was convinced that “everything about [the South] has been more or less misrepresented at the hands of Northern writers”<sup>41</sup> who, if they would but work at it, might regain an impartiality that would set the South in its true light.

Slightly later, in 1917, a former member of the College’s Board of Visitors undertook to vindicate slavery through short stories. Armistead C. Gordon (1855–1931), also a former Rector of the University of Virginia, received an honorary degree from William and Mary in 1906.<sup>42</sup> Gordon’s stories focus on the Williamsburg area during reconstruction and the first years of the twentieth century.<sup>43</sup> His *Ommirandy: Plantation Life at Kingsmill* is a stellar example of Lost Cause plantation literature and reflects Gordon’s own experiences during Reconstruction.<sup>44</sup>

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<sup>35</sup> *Society in East Virginia*, *supra* note 34, at 224.

<sup>36</sup> *Id.* at 225.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 226.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 228 n.\*.

<sup>42</sup> *A Guide to the Gordon and Webster Family Papers: A Collection in Special Collections, University of Virginia Library*, VA. HERITAGE, <http://ead.lib.virginia.edu/vivaxtf/view?docId=uva-sc/viu04087.xml>; WILLIAM & MARY LAW SCH., DIRECTORY OF ALUMNI AND FORMER STUDENTS (1959), available at [scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1000&content=directories](http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1000&content=directories).

<sup>43</sup> See, e.g., ARMISTEAD C. GORDON, *OMMIRANDY: PLANTATION LIFE AT KINGSMILL* (1917).

<sup>44</sup> See *id.* For the biographical connection, see *The Bookman Recommends*, 46 BOOKMAN 500, 502 (1917). Gordon claimed that

[m]ost of my dialect stories have some basis of fact in their incidents and in them I have sought to depict phases of the life and characteristics of the negroes whom I grew up among as a boy, and have known more or less intimately since. . . . Nearly all, if not all, of the stories in the “Ommirandy” book had some foundation of fact, and the characters are amplified portraitures of “darkeys I have known.”

BLANCHE COLTON WILLIAMS, HOW TO STUDY “THE BEST SHORT STORIES” 86 (1919).

Rich in dialect, the stories stereotypically demean African Americans. The characters almost universally regret that slavery had been abolished and demonstrate a deep devotion to their kindly masters, who remain imbued with the most profound concern for their faithful servants. The Kingsmill slaves, “with an affection generally characteristic of the race, had promptly agreed [after the War] that they would ‘stay wid Mars’ Jeems’; and they had stayed, evincing a constant and inherited loyalty.”<sup>45</sup> The title character, Ommirandy, upholds the old values: “[f]rom the moment when the almost incomprehensible news had come to the slaves on the plantation that they were free, the old woman’s dominating personality had impressed upon them a sense of their own inconsequence . . . and of the unabated dignity and power of young Mars’ Jeems.”<sup>46</sup> Ommirandy

positively and persistently refused to recognize her own freedom; and she frequently and volubly denied the right of any power or principality to set free any of the slaves on the Kingsmill plantation, whatever fate might befall other slaves on other plantations less fortunate in their masters than it had been.<sup>47</sup>

The slaves had been loyal through good times and bad, even during “the black years, [when] the Federal gunboats were in the river, and the Union armies had passed on toward Richmond”; “they had stayed at home, with nobody but ‘Mistis’ and the children in the Great House, and had kept the faith.”<sup>48</sup>

One scene with local resonance depicts the impecunious former master of Kingsmill contemplating sending his son to William and Mary, something he fears

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The Kingsmill Gordon evokes is an imaginative amalgamation that seemingly includes at least Carter’s Grove, a famed plantation house still standing down river today, and a slave quarter, “Old Town, whose dilapidated white-washed cabins faced one another in a long street, set with ragged aspen-trees.” GORDON, *supra* note 43, at 120. Gordon describes how hundreds of slaves had lived there, though the cabins were mostly torn down during and after the war. *See id.* at 11. The plantation, its faithful slaves freed, is deteriorating, the gullies deepening, the broom-sedge expanding from the river bottom into ground once tilled, and the stake and rider fences falling into disrepair. *Id.* at 11–12. Evidence of its decline includes that fact that the house itself has been bought at auction, as a summer home for a *nouveau riche* industrialist from Ohio, “a regular Aladdin [who] can buy anything he wants.” *Id.* at 22.

Gordon mentions the burial ground, the home of the spirit of an African king, a slave killed a hundred years earlier by an overseer. *Id.* at 189. Today in Kingsmill, which comprised a number of plantations and slave quarters, only one African-American burial ground is commemorated or mentioned in a history of the community. *See* WILLIAM M. KELSO, *KINGSMILL PLANTATIONS, 1619–1800*, at 108–09 (1984). Other burial grounds in Kingsmill are the subject of local rumors.

<sup>45</sup> GORDON, *supra* note 43, at 120.

<sup>46</sup> *Id.* at 121.

<sup>47</sup> *Id.* at 11.

<sup>48</sup> *Id.* at 71.

he cannot afford—even for “a careful boy” living frugally the College would cost “three or four hundred dollars a year.”<sup>49</sup>

A striking testimonial to the notion that local slavery was exceptionally pleasant comes from a 1928 letter by W. T. Greenhow, a graduate of Hampton Institute, and a Williamsburg native, born in 1861 to a family of black people “liberated in the early days of Williamsburg and given property not far from William & Mary.”<sup>50</sup> Greenhow’s father, George Greenhow, was the College’s janitor before the Civil War and liked to boast (with a fine sense of irony) that he was “the only negro ever educated at William & Mary”<sup>51</sup>—he had been taught to read and write by one of the students in return for Mrs. Greenhow doing his laundry.<sup>52</sup>

According to his son, George Greenhow “never tired of praising the humane and aristocratic slave owners” of the area “for no acts of cruelty to slaves were ever charged up against them, nor was the condition of the free negroes made uncomfortable.”<sup>53</sup> He alleged that even after Nat Turner’s rebellion in 1831, locally freed slaves chose to remain “attached to the old ‘fire side’” rather than leave Virginia.<sup>54</sup> The old days were gone, but, according to Greenhow, Williamsburg masters had before Turner’s rebellion “set their slaves free and in some cases even [given] them homes, privilege of attending schools, possession of fire arms and right of assembly for divine worship.”<sup>55</sup>

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<sup>49</sup> *Id.* at 14.

<sup>50</sup> Letter from W. T. Greenhow to John D. Rockefeller, Jr. (July 9, 1928) (on file in Colonial Williamsburg Foundation Archives) [hereinafter Letter from Greenhow]. The letter, which was discovered by Louise Kale, is used with permission.

<sup>51</sup> *Id.*

<sup>52</sup> An enslaved black man, James Hambleton Christian, “in his younger days” attended his master, James B. Christian, while the latter was a student at William and Mary. Therefore, he apparently could make a claim similar to George Greenhow’s: “through the kindness of some of the students he had picked up a trifling amount of book learning.” WILLIAM STILL, STILL’S UNDERGROUND RAILROAD RECORDS 69 (Phila., William Still rev. ed. 1886).

<sup>53</sup> Letter from Greenhow, *supra* note 50.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* Given Jim Crow and the tenor of the times, we can discount Greenhow’s portrait of local slavery, but the black sexton of Bruton Parish Church in 1864 does appear to have been enamored still of the old ways; a visitor described him as the “half-crazed, black secessionist sexton” still angry at the soldiers who removed the pews to make the church a hospital: “‘This house was once a house of grace, now disease and sickness fills the place,’ said the sexton.” See Letter to Eliza, in DEAR ONES AT HOME: LETTERS FROM CONTRABAND CAMPS 109 (Henry L. Swint ed., 1966). If the sexton were the same one as before the war, he would have been Valentine, who was owned by Beverley Tucker. See Eliza Baker, *Memoirs of Williamsburg Virginia, A Conversation Between Eliza Baker and the Rev. Wm. A. R. Goodwin* (May 4, 1933) (on file at the Rockefeller Library, Colonial Williamsburg). Valentine’s views might well have been heavily influenced by Tucker’s own peculiar views. See Patricia Samford & Meredith Moody, *Archaeological Excavations in The Brush-Everard Property: An Interim Report*, COLONIAL WILLIAMSBURG DIGITAL LIBR. (1989), <http://research.history.org/DigitalLibrary/View/index.cfm?doc=ResearchReports/RR1580.xml>.

The local precedents for these benign evocations in a small town and at a small college had endured decades. Beverley Tucker had promulgated a paternalistic view of slavery as simply a matter of natural and necessary subservience by the lesser to the greater, both parties having mutual and family-like duties and obligations.<sup>56</sup>

In his lectures on constitutional law, Beverley Tucker argued for “the perfect sovereignty and independence of the states,” denying that the people in the different colonies could be said to have been one people in any sense.<sup>57</sup> It was, he believed, “northern writers” and their misinformed understanding of the Constitution and how it came into being that had prevailed, to mischievous ends.<sup>58</sup> Tucker questioned how a northerner could ever understand the “paternal relation” of a master to the enslaved woman raising his children, who formed “with her own children . . . one family; while the master and mistress are the common parents of all.”<sup>59</sup>

Tucker evoked his idyllic view of local ease in an essay where he recalls the simple, shared happiness at Bruton Parish Church as white masters and black slaves joined in festive family celebrations:

The Episcopal minister of the village in which I live, celebrates the rites of matrimony between as many blacks as whites; the white members of the family, with their most intimate friends, sometimes witness the ceremony, and the parties, with their numerous guests, close an evening of festive hilarity with an entertainment of which the most fastidious epicure might be glad to partake.<sup>60</sup>

Slavery, Tucker argued at length, benefitted both races—evidenced especially by “the physical, intellectual and moral improvement” being enslaved brought to black

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Some black people likely made pragmatic guesses as to who might win the war. Locally, one free black couple is recorded as having spied on Union forces in Williamsburg. See CAROL KETTENBURG DUBBS, *DEFEND THIS OLD TOWN* 325 (2002). For a discussion of the porosity of the line between North and South, just west of the federally occupied College, see A Native of Glasgow [James Barr], *Singular Adventures in the Federal and Confederate States*, N.Z. HERALD, Aug. 2, 1864, at 6.

<sup>56</sup> See N. BEVERLEY TUCKER, *A SERIES OF LECTURES OF THE SCIENCE OF GOVERNMENT* 417–18 (Lawbook Exchange, Ltd. 2005) (1845).

<sup>57</sup> *Id.* at 444, 427–48.

<sup>58</sup> TUCKER, *supra* note 56, at 416.

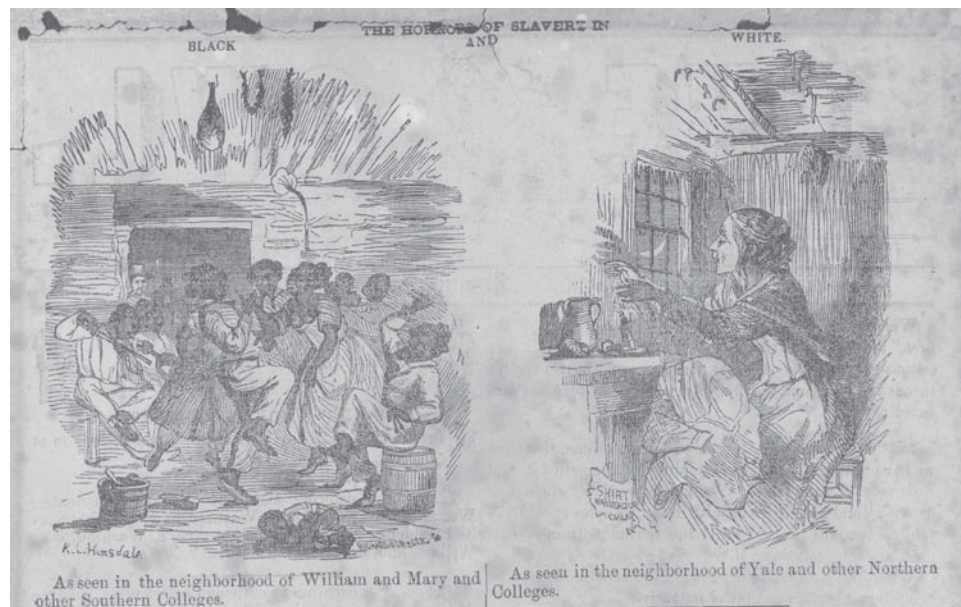
<sup>59</sup> See *id.* at 417. Tucker sent one of his writings to Thomas Carlyle, who in reply assured him that a slave, when you thought about it, was after all simply “[a] servant hired *for life*, instead of by the day or month.” Terry L. Meyers, *Two Letters from Carlyle to Beverley Tucker*, 25 *CARLYLE STUDIES ANN.* 189 (2009). For a letter from two of Tucker’s slaves pleading not to be sold and separated from their families, see PARKE ROUSE, JR., *COWS ON THE CAMPUS: WILLIAMSBURG IN BYGONE DAYS* 199–200 (1973).

<sup>60</sup> *An Essay on the Moral and Political Effect of the Relation Between the Caucasian Master and the African Slave*, 10 S. LITERARY MESSENGER 335, 336 (1844). Marriage between black people had no legal standing in Virginia at the time.

people.<sup>61</sup> The improvements from earlier times, Tucker notes, can only continue, for they are

progressive, and an accurate observer may see that, from time to time, the great body of slaves have become more attached, more content with their condition, less licentious and more honest; and that, meanwhile, their comforts have been increased, and that the master has become more kind, more indulgent, milder in his methods of government and more confiding. . . . [I]t becomes daily more manifest that, whatever griefs may fall to the lot of either party, both are happy in each other, and happy in a relation, with the duties of which use has made both familiar.<sup>62</sup>

Slightly later, in 1854, William and Mary students underlined the supposedly easy life of local slaves in a cartoon in *The Owl*, perhaps the country's first college humor publication.<sup>63</sup> It was better to be black and enslaved in Williamsburg than white and exploited in New Haven:



***The Horrors of Slavery in Black and White***<sup>64</sup>

<sup>61</sup> *Id.* at 332.

<sup>62</sup> *Id.* at 337.

<sup>63</sup> See Jennifer Oast, *Forgotten Masters: Institutional Slavery in Virginia: 1680–1860*, at 184 (Aug. 2008) (unpublished Ph.D. dissertation, College of William and Mary) (on file with Earl Gregg Swem Library).

<sup>64</sup> *The Horrors of Slavery in Black and White*, THE OWL (Wm. & Mary), Jan. 1854, at 2.

The College's care for its slaves, the writers of *The Owl* averred, was more liberal than generally allowed, but they mocked the retention of a regulation forbidding the abuse of the College's slaves as smacking of abolitionist thought.<sup>65</sup>

The reality of slavery and black life differed from the gentle visions of misty-eyed dreamers. In her extraordinary account of slavery at the College,<sup>66</sup> Jennifer Oast details the stringently complex situation faced by the enslaved in dealing with imperious and abusive students;<sup>67</sup> she cites an instance from 1702 where a slave was fired at by a College student as "an early example of what would be a long tradition of students treating college servants badly."<sup>68</sup>

In 1775, the faculty described the mistreatment of the enslaved by the Usher of the Grammar School, James Innes, and its consequences:

[H]is Beating & Punishing the Negroes of the College when he thinks them in fault . . . has encourag'd Students to do the same, . . . which tends to transfer the Command of the said Negroes from the President and Masters to the Ushers & Students to the Interruption of the Business of the College.<sup>69</sup>

In 1806, when the locally enslaved seemed likely to rebel, students "turned out several nights successively until all apprehensions of danger subsided."<sup>70</sup>

A distinguished English scientist who taught at William and Mary from 1836 to 1848, John Millington (1779–1868), enjoyed entertaining guests by tricking local black people into receiving electrical shocks.<sup>71</sup> In 1836, students assaulted and flogged Macklin Wallace, a free black man; the faculty reviewed the case and decided to "take no farther notice of this occurrence than to express decided disapprobation of it, and that its impropriety was very much enhanced by the Commission of the act within the College building."<sup>72</sup> Laura S. Haviland (1808–1898), an abolitionist who visited the area in 1866, recorded horrific tales of abuse and of slave families who were divided

<sup>65</sup> Oast, *supra* note 63, at 184–85.

<sup>66</sup> *See id.* Evidence as to how the College did treat its slaves is slim indeed. Oast notes evidence of some restrictions on how students could treat or mistreat slaves and what could be demanded of them, *id.* at 179–81, and of some stability in family units, *id.* at 186. In 1743, two slaves ran away from the College's tobacco plantation—back to Williamsburg to seek justice from the College; two faculty members were dispatched to set things to right. *Id.* at 190. But Oast's work makes clear that being owned by an institution led to little amelioration in the lives of those enslaved. *Id.* at 179–85.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 172.

<sup>69</sup> *Journal of the President and Masters of William and Mary College*, 15 WM. & MARY Q. 1, 13 (1906).

<sup>70</sup> *Glimpses of Old College Life*, 8 WM. & MARY Q. 213, 219 (1900).

<sup>71</sup> Meyers, *supra* note 1, at 1151.

<sup>72</sup> 3 HISTORICAL NOTES: THE COLLEGE OF WILLIAM AND MARY 390 (1954).

as members were sold off.<sup>73</sup> A Quaker teacher at local Freedmen's Bureau schools, Margaret Newbold Thorpe, reported the antipathy of most locals to educating former slaves and drew attention to the KKK.<sup>74</sup> One old man had been taught to read by a white lady, though his master would "whip them all to pieces" if he had found out.<sup>75</sup>

The conditions at Kingsmill in 1867 were particularly harsh. Thorpe mentions the "scarred backs" of the area's former slaves, the black families "torn apart and beaten because they wept," and daughters "sold to a fate infinitely worse than death."<sup>76</sup> Eliza Baker, born into slavery in 1843 in Williamsburg, recalled the city's flogging post with an iron cage nearby to hold the slaves before and after.<sup>77</sup> She recalled the treatment of slaves and the threat of being sold: "some [whites] treated 'em right tough, and some right good. They made you do what they wanted you to do, and if you didn't do what they wanted you to, they put you in their pocket."<sup>78</sup> She explained, "That means the nigger trader would get you."<sup>79</sup> She recalled the slave auctions: "From the block on the Court House Green. I have heard many a crying-out on the block."<sup>80</sup> The auctioneer, Moses Harrell, "would cry them out. 'Here they go!' he would cry. Hardly any parents would stand by to see their children sold."<sup>81</sup> A slave found with a book could be whipped.<sup>82</sup> If out after 9:00 p.m.: thirty-nine lashes.<sup>83</sup>

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<sup>73</sup> LAURA S. HAVILAND, *A WOMAN'S LIFE-WORK* 408–24 (Arno Press & N.Y. Times 1969) (1881).

<sup>74</sup> See Margaret Newbold Thorpe, *Life in Virginia by a "Yankee Teacher,"* 64 VA. MAG. HIST. & BIOGRAPHY 180, 180–85 (1956).

<sup>75</sup> *Id.* at 190.

<sup>76</sup> *Id.* at 195.

<sup>77</sup> See Baker, *supra* note 55, at 1, 3.

<sup>78</sup> *Id.* at 5.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 4.

<sup>83</sup> *Id.* at 3. Eliza Baker lived until 1935 and is buried in Williamsburg's Cedar Grove Cemetery, in the once-segregated black section. *Ann Eliza Baker*, FIND A GRAVE, <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=48790791> (last visited Apr. 16, 2013). In 1856, Moses Harrell was Steward at the College. See Carol Kettenburg Dubbs, *Name Index to The Bucktrout Daybook and Ledger with Biographical Data*, SWEM LIBR. ARCHIVES, <http://cf.swem.wm.edu/archives/collections/bucktrout/name-index.pdf> (last visited Apr. 16, 2013); see also Fred Boelt, *Confederate Gravesites*, JAMES CITY COUNTY CAVALRY PICKET LINES, Jan. 2012, at 3, available at <http://www.jamescitycavalry.org/sitebuildercontent/sitebuilderfiles/jccnewsletterjan12.pdf>.

Rev. Goodwin, who interviewed Baker, was a founding father of Colonial Williamsburg, and had taught religion at the College, where he was also responsible for raising funds. See ROUSE, *supra* note 59, at 112–16. To Baker's claim that being found with a book could lead to a whipping, Goodwin harrumphs in a footnote that being punished for learning to read "did not apply to slaves generally owned by the better families." Baker, *supra* note 55, at 4 n.\*. For a variety of reasons, slavery was largely invisible at Colonial Williamsburg until recent decades; one reason was simply "a reluctance to defy the sensibilities of whites living in the town of



Cornelia Carney was also born into slavery in Williamsburg, in 1838, and recalled her father, John Jones Littleton: “Ole Marsa Littleton used to beat father all de time. His back was a sight. It was scarred up an’ brittled fum shoulder to shoulder.”<sup>84</sup>



*Portrait of a Man & Virginian Luxuries*<sup>85</sup>

Creating the myth of local benevolence meant ignoring evidence of an earlier William and Mary that was antsy about slavery. Acknowledging that evidence is an alternative to either erasing slavery or transfiguring it fantastically. Such evidence is gauzy, and the evil teachings of the ante-bellum William and Mary faculty obscure it.

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Williamsburg who refused to let go of the ‘old south.’” Rex Marshall Ellis, *Presenting the Past: Education, Interpretation, and the Teaching of Black History at Colonial Williamsburg* 292 (1989) (unpublished Ed.D. dissertation, College of William and Mary). In Goodwin’s article, *The Restoration of Colonial Williamsburg*, black people are mostly belittled, as with pictures of a “Mammy” cooking and two “pickanninies who are up to their ears in watermelon.” W.A.R. Goodwin, *The Restoration of Colonial Williamsburg*, 71 *NAT’L GEOGRAPHIC* 402, 418, 437 (1937). By 1954, the magazine came to include less insulting pictures and even to mention the presence historically in Williamsburg of “a sprinkling of slaves.” Beverley M. Bowie, *Williamsburg: Its College and Its Cinderella City*, 106 *NAT’L GEOGRAPHIC* 439, 463 (1954).

For more examples of the horrors of local slavery, see *JOURNAL AND LETTERS OF PHILIP VICKERS FITHIAN: A PLANTATION TUTOR OF THE OLD DOMINION, 1773–1774*, at 38–39, 84–85 (Hunter Dickinson Farish ed., 1957); THAD W. TATE, *THE NEGRO IN EIGHTEENTH-CENTURY WILLIAMSBURG* 91–105 (1965); LORENA S. WALSH, *FROM CALABAR TO CARTER’S GROVE: THE HISTORY OF A VIRGINIA SLAVE COMMUNITY* 83, 118 (1997).

<sup>84</sup> COLONIAL WILLIAMSBURG FOUND., *supra* note 2, at 557, 558. William Still also cites the experience of Emanuel T. White, a runaway slave captured in Williamsburg, where he “received a severe flogging.” STILL, *supra* note 52, at 154.

<sup>85</sup> *Portrait of a Man & Virginian Luxuries* (two-sided oil on canvas circa 1825) (on file with the Abby Aldrich Rockefeller Folk Art Museum, Colonial Williamsburg Foundation).

But those who contributed to what Robert Engs has called a “necessary self-delusion [the] fanciful images of ‘happy darkies’”<sup>86</sup> had to shut their eyes to the possibility that, no doubt influenced by larger political and religious movements, the College also had been destabilizing in some ways to local slavery in the years before Dew et al.<sup>87</sup>

Until recently, that possible narrative has been largely ignored, perhaps because it did not easily comport with the imperatives of Jim Crow. But it was sketched out by Lyon G. Tyler on December 5, 1904, in a speech to the College’s Alpha Chapter of Phi Beta Kappa.<sup>88</sup> An indefatigable, if partisan, historian Tyler helped the College’s difficult recovery from the Civil War as President from 1888 to 1919.<sup>89</sup> Though Tyler added his voice to those peddling notions of a beneficent slavery,<sup>90</sup> he singled out in his lecture two distinguished eighteenth century professors at the College. He described George Wythe and St. George Tucker as “advocates of the emancipation of the slaves” and stated that “their teachings no doubt had much to do with producing that spirit of philanthropy so prevalent in Virginia till the sudden onslaught of the abolitionists.”<sup>91</sup>

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<sup>86</sup> Robert F. Engs, *The Myth of Happy Slaves*, CIVIL WAR SESQUICENTENNIAL: VIRTUE, VALOR, SACRIFICE 57, May 4, 2011 (printed as a supplement to the *Virginia Gazette*).

<sup>87</sup> See generally TATE, *supra* note 83, at 114–26 (discussing larger forces critical of slavery). Tate cautions that, of course, abolitionist proposals were “rare, ineffective, and certainly unrepresentative of the prevailing climate of opinion,” *id.* at 115, and cites a sarcastic *reductio ad absurdum* by a pseudonymous writer opposing an extension of religious liberty—“that you may be true Worshippers of Liberty make your Negroes as free as yourselves.” Philo-Bombastia, Letter to the Printer, VA. GAZETTE, Mar. 20, 1752, at 2. But Tate also cites a 1780 call in the *Virginia Gazette* for the enslaved to share in “the natural right of all mankind, for ‘till that be done the talk of justice is far from being completed.” TATE, *supra* note 83, at 122 (quoting 4 WM. & MARY Q. 225; VA. GAZETTE, Apr. 1, 1780).

The establishment in 1760 of a school affiliated with the College and dedicated to the religious education of black children, free and enslaved, seems relevant here. Terry L. Meyers, *Benjamin Franklin, The College of William and Mary, and the Williamsburg Bray School*, 79 ANGLICAN & EPISCOPAL HIST. 368, 368 (2010). The theological reasons behind the Bray school and the earlier involvement of the College in the religious education of black people were not intended to threaten the institution of slavery (though education of any sort threatens oppression and power). A 1711 sermon by William Fleetwood that both enabled and undercut slavery was a favorite of several early presidents of William and Mary. *Id.* at 382.

<sup>88</sup> See Lyon G. Tyler, President, William and Mary College, Address Before the Phi Beta Kappa Society (Dec. 5, 1904), in EARLY COURSES AND PROFESSORS AT WILLIAM AND MARY COLLEGE 12–13 (1904).

<sup>89</sup> ROUSE, *supra* note 59, at 92.

<sup>90</sup> In reprinting an 1834 traveler’s accounts of cruelty to slaves on plantations not far from Williamsburg, Tyler, as the editor of *The William & Mary Quarterly*, was quick to endorse contemporary denials and asseverations of the gentle lives afforded the enslaved: “on the slave question, like most English visitors, his abhorrence of slavery carried him into misstatements.” *Excerpts from the Southern Literary Messenger*, 21 WM. & MARY Q. 198, 202 (1913).

<sup>91</sup> Tyler, *supra* note 88, at 12. The talk was published in much the same form in a few other publications. See LYON G. TYLER, THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA 79 (1907); LYON G. TYLER, WILLIAMSBURG: THE OLD COLONIAL CAPITAL 186–88 (1907); Tyler, *supra* note 88, at 82.

Tyler suggests that in ante-bellum days a natural reaction against the extreme fervor of northern abolitionists led to the rise of pro-slavery thought at William and Mary between 1826 and 1857.<sup>92</sup> But he claims that the reaction might have been an anomaly: “Virginia did not take to any great extent to the new doctrines [of Dew and Beverley Tucker], but adhered to the opinions of the older professors that slavery was an evil, which was to be eliminated as soon as practicable.”<sup>93</sup> That anti-slavery history, which Tyler associates with some “300 societies in the Southern States bottomed upon a moral dissatisfaction with the institution of slavery,”<sup>94</sup> was the one foregone—Tyler never elaborated on it.

## II. LATE COLONIAL AND EARLY NATIONAL

But more evidence of anti-slavery sentiment at William and Mary in the eighteenth century exists than has been generally recognized, though much of the sentiment remains attenuated, confused, deeply racist, and linked to notions of colonization or expatriating black people. Historian David Brion Davis notes that Thomas Jefferson had “acquired a deep and lifelong hatred”<sup>95</sup> of slavery while he was a student at the College and then while reading law. He moved in

a small intellectual circle at Williamsburg that included Governor Francis Fauquier, George Wythe, William Small, and other teachers at the College of William and Mary. The scholarly Wythe and Small were closely attuned to the writings of contemporary Scottish jurists and moral philosophers, who condemned slavery both as a violation of natural rights and as a wasteful and uneconomic form of labor.<sup>96</sup>

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A vague evocation of this earlier William and Mary that was perhaps skeptical about slavery seems to lie behind a comment by the Virginia-born abolitionist Moncure Daniel Conway (1832–1907). In describing a visit to the William and Mary library with its many portraits, Conway envisions the portrait of the first President of the College, James Blair, “remonstrating with Professor Dew for having written the first pro-slavery book.” MONCURE DANIEL CONWAY, OMITTED CHAPTERS OF HISTORY DISCLOSED IN THE LIFE AND PAPERS OF EDMUND RANDOLPH 2 (N.Y.C. & London, G.P. Putnam Sons: The Knickerbocker Press 1888). Conway’s grandfather, John Moncure Conway (1779–1864), graduated from William and Mary in 1800 and was also an abolitionist. See 1 AUTOBIOGRAPHY, MEMORIES, AND EXPERIENCES OF MONCURE DANIEL CONWAY 6, 8 (1904).

<sup>92</sup> Tyler, *supra* note 88, at 12–13.

<sup>93</sup> *Id.* at 13.

<sup>94</sup> *Id.* at 12.

<sup>95</sup> DAVID BRION DAVIS, THE FOUNDATIONS OF AMERICA: SLAVERY IN THE COLONIAL CHESAPEAKE 34 (1986).

<sup>96</sup> *Id.* at 33–34. Jefferson’s intellectual approach to slavery is a contested area, to say the least; see the lively account by Paul Finkelman: SLAVERY AND THE FOUNDERS: RACE AND

Looking at the men Davis names (and others associated with them) and their proximity to the College suggests that it was a place that was open to skeptical discussion of slavery, sometimes in terms of ending the slave trade, other times in terms of freeing the enslaved.<sup>97</sup>

Francis Fauquier (1704–1768) was Lieutenant Governor of the Colony (1758–1768). He arrived with a charge from George II to soften the punishments meted out to slaves<sup>98</sup> and became Rector of the Board of Visitors at William and Mary (1761–1763). He expressed his abhorrence of slavery in his will (written the year before he died) in words that could have resonated in conversation and at the College.<sup>99</sup> He directed that his will be read to his “servants and Slaves that everything may be explained to them, if there should be any clause which they may not understand or may give them or any of them any uneasiness”<sup>100</sup> and made his feelings clear:

It is now expedient that I should dispose of my Slaves a part of my Estate in its nature disagreeable to me, but which my situation made necessary for me; the disposal of which has constantly given me uneasiness whenever the thought has occurred to me. I hope I shall be found to have been a Merciful Master to them and that no one of them will rise up in Judgment against me in that great day when all my actions will be exposed to public view. For

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LIBERTY IN THE AGE OF JEFFERSON 163–96 (2d ed. 2001). Finkelman contrasts Jefferson to Wythe, who “single-handedly tried to abolish slavery through judicial interpretation,” *id.* at 183, and to Edward Coles, who “[b]y the time he left college [at William and Mary] was a committed opponent of slavery.” *Id.* at 195.

The well-known manumissions of Robert Carter (1728–1804) derived from his religious beliefs, but the way might well have been prepared by his close friendships with Fauquier, Jefferson, Wythe, and William Small. Jefferson’s classmate John Page (1743–1808, William and Mary Class of 1763) commented of Carter that he “conversed a great deal with our highly enlightened Governor, Fauquier, and Mr. Wm. Small, the Professor of Mathematics at the College of Wm. and Mary, from whom he derived great advantage.” Shomer S. Zwelling, *Robert Carter’s Journey: From Colonial Patriarch to New Nation Mystic*, 38 AM. Q. 613, 617 (1986). Andrew Levy implies that Carter was exposed to Fauquier’s declaration that white, red, or black, all “Men are Men.” ANDREW LEVY, *THE FIRST EMANCIPATOR: THE FORGOTTEN STORY OF ROBERT CARTER, THE FOUNDING FATHER WHO FREED HIS SLAVES* 23 (2005). The declaration was in a letter of October 5, 1760 to Jeffrey Amherst: “White, Red, or Black; polished or unpolished Men are Men.” See Julie Richter, *The Impact of the Death of Governor Francis Fauquier on His Slaves and Their Families*, 18 COLONIAL WILLIAMSBURG INTERPRETER, Fall 1997, at 1, 2.

<sup>97</sup> See DAVIS, *supra* note 95, at 32–34.

<sup>98</sup> See Anne Willis, *The Master’s Mercy: Slave Prosecutions and Punishments in York County, Virginia, 1700–1780*, 20 COLONIAL WILLIAMSBURG INTERPRETER, Winter 1999/2000, at 2, 7.

<sup>99</sup> See *Francis Fauquier’s Will*, 8 WM. & MARY Q. 171, 175–76 (1900).

<sup>100</sup> *Id.* at 177.

with what face can I expect Mercy from an offended God, if I have not myself shewn mercy to those dependent on me.<sup>101</sup>

Though he did not free his slaves, he specified a plan whereby they were to choose their next owners (a sale to be insured by a price discounted 25% from market value) and ordered his executors, including Wythe, to carry out the plan:

But It is not sufficient that I have been their Master in my life. I must provide for them at my death by using my utmost Endeavors that they experience as little misery during their Lives as their very unhappy and pitiable condition will allow. Therefore I will that they shall have liberty to choose their own Master and that the Women and their children shall not be parted; that they shall have six Months allowed them to make such Choice, during which Time they shall be maintained out of my Estate.<sup>102</sup>

He made clear his

intention and earnest desire of entailing kindness upon them as far as it is in my power, of all which my executors are to be whole and sole Judges, not accountable to any one for having sold them at what may be supposed to be an under Rate. In case of extremity and not otherwise, they must be sold for the best price that can be got for them.<sup>103</sup>

Fauquier's admiration for Thomas Dawson (1713–1760), the College's fourth President, may signify in part a shared empathy for the plight of the enslaved. It was Dawson's devotion to black religious education that influenced Benjamin Franklin's recommendation for affiliating the Bray School with the College.<sup>104</sup> Fauquier is the likely author of Dawson's obituary, in which Dawson is praised for his "most extensive and unlimited Benevolence and Charity. . . . and if it be possible for these great qualifications to be carried to an excess that may be said to be the error of his life."<sup>105</sup>

George Wythe, also cited by Davis, was a signer of the Declaration of Independence and had taught Jefferson law in Williamsburg.<sup>106</sup> Wythe was on William and

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<sup>101</sup> *Id.* at 175.

<sup>102</sup> *Id.* at 175–76.

<sup>103</sup> *Id.* at 176. For the choices the enslaved made, see Richter, *supra* note 96, at 4. "Sall" (Sukey Hamilton) chose as her and her two daughters' new master the Rev. James Horrocks, President of William and Mary. Horrocks promptly sold Sall and one of the girls—"he may have calculated that he could make a tidy profit." *Id.*

<sup>104</sup> See Meyers, *supra* note 2, at 389.

<sup>105</sup> *Obituary of Rev. Thomas Dawson*, 6 WM. & MARY Q. 216, 216 (1898). For Fauquier's likely authorship, see GODSON ET AL., *supra* note 7, at 97.

<sup>106</sup> *George Wythe*, COLONIAL WILLIAMSBURG FOUND., <http://www.history.org/Almanack/people/bios/biowythe.cfm> (last visited Apr. 16, 2013).

Mary's Board of Visitors (1768), and became the country's first professor of law, at William and Mary (1779–1789).<sup>107</sup> As a judge, he ruled that “Virginia’s Declaration of Rights . . . included African Americans among the ‘all men’ born free and equally independent. ‘They should,’ Wythe said, ‘be considered free until proven otherwise.’”<sup>108</sup> One scholar, Wythe Holt, sees Wythe’s relationship to slavery as “deep, complicated, and even more contradictory than it was for most of his neighbors,”<sup>109</sup> but concludes that Wythe “was decidedly opposed to slavery.”<sup>110</sup> In one decree, Holt notes, Wythe’s finding “was founded upon the humanity of slaves and the importance of human freedom”—he ordered more than 400 “men, women and children detained in slavery” to be freed.<sup>111</sup> In 1776, Wythe and Jefferson together drafted (without proceeding further) a revision of Virginia laws incorporating “a plan of emancipation” for the enslaved.<sup>112</sup>

Wythe’s teachings may also be deduced from the actions of other students who are less renowned than Jefferson. One, Richard Randolph (1770–1796), was responsible for a striking manumission of some 150 enslaved people he had inherited.<sup>113</sup> He wrote in his will that he was “humbly beg[ging] their forgiveness, for the manifold injuries I have too often inhumanly, unjustly, & mercilessly inflicted on them.”<sup>114</sup> Historian Melvin Ely, who chronicled the history of Randolph’s freed slaves in *Israel on the Appomattox*,<sup>115</sup> says that Randolph

had imbibed the doctrine that all people are endowed with the right to life and liberty; from George Wythe, the great jurist and professor at William and Mary. Richard also absorbed the even more radical doctrine that the races were equally endowed. It followed logically that freed African Americans should not be removed to some other land, but should be given the space to develop their

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<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Wythe Holt, *George Wythe: Early Modern Judge*, 58 ALA. L. REV. 1009, 1025, 1029 (2007).

<sup>110</sup> *Id.* at 1026.

<sup>111</sup> *Id.* at 1029.

<sup>112</sup> TATE, *supra* note 83, at 122, 125.

<sup>113</sup> See Melvin Patrick Ely, *Richard and Judith Randolph, St. George Tucker, George Wythe, Syphax Brown, and Hercules White: Racial Equality and the Snares of Prejudice*, in REVOLUTIONARY FOUNDERS 323 (Alfred F. Young et. al. eds., 2011).

<sup>114</sup> *Id.* Randolph’s will makes searingly clear his motives in emancipating the enslaved he inherited, their having been subject to his countrymen’s “iniquitous laws in contradiction of their own declaration of rights, and in violation of every sacred law of nature; of the inherent, inalienable and imprescriptible rights of man, and of every principle of moral and political honesty.” *Richard Randolph Explains His Act of Manumission*, in A DOCUMENTARY HISTORY OF SLAVERY IN NORTH AMERICA 64, 65 (Willie Lee Rose ed., 1999).

<sup>115</sup> See MELVIN PATRICK ELY, *ISRAEL ON THE APPOMATTOX: A SOUTHERN EXPERIMENT IN BLACK FREEDOM FROM THE 1790S THROUGH THE CIVIL WAR* (2004).

own lives in their homeland—the American South. That’s why Richard wrote a will that called for his many slaves to go free and receive 400 acres of his land.<sup>116</sup>

Another of Wythe’s students was William Short (1759–1849). Short served as secretary to Jefferson, was the nation’s first career diplomat, died as one of the country’s wealthiest men, and, most intriguingly, supported an approach to abolishing slavery that would have encouraged black people’s full participation in the economy and politics of the nation.<sup>117</sup> He had a much higher estimation for black people than did Jefferson.<sup>118</sup>

According to historians at Monticello,

Before he left for France, Short had sold the slaves he inherited, and though he was skeptical of the justice of uprooting slaves, he concluded that colonization was the best way to help blacks, protect slave owners, and thwart the proponents of a hasty abolition. He gave \$10,000 to the American Colonization Society in his will and served as one of its presidents for the last decade of his life.<sup>119</sup>

Short was one of the founding members of Phi Beta Kappa (PBK), and one of the subjects debated at PBK was “the justice of African Slavery.”<sup>120</sup> While in Paris, Short joined the abolitionist Société des Amis des Noirs.<sup>121</sup> Short had in mind some “best

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<sup>116</sup> See Ed Pompeian, *Interview with Bancroft Winner Melvin Patrick Ely*, GEO. MASON U. HIST. NEWS NETWORK (May 22, 2005), <http://hnn.us/articles/11823.html>. Ely writes of Randolph’s having also “absorbed racially egalitarian precepts from the stepfather who reared him, St. George Tucker,” Wythe’s successor as law professor at William and Mary. Ely, *supra* note 113, at 323.

<sup>117</sup> See H. Brevy Cannon, *Pulitzer Prize Winner Gordon-Reed Calls for New William Short Biography Following U.Va. Research on Emancipation Letters to Jefferson*, UNIV. VA. (May 20, 2011), <http://www.virginia.edu/uvatoday/newsRelease.php?id=15124>.

<sup>118</sup> *Id.*

<sup>119</sup> See *William Short*, MONTICELLO, <http://www.monticello.org/site/research-and-collections/william-short> (last visited Apr. 16, 2013).

<sup>120</sup> Lyon G. Tyler, *Original Records of the Phi Beta Kappa Society*, 4 WM. & MARY Q. 213, 225 (1896). The subject was set on February 27, 1779, and the debate held March 13. *Id.* at 224, 225. The four compositions, two on each side, were reviewed further on March 27 and one, by John Brown, apparently in the affirmative, was judged worthy of preservation; no copy is known to exist. *Id.* at 225. John P. Mohler cites Short as the party responsible for selecting the debate topic, one “on the forefront of William Short’s mind in his last year as an undergraduate at William and Mary.” John P. Mohler, *The Early Development of William Short’s Abolitionism*, 8 OCCASIONAL PAPERS (forthcoming) (on file with the Lemon Project). Mohler allows for Short’s opposition to slavery to have developed at William and Mary—“there is no evidence that Short fostered anti-slavery ideals before attending William and Mary.” *Id.* at 11.

<sup>121</sup> See GEORGE GREEN SHACKELFORD, *JEFFERSON’S ADOPTIVE SON: THE LIFE OF WILLIAM SHORT, 1759–1848*, at 166 (1993). François Furstenberg notes Jefferson himself did not join

remedy for this evil of slavery in Virginia.”<sup>122</sup> His antipathy to slavery surely had not been discouraged at William and Mary.<sup>123</sup>

The final member of the “small intellectual circle” of Williamsburg’s abolitionist voices cited by Davis was William Small, the teacher at William and Mary who most strongly affected Jefferson and, according to Jefferson, the “most intimate friend” of Wythe.<sup>124</sup> Given Small’s extraordinary impact on Jefferson’s intellectual development, it would be helpful to know Small’s attitudes toward slavery directly. Unfortunately, that is impossible, though an inferential case is possible.

The intellectual heritage of William Small and his immersion in Scottish thinking of the Enlightenment has yet to be fully investigated, but Small’s own education suggests that he would have been skeptical of slavery. Martin R. Clagett comments that while Small would have found at William and Mary that his faculty colleagues (all clergy except for him) were “steeped in the conservative traditions of English Universities and had close ties to the English establishment,” Small himself “was a child of the Enlightenment, educated at an institution [Marischal College] that valued experimental science, and taught by men who were leaders of new philosophical schools of

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the Society but wrote friends that “nobody wishes more ardently than me to see an abolition not only of the trade but of slavery.” François Furstenberg, *Atlantic Slavery, Atlantic Freedom: George Washington, Slavery, and Transatlantic Abolitionist Networks*, 68 WM. & MARY Q. 247, 281 (2011) (quoting LA SOCIÉTÉ DES AMIS DES NOIRS, 1788–1799: CONTRIBUTION À L’HISTOIRE DE L’ABOLITION DE L’ESCLAVAGE 94 (Marcel Dorigny & Bernard Gainot eds., 1998)). Jefferson, he says, sent Short to the meetings. *Id.*

<sup>122</sup> SHACKELFORD, *supra* note 121, at 177. At the University of Virginia, Laura Voisin George has done initial research with the Morven Project towards a proposed digital edition of the tens of thousands of Short’s papers yet to be catalogued at the Library of Congress.

<sup>123</sup> Not all of Wythe’s students fully absorbed the same lessons. Spencer Roane (1762–1822), who married Patrick Henry’s daughter, graduated from William and Mary in 1780 and became a judge. Professor Timothy Huebner says Roane “expressed some uneasiness about the institution of slavery,” but “although Roane proved an avid emancipator in many instances, he held tightly [in his judicial rulings] to the racial assumptions of Virginia slave law. When forced to choose, Roane ultimately pushed revolutionary-era abstractions about human liberty aside and embraced the notion of slaves as property, subject to the financial transactions of whites.” TIMOTHY S. HUEBNER, *THE SOUTHERN JUDICIAL TRADITION: STATE JUDGES AND SECTIONAL DISTINCTIVENESS*, 1790–1890, at 23, 26 (1999).

John Marshall (1755–1835), the great Chief Justice of the Supreme Court, also studied with Wythe. Professor Donald M. Roper characterizes Marshall’s approach to “slavery questions” before the court as “cautious”; he describes Marshall as being content at finding a way to avoid considering the constitutionality of slavery. Donald M. Roper, *In Quest of Judicial Objectivity: The Marshall Court and the Legitimation of Slavery*, 21 STAN. L. REV. 532, 533 (1969). Roper notes Marshall’s involvement with the American Colonization Society, and characterizes his “abhorrence of slavery” as a wish “that slavery would somehow go away.” *Id.* at 534.

<sup>124</sup> Martin Richard Clagett, *William Small, 1734–1775: Teacher, Mentor, Scientist*, at 164 (2003) (unpublished Ph.D. dissertation, Virginia Commonwealth University).



thought.”<sup>125</sup> One of Small’s professors at Marischal College was Alexander Gerard, whose own intellectual background reflected the Common Sense School of Philosophy established by Thomas Reid<sup>126</sup>—a school whose tenets were frequently abolitionist. Clagett suggests the influence of the Aberdeen Philosophical Society on Small, even at a distance.<sup>127</sup>

One colleague William Small joined at William and Mary was Richard Graham whose own attitude towards slavery is clear from his writing, in 1760, to his alma mater, Queen’s College, Oxford, to “send no more of your young gentlemen into this wretched land of Tyrants & Slaves.”<sup>128</sup>

Small appears to have been his own man intellectually, neither joining reliably with the faculty in disputes with the Board of Visitors, nor even fraternizing much with his faculty colleagues.<sup>129</sup> Clagett suggests that Small may have regularly dined apart from his peers,<sup>130</sup> preferring to eat with friends outside the College, including George Wythe and Governor Fauquier, as well as William Hunter (one of the trustees of the Bray School, Hunter was especially generous not only to Franklin but to Small in his will).<sup>131</sup> The likelihood is that Small and Franklin met in Williamsburg in 1763; their friendship continued in England.<sup>132</sup>

Small’s disagreement with his faculty colleagues about corporal punishment of students<sup>133</sup> might be an index to some enlightenment in other of his thoughts, as might his (and the college President’s, James Horrocks’s) friendship with Selim, an Algerian escaped from slavery in Louisiana with whom Small read Greek.<sup>134</sup>

Although I have not been able to confirm the connection, several sources say that Small studied Frances Hutcheson, the Scottish moral philosopher credited with some of the earliest attacks on black slavery, and say that Hutcheson’s theories were central to his teaching at William and Mary.<sup>135</sup> In any case, it is perhaps telling that upon his

<sup>125</sup> *Id.* at 109. Nevertheless, at William and Mary, Small benefited from having a “servant,” though whether this was a slave loaned to him or an indentured servant is not clear. *Id.* at 136.

<sup>126</sup> *Id.* at 154, 175.

<sup>127</sup> *Id.* at 93, 97.

<sup>128</sup> *Id.* at 123.

<sup>129</sup> *Id.* at 130.

<sup>130</sup> *Id.* at 134.

<sup>131</sup> *Id.* at 166.

<sup>132</sup> *Id.* at 170–71.

<sup>133</sup> *Id.* at 160.

<sup>134</sup> See 1 BISHOP MEADE, OLD CHURCHES, MINISTERS AND FAMILIES OF VIRGINIA 348 (1906).

<sup>135</sup> For the importance of Hutcheson to the development of anti-slavery thought, see generally Professor Wylie Sypher’s discussion of his *System of Moral Philosophy (1734–1741)*. Wylie Sypher, *Hutcheson and the “Classical” Theory of Slavery*, 24 J. NEGRO HIST. 263 (1939). Professor Ronald Hamowy explores Small’s role in making Scottish moral philosophy especially prominent at William and Mary and seems to accept that under Small’s guidance “Jefferson became acquainted with the works of Hutcheson,” and was “familiar” with them; it “is perfectly plausible that [Jefferson] could have been introduced to [works of

return to England, Small numbered among his close friends two who would become famous abolitionists.<sup>136</sup> One was Erasmus Darwin (1731–1802), a founding member with Small of the Birmingham Lunar Society. The other was Josiah Wedgwood (1730–1795), who joined soon after Small’s arrival stimulated the group. Small might well have drawn on his time in Virginia to help shape their anti-slavery views—he was particularly close to another member of the Lunar Society, Thomas Day (1748–1789), whose career he shaped away from medicine and who then, a wealthy man, took up the abolitionist cause. Small’s experiences in Virginia surely informed Day’s stinging views in his popular poem, *The Dying Negro*,<sup>137</sup> the first poem in England attacking slavery and the slave trade. Day observed that Americans’ “inconsistent claims” for liberty might have more power were they “unmixed with the clank of chains, and the groans of anguish” and were America not “trampling on the dead and dying carcasses of her slaves.”<sup>138</sup> And it was Day’s poem that moved Darwin into fighting for the abolition of slavery.<sup>139</sup> When Small died, both Darwin and Day composed tributes, Day lamenting the loss of a “friend to truth, to virtue, and mankind!”<sup>140</sup>

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the Scottish Enlightenment] at William and Mary.” Ronald Hamowy, *Jefferson and the Scottish Enlightenment: A Critique of Garry Wills’s Inventing America: Jefferson’s Declaration of Independence*, 36 WM. & MARY Q. 503, 504–05 (1979). But Hamowy makes the case that Locke was the more likely and more important influence on Jefferson’s thinking when he drafted the Declaration of Independence. *Id.* at 512–14.

Two scholarly websites, those for Colonial Williamsburg and Monticello, link Small to Hutcheson. See *Historical Glossary (d–h)*, COLONIAL WILLIAMSBURG FOUND., <http://www.history.org/almanack/resources/glossary/tsrcehg2.cfm> (last visited Apr. 16, 2013); *William Small*, MONTICELLO, <http://www.monticello.org/site/jefferson/william-small> (last visited Apr. 16, 2013). Maurice Jackson says Jefferson studied with Small the works of both Adam Smith and Hutcheson, implying an influence from their anti-slavery thinking. MAURICE JACKSON, *LET THIS VOICE BE HEARD: ANTHONY BENEZET, FATHER OF ATLANTIC ABOLITIONISM* 274 n.5 (2009). Otherwise, no anti-slavery thinking at William and Mary figures in Jackson’s account.

<sup>136</sup> See *William Small*, *supra* note 135.

<sup>137</sup> See *THE DYING NEGRO* (London 1773).

<sup>138</sup> *THE DYING NEGRO* ix (London, 3d ed. 1775) (singling out slavery in the southern colonies of America). In 1776, Day evoked again slave markets including those in the “southern colonies of America”; his precision may reflect Small’s experience of how slaves “are brought into the market, naked, weeping, and in chains; —how one man dares to examine his fellow-creatures as he would do beasts, and bargain for their persons; —how all the most sacred duties, affections, and feelings of the human heart, are violated and insulted.” THOMAS DAY, *FRAGMENT OF AN ORIGINAL LETTER ON THE SLAVERY OF THE NEGROES; WRITTEN IN THE YEAR 1776*, at 32 (London 1784). For Small’s closeness to Day, see JENNY UGLOW, *THE LUNAR MEN* 184 (2002).

<sup>139</sup> Peter Rowland emphasizes the extraordinary impact of Day’s poem on the growth of abolitionist sentiment in England and credits Day with taking “the initiative in accusing the American colonists of being the chief beneficiaries” of slavery; he notes that Day was “inordinately fond of Dr. Small.” *THE LIFE AND TIMES OF THOMAS DAY, 1748–1789*, at 86, 87 (1996).

<sup>140</sup> Darwin’s and Day’s tributes to Small and a depiction of the monument bearing them are reproduced with more particulars about Small and his “liberality of sentiment and . . . enlightened humanity” in 1 JAMES PATRICK MUIRHEAD, *THE ORIGIN AND PROGRESS OF THE*

Adam Smith's *Theory of Moral Sentiments* appears to have been among works studied at William and Mary<sup>141</sup> and Smith's observation about slavery in the colonies would surely have struck some kind of chord:

Fortune never exerted more cruelly her empire over mankind, than when she subjected those nations of heroes to the refuse of the jails of Europe, to wretches who possess the virtues neither of the countries which they come from, nor of those which they go to, and whose levity, brutality, and baseness so justly expose them to the contempt of the vanquished.<sup>142</sup>

Another friend of Wythe was Samuel Henley, Professor of Moral Philosophy at William and Mary between 1770 and 1774. Henley is a figure who has yet to receive the attention he deserves, but his correspondence with Jefferson is cordial and he was admired by St. George Tucker. The controversies with Robert Carter Nicholas that saw Henley tarred as a Socinian and deist may provide some light on the intellectual climate at the College while he was there.<sup>143</sup> With Henley in mind, Rhys Isaac suggests that William and Mary at the time was “pervaded by modernist rational doctrines.”<sup>144</sup> Indeed, there are hints that Henley might have been a skeptic of slavery at the College or at least a promoter of liberties, despite casting his lot with England as the Revolution approached. Henley's library is that of an enlightened man, with Locke being especially important to him,<sup>145</sup> and his 1772 sermon distinguishing church and state<sup>146</sup> must have had some influence. The Colonial Williamsburg website notes that “Henley seemed always to have an opinion and rarely an entirely conventional one. His sermons reveal

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MECHANICAL INVENTIONS OF JAMES WATT, at clii, clvii, clviii (London, John Murray 1854) (quoting JAMES KEIR, AN ACCOUNT OF THE LIFE AND WRITINGS OF THOMAS DAY 111 (London 1791)). Both tributes were reprinted widely.

<sup>141</sup> Samuel Fleischacker notes that *Moral Sentiments* was taught in colleges in America before the Revolution and mentions Jefferson's citation of it in 1771; Jefferson may have encountered *Moral Sentiments* at William and Mary. Samuel Fleischacker, *Adam Smith's Reception Among the American Founders, 1776–1790*, 59 WM. & MARY Q. 897, 898 & n.2 (2002).

<sup>142</sup> ADAM SMITH, THE THEORY OF MORAL SENTIMENTS 402 (London 1759).

<sup>143</sup> For a discussion on the controversy between Rev. Henley and Robert Carter Nicholas, see RHYS ISAAC, THE TRANSFORMATION OF VIRGINIA, 1740–1790, at 209–30 (1982).

<sup>144</sup> *Id.* at 239.

<sup>145</sup> See Mellen Chamberlain, *Sketch of Life of Rev. Dr. Samuel Henley*, in PROCEEDINGS OF THE MASSACHUSETTS HISTORICAL SOCIETY 234, 239 (Boston, The Massachusetts Historical Society 1878).

<sup>146</sup> S. HENLEY, THE DISTINCT CLAIMS OF GOVERNMENT AND RELIGION CONSIDERED (Cambridge 1772). In his dedication, Henley displays his admiration for Newton, Locke, Bacon, and Galileo, attacking the human “fondness for systems” with people “[t]oo inert to examine whether they be right; too haughty to confess it, should they find themselves wrong.” *Id.* at Dedication. Henley there professes his admiration for Small's Algerian friend, Selim, the escaped slave. *Id.*

him to have been a man of liberal and enlightened views, but they were not universally popular, and Henley developed enemies as well as friends.”<sup>147</sup>

Another possible indicator that local sentiment was open to querying slavery is a letter excoriating slavery in 1767 by a member of the College’s Board of Visitors, Dr. Arthur Lee (1740–1792).<sup>148</sup> He pointed out the hypocrisy of those opposing British “ministerial Tyranny” when they themselves were “absolute Tyrants, and held Numbers of poor Souls in the most abject and endless State of Slavery.”<sup>149</sup> Though a continuation of the letter was apparently suppressed by the editor, its very appearance suggests again that there were some associated with the College who questioned the status quo.<sup>150</sup> Certainly one reader, the Quaker and President of the Virginia Abolition Society, Robert Pleasants, thought Lee’s letter, reprinted in 1774, “handled the subject of Slavery in a masterly manner” and might receive “the approbation of Judicious sencible men.”<sup>151</sup>

<sup>147</sup> Samuel Henley, COLONIAL WILLIAMSBURG FOUND., <http://www.history.org/Almanack/people/bios/biohenly.cfm> (last visited Apr. 16, 2013).

<sup>148</sup> See Associator Humanus, Letter to the Printers, VA GAZETTE, July 18, 1771, at 1. The topic certainly did not remain beyond the pale; the *Virginia Gazette* printed a letter from “Associator Humanus,” emphasizing the inhumanity of the slave trade and of slavery itself. *Id.* One slightly later hint as to the local ethos may be the thinking of John B. Prentis (1788–1848) who grew up in Williamsburg. For a time in Philadelphia he was an abolitionist, though later, he was a slave trader in Richmond. His family’s closeness to St. George Tucker might have eased the influence of the Quakers. See KARI J. WINTER, THE AMERICAN DREAMS OF JOHN B. PRENTIS, SLAVE TRADER 38–40 (2011).

The emancipation of slaves by Mary Stith (d. 1816), daughter of William Stith (President of William and Mary between 1752 and 1755) may also reflect local thinking. In her 1813 will, she specified that:

All the coloured people in my family being born my slaves, but now liberated, I think it my duty not to leave them destitute nor to leave them unrecompensed for past services rendered to me. As in the cause of humanity I can do but little for so many, and that little my conscience requires me to do, therefore I subject the whole of my estate to the payment of my just debts, and to the provision which I herein make for them.

See EMMA L. POWERS, COLONIAL WILLIAMSBURG FOUND., MARY STITH SHOP AND TIN SHOP HISTORICAL REPORT (1989), available at <http://research.history.org/DigitalLibrary/View/index.cfm?doc=ResearchReports%5CRR1219.xml>.

<sup>149</sup> Associator Humanus, *supra* note 148.

<sup>150</sup> *Id.*

<sup>151</sup> See COLONIAL WILLIAMSBURG FOUND., *supra* note 2, at 152 (quoting a letter of February 2, 1774 to Anthony Benezet in Philadelphia). Richard K. MacMaster provides a short survey of anti-slavery thought in Virginia as part of his introduction to the 1767 letter in Arthur Lee’s “Address on Slavery”: *An Aspect of Virginia’s Struggle to End the Slave Trade, 1765–1774*, 80 VA. MAG. HIST. & BIOGRAPHY 141, 143 (1972). Lee’s denunciation of slavery as pernicious to justice, religion, and security was intended, he said, to “prompt more able Heads to think and write upon a Subject, of such lasting import to the welfare of the Community.” See *id.* at 157. Any response from the faculty at William and Mary is not known—issues of the *Gazette* just at this time are missing—but it is known that the letter “created some controversy,” *id.* at 143, surely in opposition but possibly in support. A relative,

That Lee had studied with Adam Smith and dined with Dr. Johnson suggests their possible influence on his thinking.<sup>152</sup>

One other lesser known student at the College, Edward Coles (1786–1868), also manifested and extended the impress of his William and Mary education, this time from studying with James Madison (cousin to the more famous James Madison). Madison graduated from William and Mary in 1771. He was a friend of Henley, was the first bishop of the Protestant Episcopal Church in Virginia, and was the eighth President

Henry Lee, two weeks later introduced a bill in the legislature to increase the duty on imported slaves; as MacMaster notes, the letter and the bill (which passed) were “evidently connected with the legislative effort to curtail the African slave trade” *Id.* at 144; *see also* A.R. Riggs, *Arthur Lee, a Radical Virginian in London, 1768–1776*, 78 VA. MAG. HIST. & BIOGRAPHY 268 (1970) (discussing Lee’s life and writings during that period).

Another relation, Colonel Arthur Lee (d. 1828), had studied at the College and was known for his liberalism: he was reported as having “carried his Democratic principles so far as to make the common mechanicks [sic] & apprentices of Norfolk his intimate friends.” I.A. Coles, *Glimpses of Old College Life*, 8 WM. & MARY Q. 153, 160 (1900).

<sup>152</sup> Lee was nevertheless a racist and had countered Smith’s evocation of Africans as heroes. *See* MacMaster, *supra* note 151, at 144 (citing ARTHUR LEE, AN ESSAY IN VINDICATION OF THE CONTINENTAL COLONIES OF AMERICA, FROM A CENSURE OF MR. ADAM SMITH, IN HIS THEORY OF MORAL SENTIMENTS 9–10 (London 1764)).

When another member of the Lee family, William Ludwell Lee, freed his slaves in 1802, he provided for educating those sent North (the ones under eighteen) and sought to endow a free school to be overseen by William and Mary. Earl G. Swem, *The Lee Free School and the College of William and Mary*, 16 WM. & MARY Q. 207, 209–10 (1959) (quoting Lee’s will, which specified for annual payments to be made to “the College of William and Mary ‘for the use and benefit of a free School. . . . This institution is intended solely for the benefit of such persons whose indigent situation forbids their acquiring even the rudiments of an education’”). The link he wanted to the College might reflect a recollection of the affiliation between the Bray School and the College. *See* Meyers, *supra* note 2. Lee’s specification that the “American language” be taught to the school’s pupils, who were to be drawn from the truly indigent, and his concern for educating the slaves he freed and sent North make me think Lee might have had black education in mind. Indeed, siting the school as he directed (“in the centre of James City County,” as the boundaries were drawn in 1802) would have put it on the land he gave to his other freed slaves. Swem, *supra*, at 209. Lee’s focus on furthering democracy also makes me think that Lee might have anticipated black people ultimately being involved in the body politic. *See generally* Swem, *supra*, at 209–10. A copy of Lee’s will is at Colonial Williamsburg Foundation’s Rockefeller Library. Lee’s connection with James Madison, President of the College and his concern to his overseer for his enslaved workers is clear in a letter of June 24, 1778: “I wish them all to be treated as human beings whom Heaven has placed under my care not only to minister to my luxury, but to contribute to their happiness. In return for which I have a right to expect their faithful, honest and diligent service.” 2 LETTERS OF WILLIAM LEE 460 (Worthington Chauncey Ford, ed., Brooklyn, Historical Printing Club 1891). Lee had suggested to Robert Carter Nicholas in March 1775 that in the face of Lord Dunmore’s offer of freedom to slaves, the General Assembly “emancipate all the negroes . . . and instead of their being slaves, make them your tenants. . . . I have a large stake in this business, yet would freely give my consent.” 1 LETTERS OF WILLIAM LEE 144 (Worthington Chauncey Ford ed., Brooklyn, Historical Printing Club 1891).

of the College (1777–1812). He was a man deeply troubled by slavery. While in London to be consecrated as a bishop, Madison had come to know the English abolitionist John C. Lettsom (1744–1815). In 1804, Madison sent Lettsom an “excellent pamphlet”<sup>153</sup> (unidentified) on emancipating the enslaved in America, and Lettsom replied to “my amiable friend Dr. Madison, Bishop of Virginia”<sup>154</sup> with a long letter endorsing as “alone feasible” “a *gradual emancipation*.”<sup>155</sup> In 1810, Madison was pleased to receive another letter from Lettsom, but regretted that an accompanying package never arrived, depriving Madison of “the pleasure which I should have derived from a view of your unremitting exertions in the cause of humanity; but I feel much indebted to you for your good intentions and flattering remembrance of me.”<sup>156</sup>

Readings in Madison’s classes would surely have provoked critical thinking, for they appear to have included Godwin, Locke, Paine, Rousseau, and possibly Rush.<sup>157</sup> Madison was particularly eager to expose William and Mary students to Jefferson’s *Notes on the State of Virginia*, in which Jefferson expounded on his complex and racist views on slavery and black people but endorsed an ultimate “total emancipation” of the enslaved—progress which he thought the Revolution had encouraged.<sup>158</sup>

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<sup>153</sup> 2 THOMAS JOSEPH PETTIGREW, MEMOIRS OF THE LIFE AND WRITINGS OF THE LATE JOHN COAKLEY LETTSOM 579 (London, Nichols, Son & Bentley 1817).

<sup>154</sup> *Id.* at 108.

<sup>155</sup> *Id.* at 579–80.

<sup>156</sup> *Id.* at 577–78.

<sup>157</sup> See *Letters from William and Mary College, 1798–1801*, 29 VA. MAG. HIST. & BIOGRAPHY 129, 147, 158, 160, 166 (1921). John Tyler (W&M Class of 1807 and U.S. President) noted that Madison’s students became “the disciples of Locke and of [Algernon] Sidney.” RUBY ORDERS OSBORNE, THE CRISIS YEARS: THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA, 1800–1827, at 159 (1989). Tyler appears to have been only marginally influenced by the skepticism about slavery I detect at the College.

A seemingly full list of readings “ever since the American revolution” and Madison’s openness to discussion of all views were attested to in 1801 in a letter to the editor of the *National Intelligencer* by a recent graduate. J.C. Late, *To Mr. Dwight . . .*, NAT’L INTELLIGENCER & WASH. ADVERTISER, Nov. 20, 1801, at 1e. The writer stated that Godwin, for example, was introduced in a lecture “for the purpose of animadverting upon some of his doctrines, which were held to be both erroneous and dangerous” but the discussion was typical in its “free and candid investigation.” *Id.* “Republican principles are there [at William and Mary] fostered and inculcated . . . because they are founded in the nature of man” he continued. *Id.*

<sup>158</sup> THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 163 (William Peden ed., 1972).

When Jefferson’s *Notes* were first printed (in a run of only 200 copies), he thought to limit the distribution of the book tightly, but nevertheless had in mind sending “a copy to each of the students of [William and Mary College]” as a work that “might set our young students into a useful train of thought.” THE PAPERS OF THOMAS JEFFERSON DIGITAL EDITION, <http://rotunda.upress.virginia.edu/founders/TSJN-01-08-02-0094> [hereinafter JEFFERSON PAPERS]. In writing on May 11, 1785, to the future President James Madison (cousin to William and Mary’s Madison) for advice on this, however, he was apprehensive; he wanted “to put it into the hands of the young men at the college, as well on account of the political as physical parts,” but noted that “there are sentiments on some subjects which I apprehend might be displeasing to the country perhaps to the assembly or to some who lead it.” *Id.* He urged Madison to “answer

me immediately on the preceding subject.” *Id.* Jefferson’s record of the letter highlights his intention and his fears: “Will send him copy of my notes if ready by the evening. Only send one other copy to Amer. viz to Monroe. Ask his advice. I want to send to each of students at [William and Mary College] but apprehend will give offence.” *Id.*

That Jefferson wrote with his thoughts on slavery at the top of his apprehensions is clear. Peden notes that Jefferson feared that if the *Notes* became public, it might “endanger the attainment of his most cherished goals,” including “the emancipation of slavery in Virginia.” JEFFERSON, *supra*, at xvii. In a letter of June 7, 1785, Jefferson was explicit about these apprehensions, and about his hopes for the young men being educated at William and Mary:

The strictures on slavery and on the constitution of Virginia . . . are the parts which I do not wish to have made public, at least till I know whether their publication would do most harm or good. It is possible that in my own country these strictures might produce an irritation which would indispose the people towards the two great objects I have in view, that is the emancipation of their slaves, and the settlement of their constitution on a firmer and more permanent basis. If I learn from thence, that they will not produce that effect, I have printed and reserved just copies enough to be able to give one to every young man at the College. It is to them I look, to the rising generation, and not to the one now in power for these great reformatations.

Letter from Thomas Jefferson to Chastellux (June 7, 1785), in JEFFERSON PAPERS, *supra*.

Madison thought Jefferson’s views explosive enough that he advised, on November 15, 1785, against putting them directly into the hands of students. The italicized words below were originally written in a code the two shared.

I have looked them over carefully myself & consulted several judicious friends in confidence. We are all sensible that the *fre[e]dom of your strictures* on some *particular measures* and *opinions* will displease *their respective abettors*. But we equally concur in thinking that this consideration ought not to be weighed against the *utility of your plan*. We think both the facts and remarks which you have assembled too *valuable* not to be made known, at least to those for whom *you destine* them, and speak of them to *one another in terms which* I must *not repeat to you*. Mr. Wythe suggested that it might be better to put the number you may allot to the University into the library, rather than to distribute them among the Students. In the latter case the Stock will be immediately exhausted. In the former the discretion of the professors will make it serve the Students as they successively come in. Perhaps too an *indiscriminate gift* might offend *some narrow minded parents*.

Letter from James Madison to Thomas Jefferson (Nov. 15, 1785), in THE PAPERS OF JAMES MADISON DIGITAL EDITION (J.C.A. Stagg, ed., 2010), <http://rotunda.upress.virginia.edu/founders/JSMN-01-08-02-0214>.

Jefferson acted cautiously indeed, sending only one copy to Virginia. See Letter from James Madison (Mar. 27, 1786), in JEFFERSON PAPERS, *supra*. But on August 4, 1786, he received a letter from William and Mary’s Madison that clearly, if disguisedly, refers to that copy. *Id.* Writing on March 27, 1786, Madison asked Jefferson to send a copy to the College as something that would be useful to its students to read, not just for its factual material but for its ability to dispel unnamed fogs (that by implication include slavery):

Being in Richmond, at the Time of the last Session of our Assembly our mutual Friend Col. Madison, shewed me a work, which, tho I had an

Jefferson himself was also eager to get those views and that vision into the hands of students, the next generation of Virginia's leaders, and did so after considering carefully the possibly explosive reaction when his ideas became public beyond the College. Finally, in 1787, Jefferson sent his *Notes* to Madison, Wythe, and Charles Bellini (professor of modern languages at the College) along with more than two dozen other copies, several for the College library, the rest for distribution to students.<sup>159</sup>

In 1804, one student recalled Madison's efforts "to open and expand the mind of the student . . . . In his opinions of every kind, he is liberal and indulgent. The

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opportunity of viewing but too transiently, yet I wish its Author could be induced to render more public. It would be an Ornament to our Library, and highly profitable to our Youth. They will gain from it a Knowledge relative to their Country, not elsewhere to be obtained, and will be impressed with the great Advantage of treasuring up, and methodically arranging Facts of Importance, whether they belong to the moral or the physical world. Such a Work should not be kept in private. Let it have the broad Light of an American Sun. It will assist greatly in dispelling some Misty Fogs, which still hover about us.

*Id.* Wythe too had seen the copy and had delicately written to Jefferson, January 10, 1786, seeking a copy:

My neighbour Madison, just now, sent to me a paquet, which [I] perceived, by the superscription, to have come from you; a favour little deserved by one who had not written to you since you crossed the [A]tlantic. I will not say what was the cause of this silence; but can swear, that the cause was not forgetfulness of you, nor want of good will for you. Before [I] opened the paquet observing it to contain books, [I] hoped to see the copy of one, with a cursory reading of which [I] had then lately been delighted. You will know what book [I] mean, when [I] tell you, that he, who indulged me with the reading of it, informed me, that the author had not yet resolved to publish it.

Letter from George Wythe to Thomas Jefferson (Jan. 10, 1786), in *JEFFERSON PAPERS*, *supra*.

Soon after, another letter, dated February 10, 1786, came with Wythe's mention again of his desire for "a copy of the book which [I] had seen in the hands of your friend M" and a request that a copy also go to Richard Paul Jodrell in London. *Id.*

Jefferson wrote Wythe on August 13, 1786, noting that "Madison, no doubt, informed you of the reason why I had sent only a single copy to Virginia," but stating that now he had been "assured by him that they will not do the harm I had apprehended, but on the contrary may do some good, I propose to send thither the copies remaining on hand, which are fewer than I had intended." Jefferson told Wythe that the book contained "no truth there that is not familiar to you," again clearly referring to his views on slavery. Letter from Thomas Jefferson to George Wythe (Aug. 13, 1786), in *JEFFERSON PAPERS*, *supra*.

And, in September 1787, after many delays in printing an adequate new edition, Jefferson finally forwarded copies to Wythe, Madison, Bellini and others. He also sent more than two dozen other copies "for such young gentlemen of the college as Mr. Wythe from time to time shall think proper, taking one or more for the college library." Letter from Thomas Jefferson to George Wythe (Sept. 16, 1787), in *JEFFERSON PAPERS*, *supra*.

<sup>159</sup> Letter from Thomas Jefferson to George Wythe (Sept. 16, 1787), in *JEFFERSON PAPERS*, *supra* note 158.



priest is buried in the philosopher for he embraces no opinion that philosophy will not justify.”<sup>160</sup>

In April, 1844, Edward Coles recalled studying with Madison, an old friend of his family, and listening to his lectures on government: “While attending the political course of studies in the senior class at William & Mary, I had my attention first awakened to the state of master & slave.”<sup>161</sup> This revelation came apparently in class, in the midst of Madison’s “lecturing & explaining the rights of man”: “I asked him, in the simplicity of youth, & under the influence of the new light just shed on me—if this be true how can you hold a slave—how can man be made the property of man?”<sup>162</sup> Madison, says Coles, replied with a “peculiarly embarrassed manner”; he “frankly admitted [holding a man as property] could not be rightfully done, & that Slavery was a state of things that could not be justified on principle, & could only be tolerated in our Country, by our finding it in existence [sic], & the difficulty of getting rid of it.”<sup>163</sup>

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<sup>160</sup> *Letters of Rev. James Madison, President of the College of William and Mary to Thomas Jefferson*, 5 WM. & MARY Q. 77, 77 n.1 (1925). One student commented in 1799 that the effect on a student of studying at William and Mary, compared to other institutions was “more liberality” and a “spirit of skepticism” that could even verge on “Deism, atheism &c.” See *Glimpses of Old College Life*, 8 WM. & MARY Q. 153, 158, 159 (1900). The editor comments that the College “was the hot-bed of the Republican party, with its doctrines of freedom in thought and government.” *Id.* at 159 n.†.

Madison’s advice to his daughter regarding her “servants” reveals his own (and less certainly the College’s) treatment of the enslaved: “[T]each them to respect and love you, while you expect from them a reasonable discharge of their respective duties. Never tease yourself or them by scolding; it has no other effect than to render them discontented and impertinent. Admonish them with a calm firmness.” Letter from Bishop Madison to his Daughter (Jan. 1811), in OSBORNE, *supra* note 157, at 146. Moreover, they should have “in particular . . . the strongest claim on your charity; let them be well clothed, nursed in sickness, and never unjustly treated.” *Id.* at 147.

<sup>161</sup> Letter from Edward Coles (Apr. 4, 1844), reprinted in Ralph L. Ketchum, *The Dictates of Conscience: Edward Coles and Slavery*, 36 VA. Q. REV. 46, 47 (1960).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* Coles wrote to Jefferson in 1814 “to entreat & beseech you to exert your knowledge & influence in devising & getting into operation some plan for the gradual emancipation of slavery.” See Dan Monroe, *Edward Coles, Patrician Emancipator*, ILL. HIST. TEACHER (2005), available at <http://www.lib.niu.edu/2005/ih1210502.html>. Jefferson’s reply, on August 25, 1814, conceded the moral high ground to Coles:

The love of justice and the love of country plead equally the cause of these people, and it is a mortal reproach to us that they should have pleaded it so long in vain, and should have produced not a single effort, nay I fear not much serious willingness, to relieve them and ourselves from our present condition of moral and political reprobation.

*Id.* But he was, Jefferson said, too elderly to undertake such a project: “This enterprise is for the young; for those who can follow it up; and bear it through to its consummation. It shall have all my prayers, & these are the only weapons of an old man.” *Id.*

Coles’s 1819 legal instrument freeing his slave accompanies Monroe’s essay online. See *id.* at 9. It could not be clearer: “I do not believe that man can have a right of property in his fellow man, but on the contrary, that all mankind are endowed by nature with equal rights.” *Id.*

Both in class and out, Coles challenged Madison with a variety of self-evident questions:

In theory the Bishop concurred [sic] with me, but I could not convince him he was bound to carry out his theory, & to act up to his principles, by giving freedom to his Slaves. He was anxious, he said, for the Legislature to make provision for the abolition of Slavery in the State.<sup>164</sup>

Coles could not abide such temporizing and went on to sell his Virginia estate and move his slaves to the Northwest Territory, where he freed them and fought to keep slavery out of Illinois, where he became the state's second governor.<sup>165</sup> Coles's efforts extended to his native state as well, where he involved himself deeply in the discussions in the 1830s that might have led to the abolition of slavery in Virginia.<sup>166</sup>

Another student of Madison's was John Hartwell Cocke II (1780–1866), an associate with Jefferson in the founding of the University of Virginia and an "ardent abolitionist"<sup>167</sup> whose views were shaped at least in part by his having spent "his formative years in Williamsburg at the College of William and Mary."<sup>168</sup> Cocke "fervently believed that slave labor was evil" and pursued what he thought was the best remedy: becoming active in the American Colonization Society and freeing "many of his own slaves, those he considered capable of supporting themselves in Africa and leading a Christian life."<sup>169</sup> Professor Randall M. Miller notes Cocke's opposition to slavery as coming in part from the "natural rights principles of the eighteenth century . . . acquired while a student under Bishop James Madison at the College of William and Mary."<sup>170</sup> Cocke was ostracized and beaten for these beliefs.<sup>171</sup>

Madison's seeming openness to the plight of black people might be inferred from an incident in which a local free black man approached him in 1807 to attend science lectures at the College.<sup>172</sup> Madison expressed sympathy to the applicant, Rozarro,

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On Madison's commitment "to a radical position in defense of American autonomy, political freedom, social contract, and legislative government" see Charles Crowe, *Bishop James Madison and the Republic of Virtue*, 30 J. S. HIST. 58 *passim* (1964).

<sup>164</sup> Ketchum, *supra* note 161, at 48.

<sup>165</sup> Suzanne Cooper Guasco, "To Put into Complete Practice Those Hallowed Principles": Edward Coles and the Crafting of Antislavery Nationalism in Early Nineteenth-Century America, 11 AM. NINETEENTH CENTURY HIST. 17, 24 (2010).

<sup>166</sup> *Id.* at 19, 30–31. St. George Tucker and Jefferson figured in Coles's efforts. *See id.*

<sup>167</sup> *John Hartwell Cocke II*, MOUNT PLEASANT PLANTATION, [http://mountpleasantplantation.com/?page\\_id=149](http://mountpleasantplantation.com/?page_id=149) (last visited Apr. 16, 2013).

<sup>168</sup> *Id.* He graduated in 1798. *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> "DEAR MASTER": LETTERS OF A SLAVE FAMILY 32 (Randall M. Miller ed., 1990).

<sup>171</sup> *Id.*

<sup>172</sup> Letter from Bishop James Madison to William H. Cabell (July 30, 1807) (on file with Earl Gregg Swem Library), available at <http://digitalarchive.wm.edu/bitstream/handle/10288/16301/MadisonRozarro.pdf?sequence=4>.

twenty years old, a landowner, and self-educated in reading, writing, arithmetic, plane and solid geometry, and the rudiments of Latin.<sup>173</sup> But Madison proposed instead that he take a well-paying, skilled job at the state armory in Richmond.<sup>174</sup>

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* I am indebted to Margaret Cook, David Holmes, and Mel Ely for bringing to my attention what seems to be the first application by a black student to attend lectures at William and Mary. My colleague Jody Allen is pursuing information she has developed on Rozarro; she has discovered an 1806 petition to the General Assembly asking for a waiver for a John Wallace DeRozaro, a skilled gunsmith, to keep firearms. See *A Guide to the York County (Va.) Free Negro and Slave Records, 1806–1860*, LIBR. VA., <http://ead.lib.virginia.edu/vivaead/published/lva/vi02891.document> (last visited Apr. 16, 2013). The family name appears in the registry of free black people in Charles City County. See *Free Negroes & Mulattoes*, CHARLES CITY COUNTY, <http://www.charlescity.org/fnr/> (last visited Apr. 16, 2013).

Like Bishop Madison, successive College presidents until Thomas Roderick Dew may have been uneasy with slavery. Evidence regarding John Augustine Smith (1782–1865) (William and Mary Class of 1800 and a physician trained in London), who was the first lay President of William and Mary (1814–1826), is hard to find, but a passing commentary in one of his publications may indicate skepticism. Smith observes that in arguing that “slavery is beneficial to a new country” and “[S]ome Southern gentlemen of note and talent” have to omit “*more than half the facts*,” and that they measure but “the number of trees which have been felled, and yards of ditch which have been dug—the state of society, as regards its improvement, religious, moral, and intellectual, its habits of feeling, and thinking, and its modes of acting, being counted for nothing!” JOHN AUGUSTINE SMITH, *SELECT DISCOURSES ON THE FUNCTIONS OF THE NERVOUS SYSTEM, IN OPPOSITION TO PHRENOLOGY MATERIALISM AND ATHEISM TO WHICH IS PREFIXED A LECTURE ON THE DIVERSITIES OF THE HUMAN CHARACTER, ARISING FROM PHYSIOLOGICAL PECULIARITIES* 165–66 n.† (N.Y.C., D. Appleton & Co. 1840).

Smith nevertheless forwarded the anatomical theorizing that held black people to be innately less than white people. See JOANNE POPE MELISH, *DISOWNING SLAVERY: GRADUAL EMANCIPATION AND ‘RACE’ IN NEW ENGLAND, 1780–1860*, at 161 (1998). In a published lecture to the second course of Anatomical Instruction in the College of Physicians and Surgeons for the State of New York, Smith sought to prove the superior “anatomical structure of the European” to that of other races, especially black people (Europeans and black people “being placed at the opposite extremes of the scale”). J. Augustine Smith, *To the Editors of the Medical and Philosophical Journal and Review*, 1 N.Y. MED. & PHIL. J. & REV. 33 (1809).

The Rev. William H. Wilmer, President of the College from 1826 to 1827, in May 1819 had presented to the 1820 Convention of the Protestant Episcopal Church of the Diocese of Virginia an address commending Bushrod Washington, President of the American Colonization Society and his efforts. See Francis L. Hawks, *A Narrative of Events Connected with the Rise and Progress of the Protestant Episcopal Church in Virginia*, in 1 CONTRIBUTIONS TO THE ECCLESIASTICAL HISTORY OF THE UNITED STATES OF AMERICA, 137–38 (N.Y.C., Harper and Brothers 1836).

The Rev. Adam Empie (1785–1860) came to the presidency of the College (1827 to 1836) from New York; he was also Rector of Bruton Parish Church and his reports to the Convention of the Protestant Episcopal Church of the Diocese of Virginia state that he involved black people in the congregation. See *id.* at 235. In 1829, he reported that six of the eight marriages he officiated at were of “coloured persons” and that one of nine new communicants was “an African.” *Id.* In 1833, he reported three of the four children he baptized were black, as were five of the eight couples he married; two of sixty-three communicants

After George Wythe himself, perhaps William and Mary's most powerful voice opposing slavery was St. George Tucker, who studied at William and Mary in 1772 and then read law with Wythe (whom he succeeded, from 1790 to 1804, as professor of law at the College).<sup>175</sup>

Tucker appears to have had a plan for recolonizing black people after gradually emancipating them as early as 1790, as he revealed in writing, March 29, 1790, to Jefferson's classmate, John Page (1743–1808; W&M Class of 1763). He said Page was "one who thinks with me that slavery is a curse upon our country."<sup>176</sup> Tucker's

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were black. *Id.* at 294. In 1834, there remained two black communicants, four of eleven baptisms were of black children, as were two of six weddings performed. *Id.* at 306. In 1835, there were still two "coloured persons," among sixty-one communicants, three of ten baptisms performed were of black children, and two of eleven funerals were for black people. *Id.* at 329.

In 1834, a committee Empie chaired to report on the state of the church urged more attention to the religious education of black people, whom he called "that portion of 'the degraded race of man' with which an inscrutable Providence has been pleased to afflict our country." *Id.* at 312. Empie concluded, "the souls of [God's] servants as well as of his children are intrusted to his care." *Id.*

Empie was a member of the American Colonization Society. See 12 AFRI. REPOSITORY & COLONIAL J., Aug. 1836, at 264.

The Special Collections Research Center, Swem Library, College of William and Mary, holds four letters the abolitionist Sarah Moore Grimké sent to Mrs. Anna Empie when the Empies were in Wilmington, North Carolina. In one letter she writes of sending tracts and Bibles "calculated for the colored people." Letter from Sarah Grimké to Mrs. Anna Eliza Empie (May 15, 1821) (on file with Earl Gregg Swem Library). The Empies' concern for the religious education of black people continued when Rev. Empie was called to Richmond, where, "against protest, he first taught religious subjects to slaves." Thomas Atkinson, *Sketches of Clergy and Laymen, in ONE HUNDREDTH ANNIVERSARY COMMEMORATING THE BUILDING OF ST. JAMES CHURCH 24* (William Lord DeRosset ed., 1939).

And it may be worth recording that William Barton Rogers (1804–1882), the founder of the Massachusetts Institute of Technology, was educated at William and Mary in 1819–1821 and taught there from 1828–1835. His distress at slavery led him to leave the University of Virginia and the state in 1853. See A.J. Angulo, *William Barton Rogers and the Southern Sieve: Revisiting Science, Slavery, and Higher Learning in the Old South*, 45 HIST. EDUC. Q. 18, 36 (2005).

<sup>175</sup> Paul Finkelman sees Wythe as "Tucker's teacher, mentor, and close friend," it is a "relationship . . . important for understanding Tucker's views on slavery" even though Wythe was more consistent, taking "a strong stand against slavery, emancipating his own slaves and bravely attempting to strike down slavery by judicial fiat." Paul Finkelman, *The Dragon St. George Could Not Slay: Tucker's Plan to End Slavery*, 47 WM. & MARY L. REV. 1213, 1218 (2006).

<sup>176</sup> See T.B. McCord, Jr., *John Page of Rosewell: Reason, Religion, and Republican Government from the Perspective of a Virginia Planter, 1743–1808*, at 605 (1990) (unpublished Ph.D. dissertation, American University) (on file with American University). Tucker had in mind "a plan for gradual emancipation and for colonization." *Id.* McCord notes that Page was, like Jefferson, an early advocate for colonization but "thought that certain freedmen could play a positive role in white society." *Id.* at 608. "As dependent as Page was upon slavery, he still opposed it." *Id.* at 665.

McCord identifies Page as the author of a letter in the *Virginia Gazette*. *Id.* at 667–68; see VA. GAZETTE, Nov. 24, 1775, at 3 (urging slaves tempted by Lord Dunmore's promise

entanglement with slavery was complex, even contradictory, and his efforts against it episodic, but his influence was both local (as on his adopted son, Richard Randolph)<sup>177</sup> and broad (as in his published works).<sup>178</sup> Dean Davison M. Douglas notes that in Tucker's influential five-volume edition (1803) of William Blackstone's *Commentaries*, which articulated the effects of the Revolution on American law Tucker drew "extensively on his William and Mary lectures."<sup>179</sup>

Tucker's ambivalence in these volumes is clear as he contemplates the export of slaves westward into new territories. Dispersal, he suggests, would lessen the danger of revolts that "the number of [the enslaved] may in time create in some of the states . . . . Yet it is difficult to suppress a sigh, whenever we discover any measure which seems to favour the continuance of slavery among us."<sup>180</sup> And slavery itself in Virginia, Tucker declares as he cites the Bill of Rights, can hardly be defended: "how perfectly irreconcilable a state of slavery is to the principles of a democracy, which, form the *basis* and *foundation* of our government."<sup>181</sup> It is time, he says, to "admit the evidence of moral truth, and learn to regard them as our fellow men, and equals, except in those particulars where accident, or possibly nature, may have given us some advantage; a recompence, for which they, perhaps, enjoy in other respects."<sup>182</sup>

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of freedom to remain in the relatively "easy and comfortable" servitude with their masters). The writer suggests that the masters, "were it in their power, or were they permitted, [would] not only prevent any more negroes from losing their freedom, but restore it to such as have already unhappily lost it." *Id.*

<sup>177</sup> See *supra* note 116.

<sup>178</sup> Thomas Hart Benton (1782–1858) developed his opposition to the extension of slavery from reading Tucker's *Dissertation* in 1804. See THEODORE ROOSEVELT, THOMAS H. BENTON 297 (Bost., Houghton, Mifflin & Co. 1899). Tucker also surely influenced his cousin George Tucker (1775–1861) (William and Mary, Class of 1797), who studied law with him and who at one time held abolitionist views (though he argued from more narrowly urgent motives). See ST. GEORGE TUCKER, LETTER TO A MEMBER OF THE GENERAL ASSEMBLY OF VIRGINIA, ON THE SUBJECT OF THE LATE CONSPIRACY OF THE SLAVES (Balt., Bonsal & Niles 1801). George Tucker reports, too, that St. George Tucker's *Dissertation* moved one elector in the 1796 election to shift his vote to Jefferson. See George Tucker, *Autobiography of George Tucker*, 18 BERMUDA HIST. Q. 82, 104 (1961). George Tucker likely wrote *Letters from Virginia, Translated from the French* (1816), which vigorously disputed Jefferson's views that black people were inferior. See *George Tucker Criticizes Jefferson's Views of Racial Difference*, in A DOCUMENTARY HISTORY OF SLAVERY IN NORTH AMERICA 76 (Willie Lee Rose ed., 1996).

<sup>179</sup> Davison M. Douglas, *Foreword—The Legacy of St. George Tucker*, 47 WM. & MARY L. REV. 1111, 1113 (2006). In *Blackstone's Commentaries*, Paul Finkelman and David Cobin note that Tucker began writing his commentaries in 1790, "as he prepared lectures for his courses at William and Mary." See Paul Finkelman & David Cobin, *An Introduction to St. George Tucker's Blackstone Commentaries*, in BLACKSTONE'S COMMENTARIES, at v (St. George Tucker ed., Lawbook Exchange 1996) (1803).

<sup>180</sup> 2 BLACKSTONE COMMENTARIES 282 (St. George Tucker ed., Lawbook Exchange 1996) (1803).

<sup>181</sup> *Id.* at 54.

<sup>182</sup> *Id.* at 55.

But the most famous of Tucker's writings is his *Dissertation on [the Gradual Abolition of] Slavery* (1796 and included in his 1803 *Commentaries*). In 1795 as he was working towards the *Dissertation*, Tucker wrote to the historian and clergyman Jeremy Belknap expressing his approval "that Slavery has been wholly exterminated from the Massachusetts" and seeking through a questionnaire "from the example of our sister State, [to] learn what methods are most likely to succeed in removing the same evil from among ourselves."<sup>183</sup> He emphasized that his position "in my official Character as *professor of law in the College*" had led him to review past legislative restrictions on the slave trade and, he noted that "The introduction of Slavery into this Country, is at this day considered among its greatest Misfortunes, by a very great Majority of those who are reproached for An Evil, which the present Generation could no more have avoided, than an hereditary Gout or Leprosy."<sup>184</sup>

In the *Dissertation*, Tucker calls America "the vale of death to millions of the wretched sons of Africa."<sup>185</sup> Even as Americans were "offering up vows at the shrine of Liberty," they were "imposing upon our fellow men, who differ in complexion from us, a *slavery*, ten thousand times more cruel than the utmost extremity of those grievances and oppressions of which we complained."<sup>186</sup> Tucker dedicated his proposal to those to whom he submitted it: "[t]o the General Assembly of Virginia, To whom it belongs to decide upon the expediency and practicability of a plan for the *gradual abolition of Slavery* in this commonwealth. . . ."<sup>187</sup> He wrote with some urgency:

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<sup>183</sup> Letter from St. George Tucker to Jeremy Belknap (Jan. 24, 1795), available at [http://www.masshist.org/database/viewer.php?old=1&item\\_id=614](http://www.masshist.org/database/viewer.php?old=1&item_id=614).

<sup>184</sup> *Id.* The questions themselves are revealing, as are the correspondence and replies. On April 11, 1795, Tucker observed of the slave trade, "happy would it have been for us had that horrid traffic never found its way hither." *Id.*

<sup>185</sup> ST. GEORGE TUCKER, A DISSERTATION ON SLAVERY: WITH A PROPOSAL FOR THE GRADUAL ABOLITION OF IT IN THE STATE OF VIRGINIA 7 (Westport, Conn., Negro Universities Press 1970) (1796).

<sup>186</sup> *Id.* at 8. Like the attitudes and proposals it advances, the *Dissertation* is complex and not wholly palatable. See Michael Kent Curtis, *St. George Tucker and the Legacy of Slavery*, 47 WM. & MARY L. REV. 1157 (2006). Curtis notes that Tucker's "expressed empathy [for slaves] did not often appear in Tucker's personal relations with his own slaves" and quotes another commentator: "Tucker's treatment of his slaves often revealed 'an entrepreneur adept at squeezing maximum profit' from slavery." *Id.* at 1169, 1170 (quoting Christopher Leonard Doyle, Lord, Master, and Patriot: St. George Tucker and Patriarchy in Republican Virginia 1772–1851, at 106 (1996) (unpublished Ph.D. dissertation, University of Connecticut) (on file with the University of Connecticut). Paul Finkelman calls the *Dissertation* "simultaneously visionary, philanthropic, racist, vicious, utterly impractical, internally inconsistent, and hopelessly complex"; after writing it, "Tucker turned his back on such reformist projects" and, in later years, "seemed to come to terms with slavery, embracing it, and encouraging his children to do so." Finkelman, *supra* note 175, at 1240, 1217. Finkelman provides other details on Tucker's involvement with and attitudes towards slavery as well as an analysis of the *Dissertation*. See *id.*

<sup>187</sup> See TUCKER, *supra* note 185, at "Submission to the General Assembly of Virginia."

The Author considering the Abolition of Slavery in this State, as an object of the first importance, not only to our moral character and domestic peace, but even to our political salvation; and being persuaded that the accomplishment of so momentous and desirable an undertaking will in great measure depend upon the *early* adoption of some plan for that purpose, with diffidence submits to the consideration of his countrymen his ideas on a subject of such consequence.<sup>188</sup>

That Virginia's House of Delegates ignored the proposal affirms the prevailing values of the time, but does not undermine Tucker's motives. Most significant here, however, is that he had been presenting the material in his classes: "The following pages form a part of a course of Lectures on Law and Police, delivered in the University of William and Mary, in this Commonwealth."<sup>189</sup>

The influence of Madison and Tucker may be gleaned from comments by Winfield Scott (1786–1866; known as "Old Fuss and Feathers"<sup>190</sup>), who studied at William and Mary in 1805. Scott recalled that Bishop Madison's intellectual rigor led, ironically, to a growth of skepticism among his students

Bishop Madison, President of William and Mary College, contributed not a little, within his sphere, by injudicious management, to the prevalent evil. It was his pious care to denounce to the new comers certain writings of Hume, Voltaire, Godwin, Helvetius, etc., etc., then generally in the hands of seniors. These writings the good bishop represented as sirens, made perfectly seductive by the charms of rhetoric. Curiosity was thus excited. Each green youth became impatient to try his strength with so much fascination; to taste the forbidden fruit, and, if necessary, to buy knowledge at whatever cost.<sup>191</sup>

As for slavery, Scott traced his skepticism to his studies in Williamsburg:

In boyhood, at William and Mary College, and in common with most, if not all, my companions, I became deeply impressed with

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<sup>188</sup> *Id.* at "To The Reader."

<sup>189</sup> *Id.* In an article that discusses the larger forces encouraging and then discouraging abolitionist thinking in the early Republic, Philip Hamilton explores Tucker's retreat from the position he took in his *Dissertation*. See Philip Hamilton, *Revolutionary Principles and Family Loyalties: Slavery's Transformation in the St. George Tucker Household of Early National Virginia*, 55 WM. & MARY Q. 531 (1998). Tucker's developing domestication and sentimentalizing of slavery clearly shaped his son's self-deception. See *id.* at 548–56.

<sup>190</sup> See ARTHUR D. HOWDEN SMITH, *OLD FUSS AND FEATHERS* 237 (1937).

<sup>191</sup> 2 WINFIELD SCOTT, *MEMOIRS OF LIEUT.-GENERAL SCOTT*, LL.D. 10 (N.Y.C., Sheldon & Co. 1864).

the views given by Mr. Jefferson, in his “Notes on Virginia,” and by Judge Tucker, in the Appendix to his edition of Blackstone’s Commentaries, in favor of a gradual emancipation of slaves. That Appendix I have not seen in thirty odd years, and, in the same period, have read scarcely any thing on the subject; but my early impressions are fresh and unchanged. Hence, if I had had the honor of a seat in the Virginia Legislature in the winter of 1831–’2, when a bill was brought forward to carry out those views, I should certainly have given it my hearty support.<sup>192</sup>

Perhaps the most striking evidence for this reconstructed history of William and Mary in the eighteenth century is a largely forgotten fact: in 1791, the College, with James Madison as President, conferred an honorary Doctor of Laws degree on a famous abolitionist and activist in England, Granville Sharp (1735–1813).<sup>193</sup> William Frederick Poole called attention to that formal, institutional act in 1873, but the fact was no doubt inconvenient at the time to those intent on creating another narrative.<sup>194</sup> Poole comments somewhat narrowly of Sharp that he “had no other reputation than his anti-slavery record” and that, had he “come over some years later to visit the President and Fellows of the College which had conferred upon him so distinguished an honor, it might have been at the risk of personal liberty, if not of life.”<sup>195</sup> Madison’s

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<sup>192</sup> *Id.* at 372. Scott develops the full complexity of his views. Scott’s wording seems to imply that Jefferson’s *Notes on the State of Virginia* was a text studied at William and Mary. *Id.* One of Scott’s fellow students who studied with Tucker, John J. Crittenden (1787–1863, William and Mary Class of 1806), took a different tack as the Civil War loomed by proposing the Crittenden Compromise, which would, he thought, preserve the Union by dividing the country all the way to the Pacific, with slavery prohibited in the north and protected in the south. See ALBERT D. KIRWAN, JOHN J. CRITTENDEN: THE STRUGGLE FOR THE UNION 374–76 (1962).

<sup>193</sup> On Sharp, see Brycchan Carey, *Granville Sharp (1735–1813)*, BRYCCHAN CAREY.COM, <http://www.brycchancarey.com/abolition/sharp.htm> (last visited Apr. 16, 2013). Sharp had been instrumental in helping Madison in London in 1790 when Madison was seeking consecration as a bishop in the American Episcopal Church. See 1 PRINCE HOARE, MEMOIRS OF GRANVILLE SHARP 343 (2d ed., London, Henry Colburn 1828); 1 CHARLES STUART, A MEMOIR OF GRANVILLE SHARP 35 (N.Y.C., American Anti-Slavery Society 1836). Also generally forgotten today is that two northern universities, Brown and Harvard, each conferred an honorary degree on Sharp (even before William and Mary). See HOARE, *supra*, at 379.

<sup>194</sup> WILLIAM FREDERICK POOLE, ANTI-SLAVERY OPINIONS BEFORE THE YEAR 1800, at 73 (Cincinnati, Robert Clarke & Co. 1873).

<sup>195</sup> *Id.* at 73. Poole’s source appears to be William Goodell, who made much the same points as Poole. See WILLIAM GOODELL, SLAVERY AND ANTI-SLAVERY: A HISTORY OF THE GREAT STRUGGLE IN BOTH HEMISPHERES WITH A VIEW OF THE SLAVERY QUESTION IN THE UNITED STATES 104–05 (N.Y.C., William Harned 1852).

Sharp’s support for American independence was no doubt a factor in the College’s decision to honor him, but even in his *Declaration of the People’s Natural Right to a Share in the Legislature*, his call for “the Abomination of domestick as well as political Slavery [to be] abolished” is clear. Granville Sharpe, *Declaration of the People’s Natural Right to Share in the Legislature*, VA. GAZETTE, Oct. 20, 1774, at 1.



correspondence with Sharp shows their friendly ties and shared interests in the condition of Christianity in Virginia.<sup>196</sup> In sending Sharp the February 8, 1791, resolution from the faculty thanking him for several books given to the library and awarding him a Doctor of Laws degree, Madison emphasized Sharp's efforts in regard to slavery:

Two [sic] much Praise cannot be given to the truly noble Exertions, which you have made, and are Continuing to make, in a Concern the most interesting to Humanity. May the Almighty Crown a Benevolence so distinguished with the deserved success! The Hearts of all good Men must Applaud and admire your generous Exertions; and if there be a Cause, which we may presume Heaven itself would particularly favour, it must be that which has for its object the Abolition of the Slave Trade. Your communications upon that, or any other Subject, will always be most flattering to one.<sup>197</sup>

Madison went on to assure Sharp that "the Degree will reflect no Honour upon you; But it will prove that we, at least, are sensible to whom literary Honours are due. The Diploma shall be forwarded."<sup>198</sup>

Jefferson himself, a few years earlier, in 1785, made it clear that under the influence of Wythe, the students of the College were open to, perhaps even immersed in, emancipationist thought.<sup>199</sup> He advised the English moral philosopher Richard Price (1723–1791) not to be discouraged in opposing slavery, and he sought once more to deepen the anti-slavery thinking William and Mary students were exposed to:

In Maryland I do not find such a disposition to begin the redress of this enormity as in Virginia. This is the next state to which we may turn our eyes for the interesting spectacle of justice in conflict with avarice and oppression: a conflict wherein the sacred side is gaining daily recruits from the influx into office of young men grown and growing up. These have sucked in the principles of liberty as it were with their mother's milk, and it is to them I look

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By the time Sharp was given his degree, George Washington was no longer Chancellor of the College, but although Washington seems to have ignored Sharp's *The Law of Retribution* (1776), "by the early 1790s" his own interest in emancipation seemed to have been developing. See Furstenberg, *supra* note 121, at 260.

<sup>196</sup> See Letter from James Madison to Granville Sharpe (June 21, 1791), in *ABOLITION AND EMANCIPATION PART 4: GRANVILLE SHARPE PAPERS FROM GLOUCESTERSHIRE RECORD OFFICE* (Adam Matthew Publications).

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> Letter from Thomas Jefferson to Richard Price (Aug. 7, 1785), in *8 THE PAPERS OF THOMAS JEFFERSON* 356 (Julian P. Boyd et al. eds., 1953).

with anxiety to turn the fate of this question. Be not therefore discouraged. What you have written will do a great deal of good: and could you still trouble yourself with our welfare, no man is more able to give aid to the labouring side. The college of William and Mary in Williamsburg, since the remodelling of it's [sic] plan, is the place where are collected together all the young men of Virginia under preparation for public life. They are there under the direction (most of them) of a Mr. Wythe one of the most virtuous of characters, and whose sentiments on the subject of slavery are unequivocal. I am satisfied if you could resolve to address an exhortation to those young men, with all that eloquence of which you are master, that it's [sic] influence on the future decision of this important question would be great, perhaps decisive. Thus you see that, so far from thinking you have cause to repent of what you have done, I wish you to do more, and wish it on an assurance of it's [sic] effect.<sup>200</sup>

My efforts towards a newly reconstructed institutional history of anti-slavery thought at William and Mary may clarify a bitter thrust against Thomas Jefferson that has only recently come to light. In December 1808, "A Slave" addressed a searing letter to President Jefferson about slavery, its cruelty, its injustice, its violence, and its danger to the Republic itself.<sup>201</sup> "Is this," he challenged Jefferson, "the fruits of your education, Sir?"<sup>202</sup> If I am right about William and Mary's destabilizing and anti-slavery education, that indictment would have stung.

Unlike Wythe, of course, Jefferson, Tucker, Madison, and the College never freed those they enslaved, never lived up to the Enlightenment principles from which they derived their skepticism of slavery. There was a road from those Revolutionary Era values when William and Mary was, in Henry May's words, one of "the stoutest fortresses of Enlightenment in the South"<sup>203</sup> to its institutional shame under Dew and

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<sup>200</sup> *Id.* at 357. In 1795, Joseph Scott commented on those educated at the College that they were generally characterized by "their great liberality of sentiment; their minds are never cramp[ed] by local prejudices." See THE NEW AND COMPLETE AMERICAN ENCYCLOPEDIA: OR UNIVERSAL DICTIONARY OF ARTS AND SCIENCES 597 (N.Y.C., E. Low 1811).

<sup>201</sup> See Thomas N. Baker, 'A Slave' Writes Thomas Jefferson, 68 WM. & MARY Q. 127, 127 (2011).

<sup>202</sup> *Id.* at 142. Baker explores some hints that "A Slave" may have known Jefferson or known something about him. See *id.* The intimations that "A Slave" may have lived in Philadelphia makes me think he might have known of Jefferson from William Short, who lived there and who corresponded from there with Jefferson about slavery.

<sup>203</sup> HENRY F. MAY, THE ENLIGHTENMENT IN AMERICA 332 (1976). Though May does not discuss skepticism about slavery at William and Mary, he draws attention to many aristocratic Virginians' detestation of slavery, "the institution on which their style of life depended." *Id.* at 134. And to the College's prominence as "the principal stronghold of the Revolutionary Enlightenment among American colleges." *Id.* at 246.

Beverley Tucker and to the narratives leading from there to silence and to delusional mythology—and that road remained open. What was the influence from anti-slavery anxiety at the College? Teachers never know, but the College’s students in those early days imbibed anti-slavery notions, and in some cases acted on them.<sup>204</sup> Some actions were local, but some, those by William Short,<sup>205</sup> for example, and especially by Edward Coles,<sup>206</sup> had larger effects. That the regions nearer Williamsburg and perhaps most immediately affected by William and Mary intellectually appear to have seen a relatively high number of manumissions<sup>207</sup> may just conceivably reflect some effect as well.

As for other institutions of higher learning at the time, ones in the South, as one might expect, were more supportive of slavery, as was Princeton.<sup>208</sup> Other northern institutions—Harvard, Brown, and Dartmouth—manifested hesitations, but more rarely and episodically.<sup>209</sup> Though Yale graduates included a number of early abolitionists,

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<sup>204</sup> I cannot verify a claim by William A. Maddox that “[u]nder the inspiration of Professors St. George Tucker and George Wythe, students at William and Mary . . . advocated freedom for slaves in their literary societies and even petitioned the legislature for an adjudication of the question.” WILLIAM ARTHUR MADDOX, *THE FREE SCHOOL IDEA IN VIRGINIA BEFORE THE CIVIL WAR: A PHASE OF POLITICAL AND SOCIAL EVOLUTION* 127 n.1 (1918). It is noteworthy that a petition of November 16, 1795, excoriating slavery, bears Wythe’s name prominently. Petition 11679501 to the Speaker and House of Delegates in Virginia (Nov. 16, 1795), *available at* <http://library.uncg.edu/slavery/details.aspx?pid=2244>.

<sup>205</sup> See Furstenberg, *supra* note 121, at 281.

<sup>206</sup> Edward Coles et al., *Letters of Governor Edward Coles Bearing on the Struggle of Freedom and Slavery in Illinois*, 3 J. NEGRO HIST. 158 (1918).

<sup>207</sup> Reasons behind and rates of manumission are complex indeed. See Eva Sheppard Wolf, *Manumission and the Two-Race System in Early National Virginia*, in *PATHS TO FREEDOM: MANUMISSION IN THE ATLANTIC WORLD* 175 (Rosemary Brana-Shute & Randy J. Sparks eds., 2009). Sheppard Wolf seems to accept a conclusion by Peter Albert that there were “more manumissions in the southern Tidewater” than in other regions in Virginia, driven by anti-slavery and religious forces and a decline in the economics of slavery locally. *Id.* at 325. She includes as influential factors the area being “at a later stage of social development” and having “stable, well connected communities.” *Id.*; see also EVA SHEPPARD WOLF, *RACE AND LIBERTY IN THE NEW NATION: EMANCIPATION IN VIRGINIA FROM THE REVOLUTION TO NAT TURNER’S REBELLION* 7–16 (2006). Professor Wolf notes a “greater incidence of manumission in eastern Virginia” as a function of soil depletion, which is surely so. *Id.* at 110. An early study suggests the impact of revolutionary era ideals and the rights of man on manumission in Virginia. See Luther P. Jackson, *Manumission in Certain Virginia Cities*, 15 J. NEGRO HIST. 278 (1930). A direct connection to thinking at William and Mary is, of course, difficult to prove.

<sup>208</sup> See John Weeren, *Slavery at Princeton*, PRINCETON UNIVERSITY, <http://princeton.edu/mudd/news/faq/topics/slavery.shtml> (last visited Apr. 16, 2013).

<sup>209</sup> Alfred L. Brophy does see signs of anti-slavery thought at some southern schools—Washington College (later Washington and Lee University), Miami University of Ohio, the University of North Carolina, and the University of Alabama—but only later, in the 1830s “in keeping with Enlightenment ideas in circulation in southern schools at that point.” See Alfred L. Brophy, *The Jurisprudence of Slavery, Freedom, and Union at Washington College, 1831–1861*, in *UNIVERSITY, COURT AND SLAVE* (forthcoming).

Religious complexities among Presbyterians led to Princeton’s alignment in ante-bellum days largely with the South, where many of its students lived. Sean Wilentz comments that the

its own encouragement of anti-slavery thinking has yet to be documented.<sup>210</sup> Among its contemporaries, William and Mary stands out for its apparently sustained and pervasive—though relative—skepticism about slavery. It was seemingly a hotbed of unease about the peculiar institution.

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College of New Jersey and the Princeton Theological Seminary both were skeptical of “revival-inspired social reform” and held “conservative views about anti-slavery” thinking. Sean Wilentz, *Princeton and the Controversies Over Slavery*, 85 J. PRESBYTERIAN HIST. 102, 105 (2007). The town was “strongly anti-abolitionist” and “Old School Princeton . . . attacked antislavery radicalism, alternately, as a form of enthusiastic religious heresy and a fanatical cause whipped up by radical Jacksonian Democrats.” *Id.* But Wilentz suggests an earlier “active involvement in humanitarian campaigns to restrict slavery”—apparently engagement in the American Colonization Society with a broadly shared feeling that “although slavery could be justified on scriptural grounds, it was hardly a desirable condition.” *Id.* at 106. A Princeton University website offers a succinct observation, that the university “cannot be said to have had a ‘glowing history in opposing slavery.’” *See* Weeren, *supra* note 208.

At Harvard, a debate was held in 1773 on “The Legality of Enslaving Africans,” but though the authors of a recent study say that people connected to Harvard may have had “private doubts” about slavery, they note no consequences of the debate. *See* SVEN BECKERT ET AL., HARVARD AND SLAVERY 12 (2011), available at <http://www.harvardandslavery.com/resources/>. The authors do note that the judges who helped to end slavery in Massachusetts, including Chief Justice William Cushing, were educated at Harvard where, the implication is, “anti-slavery ideas” accompanied “Revolutionary era . . . notions of universal rights and the social upheavals of removing colonial rule.” *Id.* at 14. Even in the ante-bellum period, those at Harvard skeptical of slavery were rare; the university’s leaders “discouraged faculty and students who wanted to publicly question the institution of slavery and who advocated a politics of abolition.” *Id.* at 16. “Harvard professors who chose to join anti-slavery organizations put their jobs and their statuses in jeopardy.” *Id.* at 19.

At the College of Rhode Island (later Brown University), anti-slavery thought was promulgated though the University’s recent report on slavery notes that “the fellows and trustees” of the institution were divided on abolishing the slave trade. *See* BROWN UNIVERSITY, SLAVERY AND JUSTICE: REPORT OF THE BROWN UNIVERSITY STEERING COMMITTEE ON SLAVERY AND JUSTICE 21–25 (2006), available at [brown.edu/Research/Slavery\\_Justice/documents/SlaveryAndJustice.pdf](http://brown.edu/Research/Slavery_Justice/documents/SlaveryAndJustice.pdf). David Howell is cited as a founder of the Providence Abolition Society and, “tutor, professor, and fellow” of the College as well as, briefly, its President. *Id.* In 1786, Moses Brown proposed a contest for “the best student essay on the slave trade,” but the competition at Brown never happened (nor did competitions Moses Brown had in mind at Harvard, Yale, and Princeton). Still, “some students imbibed the ideas of the anti-slavery movement,” including one, James Tallmadge, whose College of Rhode Island commencement address attacked slavery. *Id.* at 24. Southern students, including the sons of Virginia’s Robert Carter, apparently, however, found little at Brown to unsettle their own beliefs. *Id.* at 25.

The only early instance of anti-slavery sentiment at Dartmouth that I have found is Moses Fisk, a Tutor who in 1795 preached a powerful sermon on the subject. *See* MOSES FISK, TYRANNICAL LIBERTYMEN: A DISCOURSE ON NEGRO SLAVERY IN THE UNITED STATES (Hanover, Eagle Office 1795).

<sup>210</sup> *See* Yale, *Slavery & Abolition*, YALESLAVERY.ORG, <http://www.yaleslavery.org/Abolitionists/abolit.html> (last visited Apr. 16, 2013).