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Debating Slavery and Empire in the Washington College Literary Societies

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Debating Slavery and Empire in the Washington College Literary Societies

Alfred L. Brophy*

Abstract

This paper examines the debates of the Washington and Graham Literary Societies at Washington College in the 1850s. It has two purposes. The first is to use the debate topics as a gauge of the issues on the minds of Washington College's students, particularly as they related to slavery and empire. This is part of the growing literature on the intellectual history of the pre-Civil War South and of its connection to slavery, for issues of race and slavery were common in the debates. The second is a more theoretical point. I seek to intervene in the popular constitutionalism literature by showing yet another place that Americans engaged significant constitutional issues. Moreover, the debates reflect that constitutional issues, like Union, were part of a larger matrix of ideas about the economy, nationalism, and race.

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I. Introduction

Most weeks during the school year, students from Washington College’s two literary societies gathered in their offices on the top floor of the main classroom building, Washington Hall.¹ There, students debated a topic that they had selected at a previous meeting.² Those topics spanned from grand issues of politics and constitutionalism—such as whether the United States would remain permanent³ and should it annex more territory,⁴ to the wisdom of a home-stead act⁵—to more philosophical questions about individual duty, such as “Is the instigator more to blame than the perpetrator of a crime?”⁶ and “Is dueling justified on any basis?”⁷ Sometimes students also dealt with abstract questions about literature or republics, such as “Is a republican form of government the best for promoting science and literature?”⁸; “Is national literature to be regarded

1. See OLLINGER CRENSHAW, *GENERAL LEE'S COLLEGE: THE RISE AND GROWTH OF WASHINGTON AND LEE UNIVERSITY* 117 (1969) (discussing literary society debates); see also WILLIAM HENRY RUFFNER, *WASHINGTON AND LEE HISTORICAL PAPERS*, no. 6, at 77–79 (1904) (discussing Washington College’s literary societies).

2. See W. G. BEAN, *STONEWALL'S MAN: SANDIE PENDLETON* 8–9 (2000) (discussing Pendleton’s participation in the Graham Literary Society).

3. See *Minutes of Washington Society*, Mar. 15, 1851 (questioning the changing nature of the United States) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

4. See *Minutes of Washington Society*, Oct. 30, 1852 (wondering whether the United States should expand its outreach) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); *Minutes of Washington Society*, Jan. 15, 1853 (“Was the acquisition of California beneficial to the United States?”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); *Minutes of Washington Society*, Sept. 23, 1854 (“Should the Sandwich Islands and Cuba be annexed to the United States?”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

5. See *Minutes of Washington Society*, Jan. 20, 1855 (“Is the Home-stead Bill an expedient measure?”).

6. *Minutes of Graham Society*, Sept. 22, 1855 (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

7. *Minutes of Graham Society*, Mar. 25, 1846 (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

8. *Minutes of Graham Society*, Feb. 9, 1856 (on file with the Washington

more a cause than a consequence of national refinement?"⁹; and "Does the stability of a nation depend more on the virtue of the people, than the good policy of the government?"¹⁰

When taken together, those debates offer an important window into the minds of Washington College students. I have two goals in this essay. The first is to use the debates as a gauge of the rich intellectual culture in pre-Civil War Washington College.¹¹ Some of the most vibrant historical research of the past several decades has centered around the ideas of nineteenth-century southerners.¹² While we rightly see their world view as deeply inhuman, we are increasingly seeing that antebellum southerners had important debates about a range of constitutional, political, and moral ideas. Those ideas correlate with—and likely derive from—the world of slavery so central to the southern economy and social life.¹³ These debates reveal the broad intellectual horizons of Washington College's students and that a series of ideas about slavery, race, economy, and

and Lee Journal of Civil Rights and Social Justice).

9. *Minutes of Graham Society*, July 17, 1859 (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

10. *Minutes of Graham Society*, Nov. 15, 1851 (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

11. See generally Alfred L. Brophy, *The Jurisprudence of Slavery, Freedom, and Union at Washington College, 1831 to 1861* (Sept. 29, 2011) (unpublished manuscript) (describing how southerners at Washington College discussed the mandates of jurisprudence and constitutionalism and the future of slavery) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

12. See generally MICHAEL BERNATH, *CONFEDERATE MINDS: THE STRUGGLE FOR INTELLECTUAL INDEPENDENCE IN THE CIVIL WAR SOUTH* (2010) (discussing the ideas and culture surrounding the confederate movement); ALFRED L. BROPHY, *UNIVERSITY, COURT, AND SLAVE: PROSLAVERY THOUGHT IN SOUTHERN COLLEGES AND COURTS AND THE COMING OF CIVIL WAR* (2016) (discussing proslavery thought and sometimes, as at Washington College, antislavery thought, among southern intellectuals); DREW FAUST, *A SACRED CIRCLE: THE DILEMMA OF THE INTELLECTUAL IN THE OLD SOUTH, 1840-1860* (1977) (examining the different intellectual approaches taken by leading philosophers in the Old South); SARAH GARDNER, *BLOOD AND IRONY: SOUTHERN WHITE WOMEN'S NARRATIVES OF THE CIVIL WAR, 1861-1937* (2004) (arguing that women helped define and reshape southern identity); MICHAEL O'BRIEN, *CONJECTURES OF ORDER: INTELLECTUAL LIFE AND THE AMERICAN SOUTH, 1810-1860* (2004) (describing the shift in intellectual thought occurring throughout the mid-nineteenth century in the Old South).

13. See generally Alfred L. Brophy, *The World Made by Laws and the Laws Made by the World of the Old South*, in *SIGNPOSTS: NEW DIRECTIONS IN SOUTHERN LEGAL HISTORY* 219–39 (Sally Hadden & Patricia Minter eds., 2013).

constitutionalism all sat alongside one another in the minds of educated southerners. I want to use the debate topics to suggest that breadth and also to reveal what seem to be some of the central tendencies. I want to use the debates as a gauge of what important members of the public were thinking about in this era before public opinion polls.

A few scholars have made use of student literary debates in this period as a gauge of some of the student attitudes on specific issues, most commonly slavery.¹⁴ Timothy Williams has made the most systematic use of college debates, focusing on thousands of debates at the University of North Carolina from the 1820s to the Civil War.¹⁵ A few others have turned to southern college literary societies, including the speeches given to them and their debates, to suggest the engagement of students with issues like slavery, race, and secession.¹⁶

My second goal in this essay is to make a more theoretical point, about the use that might be made of student debates—and other evidence of ideas in colleges, such as graduation addresses—to help us understand popular ideas about the Constitution before the Civil War. That is, how did American thought about the Constitution shape (or correlate with) public ideas?¹⁷ Much of the popular constitutionalism literature is

14. See, e.g., DANIEL SHARFTSTEIN, *THE INVISIBLE LINE: A SECRET HISTORY OF RACE IN AMERICA*, 53–72 (2012) (exploring the history of race in America through the perspective of multiracial families); MARK J. SWAILS, *LITERARY SOCIETIES AS INSTITUTIONS OF HONOR AT EVANGELICAL COLLEGES IN ANTEBELLUM GEORGIA* (MA Thesis, Emory University, 2007); B. Evelyn Westbrook, *Debating Both Sides: What Nineteenth-Century College Literary Societies Can Teach us About Critical Pedagogies*, 21 *RHETORIC REVIEW* 339–56 (2002) (discussing debates about slavery and political theory at South Carolina College).

15. See TIMOTHY J. WILLIAMS, *INTELLECTUAL MANHOOD: UNIVERSITY, SELF, AND SOCIETY IN THE ANTEBELLUM SOUTH* 175–88 (2015) (explaining how higher education in antebellum South Carolina encouraged intellectualism).

16. See, e.g., PETER CARMICHAEL, *THE LAST GENERATION: YOUNG VIRGINIANS IN PEACE, WAR, AND REUNION* (2005) (examining southern literary societies generally); Alfred L. Brophy, *The Law of the Descent of Thought: Law, History, and Civilization in Antebellum Literary Addresses*, in 20 *LAW AND LITERATURE* 343–402 (2008) (discussing the University of Alabama as a place of proslavery and occasionally anti-slavery thought). See generally Michael Sugrue, *South Carolina College: The Education of an Antebellum Elite* (1992) (unpublished Ph.D. dissertation, Columbia University).

17. See generally LARRY KRAMER, *THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW* (2005). See MARK TUSHNET, *TAKING THE CONSTITUTION AWAY FROM THE COURTS* (2000) (suggesting increased political

concerned with ways the concept might be used to limit the power of Congress. But there is a constitutive part of public constitutional thought, too: how did the idea of a Constitutional Republic bind early Americans together? In the words of the leading Whig lawyer B.F. Moore, speaking at the University of North Carolina in 1846, how did the idea of justice become a “Silken Cord that Unites” the United States?¹⁸

One key idea of Americans in the 1840s and 1850s was that we had a national, commercial, Christian republic that bound us together. From monuments and founding figures like George Washington, to statehouses built to evoke ancient republics, and to the principles of commerce and law, Americans—particularly those of the Whig party—saw the country united in a common mission of economic, technological, and moral progress.¹⁹ Many of the Supreme Court justices under Marshall shared that vision²⁰ with political leaders like Daniel Webster.²¹

II. *The Washington College Literary Society Debates*

Washington College—like many other schools—had two literary societies in the years before the Civil War, the Graham

action related to the Constitution); Roman Hoyos, *Who are ‘the People’?* Southwestern Law Sch., Research Paper No. 15-2, 2015, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2633349 (discussing problems with identifying “the people” for purposes of popular constitutionalism).

18. Alfred L. Brophy, *The Republics of Liberty and Letters: Progress, Union, and Constitutionalism in Graduation Addresses at the Antebellum University of North Carolina*, 89 N.C. L. REV. 1879–1964, 1885 (2011).

19. See, e.g., E.L. MAGOON, ELOQUENCE AND LIBERTY: AN ORATION DELIVERED BEFORE THE LITERARY SOCIETIES OF WASHINGTON COLLEGE, LEXINGTON, VA., JUNE 24, 1846 (1846) (linking moral progress with American liberty and oratory). Magoon developed this further in his book, E.L. MAGOON, WESTWARD EMPIRE, OR, THE GREAT DRAMA OF HUMAN PROGRESS (1856).

20. See G. EDWARD WHITE, THE MARSHALL COURT AND CULTURAL CHANGE, 1815–1835, 76–156 (1988) (discussing the origins of Marshall Court jurisprudence in ideas about law popular at the time, including and especially republicanism). Cf. Stephen Siegel, *The Marshall Court and Republicanism*, 67 Tex. L. Rev. 903–42 (1989) (reviewing WHITE, *supra* note 20) (suggesting varieties of meanings for “Republicanism.”).

21. See generally MAURICE G. BAXTER, ONE AND INSEPARABLE: DANIEL WEBSTER AND THE UNION (1984).

Society and the Washington Society.²² Students met, typically, weekly during the school year and at most meetings they debated a topic that had been selected a week or two before.²³ The topics, though not the specific arguments, are preserved in the society minute books that are now in the Leyburn Library's Special Collections on the Washington and Lee University campus.²⁴ The debates are often on literary or historical topics that seem to have relatively little direct relationship to contemporary politics, such as "Did Napoleon do more harm than good to the world?"²⁵

A. *The Shifting Grounds of Slavery and Race*

The students at the two literary societies frequently debated issues around the morality of slavery, its expediency, and future. For instance, the Washington Society debated on May 9, 1845, "Is slavery a moral and political evil?" and a slim majority concluded "yes."²⁶ Four years later, the students again—by a slim majority—came to the same result.²⁷ Whatever they thought about the abstract morality of slavery, they were overwhelmingly against the abolition of slavery. When they debated, "Ought slavery to be abolished in the United States?" in November 1846, the students voted four-to-one "no."²⁸ This reflects the

22. See CRENSHAW, *supra* note 1, at 117 (describing the activity of literary societies in Washington and Lee's history); see also RUFFNER, *supra* note 1, at 77–79 (discussing the literary societies at Washington College).

23. See generally BEAN, *supra* note 2 (discussing the history of the Graham Society).

24. The minute books are available in Leyburn Library's Special Collections for the Washington Society from the 1840s through 1861; for the Graham Society, they are available from the 1840s to 1856. The minute book (or books) dealing with April 1856 to the Civil War is missing. Often, the minute books record the student votes on the debate. See generally CRENSHAW, *supra* note 1; RUFFNER, *supra* note 1; BEAN, *supra* note 2.

25. *Minutes of Graham Society*, June 26, 1854 (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

26. See *Minutes of Washington Society*, May 9, 1845 (showing a voting record of 9 "yes" and 8 "no") (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

27. See *Minutes of Washington Society*, Oct. 27, 1849 (discussing if slavery is consistent with religion and morality, decided 3 to 2 on November 3, 1849) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

28. See *Minutes of Washington Society*, Nov. 14, 1846 (deciding 4 in favor,

ambivalence around slavery in Lexington as late as the 1840s. However, Henry Ruffner, Washington College's president, argued publicly in the early 1840s against slavery.²⁹

Attitudes were changing in the south and at Washington College, too. Two years later, in April 1851, the students debated issues of efficiency and concluded that the abolition of slavery would not be beneficial to the South.³⁰ They asked a broader question in December 1851: "Is the institution of slavery beneficial to the interests of the world?" and decided that overwhelmingly favorably, by an eight-to-two vote.³¹ A few months later, in February 1852, they asked as part of the anniversary of the Society, "Is the institution of slavery injurious to the interests of the South?" and they concluded, overwhelmingly, "no"—of the thirty-three votes cast, only four said "yes."³² Expediency and morality were not the same thing, to be sure, as Chief Justice John Marshall wrote in cases involving both slavery and Native Americans.³³ The story is repeated several other times, as well. But when the Graham Society debated, "Is the institution of slavery injurious to the interest of the South?" on May 15, 1852, they decided resoundingly "yes" by eight-to-four votes.³⁴

16 against on November 21, 1846) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

29. See A SLAVE HOLDER OF WEST VIRGINIA, ADDRESS TO THE PEOPLE OF WEST VIRGINIA, SHEWING THAT SLAVERY IS INJURIOUS TO THE PUBLIC WELFARE, AND THAT IT MAY BE GRADUALLY ABOLISHED, WITHOUT DETRIMENT TO THE RIGHTS AND INTERESTS OF SLAVEHOLDERS (Lexington, Va., R.C. Noel 1847) (attributed to Henry Ruffner) (arguing in favor of abolition).

30. See *Minutes of Washington Society*, Apr. 26, 1851 (showing a voting record of 2 "yes" and 5 "no.").

31. *Minutes of Washington Society*, Dec. 6, 1851 (on file with Washington and Lee Journal of Civil Rights and Social Justice).

32. *Minutes of Washington Society*, Feb. 21, 1852 (on file with Washington and Lee Journal of Civil Rights and Social Justice).

33. See *The Antelope*, 23 U.S. 66 at **1 (1825) ("The African slave trade is contrary to the law of nature, but is not prohibited by the positive law of nations."); see also generally *Johnson and Graham's v. William M'Intosh*, 21 U.S. 543 (1823) (deciding that Native American peoples were not able to pass title to land to private individuals because the land belonged to the Europeans who had conquered it).

34. See *Minutes of Graham Society*, Apr. 24, 1852 (setting topic for debate) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); see also *Minutes of Graham Society*, May 15, 1852 (debating slavery's impact on the interests of the South) (on file with the Washington and Lee Journal of Civil

There was some recognition of the moral problems associated with slavery—and with the United States’ treatment of Native Americans. In October 1850 the students debated: “Which race has suffered the most injustice from the hands of the white race, the Indian or Negro?” and a bare majority found that the Natives had suffered the most injustice.³⁵ While Native Americans did not occupy as much space in the debates as enslaved people, on several other occasions in the 1850s the Washington Society debated them. Once the question presented was whether it was justifiable to remove “the Florida Indians while they live peaceably with the Whites.”³⁶ Another time the question was whether “the conduct of the American People towards the American Indians [has] been justifiable.”³⁷ But at their thirty-eighth anniversary in 1852, the Washington Society debated whether slavery was “injurious to the interests of the South” and, overwhelmingly, the students rejected that proposition: four voted “yes;” twenty-nine voted “no.”³⁸

There was a sense among some students, however, that freedom was possible for African Americans. A fall 1852 debate, “Is the negro race capable of enlightenment in any other condition than that of slavery?” left seven students voting “no”; that is, seven of the voters thought that people of African descent were fit only for slavery. Ten, however, voted “yes,” which suggests that they thought something other than slavery was possible. That is far from an endorsement of immediate abolition attitudes, but it suggests that there was some continuing anti-slavery sentiment, or at least belief, that something other than

Rights and Social Justice).

35. See *Minutes of Washington Society*, Oct. 19, 1850 (setting topic for debate) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); see also *Minutes of Washington Society*, Oct. 27, 1850 (debating whether American Indians or African Americans suffered more injustice, with 8 students voting for the “Indian” and 3 for the “Negro”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

36. See *Minutes of Graham Society*, Apr. 14, 1855 (deciding with a vote of 13 to 5 in the negative on April 14, 1855) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

37. See *Minutes of Washington Society*, Sept. 24, 1853 (deciding with a 9 to 5 vote on October 6, 1853) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

38. *Minutes of Washington Society*, Feb. 21, 1852 (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

slavery was a possibility.³⁹ The students, however, were not much in favor of taking steps to elevate enslaved humans. When the students debated in February 1855, “Is the law prohibiting citizens of the United States from teaching their slaves to read a proper one?” they concluded by more than two-to-one that the law was proper.⁴⁰ The next February, they concluded by a thirty-two-to-nine vote that “the institution of slavery [is] necessary for the most perfect development of Society.”⁴¹

The students were increasingly seeing slavery as not just expedient, but necessary and moral, too. On September 25, 1852, the Graham Society students set for debate the question, “is slavery a moral, and political, evil?”⁴² On October 2, 1852, they concluded more than two-to-one that it was not.⁴³ In September 1853, they debated: “Is slavery an evil?”⁴⁴ Overwhelmingly, they concluded “no.” Again in October 1854, they debated, “Has the introduction of slavery into North America been productive of more good or evil to the world?”⁴⁵ On September 15, 1855 they

39. See *Minutes of Washington Society*, Nov. 20, 1852 (holding the debate on December 4, 1852) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

40. See *Minutes of Washington Society*, Feb. 3, 1855 (debating appropriateness of the law prohibiting citizens from teaching slaves to read with a vote of 10 “yes” to 4 “no”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); see also *Minutes of Washington Society*, Feb. 7, 1857 (debating the question, “Is the law of the United States prohibiting citizens from teaching their slaves a proper one?” decided on February 25 with a vote of 16 “yes” to 11 “no”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

41. See *Minutes of Washington Society*, Feb. 22, 1856 (deciding that slavery was expedient and necessary with a vote of 32 “yes” to 9 “no”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

42. *Minutes of Graham Society*, Sept. 25, 1852 (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

43. See *Minutes of Graham Society*, Oct. 2, 1852 (voting on whether slavery was a moral and political evil with 8 “yes” votes and 20 “no”); see also *Minutes of Graham Society*, June 23, 1855 (asking “Is slavery in itself an evil?” and concluding “no,” by a vote of 3 “yes” to 6 “no”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

44. See *Minutes of Washington Society*, June 4, 1853 (setting again on September 10, 1853 for debate in a week and defeated 18 “no” to 3 “yes” on September 17, 1853) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

45. See *Minutes of Washington Society*, Oct. 14, 1854 (deciding with a vote of 15 “yes” to 8 “no” on November 18, 1854) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

debated whether “slavery is in accordance with the dictates of humanity?” and concluded nearly three-to-one that it was.⁴⁶ Three years later, the students debated: “Is slavery detrimental to the agricultural interests of the South?”⁴⁷ They concluded overwhelmingly that it was not. Around the same time, a majority of these students concluded that the expulsion of free people from Virginia was desirable.⁴⁸

By the late 1850s, the students considered the “extension of slavery in the United States desirable” by a three-to-one margin.⁴⁹ In September 1859, a majority thought that slavery was not a moral nor political evil.⁵⁰ They debated whether “the captured Africans should be returned to their homes.”⁵¹ The month after John Brown’s raid on Harper’s Ferry of October 1857, the Washington Society students concluded that Virginia’s governor should “demand all the Harper’s Ferry insurgents” by a

46. See *Minutes of Graham Society*, Sept. 15, 1855 (voting 14 “yes” to 5 “no” that slavery is in accordance with the dictates of humanity) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

47. See *Minutes of Washington Society*, Jan. 10, 1857 (concluding that slavery is not detrimental to the agricultural interests of the south, with 2 “yes” votes and 16 “no” votes on January 24, 1857) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

48. See *Minutes of Washington Society*, Apr. 9, 1853 (setting for debate, “Would the expulsion of free negroes from Virginia be beneficial to the state?” and affirmed by a majority of 8 on April 23, 1853) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

49. See *Minutes of Washington Society*, Jan. 29, 1859 (setting topic for debate; question decided during the February 12, 1859 meeting with 12 “yes” votes to 4 “no”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

50. See *Minutes of Washington Society*, Sept. 10, 1859 (setting for debate: “Is slavery a moral and political evil?” and concluding on September 24, 1859 with 8 “yes” votes and 11 “no” votes) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

51. See *Minutes of Washington Society*, Sept. 18, 1858 (setting for debate, “Ought the captured Africans be returned to their homes?”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice). The vote on October 2, 1858 was 10 “yes” to 8 “no.” This vote is susceptible to multiple interpretations. The vote might be against colonization and thus in favor of continued slavery. Alternatively, it might be against removal of free people from the state, and thus perhaps reflect more tolerance (or less intolerance) of African Americans in Virginia than was typical. See also generally KIRT VON DAACKE, *FREEDOM HAS A FACE: RACE, IDENTITY, AND COMMUNITY IN JEFFERSON'S VIRGINIA* (2012) (discussing attitudes of white community towards free people of African descent in Virginia).

vote of two-to-one.⁵² The students even went so far as debate reopening the slave trade in the fall of 1859, though the students defeated the proposition.⁵³

B. Union and Secession

The discussion of slavery went along with a host of other issues that the students debated—from questions about the value and permanence of the Union and the wisdom of secession, to territorial expansion, and even the importance of political parties to national harmony. As early as the 1840s they were asking whether “any state of the Union [can] nullify an act of Congress?”⁵⁴ The Washington Society students asked political questions about secession more directly beginning in the fall of 1850 with, “Ought the South to secede from the Union, if the fugitive Slave Bill is annulled or not carried into effect?”⁵⁵ That issue was defeated four-to-five.⁵⁶ Around the same time, the Graham Society students asked, “Should the south secede from the Union in consequence of the recent actions of Congress touching the slavery question and the subsequent actions of the North?”⁵⁷ They concluded, overwhelmingly, “no.”⁵⁸ Essentially,

52. See *Minutes of Washington Society*, Nov. 5, 1859 (debating whether the governor should demand of all Harper’s Ferry insurgents with a vote of 13 “yes” to 6 “no” on November 19, 1859) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

53. See *Minutes of Washington Society*, Nov. 19, 1859 (“Should the African slave trade be reopened?” with 11 “no” to 8 “yes” votes) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

54. See *Minutes of Graham Society*, Mar. 14, 1846 (deciding that states cannot nullify an act of Congress with 22 “no” votes to 4 “yes” votes on March 28, 1846) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

55. See *Minutes of Washington Society*, Nov. 16, 1850 (voting on whether the South should secede from the Union if the Fugitive Slave bill was not enforced; decided 4 “yes” to 5 “no” on December 17, 1850) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

56. *Minutes of Washington Society*, Dec. 17, 1850 (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

57. *Minutes of Graham Society*, Oct. 19, 1850 (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

58. See *Minutes of Graham Society*, Nov. 2, 1850 (debating whether the South should secede in response to acts of Congress; the votes were 4 “yes” and 18 “no”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

the students continued to be divided on whether states had a constitutional right to secede.⁵⁹ The Graham Society students debated in February 1852, “Has a state a right to secede from this Union?” and they concluded “no” by nearly two-to-one.⁶⁰ Regardless of the right of secession, by spring of 1851 the students overwhelmingly voted that the Union did not appear to be firmly established.⁶¹ By the middle of the 1850s, students were less pessimistic⁶² and they wondered about whether the states should secede.

In March 1854, amidst debate over the Kansas-Nebraska Act, which repealed the Missouri Compromise that barred slavery north of Missouri’s southern border and allowed settlers in the Kansas and Nebraska territories to vote on slavery themselves, the Graham Society debated whether “the Southern states [should] secede if the Nebraska Bill is not passed.”⁶³ On that same day, students at the Graham Society debated whether the Nebraska Bill should be passed and concluded, seventeen-to-seven, that it should.⁶⁴ The students stood up for southern culture.

59. See *Minutes of Graham Society*, Mar. 15, 1851 (setting for debate, “Should Western Virginia secede if the “White Basis” is not adopted?” and concluding 8 “yes” to 5 “no” on March 22, 1851) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

60. See *Minutes of Graham Society*, Feb. 21, 1852 (voting 6 “yes” to 11 “no” on the South’s right to secede) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

61. See *Minutes of Graham Society*, Mar. 15, 1851 (setting for debate, “Do present appearances warrant the belief that the Union is firmly established?” and concluding with 1 “yes” and 8 “no” on April 12, 1851) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); see also *Minutes of Graham Society*, Nov. 22, 1851 (setting for debate, “Do present appearances warrant the belief that the Union will be perpetual?” and concluding with 6 “yes” and 9 “no” on December 6, 1851) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

62. See *Minutes of Washington Society*, Oct. 13, 1855 (“Is there danger of dissolution of the Union?”; decided in the negative 13 to 7 on November 3, 1855) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

63. See *Minutes of Washington Society*, Feb. 19, 1854 (setting topic for debate; seems to be decided in negative by majority of 1 on March 4, 1854) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

64. See *Minutes of Graham Society*, Feb. 18, 1854 (setting topic for debate and voting 17 to 7 on March 4, 1854) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

In March 1856, Representative Preston Brooks of South Carolina attacked Massachusetts Senator Charles Sumner on the floor of the United States Senate for having attacked Brooks' kinsman in a speech about the admission of Kansas to the Union.⁶⁵ Sumner was gravely injured and that led to a national debate about the appropriate punishment of Brooks.⁶⁶ In June 1856, the Washington Literary Society debated whether Brooks should be expelled from Congress and they concluded by a two-to-one margin that Brooks should not.⁶⁷ Subsequent efforts to expel Brooks from Congress failed, but he resigned in July 1856 so that voters in his district could ratify his actions; they did, by sending him back to Congress in November 1856.⁶⁸

When Republican John Fremont ran for president in 1856, the Washington Literary Society asked whether—if Fremont were elected—the South should “take means to perpetuate its own institutions independent of the North.”⁶⁹ “No,” they said, by a vote of twenty against seven in favor of separate action.⁷⁰ Secession had supporters, but the Union had far more in the fall of 1856 in the Washington Literary Society.⁷¹ Perhaps that was because Fremont's election was so unlikely; perhaps it was also because the Republican threat to slavery was so remote. However, things changed quickly in politics, particularly between Buchanan's election in the fall of 1856 and Lincoln's election in the fall of 1860.

Secession continued to be the talk of the nation and at Washington College, yet the students seemed relatively moderate.⁷² As late as February 1858, the Washington Literary

65. See generally WILLIAMJAMES HULL HOFFER, *THE CANING OF CHARLES SUMNER: HONOR, IDEALISM, AND THE ORIGINS OF THE CIVIL WAR* 1 (2010).

66. See *id.* at 9–10 (stating that the wounds and gashes on Sumner's head bled profusely and his shirt and coat were drenched with blood).

67. See *Minutes of Washington Society*, June 7, 1856 (setting topic for debate; decided in the negative by a vote of 4 “yes”, 8 “no” on June 28, 1856) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

68. HOFFER, *supra* note 65, at 4.

69. See *Minutes of Washington Society*, Sept. 13, 1856 (setting topic for debate) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

70. *Id.*

71. See *id.* (according to the September 1856 vote on the secession of the South).

72. See *Minutes of Washington Society*, Feb. 6, 1858 (setting topic for

Society overwhelmingly concluded that there was not “danger of war between the South & North.”⁷³ However, politics and attitudes changed decidedly by the fall of 1860. When secession appeared likely, the students debated the South’s next steps. On November 11, 1860, just after Lincoln’s election, they debated “[I]n case of disunion, should Virginia adhere to the North or South?” Ten voted with the South and four for the North.⁷⁴ In February 1861, they debated “[S]hould Texas declare itself independent and take Mexico?”⁷⁵

In addition to the constitutional question regarding the legality of secession, students also debated the effects of political parties, such as whether “the existence of two parties politically opposed to each other [was] essential to the welfare of the Union.”⁷⁶ Historians have continued to debate the question whether the existence (and later breakdown) of political parties led to the Civil War.⁷⁷

C. National Expansion

Closely related to the issue of slavery was that of national expansion and empire.⁷⁸ The student debates reflected concerns over war and territorial expansion and whether there should be yet more expansion. They debated the controversial Mexican-American War, through which the United States acquired much

debate; concluded with a vote of 27 “no” to 7 “yes” on February 27, 1858) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

73. *Id.*

74. *See Minutes of Washington Society*, Oct. 27, 1860 (setting topic for debate on November 11, 1860) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

75. *See Minutes of Washington Society*, Feb. 1861 (setting topic for debate) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

76. *Minutes of Washington Society*, Jan. 4, 1851 (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

77. *See generally* MICHAEL F. HOLT, *THE POLITICAL CRISIS OF THE 1850S* (2007) (emphasizing the importance of parties in maintaining the Union and then, when they broke down, in secession).

78. *See generally* DANIEL WALKER HOWE, *WHAT HATH GOD WROUGHT: THE TRANSFORMATION OF AMERICA, 1815-1848* 701–43 (2007) (discussing the United States’ territorial expansion and ambitions); DAVID S. REYNOLDS, *WAKING THE GIANT: AMERICA IN THE AGE OF JACKSON* 308–63 (2008) (discussing “party politics and manifest destiny.”).

of what is now the southwestern United States. The war was controversial among the Whig party and those opposing slavery, for the territorial expansion added significantly to the territory for slavery and, potentially, added political power to proslavery interests. In June 1846, as the war was beginning, the Graham Society asked “[I]s the US justifiable in waging war with Mexico under existing circumstances?”⁷⁹ In January 1847, the Washington Society debated whether “the war now existing between the U.S., and Mexico [is] a just one.”⁸⁰ In the midst of the war, in May 1847, the Washington Society asked, “[S]hould the United States take territory from Mexico as an indemnity for the expense of the war?”⁸¹

Whatever the controversy over the Mexican War—in which Whigs largely opposed it and Democrats largely supported it—the results were viewed positively. Looking back in 1853, the Graham Literary Society students asked whether “the war with Mexico [was] justifiable.”⁸² They concluded with a slim majority that it was.⁸³ Similarly, the January 1853 anniversary meeting of the Graham Society, where alumni, faculty and students participated in the debate, asked whether California would “likely prove beneficial to the union” and concluding by more than two-to-one that it would.⁸⁴

In terms of even further expansion, the Washington Society debated in September 1851 whether “the Americans [were]

79. *Minutes of Graham Society*, June 6, 1846 (on file with the Washington and Lee University Library).

80. *Minutes of Graham Society*, Jan. 23, 1847 (on file with the Washington and Lee University Library).

81. *See Minutes of Washington Society*, May 1, 1847 (setting topic for debate) (on file with the Washington and Lee University Library).

82. *Minutes of Graham Society*, Apr. 9, 1853 (on file with the Washington and Lee University Library).

83. *See Minutes of Graham Society*, Apr. 25, 1853 (voting 7 to 5 “yes.”); *see also Minutes of Washington Society*, May 12, 1855 (setting question for debate, “Was the United States justifiable in making war against Mexico?”) (on file with the Washington and Lee University Library).

84. *See Minutes of Graham Society*, Jan. 19, 1853 (listing topic and outcome); *see also Minutes of Graham Society*, Jan. 12, 1850 (setting as topic, “Ought California to be admitted into the Union as a state at the present time?”); *Minutes of Washington Society*, Jan 15, 1853 (setting as topic, “Was the acquisition of California beneficial to the United States?”) (on file with the Washington and Lee University Library).

justifiable in the Cuban expedition.”⁸⁵ In 1853, the Washington Society debated whether the United States should “engage in a war with Spain for the sake of Cuba.”⁸⁶ The Graham Society also debated in 1853 whether “the acquisition of Cuba proves beneficial to the United States.”⁸⁷ They continued to talk about these questions periodically for years.⁸⁸

The students looked abroad as well. For instance, they debated whether “Russia [was] justifiable in attempting war upon Turkey”⁸⁹ and questioned whether “[T]he United States. . . [should] offer its mediation between the belligerent powers of Europe.”⁹⁰ Not only did the students discuss the United States’ role in world affairs, they worried about Europe’s role in the western hemisphere. In January 1850, at their anniversary meeting, the students debated whether the United States should “prevent European interference in the public affairs of the western continent.”⁹¹ These questions then led them to wonder about immigration to the United States. In 1852, they asked whether the United States would be injured by Chinese immigration.⁹² The next year they asked whether

85. *Minutes of Washington Society*, Sept. 18, 1851 (on file with the Washington and Lee University Library).

86. *Minutes of Graham Society*, Jan. 8, 1853 (on file with the Washington and Lee University Library).

87. See *Minutes of Graham Society*, Jan. 29, 1853 (announcing debate topic) (on file with the Washington and Lee University Library).

88. See *Minutes of Washington Society*, Feb. 22, 1854 (setting as a debate topic “Is the peaceful acquisition of Cuba desirable?”); see also *Minutes*, *supra* note 84, Jan. 15, 1853 (setting as a debate topic, “Was the acquisition of California beneficial to the United States?”); *Minutes of Washington Society*, Sept. 23, 1854 (setting as debate topic, “Should the Sandwich Islands and Cuba be annexed to the United States?”); *Minutes of Washington Society*, Mar. 26, 1859 (setting as debate topic, “Would the acquisition of Cuba by force be desirable?”) (on file with the Washington and Lee University Library).

89. See *Minutes of Graham Society*, Oct. 1, 1853 (voting 9 “yes” to 14 “no” on October 15, 1853) (on file with the Washington and Lee University Library).

90. *Minutes of Washington Society*, Jan. 6, 1855 (on file with the Washington and Lee University Library).

91. See *Minutes of Graham Society*, Jan. 18, 1850 (filing between minutes for April 13, 1850 and April 20, 1850) (on file with the Washington and Lee University Library).

92. See *Minutes of Graham Society*, Dec. 4, 1852 (deciding 12 to 7 in the affirmative on December 18, 1852) (on file with the Washington and Lee University Library).

the “rebellion in China [is] likely to result in good to herself and the world.”⁹³

The students at Washington College maintained wide ambitions for the United States and they were concerned with the United States’ role in the world. Their interests and ambitions for the United States spanned the continents. Through the debate topics that they chose, we can see the students blending topics of political, economic, social, and constitutional significance.

D. Questions of Economy

Many of the questions of territorial expansion, expansion of slavery, and engagement in the world had implications for the economy as well as southern society. The students sometimes engaged directly in debates about economic policy. At points the discussion was theoretical, such as when the Washington Society debated in 1846 whether “the institution of property produces a beneficial result on the community at large.”⁹⁴ The vote of thirteen “yes” to seven “no” is somewhat surprising.⁹⁵ One might have thought, given the centrality of property to Americans in the pre-Civil War era, that the vote would be even more lopsided.⁹⁶

Most of the debates on economic policy focused on more specific questions, such as the wisdom of internal improvements, like railroads. In 1846, the Graham Society debated whether Virginia should grant a right of way through the state to the Baltimore & Ohio Railroad.⁹⁷ In the 1850s, both societies debated the expediency of a trans-continental railroad.⁹⁸ On a more local

93. See *Minutes of Graham Society*, Sept. 17, 1853 (setting topic for debate) (on file with the Washington and Lee University Library).

94. See *Minutes of Washington Society*, Apr. 11, 1846 (setting topic for debate) (on file with the Washington and Lee University Library).

95. *Minutes of Washington Society*, Apr. 25, 1846. (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

96. See Alfred L. Brophy, *Property and Progress: Antebellum Landscape Art and Property Law*, 40 MCGEORGE L. REV. 603, 620 (2009) (describing antebellum period concerns through painting and how the people understood property in the era).

97. See *Minutes of Graham Society*, Apr. 28, 1846 (setting topic for debate) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

98. See *Minutes of Graham Society*, Oct. 15, 1853 (setting for debate, “Will the construction of the Pacific Railroad be conducive to the general interests of

question, the Graham Society narrowly opposed the proposition that “the legislature [should] grant a charter for a railroad running through the Valley of Virginia, touching at Harrisonburg, Staunton, Lexington, Buchanan and Fincastle.”⁹⁹ Their other interests stretched to such issues as whether an international copyright law is needed, which was a topic of considerable public interest.¹⁰⁰

E. Morality, Religion, Conscience, and Politics

Besides the issues of slavery, empire, and economics, many of the debates focused on issues of morality and of the relationship between morals and government. These issues often overlapped with questions of how Christianity related to American government. For instance, in 1853 the Graham Society debated whether the United States should “take forcible measures to ensure liberty of conscience in religious worship to its citizens residing in other countries.”¹⁰¹ The Graham Society debated a larger issue: whether a Republican government can endure without the influence of Protestant thought.¹⁰² Running alongside

the Nation?”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice). *See also Minutes of Washington Society*, Oct. 1, 1852 (setting for debate, “Would it be advisable for the United States to construct a railroad from the Atlantic to the Pacific?”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); *Minutes of Graham Society*, Jan. 31, 1857 (setting for debate “Ought our government to favor the building of a Pacific railroad?” and concluding “yes” by a vote of 17 to 4 on February 14, 1857) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

99. *See Minutes of Graham Society*, Nov. 5, 1853 (setting topic for debate; defeated 11 to 13 on November 21, 1853) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

100. *See Minutes of Graham Society*, Nov. 23, 1850 (setting topic for debate) (on file with the Washington and Lee Journal of Civil Rights and Social Justice). *See also* Oren Bracha, *The Ideology of Authorship Revisited: Authors, Markets, and Liberal Values in Early American Copyright*, 118 YALE L.J. 186, 211, n. 91 (2008) (“International copyright protection was a recurring issue of fierce debate in the United States during the nineteenth century.”).

101. *See Minutes of Graham Society*, Feb. 19, 1853 (setting topic for debate, which was rejected by a vote of 11 “no” to 6 “yes” on March 19, 1853) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

102. *See Minutes of Graham Society*, Oct. 8, 1853 (setting topic for debate, decided overwhelmingly “no”, by a vote of 3 “yes” to 24 “no” on October 22, 1853) (on file with Washington and Lee Journal of Civil Rights and Social Justice).

questions of Protestantism was concern over Catholicism.¹⁰³ Sometimes the debate about Republican government took on questions of corruption and transparency. For instance, the Washington Society debated in 1854: “Are secret political organizations dangerous to republican institutions?”¹⁰⁴ Often, though, the debates were about more compact issues of morality, such as the evils of temperance¹⁰⁵ and of dueling.¹⁰⁶

While many of the debate topics were on issues of political concern, sometimes the students engaged in explicit issues of politics, such as whether “[T]he principles of the Native American

103. See *Minutes of Graham Society*, Jan. 24, 1846 (setting for debate, “Which is to be considered the greatest evil to our country, slavery or the Roman Catholic religion?”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); *Minutes of Graham Society*, Nov. 30, 1850 (setting for debate, “Should Roman Catholics be allowed to hold offices and vote in our government?”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); *Minutes of Graham Society*, Jan. 10, 1852 (questioning, “Is the Roman Catholic religion or slavery the greatest evil to our country?” and concluding with Catholicism, by a vote of 8 to 7) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); *Minutes of Graham Society*, May 21, 1853 (setting for debate, “Is Roman Catholicism likely to injure the U.S.” and concluding in the negative, with 2 “yes” votes and 10 “no” votes, on June 4, 1853) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

104. See *Minutes of Washington Society*, Dec. 16, 1854 (setting topic for debate) (on file with the Washington and Lee Journal of Civil Rights and Social Justice). See also *Minutes of Washington Society*, Mar. 7, 1857 (“Are secret societies dangerous?”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

105. See, e.g., *Minutes of Washington Society*, May 29, 1847 (setting for debate, “Has intemperance been more destructive to life and morality than war?”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); *Minutes of Washington Society*, Apr. 17, 1852 (debating “Is the Order of the Sons of Temperance beneficial to the interests of the Union?”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice). See also *Minutes of Graham Society*, Oct. 7, 1854 (setting for debate, “Would the cause of temperance be promoted in Virginia if the Maine liquor law was adopted?”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

106. See *Minutes of Graham Society*, Nov. 14, 1853 (wondering, “Is dueling justifiable in any case whatever?” and narrowly concluding “no,” with 11 “yes” and 12 “no” votes on December 3, 1853) (on file with the Washington and Lee Journal of Civil Rights and Social Justice); *Minutes*, *supra* note 7, Mar. 25, 1846 (setting topic for debate, “Is dueling justified on any basis?”); *Minutes of Graham Society*, June 17, 1854 (setting topic for debate, “Ought dueling to be prohibited by law?”) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

party [are] dangerous to the liberties of our country,” which the Washington Society set for debate in March 1847.¹⁰⁷ Sometimes the students even debated over presidential candidates. The Washington Society debated whether Winfield Scott or Millard Fillmore should receive the Whig nomination in 1852.¹⁰⁸ Later that year, they debated whether Scott or Franklin Pierce should be elected president.¹⁰⁹

III. Conclusion: Student Debates and Public Constitutionalism

The student debate topics certainly covered a broad spectrum. They ran from slavery to constitutionalism, nationalism, immigration, war, imperialism, economy, religion, and morality, thus reflecting the breadth of ideas of educated and affluent southerners with wide horizons.¹¹⁰ The students asked questions of—and defended—basic elements of their society and they thought about problems continuing within the Union. Should the Union continue? Should southern states secede? Was the United States living up to its obligations? They worried about immigration and about trying to exclude African Americans from the state and from the country.

The United States expanded its empire, from the war with Mexico, to the possibility of acquiring Cuba, admission of California as a state, and to war in Europe and relations with China. The debates reveal that the students wondered about how to expand the United States’ territory and power and whether their expanded territory interfered with the republic in economic and political ways.¹¹¹

107. See *Minutes of Washington Society*, Mar. 27, 1847 (setting topic for debate) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

108. See *Minutes of Washington Society*, May 29, 1852 (debating on politics) (on file with the Washington and Lee University Library).

109. See *Minutes of Washington Society*, Sept. 17, 1852 (setting topic for debate) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

110. See O’BRIEN, *supra* note 12, at 2 (portraying pre-Civil War Southerners as people with wide horizons who were engaged in trans-Atlantic debates); PAUL QUIGLEY, *SHIFTING GROUNDS: NATIONALISM AND THE AMERICAN SOUTH, 1848-1865* (2014) (discussing evolving ideas of nationalism in the old South).

111. There are also a substantial number of topics that seem less centered

All of those issues reveal that students were actively engaged in key questions of the era, from slavery and territory to the rule of law and constitutionalism. This reconfirms that students were deeply concerned with key issues of politics and that these issues were related. That is, rather than separating out specific “constitutional” issues and treating them separately, the students—like Americans more generally—dealt with constitutional law as part of a matrix of ideas and issues. If we see how the questions of nationalism, slavery, empire, economics, politics, and morality were connected, we can begin to better appreciate how constitutional ideas operated in context. A constitutional culture, as Jason Mazzone and others have identified,¹¹² emerged in the pre-Civil War era and that culture was part of holding together a diverse and rapidly expanding Union.

The insights of the current generation of scholars of constitutional culture build in some ways on the commonwealth studies that looked at the economic, legal, and political development of states in the early nation.¹¹³ While the commonwealth studies are more focused on government action, the contemporary constitutional culture studies look more broadly to the ways that non-government actors adopted a vision of the nation and worked in conjunction with government actors to execute on it.¹¹⁴ It is a question of how a diverse set of Americans imagined a different world and then created it through their cultural production¹¹⁵—such as July Fourth

on political issues: Was Napoleon justly banished to St. Helena? Is a republic or monarchy better suited to produce literature? These topics provide, no doubt, important insight into the concerns of Washington College students, but are well beyond the present project. This essay is limited to exploring the uses of the more explicitly political, economic, and constitutional questions the students debated.

112. See generally Jason Mazzone, *The Creation of a Constitutional Culture*, 40 TULSA L.REV. 671 (2005); JOHANN NEEM, *CREATING A NATION OF JOINERS: DEMOCRACY AND CIVIL SOCIETY IN EARLY NATIONAL MASSACHUSETTS* (2008).

113. See generally OSCAR HANDLIN & MARY FLUG HANDLIN, *COMMONWEALTH: A STUDY OF THE ROLE OF GOVERNMENT IN THE AMERICAN ECONOMY: MASSACHUSETTS, 1774–1861* (1947).

114. See generally NEEM, *supra* note 112.

115. See generally Doni Gewirtzman, ‘Vital Tissues of the Spirit’: *Constitutional Emotions in the Antebellum United States*, THE ASHGATE RESEARCH COMPANION TO LAW AND THE HUMANITIES IN NINETEENTH-CENTURY

Orations,¹¹⁶ monument dedications like the dedication of the Washington Equine Statue in Richmond, Virginia,¹¹⁷ court arguments like Webster's argument in Dartmouth College,¹¹⁸ legal treatises like Joseph Story's *Constitutional Law*,¹¹⁹ and even cemetery and funeral addresses¹²⁰—and how these cultural pieces worked in support of other generators of nationhood, from military and commercial interests to the legal system.

Looking at these debates as part of the southern constitutional culture in the years before the Civil War can help us remember the importance of seeing the entire world as a whole. Like the recent work that links constitutional culture to the politics of protesters and gives us a sense of how activists in the streets and without legal training remade the world of acceptable legal responses,¹²¹ the debates give us a sense of how smart, wealthy, and soon to be influential students talked about their world and hammered out their responses as the world shifted around them. These debates show that they engaged the times. Students were indeed putting into practice Ralph Waldo

AMERICA (forthcoming 2017); Doni Gewirtzman, *Our Founding Feelings: Emotion, Commitment, and Imagination in Constitutional Culture*, 43 U. RICH. L. REV. 623 (2009); Doni Gewirtzman, *Glory Days: Popular Constitutionalism, Nostalgia, and the True Nature of Constitutional Culture*, 93 GEO. L.J. 897 (2005).

116. See PAUL QUIGLEY, *SHIFTING GROUNDS: NATIONALISM AND THE AMERICAN SOUTH, 1848–1865* (2011) (studying the ways southerners saw themselves as American nationalists and not as sectionalists).

117. See ROBERT HUNTER, *MR. HUNTER'S ORATION: OPENING ODE AND ORATION* (delivering at the Inauguration of Crawford's Equestrian Statue of Washington in Richmond, Virginia on February 22, 1858).

118. See DANIEL WEBSTER, *THE GREAT SPEECHES AND ORATIONS OF DANIEL WEBSTER 1–24* (Edwin P. Whipple ed. 1914) (referencing the Dartmouth College Case and argument before the Supreme Court on March 10, 1818).

119. See ELLEN HOLMES PEARSON, *REMAKING CUSTOM: LAW AND IDENTITY IN THE EARLY AMERICAN REPUBLIC* (2011) (drawing on the law lectures, treatises, speeches, and papers of the early republic's legal scholars to examine the critical role that they played in the formation of American identities).

120. See generally Alfred L. Brophy, *The Road to the Gettysburg Address*, 43 FLA. ST. U. L. REV. (forthcoming 2016).

121. See generally Robin West, *Constitutional Culture or Ordinary Politics: A Reply to Reva Siegel*, 94 CAL. L. REV. 1465 (2006); Reva Siegel, *Constitutional Culture, Social Movement Conflict, and Constitutional Change: The Case of the de Facto ERA*, 94 CAL. L. REV. 1323 (2006).

Emerson's admonition in his 1837 Address, "The American Scholar:" students should be engaged in the world.¹²²

122. See KENNETH S. SACKS, UNDERSTANDING EMERSON: "THE AMERICAN SCHOLAR" AND HIS STRUGGLE FOR SELF-RELIANCE 5–20 (2003) (discussing Emerson's injunction to students); see also Alfred L. Brophy, *The Southern Scholar: Howard College Before the Civil War*, 43 CUMB. L. REV. 289-319 (2015) (discussing relatively moderate ideas at Howard College in Marion, Alabama).