

**DANGEROUS SUBJECTS IN EVERY  
SENSE: VIOLENCE AND POLITICS AT THE  
LAW DEPARTMENT OF THE UNIVERSITY  
OF MISSISSIPPI**

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## INTRODUCTION

The young bloods of the South: sons of planters, lawyers about towns, good billiard-players and sportsmen, men who never did work and never will. War suits them, and the rascals are brave, fine riders, bold to rashness, and dangerous subjects in every sense. . . . [T]hey are the most dangerous set of men that this war has turned loose upon the world. . . . These men must all be killed or employed by us before we can hope for peace.<sup>1</sup>

— William T. Sherman

Early in summer of 1858, Professor William Forbes Stearns stood in the chapel at the University of Mississippi before his nine graduating students.<sup>2</sup> It had rained earlier that week, and the air in the brick building was warm and humid. Stuffed into pews, the young students looked eagerly at their loquacious professor. After two years of legal instruction at his hands, they would soon be presented with diplomas that authorized them to practice law anywhere in the state. But commencement afforded the stooped and spectacled instructor one final opportunity to lecture his pupils.

Stearns's address came at the end of a particularly busy week of celebratory events. The famous Reverend Palmer traveled from his Presbyterian congregation at New Orleans to give the Commencement Sermon on Sunday.<sup>3</sup> Members of the Sophomore Class practiced elocution Monday morning.<sup>4</sup> Thomas J. Walton (Class of 1857)—Stearns's later successor—gave the alumni address Monday night.<sup>5</sup> And Tuesday saw William S. Barry, who

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<sup>1</sup> 1 WILLIAM T. SHERMAN, MEMOIRS OF GEN. W. T. SHERMAN 365 (New York, Charles L. Webster & Co. 1891).

<sup>2</sup> This building still stands and now houses the university's Croft Institute for International Studies.

<sup>3</sup> His widely published "Thanksgiving Sermon" helped push Louisiana to secession in 1861. See generally THOMAS CARY JOHNSON, THE LIFE AND LETTERS OF BENJAMIN MORGAN PALMER (1906).

<sup>4</sup> *University of Mississippi—Commencement Exercises*, WEEKLY VICKSBURG WHIG (Vicksburg, Miss.), July 21, 1858, at 3.

<sup>5</sup> Thomas Walton, Esq., WEEKLY VICKSBURG WHIG (Vicksburg, Miss.), July 21, 1858, at 2 ("His address was quite lengthy, but was patiently listened to by the interested audience. The subject, '*Organic Law*,' was discussed in a bold, masterly, and intrepid manner, and was frequently enthusiastically applauded.").

was a Yale graduate, U.S. representative, and fire-eating secessionist,<sup>6</sup> speak before the university's two literary societies.<sup>7</sup> But finally, Stearns's turn came.

He lectured for over an hour on several legal topics. But he ended with these somber parting words:

Young gentlemen of the graduating class! When I reflect that I am addressing you, collectively, for the last time; that tomorrow we are to separate, perhaps forever; I can enter into the feelings that thrill the mother's heart, as she surrenders a cherished daughter to the husband of her choice. It is hard to give her up; but the reflection that is best for her to go—that she is fulfilling her duty and her destiny,—keeps down those tears that else would flow apace. In the unconnected and desultory remarks that I have now addressed to you, I have aimed at the presentation of a legacy of parting counsel, which I trust, in consideration of the source from whence it proceeds, will not be utterly despised, and which I know will be useful to you in future years.

Go forth upon your high mission, and may the blessing of God go with you and abide you. The ambition to become an accomplished lawyer is no grovelling [sic] aspiration; but there is an ambition higher far than that—the ambition to become truly good and useful men, discharging every human duty with a scrupulous fidelity. Let not this noble ambition be stifled by the desire to become rich, or powerful, or famous; but strive as to live, and so to exercise those talents with which God has gifted you, that, when you shall have passed away from earth, men shall say of you that “the world is better because you had lived in it.”<sup>8</sup>

And the next morning, Stearns's much-loved class graduated in the chapel, which “was thronged, from pit to dome, with

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<sup>6</sup> For a brief, but favorable biographical sketch on Barry, see SEMI-CENTENNIAL HISTORICAL AND BIOGRAPHICAL RECORD OF THE CLASS OF 1841 IN YALE UNIVERSITY 30–32 (New Haven, Tuttle, Morehouse & Taylor 1892).

<sup>7</sup> *University of Mississippi—Commencement Exercises*, *supra* note 4, at 3.

<sup>8</sup> William Forbes Stearns, *Advice to Graduating Class 22–23* (July 20, 1858) (available at the Grisham Law Library Archives at the University of Mississippi School of Law).

people.”<sup>9</sup> Perhaps, on campus that day, Stearns and his students parted forever. But certainly, within ten years, they would never meet again: the once-prospering law department closed, Stearns fled the state and took his own life, and every member of the Class of 1858 fought for the Southland’s cause on battlefields far from the quiet college town in the rolling hills of northern Mississippi.<sup>10</sup>

Part I of this Article begins with an early history of the University of Mississippi’s law department. Its foundation and initial legislative support were contingent upon its usage as a tool to indoctrinate Mississippi youths in pro-states’ rights and pro-slavery sentiments. Therefore, it was both an inherently violent and political institution.

In that vein, this Article focuses primarily on the violent and political characteristics of the three men who shaped the department as professors: William F. Stearns, L. Q. C. Lamar, and Thomas J. Walton. Stearns was the Yankee-born and mild-mannered professor who advocated for the university to inundate Mississippi youths with Southern values. Lamar was the depressed former Confederate whose professorship was merely a respite from a life of politics. And Walton was the reconstructed Delta planter who preached the supremacy of federal law to his students, and whose numbers quickly dwindled during his tenure. Despite their different backgrounds, all three of these men understood their professorships as inherently political and the law department as an apparatus for political indoctrination.

Part II of this Article analyzes each law-department class’s Confederate service numbers and death rates. It then briefly describes the personal histories of some of the law department’s earliest students and again identifies two major themes in their lives: violence and politics. While several of these young men were scions of famous and wealthy Mississippi families—Barksdales and Branhams, Falkners and Forrests—others were just “common as hell.”<sup>11</sup> As a result, their experiences differ greatly from each other and their profiles provide excellent examples of the war,

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<sup>9</sup> *University of Mississippi—Commencement Exercises*, DAILY VICKSBURG WHIG (Vicksburg, Miss.), July 20, 1858, at 4.

<sup>10</sup> See *infra* Part II.A.

<sup>11</sup> WILLIAM ALEXANDER PERCY, LANTERNS ON THE LEVEE 62 (1941).

disease, and murder that plagued Mississippi, as well as the region's diverse and divisive politics.

These students were violent and political. Perhaps they were among the Southern men whom William T. Sherman described as "dangerous subjects in every sense."

## I. THE LAW DEPARTMENT: 1854–1875

### A. *The Right Philosophy of Government*

In the early days of its statehood, Mississippi stood in the nation's hinterland. The frontier lacked the formal institutions of the East, so the typical young Mississippian who desired to become a lawyer had to follow an informal path and "learn the law by a combination of private study and formal apprenticeship."<sup>12</sup> And although Mississippi's voluntary state bar association was the first in the nation and temporarily resulted in a more regulated and formal legal profession than other states maintained,<sup>13</sup> it was only fleeting and its members were few.<sup>14</sup> So most attorneys in this frontier state were ultimately unregulated and possessed limited legal knowledge. This meant that the student's informal education at their hands was also limited.

Beyond that limited instruction, the student would pore over and memorize portions of Kent's *Commentaries on American Law*, Blackstone's *Commentaries on the Laws of England*, and other well-known legal treatises.<sup>15</sup> Once satisfied with his training in black-letter law, the student would then present himself to the state's High Court for questioning.<sup>16</sup> If the court approved his admission, he could set up his practice in one of the many sprouting towns in the Mississippi countryside. Importantly, this

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<sup>12</sup> John H. Langbein, *Blackstone, Litchfield, and Yale: The Founding of the Yale Law School*, in *HISTORY OF THE YALE LAW SCHOOL* 19 (Anthony T. Kronman ed., 2004).

<sup>13</sup> See Michael de L. Landon, *The Mississippi State Bar Association, 1821–1825: The First in the Nation*, 42 *J. MISS. HIST.* 222, 222–42 (Aug. 1980).

<sup>14</sup> The first bar association existed from 1821 until about 1825. Its small roster included several prominent lawyers, including senators, district judges, governors, state supreme court justices, and U.S. district attorneys. For a full history of this association, see MICHAEL DE L. LANDON, *EARLY MISSISSIPPI BAR ASSOCIATIONS* (1966).

<sup>15</sup> Sylvester John Hemleben & Richard T. Bennett, *Beginnings of the Legal Profession in Mississippi*, 36 *MISS. L.J.* 155, 155 (1965).

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

early Mississippi attorney relied far more on his oral advocacy skills than on his legal training when it came to representation.<sup>17</sup> His lack of formal education, therefore, was not necessarily a professional handicap.

This system of informal legal education had many faults, so it naturally declined in popularity after several attorneys developed proprietary law schools. Under this newer model, the attorney would open a school in conjunction with his law office. The most prominent of these was Connecticut's Litchfield Law School, which operated from the 1780s until the 1830s and had an extensive influence on American legal education.<sup>18</sup> And with a national draw, several influential Southerners attended the institution, including Augustus B. Longstreet, antebellum president of the University of Mississippi.<sup>19</sup> Several other proprietary law schools were nearer to young Mississippians who sought a more formalized legal education: Daniel Mayes operated a school in Jackson,<sup>20</sup> Gustavus Schmidt ran the Louisiana Law School in

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<sup>17</sup> *Id.* Louis L'Amour describes this phenomenon of the advocacy-focused attorney well:

The attorneys, fully aware of their importance [during court trials], held center stage, and each had his supporters and following. Each was aware that his arguments would be discussed pro and con for months, and each savored quotations from the Bible, Shakespeare, and the classics, preparing every oration with care.

LOUIS L'AMOUR, EDUCATION OF A WANDERING MAN 167 (1989).

<sup>18</sup> For an excellent summary of the Litchfield Law School's history, see Langbein, *supra* note 12, at 23–32.

<sup>19</sup> Other prominent men who settled Mississippi or were from Mississippi families attended the Litchfield Law School, including William Henry Sparks of Natchez who practiced law with Judah Benjamin, and William Fitz-Winthrop Sargent also of Natchez who was the son of Mississippi Governor Winthrop Sargent. THE LITCHFIELD LAW SCHOOL, 1784–1833 18 (1900); CHAIM M. ROSENBERG, YANKEE COLONIES ACROSS AMERICA: CITIES UPON THE HILLS x (2015); W. H. SPARKS, THE MEMORIES OF FIFTY YEARS 184–85 (Philadelphia, Claxton, Remsen, & Haffelfinger 1870).

<sup>20</sup> Mayes was a Kentuckian who served as the head of the law department at Transylvania University in the 1830s until he moved to Jackson, Mississippi. JAMES D. LYNCH, THE BENCH AND BAR OF MISSISSIPPI 254–57 (New York, E. J. Hale & Son 1881). Among his sons and sons-in-law were four very prominent attorneys: Edward Mayes (Class of 1870), later professor of law and chancellor of the University of Mississippi; Herman Bowman Mayes, probate court judge; Wiley Pope Harris, signatory of the Confederate States Constitution and circuit court judge; and George Lemuel Potter, Yale graduate and Jackson attorney. ROBERT LOWRY & WILLIAM H. MCCARDLE, A HISTORY OF MISSISSIPPI 485 (Jackson, R. H. Henry & Co. 1891).

New Orleans,<sup>21</sup> and the Memphis Institute housed a small law department.<sup>22</sup>

Soon this model also declined because proprietary law schools could not compete with the newly opened law schools that universities quickly established.<sup>23</sup>

Mississippi's political leadership grew concerned: Many Mississippi youths were leaving the state to obtain their legal education elsewhere. Some attended the University of Virginia's law department, a notable Southern institution with an excellent reputation that had "overshadowed in prestige its academic department."<sup>24</sup> But others headed farther north to schools like Yale and Harvard.<sup>25</sup>

Mississippi elders were perturbed that Yale, Harvard, and other Northern universities would indoctrinate young Southern men with abolitionist and anti-Southern values. Stearns summarized this sentiment succinctly when he wrote a family friend who was considering college education at Yale:

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<sup>21</sup> Schmidt, a Swedish immigrant, operated the law school until its absorption by the University of Louisiana, now Tulane University. W. LEE HARGRAVE, *LSU LAW: THE LOUISIANA STATE UNIVERSITY LAW SCHOOL FROM 1906 TO 1977* 5–6 (2004).

<sup>22</sup> This department was run by E. W. M. King and Valentine D. Barry. *Memphis Institute*, *YAZOO DEMOCRAT* (Yazoo City, Miss.), Dec. 11, 1850, at 4. King, who was a local judge, "was of a fiery temperament, resentful and sometimes rash, but exceedingly tender and gentle with those who were fortunate enough to be loved by him." *STANDARD HISTORY OF MEMPHIS, TENNESSEE* 524 (John P. Young ed., 1912). Barry's nephew, Roger Barton, Jr., was a member of the law department's Class of 1857. *See infra* Part II.B.1.

<sup>23</sup> Langbein asserts that the Litchfield Law School specifically failed for four reasons: (1) the proprietary model had no succession plan; (2) the system of lecturing was replaced by the "text-and-recitation" system found at new law schools; (3) the proprietary model produced alumni who were hesitant to donate to the institution; and (4) the isolation of the proprietary law school from other disciplines deprived students of important cross-disciplinary studies. Langbein, *supra* note 12, at 30–31.

<sup>24</sup> Sylvester John Hemleben & Richard T. Bennett, *A Historical Sketch of the Early Law School of the University of Mississippi: A Newly Found Memoir*, 37 *MISS. L.J.* 28, 35 (1965).

<sup>25</sup> Despite these fears, many prominent Southerners attended elite Northern institutions like Yale and Harvard and still supported the Confederacy during the war. *See generally* NATHANIEL CHEAIRS HUGHES, JR., *YALE'S CONFEDERATES: A BIOGRAPHICAL DICTIONARY* xii–xiv (2008); HELEN P. TRIMPI, *CRIMSON CONFEDERATES: HARVARD MEN WHO FOUGHT FOR THE SOUTH* (2010).

And, above all, how can you endure; day after day, for years, the studied insults which your fellow students, your instructors, and the fanatical people of Connecticut will be continually heaping upon you, and upon the land of your birth, and its people and institutions? And if, “enduring all things” to the end, you should remain there until you could bear away a diploma impressed by the broad seal of Yale; do you think you would exhibit it more than once after your return to your home? I do not; for I know, that, on account of the sectional ill feeling now prevailing—and daily waxing more and more fierce—between the North and the South, the very fact that you had chosen to resort to a Northern and notoriously abolitionized institution for your collegiate education would cause you to be looked upon with suspicion by those with whom you sported in your childhood; and it would not be until you had passed an ordeal of trial, and proved yourself to be untainted by the contamination of your collegiate associations, that you would again be regarded with the confidence of former years. Remember: gold, even, may be purchased at a ruinous price.<sup>26</sup>

Powerful Mississippians knew that those who controlled the education of the state’s young men would also control the state’s political future. Political power, thus, became the pervasive theme of the law department’s early history. The department was never merely an educational institution. Rather, it was the State’s most capable apparatus to create a pipeline of lawyers and politicians who would assert political control over the masses of Mississippi.

So, these powerful Mississippians determined that a local public institution should house legal instruction and ensure that the state’s young lawyers and politicians would never embrace abolitionism or any other anti-Southern sentiment. Legal education in the state would occur only under their close supervision and with their approval. The University of Mississippi appeared to be the right institution for this arrangement.

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<sup>26</sup> Letter from William Forbes Stearns, Professor, University of Mississippi, to William Cowper Nelson (Aug. 7, 1857) (on file with the Department of Archives and Special Collections at the University of Mississippi). Nelson did, in fact, choose to attend the University of Mississippi. For a collection of his letters, see WILLIAM COWPER NELSON, *THE HOUR OF OUR NATION’S AGONY: THE CIVIL WAR LETTERS OF LT. WILLIAM COWPER NELSON OF MISSISSIPPI* (Jennifer W. Ford ed., 2007).

Chartered in 1844, it was a university in name only; its sole department was academic.<sup>27</sup> Its trustees were prominent men in the state and, helpfully, several of them were attorneys.<sup>28</sup> Additionally, limited legal instruction already happened within the university: Both international and constitutional law were taught under the collegiate course.<sup>29</sup> But perhaps most importantly, a revered attorney-turned-minister, Augustus B. Longstreet, served as the university's president.

Born in the South to Northern parents, Longstreet had a tumultuous upbringing. Although a "well-regarded member of his community," Longstreet's father was a failed inventor and struggled to support his family.<sup>30</sup> Despite living in the notoriously violent county in the South Carolina upcountry known as "Bloody Edgefield,"<sup>31</sup> Longstreet's mother ensured that he received a formal education away from home.<sup>32</sup> He studied at Moses Waddel's Willington Academy.<sup>33</sup> Determined to shape his

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<sup>27</sup> See generally DAVID G. SANSING, *THE UNIVERSITY OF MISSISSIPPI: A SESQUICENTENNIAL HISTORY* 45–74 (1999).

<sup>28</sup> Attorneys identified with the early history of the university include: Albert T. Bledsoe, Andrew M. Clayton, William Y. Gholson, George F. Holmes, James M. Howry, Pryor Lea, Augustus B. Longstreet, Alexander H. Pegues, John A. Quitman, William L. Sharkey, Jacob Thompson, J. Alexander Ventress, and Edward C. Wilkinson. MICHAEL DE L. LANDON, *THE UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW: A SESQUICENTENNIAL HISTORY* 2–3 (2006); UNIVERSITY OF MISSISSIPPI, *HISTORICAL CATALOGUE OF THE UNIVERSITY OF MISSISSIPPI 1849–1909* 81 (Nashville, Marshall & Bruce Co. 1910).

<sup>29</sup> LANDON, *supra* note 28, at 2.

<sup>30</sup> David Rachels, *A Biographical Reading of A. B. Longstreet's Georgia Scenes*, in *THE HUMOR OF THE OLD SOUTH* 113, 115 (M. Thomas Inge & Edward J. Piacentino eds., 2001).

<sup>31</sup> See generally Frankie Y. Bailey, *Honor, Class, and White Southern Violence: A Historical Perspective*, in *VIOLENT CRIME: ASSESSING RACE AND ETHNIC DIFFERENCES* 331, 350 (Darnell F. Hawkins ed., 2003) ("In the eighteenth and nineteenth centuries, Southerners called the county 'Bloody Edgefield,' because of its extremely high rates of lethal violence. The settlers of this county were Scotch-Irish immigrants who came to America in the eighteenth century and made their way from Pennsylvania to South Carolina.").

<sup>32</sup> Rachels, *supra* note 30, at 116.

<sup>33</sup> At both the Willington Academy and the University of Georgia, Moses Waddel taught many influential Southerners. See generally TOM HORTON, *THE AMERICAN ETON: MOSES WADDEL'S FAMED WILLINGTON ACADEMY* (2012). He was an effective teacher and may have influenced Longstreet's career in education:

[Waddel] took hold of the University of Georgia when it was impoverished and despised, and in a few years he put it in a position of prominence and influence. Students who had been under him could

educational path after his boyhood hero, John C. Calhoun,<sup>34</sup> Longstreet followed Calhoun's example and graduated from Yale College; he then attended the Litchfield Law School before his admission to the bar in 1815.<sup>35</sup> Longstreet was an attorney, a politician, a judge, a newspaper editor, and the author of a well-known book of humorous short stories before becoming a Methodist minister in 1838.<sup>36</sup> His ministry led to a career in higher education at several Methodist institutions, including Emory College and Centenary College before he came to the University of Mississippi in 1849.<sup>37</sup>

Longstreet was no scholar, but he believed in a form of higher education that instilled devotion to the "spirit of primitive Methodism,"<sup>38</sup> and indoctrinated its pupils with Southern values.<sup>39</sup> The creation of a law department within his university

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never have done talking about him and his ways, could never refrain from citing you the names of old Waddel boys who had achieved fame. Indeed, it is a formidable list: John C. Calhoun, William H. Crawford, Hugh S. Legaré, George R. Gilmer, James L. Petigru, and others,—congressmen, senators, governors, a straggling minister or so, an occasional teacher, but always, congressmen, senators and governors—always!

JOHN DONALD WADE, *AUGUSTUS BALDWIN LONGSTREET: A STUDY OF THE DEVELOPMENT OF CULTURE IN THE SOUTH* 26 (1924). Waddel's son, John Newton Waddel, would serve on the faculty of the University of Mississippi and later serve as its chancellor. JOHN N. WADDEL, *MEMORIALS OF ACADEMIC LIFE* 468 (Richmond, Presbyterian Comm. of Pub. 1891).

<sup>34</sup> WADE, *supra* note 33, at 124 ("Calhoun was, [Longstreet] thought, above William Pitt, or any other premier who ever lived before or since his day. He could never forget his boyish worship of this giant.") (internal citation omitted).

<sup>35</sup> Edward L. Tucker, *Augustus Baldwin Longstreet*, in *SOUTHERN WRITERS: A BIOGRAPHICAL DICTIONARY* 285, 285 (Robert Bain et al. eds., 1979).

<sup>36</sup> *Id.* See also AUGUSTUS B. LONGSTREET, *GEORGIA SCENES, CHARACTERS, INCIDENTS, &C. IN THE FIRST HALF CENTURY OF THE REPUBLIC* (Augusta, S. B. Sentinel Office 1835).

<sup>37</sup> SANSING, *supra* note 27, at 59.

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

<sup>39</sup> During his tenure at Emory College, Longstreet was an outspoken critic of abolitionism to both his students and the general public:

During the eight years Longstreet served as president of Emory College (1840–48), he authored several other important pamphlets on the scriptural legitimacy of slavery. He also gave numerous sermons and lectures on the subject. While his works certainly influenced the Emory community, his voice carried far beyond the boundaries of Oxford. Longstreet's words continued to fan the flames of the fire over proslavery and secessionist arguments during his tenure at Emory

that would impart those values, therefore, seemed only natural. And the Longstreet family's influence over that department would be extraordinarily long-lasting, despite Longstreet's own resignation from the university in 1856.<sup>40</sup> His son-in-law, L. Q. C. Lamar, led the law department from 1866 until 1870<sup>41</sup>; his niece's husband, Thomas J. Walton (Class of 1857), served as the law professor from 1871 until 1875<sup>42</sup>; and his granddaughter's husband, Edward Mayes (Class of 1869), revived the law department in 1877 and taught law until his appointment as chancellor of the university in 1886.<sup>43</sup>

Thus, with the favorable situation of the university in mind, the president of the university's trustees, Jacob Thompson, traveled to Jackson to speak in front of the legislature in January 1854. He advocated for the creation of a professorship of law within the university, but specifically a professorship in the Jeffersonian style, in that "[t]he philosophy of government should be taught together with [law], and history, which is philosophy teaching by example."<sup>44</sup> This was a legal-education style that intended "to teach law as a means of moral education," with the goal "to inculcate republican virtue, those traits needed by public men to evoke public trust in public institutions."<sup>45</sup> Thompson

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College, ultimately contributing to the growing sectional divide of the nation.

Patrick C. Jamieson, *Making Their Case: Religion, Pedagogy, and the Slavery Question at Antebellum Emory College*, in *SLAVERY AND THE UNIVERSITY: HISTORIES AND LEGACIES* 99, 102 (Leslie M. Harris et al., eds., 2019).

<sup>40</sup> Sansing asserts that Longstreet resigned on July 10, 1854. SANSING, *supra* note 27, at 74. But the correct date appears to be July 10, 1856. *E.g.*, John W. Johnson, *Biographical Sketches of Judge A. B. Longstreet and Dr. F. A. P. Barnard*, in 12 *PUBLICATIONS OF THE MISSISSIPPI HISTORICAL SOCIETY* 122, 134 (Franklin L. Riley ed., 1912).

<sup>41</sup> See *infra* Part I.C.

<sup>42</sup> See *infra* Part I.D.

<sup>43</sup> SANSING, *supra* note 27, at 152–53.

<sup>44</sup> EDWARD MAYES, *HISTORY OF EDUCATION IN MISSISSIPPI* 142 (Washington, Government Printing Office 1899). Thompson would later serve in President Buchanan's cabinet. For more information on Thompson, see Dorothy Zollicoffer Oldham, *Life of Jacob Thompson* (1930) (unpublished M.A. thesis, University of Mississippi) (on file with the Department of Archives and Special Collections at the University of Mississippi).

<sup>45</sup> Paul D. Carrington, *Teaching Law and Virtue at Transylvania University: The George Wythe Tradition in the Antebellum Years*, 41 *MERCER L. REV.* 673, 673–74 (1990). In fact, Carrington asserts that the law department at the University of

spoke fearfully of Southern youth attending Northern universities that were “antagonistic in [their] principles to Southern views of the right philosophy of government.”<sup>46</sup> Receptive to Thompson’s speech, the legislature established the requested professorship:

SECTION 1. Be it enacted by the Legislature of the State of Mississippi, That a Professorship of Governmental Science and Law be created in the University of Mississippi, and it is hereby made the duty of the Trustees of said Institution to elect a Professor to fill the same, who shall lecture on the Philosophy of Government and Science of Law, to such class or classes as may be formed therein, under such rules and restrictions as the Board of Trustees may prescribe.<sup>47</sup>

With the first step towards educating young Mississippians on “the right philosophy of government” accomplished, the trustees next looked for the right man to implement their plan.<sup>48</sup>

#### *B. Stearns: Yankee-Turned-Southern*

When Thompson sought funding for the “Professorship of Governmental Science and Law,” he noted that its occupant “would require no ordinary man” and that “[s]uch a man as would fully suit the place would be of more difficult selection than any other professor in the university.”<sup>49</sup> And the public seemed to agree.<sup>50</sup> In William Forbes Stearns, the trustees found no ordinary man.

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Mississippi—along with the law departments at Indiana University, the University of Louisville, and the University of Louisiana—was an “institutional offspring” of Transylvania’s law department. *Id.* at 698. This argument is further bolstered by Edward Mayes’s (Class of 1870) tenure at the law department, as his father, Daniel Mayes, was head of the law department at Transylvania University in the 1830s. Other schools—predominantly Northern institutions like Harvard—focused solely on the teaching of the common law. ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 155 (1921).

<sup>46</sup> MAYES, *supra* note 44, at 142.

<sup>47</sup> Act of Feb. 27, 1854, ch. 56, 1854 Miss. Laws 160.

<sup>48</sup> MAYES, *supra* note 44, at 142.

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

<sup>50</sup> *The Law Chair of the University of Professor Stearns*, SEMI-WEEKLY MISSISSIPPIAN (Jackson, Miss.), Sept. 12, 1854, at 2 (“No mere lawyer, however experienced or practiced, would fill such a place.”).

He was a native of Vermont and orphaned at an early age.<sup>51</sup> An uncle raised him in an industrial town in upstate New York,<sup>52</sup> and by the time he was nineteen years old, the largely self-educated Stearns emigrated south to Pontotoc, Mississippi to clerk in a bank.<sup>53</sup> It was there that he began to study law,<sup>54</sup> and at twenty-three years old, he was admitted to the bar.<sup>55</sup>

Physically, Stearns was relatively short, with a stoop, “contracted, it is supposed, by the habit of bending over his books when a child.”<sup>56</sup> He had a large forehead and deep-set eyes that would “dilate and gather brilliancy” when he was “[u]nder a strong mental stimulus.”<sup>57</sup> His wife later described some of his peculiar mannerisms:

[He was] always gentle, modest and courteous, winning the devotion of the meanest creature that approached him and not exciting the envy of any. . . . His eye was intensely bright, but with a quiet burning. There were no swift glances or changes of expression. His movements were usually quick, but so quiet they would almost seem slow. He made no bluster. His was a nervous, intense temperament, quick to feel and swift to execute, but so tempered by long effort at self-control that he usually gave the impression of extreme coolness. He used to confess sometimes that he was naturally all fire, and it was only because of the great necessity for self-mastery that he made the almost super-human effort which proved so successful.<sup>58</sup>

He began his law practice with Alexander Clayton of Holly Springs,<sup>59</sup> and gained a reputation as “a very fine talker, speaking

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<sup>51</sup> Mary Jane Ferriss Stearns, *A Biography of William F. Stearns* 2–4 (1869) (unpublished manuscript) (on file with the Grisham Law Library at the University of Mississippi). Phyllis S. Kitson—Mary Jane Ferriss Stearns’ great-grandniece—completed this unfinished biography in 1993.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 2–4.

<sup>54</sup> *Id.* at 4.

<sup>55</sup> *Id.* at 11.

<sup>56</sup> *Id.* at 5.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 4–5.

<sup>59</sup> *Id.* at 11. In his lifetime, Clayton held many important positions, including a justice of the state’s High Court of Errors and Appeals (now the Mississippi Supreme Court), president of the University of Mississippi’s Board of Trustees, and delegate to

with great ease and fluency and with apparent enjoyment,”<sup>60</sup> and as an excellent writer.<sup>61</sup> His wife wrote that she always enjoyed hearing him speak, “even if he said nothing more important than that he had breakfasted.”<sup>62</sup> He maintained his regional politics and voted with the Whigs, but he quickly became sympathetic to Southern culture and causes, admiring “the warm hearts and gardens of the sunny South,”<sup>63</sup> holding “the sentiments of the Abolitionist faction in most utter abhorrance [sic],”<sup>64</sup> and ultimately “harden[ing] his heart” and becoming a slaveholder himself.<sup>65</sup>

When the university received its charter, young Stearns was an early supporter, and was asked to deliver an address as “Grand Orator” at the laying of the Lyceum’s cornerstone.<sup>66</sup> Always the counselor, he warned his audience that “[t]he establishment of

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the 1860 Democratic National Convention at Charleston, South Carolina. He was also an extremely influential person in the early history of the university:

None of the original board members was more closely identified with the university’s early history and development than Alexander M. Clayton, a member of the board of trustees on three separate occasions. Clayton resigned from the board in 1852 to become American consul in Havana. Following his tour in Cuba, he was reelected to the board in 1857 and served until the Reconstruction board was installed in 1870. Clayton was a states’ rights, proslavery, secessionist Democrat who made a rousing speech on the floor of the Mississippi secession convention in 1861. Along with L. Q. C. Lamar, he was on the committee that drafted the Ordinance of Secession. During the Civil War, Clayton served in the Congress of the Confederate States until President Jefferson Davis appointed him to the Confederate District Court of Mississippi. After Reconstruction, Governor John Marshall reappointed Clayton to the board of trustees and he served until his death in 1889, at the age of eighty-nine. During his third tenure on the board of trustees, Clayton was influential in the adoption of coeducation at the University of Mississippi in 1882.

SANSING, *supra* note 27, at 30. For a contemporaneous biography of Clayton, see LYNCH, *supra* note 20, at 500–07.

<sup>60</sup> Stearns, *supra* note 51, at 6.

<sup>61</sup> *Id.* at 7.

<sup>62</sup> *Id.* at 6.

<sup>63</sup> *Id.* at 9.

<sup>64</sup> *Id.* at 10.

<sup>65</sup> *Id.* at 11.

<sup>66</sup> Rob Morris, *Sixteen Years a Freemason*, 1 THE VOICE OF MASONRY AND TIDINGS FROM THE CRAFT 45, 51 (Rob Morris & J. Adams Allen eds., 1863); SANSING, *supra* note 27, at 42.

numerous collegiate institutions has been attempted at different periods, in various portions of the South-West, but, from some strange and almost unaccountable fatality, nearly every one of such attempts has resulted in failure and disappointment.”<sup>67</sup> This newly established university, he advised, must not perish like the ones before it, otherwise Mississippians would be forced to continue to send their sons “to distant parts of the Union . . . surrounded by new influences and associations, which are insensibly but surely yielded to, and which render them, when they return to the land in which their lot is cast, foreigners in sentiment and feeling.”<sup>68</sup> Here, Stearns echoed the elite fear of the political and cultural ramifications of Southern men with Northern educations.

Several years later, in 1854, the trustees offered him the newly created “Professorship of Governmental Science and Law.” Two candidates had already turned down the position—Judge Edward C. Wilkinson and Judge Caswell R. Clifton<sup>69</sup>—but Stearns accepted, likely at the encouragement of his law partner and former university trustee, Alexander Clayton.<sup>70</sup> By this time, he

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<sup>67</sup> William F. Stearns, *Address*, 6 FREEMASONS’ MONTHLY MAG. 17, 20 (1847). For information on several failed collegiate institutions in early Mississippi, including the University of Holly Springs, Sharon College, and the Chulahoma College and Commercial Institute, see DAVID G. SANSING, MAKING HASTE SLOWLY: THE TROUBLED HISTORY OF HIGHER EDUCATION IN MISSISSIPPI 18–33 (1990).

<sup>68</sup> Stearns, *supra* note 67, at 20.

<sup>69</sup> Both men, apparently, were distinguished attorneys: A Jackson newspaper called Wilkinson an “accomplished gentleman and jurist” and Clifton a “genial warm-hearted gentleman, long a resident of Mississippi, identified with all her interests and thoroughly versed in her laws and institutions.” *Law Professor of the University of Mississippi*, SEMI-WEEKLY MISSISSIPPIAN (Jackson, Miss.), July 25, 1854, at 2. It is an early stroke of luck for the law department that both Wilkinson and Clifton turned down the trustees’ offer, because both would die in the fall of 1855. Wilkinson died at Bardstown, Kentucky in August from chronic bronchitis. *Death of the Hon. E. C. Wilkinson*, MISS. FREE TRADER (Natchez, Miss.), Aug. 22, 1855, at 1. And Clifton died at Jackson in October from yellow fever. *High Court—Death of Judge Clifton*, MISS. FREE TRADER (Natchez, Miss.), Oct. 17, 1855, at 3; *Death of Judge C. R. Clifton*, MISSISSIPPIAN STATE GAZETTE (Jackson, Miss.), Oct. 17, 1855, at 2.

<sup>70</sup> Apparently, Stearns hesitated in accepting the professorship:

Stearns did not accept the offer of the professorship immediately or eagerly. He was, in fact, “reluctant to retire from his practice.” Years later, Clayton would confide to Howry that two members of the board of trustees “were constrained to visit him in his office to exert their powers of persuasion to induce him to accept the place.” To that first class meeting, on October 2, 1854, he confessed: “I have had no experience in the work of

had endeared himself to the people of his adopted state: a Jackson newspaper lauded Stearns as an extensive reader, a gifted advocate, and “a man of easy and genial manners, a gentleman, full of that mellow and racy kindness towards all.”<sup>71</sup> A letter writer from Carrollton, Mississippi praised the trustees’ choice, exclaiming that he “regard[ed] [Stearns] as among the most learned jurists Mississippi, or even the South, has ever produced.”<sup>72</sup> And a Holly Springs newspaper wrote that they were “glad that the well-merited compliment . . . [was] paid to [their] townsman,” but they “regret[ted] to lose so excellent a citizen.”<sup>73</sup>

Stearns, expecting the arrival of law students for the inaugural academic year, established a two-year curriculum to be taught at the university’s Lyceum for the award of a Bachelor of Laws degree:

[S]tudents were examined daily upon their reading in the text-book under perusal, and such explanations were then afforded as were requisite in order to show wherein the general principles laid down by the author had been modified by local statutes or adjudications. Occasional lectures were delivered to the seniors, illustrating the local law and practice peculiar to Mississippi.

The text-books used were, Blackstone’s Commentaries, Kent’s Commentaries, Story on Bailments, Story on Agency, Story on Partnership, Story on Conflict of Laws, Smith on Contracts, Byles on Bills, Stephen on Pleading, Angell and Ames on Corporations, Greenleaf on Evidence, Adams’s Equity, Gresley’s Equity Evidence, and Wharton’s American Criminal Law.<sup>74</sup>

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instruction, except . . . in directing the legal studies of a few individual students in my office.”

LONDON, *supra* note 28, at 6.

<sup>71</sup> *The Law Chair of the University and Professor Stearns*, MISSISSIPPIAN STATE GAZETTE (Jackson, Miss.), Sept. 13, 1854, at 2.

<sup>72</sup> *University of Mississippi*, 26 DE BOW’S REV. 335, 336 (J. D. B. De. Bow. ed. 1859).

<sup>73</sup> *Mississippi University*, NATCHEZ WEEKLY COURIER (Natchez, Miss.), Sept. 13, 1854, at 1.

<sup>74</sup> MAYES, *supra* note 44, at 143–44.

The coursework was similar to that of other antebellum institutions,<sup>75</sup> and similar, even, to the pre-institutional informal path of learning law under a practicing attorney. And although Stearns would predominantly teach students of the law department, his professorial duties also required him to instruct seniors in the academic department in both “international and constitutional law.”<sup>76</sup> This was a continuation of legal instruction for collegiate students, but undoubtedly ensured that all graduates of the institution would learn “the right philosophy of government.”

Although only six graduated, ten students claimed membership in that inaugural class, the Class of 1856.<sup>77</sup> Nine of those ten men fought for the Confederacy in some capacity; four did not survive the war.<sup>78</sup> It appears that only five ever practiced

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<sup>75</sup> See REED, *supra* note 45, at 458–59.

<sup>76</sup> MAYES, *supra* note 44, at 143.

<sup>77</sup> They were B. J. Clanton, J. A. Green, Henry J. Harper, F. J. Lovejoy, John T. Moseley, Charles P. Neilson, L. W. Reasons, James S. Terral, Jr., Albert H. Thomas, and H. E. Weatherby. See LANDON, *supra* note 28, at 7.

<sup>78</sup> Harper died at the Battle of Second Murfreesboro (Stones River), “[w]ounded in through the Bowels.” Compiled Service Records, 29th Regiment, Mississippi Infantry, Henry J. Harper. Lovejoy fought with the Lamar Rifles, and died at Oxford in July 1862. Compiled Service Records, 11th Regiment, Mississippi Infantry, Flavius J. Lovejoy. Terral died at the Battle of Second Corinth. Compiled Service Records, 7th Battalion, Mississippi Infantry, James S. Terral Jr. A fellow soldier later described Terral’s death:

Sixty-one years after the battle, Evans wrote his brother a letter about the Battle of Corinth and Terral’s death. Evans remembered that he was nearby when the lieutenant colonel fell from his horse. “He was shot all to peaces,” he wrote, “boath leges were broke[,] boath arms was broke[,] and 4 or five bullits were shot in his boddy.” Evans recalled Terral hollering “knock them off of there guns boys for I caint do any more.” Evans added that “we done what he told us to do and spiked the big guns . . .” Evans later helped carry his stricken commander to the rear, staying with him until he died.

BOBBY ROBERTS & CARL MONEYHON, *PORTRAITS OF CONFLICT: A PHOTOGRAPHIC HISTORY OF MISSISSIPPI IN THE CIVIL WAR* 168 (1993). Lastly, Weathersby, who was called “tall, handsome, talented, chivalrous and brave,” fell at the Battle of Franklin. LUKE WARD CONERLY, *PIKE COUNTY MISSISSIPPI 1798–1876: PIONEER FAMILIES AND CONFEDERATE SOLDIERS RECONSTRUCTION AND REDEMPTION* 150 (1909); *History of Quitman Rifles*, in 34 *SOUTHERN HISTORICAL SOCIETY PAPERS* 239, 241 (R. A. Brock ed., 1906).

law: J. A. Green in northern Mississippi<sup>79</sup>; James S. Terral, Jr., Charles P. Neilson, and H. E. Weathersby in southern Mississippi<sup>80</sup>; and John T. Moseley in Texas.<sup>81</sup> L. W. Reasons died soon after the war,<sup>82</sup> B. J. Clanton was an inmate in the Mississippi State Lunatic Asylum by 1880,<sup>83</sup> and Albert H. Thomas—the only non-military man—became a Methodist minister at Memphis.<sup>84</sup>

Attendance rose during the second year of operation with twenty-two law students at the department.<sup>85</sup> A change in Mississippi law likely helped this: “a diploma granted by the State University, conferring the degree of bachelor at law upon students of the law class” operated as “a license granted by a court as aforesaid.”<sup>86</sup> This so-called diploma privilege was not unusual in the nineteenth century,<sup>87</sup> but it undoubtedly encouraged those who wished to practice in the state to study and earn a degree at the law department, rather than leave the state for foreign instruction. Additionally, it ensured that a steady stream of new lawyers immersed in the Southern philosophy of government would begin to practice law and enter the political arena heavily influenced by that philosophy.

These early students were unprepared for college studies,<sup>88</sup> and they spent their days on campus involved in mischief and

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<sup>79</sup> Green was a circuit court judge in Corinth and served on the university's Board of Trustees in the late 1800s. LONDON, *supra* note 28, at 7.

<sup>80</sup> Terral “in 1858 was elected district attorney of the eighth district, over a very popular incumbent.” 2 BIOGRAPHICAL AND HISTORICAL MEMOIRS OF MISSISSIPPI 888 (Chicago, Goodspeed Pub. Co. 1891). Neilson also served as a delegate to the 1868 Constitutional Convention. *Col. C. P. Neilson*, WEEKLY CLARION-LEDGER (Jackson, Miss.), Mar. 29, 1894, at 4.

<sup>81</sup> *Rainbow (W. W. W.) Notes*, 18 THE RAINBOW OF DELTA TAU DELTA 351, 351 (June 1895); 1860 U.S. Census, Marion County, Texas, Jefferson, population schedule, p. 33 (written), dwelling 224, family 243, Jno T Moseley.

<sup>82</sup> Headstone, Reasons Cemetery, Ellard, Calhoun County, Mississippi.

<sup>83</sup> 1880 U.S. Census, Hinds County, Mississippi, population schedule, Beat no. 1 Liberty Grove Precinct, ED 5, p. 89, line 9, B. J. Clanton.

<sup>84</sup> Headstone, Elmwood Cemetery, Memphis, Shelby County, Tennessee.

<sup>85</sup> MAYES, *supra* note 44, at 146.

<sup>86</sup> Act in Relation to Attorneys and Counsellors at Law, ch. 9, art. 1, 1857 Miss. Laws 151.

<sup>87</sup> Other states with the diploma privilege included Louisiana, Georgia, New York, Tennessee, Michigan, and Wisconsin. REED, *supra* note 45, at 252 n.1.

<sup>88</sup> JAMES ALLEN CABANISS, A HISTORY OF THE UNIVERSITY OF MISSISSIPPI 18 (1949).

drunkenness.<sup>89</sup> A professor wrote that “in all probability, very rarely, if ever, was an institution of learning attended by a body of students so disorderly and turbulent as those of the first session proved to be, taken as a mass.”<sup>90</sup> The misbehavior of students in the academic department continued throughout the antebellum period:

[T]he animal spirits of the young Mississippians were—and are—irrepressible, no matter how stern the discipline, no matter how condign the punishment. There were instances of reprehensible visits to the village of Oxford in disguise as late as midnight or after. The difficulty some students had in getting up at sunrise in the chill winter for devotions provoked the charge of “repeated absences from prayers without excuse.” There was the playful but boisterous mischief of shooting fire-crackers in the dormitories at Christmas-time.<sup>91</sup>

The law students, however, managed to escape faculty discipline for violent behavior until the winter of the 1856–57 academic year, when law-department student James G. Minter (Class of 1857) fought an undergraduate student, Robert F. Wilson, over the attention of a woman. Wilson’s father chronicled the event in a letter to a newspaper:

[M]y son, Robert F. Wilson, got into a difficulty at a dancing party, with one of the law students, a Mr. Minter, about whose set it was to dance with a certain young lady; the matter was submitted to the young lady for decision, who decided in favor of my son, when Minter asked him if he claimed the set; he replied he did, if the young lady said so; Minter then struck him, in the dancing room, and in the immediate presence of the young lady in question. They were separated. . . . He returned and attacked Minter, intending to resent the insult as best he could without arms, when Minter

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<sup>89</sup> *Id.* at 18–19.

<sup>90</sup> WADDEL, *supra* note 33, at 267.

<sup>91</sup> CABANISS, *supra* note 88, at 26 (internal citation omitted).

drew a pistol, and they were again separated; the whole occupying but a few moments.<sup>92</sup>

The faculty expelled Minter, but “[t]he law students, in a body, rose and denied the jurisdiction of the Faculty over the law department.”<sup>93</sup> They argued that the undergraduate code of conduct was inapplicable to them, and the faculty ended Minter’s expulsion.<sup>94</sup> Receptive to their argument, the faculty changed the code to allow greater autonomy for the law students. This new policy consisted of two disciplinary steps entirely under the supervision of the law professor and university chancellor: first, the law student would be “privately and kindly admonished”; if that failed to reform, then the student would be expelled from the university, but “without public censure.”<sup>95</sup>

Wilson’s father protested Minter’s punishment as insufficient,<sup>96</sup> but Minter still received his diploma several months later.<sup>97</sup> Like many other Mississippians, he immigrated to Texas, where he fought in a cavalry company during the war,<sup>98</sup> then farmed and practiced law until his 1892 death.<sup>99</sup>

By the end of his third year at the law department’s helm, Stearns began to attract attention on a national scale. In May, at the chancellor’s recommendation, Yale College conferred upon Stearns the honorary degree of Doctor of Laws.<sup>100</sup> And despite his earlier objections to Yale’s Northern bias, it is apparent that he considered the degree to be a high compliment.<sup>101</sup> Soon after, Stearns married his second wife in New York.<sup>102</sup> The couple

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<sup>92</sup> J. M. Wilson, *The Doings of the State University*, VICKSBURG WEEKLY WHIG (Vicksburg, Miss.), July 22, 1857, at 2.

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

<sup>94</sup> LANDON, *supra* note 28, at 12.

<sup>95</sup> CATALOGUE OF THE OFFICERS, ALUMNI AND STUDENTS OF THE UNIVERSITY OF MISSISSIPPI AT OXFORD, MISSISSIPPI: 1860–’61 28 (Jackson, Miss., Mississippian Steam Book and Job Office 1860).

<sup>96</sup> Wilson, *supra* note 92.

<sup>97</sup> LANDON, *supra* note 28, at 12.

<sup>98</sup> Compiled Service Records, 25th Regiment, Texas Cavalry, J. G. Minter.

<sup>99</sup> 1880 U.S. Census, Liberty County, Texas, population schedule, Liberty, ED 45, p. 19, line 11, James G. Minter; Headstone, Liberty City Cemetery, Liberty, Liberty County, Texas.

<sup>100</sup> Stearns, *supra* note 51, at 13.

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

<sup>102</sup> *Id.* at 12.

honeymooned in Washington, D.C. that autumn. There, Jacob Thompson—then serving as Secretary of the Interior—entertained the newlyweds and they dined with U.S. Attorney General Jeremiah Black and met with President James Buchanan and his famous niece, Harriet Lane.<sup>103</sup>

Attendance at the law department continued to increase: At the start of the 1859–60 academic year, a record forty-one students enrolled under Stearns’s tutelage.<sup>104</sup> The trustees recognized that a new professorship would be necessary to instruct the growing student body, and the legislature authorized the creation of a second “professorship of governmental science and law” in February 1860.<sup>105</sup>

During the commencement exercises of 1860, the trustees announced that James Fisher Trotter would fill the newly created position.<sup>106</sup> A Virginian who came to Mississippi in the early 1820s,<sup>107</sup> Trotter had “long been associated with the history of Mississippi” at the time of his appointment<sup>108</sup>: he served as a state representative, a state senator, a circuit court judge, a U.S. senator, a justice of the state’s highest court, and a chancellor.<sup>109</sup> In addition to this extensive political and legal résumé, Trotter had practiced law with Stearns at Holly Springs.<sup>110</sup> This prior association between the two law professors caused an Oxford newspaper to predict that their “intimate friendship [which] has existed for many years” surely “affords an assurance that they will labor together in a spirit of the utmost harmony.”<sup>111</sup> The newspaper later wrote, “[t]here will . . . be no earthly plea for sending our young men abroad to attend the law schools of other Universities, as our own University has Law Professors as deeply versed in legal lore, and as capable of qualifying young men for

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<sup>103</sup> *Id.*

<sup>104</sup> MAYES, *supra* note 44, at 146.

<sup>105</sup> Act of Feb. 10, 1860, 1859 Miss. Laws 238–39.

<sup>106</sup> *The State University—Commencement Exercises*, SEMI-WEEKLY MISSISSIPPIAN (Jackson, Miss.), July 10, 1860, at 2.

<sup>107</sup> LYNCH, *supra* note 20, at 205.

<sup>108</sup> *The Newly-elected Professors*, OXFORD INTELLIGENCER (Oxford, Miss.), July 4, 1860, at 2.

<sup>109</sup> LYNCH, *supra* note 20, at 205–06.

<sup>110</sup> *The Newly-elected Professors*, *supra* note 108.

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

the Bar, as any University in America.”<sup>112</sup> Finally, elite Mississippians had achieved their goal: the state of Mississippi housed an institution capable of indoctrinating their young men with “the right philosophy of government.”

Students remained politically active at the antebellum law department. As a student, Howard Falconer (Class of 1862) founded the *Oxford Intelligencer* to help defend the university from political attacks against it.<sup>113</sup> In its first printing, the *Intelligencer* declared itself a Democratic newspaper “with the interests . . . of the slaveholding States” at heart and that “[t]he great doctrines of State Rights, as set forth by Calhoun, will be the chart of our course; Truth will be our polar star.”<sup>114</sup> Falconer intended the newspaper to be a “reliable general newspaper” that aimed to “publish[] all University news, . . . giv[e] full accounts of all important exercises, and . . . serv[e] up for them all the little *morceaux* which only one initiated knows how to gather.”<sup>115</sup> Falconer advocated for the university and its causes from then on, only closing the paper shortly before Northern occupation.<sup>116</sup>

Thirty-five students attended the law department during its last year of antebellum operation,<sup>117</sup> and Falconer wrote in the *Intelligencer* that “[t]he true friends of the University, therefore, have every reason to congratulate themselves upon its present condition and future prospects.”<sup>118</sup> And with a consistently larger

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<sup>112</sup> *Judge Trotter*, OXFORD INTELLIGENCER (Oxford, Miss.), July 11, 1860, at 2.

<sup>113</sup> SANSING, *supra* note 27, at 25 (“The Oxford *Intelligencer*, which friends of the university established in June 1860 as an alternative to the *Mercury*, condemned in unsparing language any talk of moving or closing the university.”).

<sup>114</sup> *Salutatory*, OXFORD INTELLIGENCER (Oxford, Miss.), June 6, 1860, at 2.

<sup>115</sup> *Id.*

<sup>116</sup> Falconer served in two different companies of Mississippi infantry and was taken prisoner of war. Compiled Service Records, 9th and 34th Regiments, Mississippi Infantry, Howard Falconer. He died during the Yellow Fever Epidemic of 1878. Mrs. W. A. Anderson, *A Chapter in the Yellow Fever Epidemic of 1878*, in 10 PUBLICATIONS OF THE MISSISSIPPI HISTORICAL SOCIETY 223, 233 (Franklin L. Riley ed., 1909) (“Howard Falconer, known and honored and beloved by every one, eminent for his studious habits and social attractions, was the first to make the sacrifice, to risk his life and surrender it upon the altar of benevolence, by administering to the comfort and relieving the wants of strangers in distress.”).

<sup>117</sup> MAYES, *supra* note 44, at 146.

<sup>118</sup> *University of Mississippi*, OXFORD INTELLIGENCER (Oxford, Miss.), Oct. 3, 1860, at 3.

student body, the trustees planned to move the department away from campus and to the Oxford Square.<sup>119</sup>

It appears that Stearns reached the pinnacle of his professorial success at the university in the autumn of 1860. But secessionist fever ran high with President Abraham Lincoln's election and the law department would soon fall. Students organized an infantry company they called the University Greys that December, most likely in a dormitory room.<sup>120</sup> The group included several law students,<sup>121</sup> and after Mississippi seceded from the Union in January 1861,<sup>122</sup> "Oxford was brilliantly illuminated and people celebrated in the streets."<sup>123</sup> "[T]he faculty found it almost impossible to keep the boys in class and focused on their studies,"<sup>124</sup> and pleas by the chancellor and even Confederate President Jefferson Davis went unheeded.<sup>125</sup> Rebel forces fired on Fort Sumter in April, and the University Greys were off to First Manassas (First Bull Run).<sup>126</sup> Other students returned to their hometowns to enlist with local companies.<sup>127</sup>

By early May 1861, every student but five had left campus, and the faculty awarded degrees to those who would have graduated had the war not begun.<sup>128</sup> Both Stearns and Trotter

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<sup>119</sup> The *Intelligencer* chronicled this as well:

The old barber's shop, which all persons acquainted with Oxford will remember as standing at the North-east corner of the public square, has been removed by Col. W. F. Avent, preparatory to the commencement of a new brick building, which is to be partially devoted to the uses of the Law Department of the University.

*Improvement*, OXFORD INTELLIGENCER (Oxford, Miss.), Aug. 1, 1860, at 3. Landon, however, asserts that this building was on the northwest corner of the Square. LANDON, *supra* note 28, at 16. Avent later built the Thompson House in Oxford. JOEL WILLIAMSON, WILLIAM FAULKNER AND SOUTHERN HISTORY 127 (1993).

<sup>120</sup> SANSING, *supra* note 27, at 106.

<sup>121</sup> Walter L. Stricklin (Class of 1860), Jeremiah S. Gage (Class of 1861), Henderson M. Jacoway (Class of 1861), J. R. Montgomery (Class of 1861), Jefferson H. McLemore (Class of 1862). See generally STEVEN H. STUBBS, DUTY-HONOR-VALOR: THE STORY OF THE ELEVENTH MISSISSIPPI INFANTRY REGIMENT (2000).

<sup>122</sup> TIMOTHY B. SMITH, THE MISSISSIPPI SECESSION CONVENTION: DELEGATES AND DELIBERATIONS IN POLITICS AND WAR, 1861–1865 75 (2014).

<sup>123</sup> SANSING, *supra* note 27, at 102.

<sup>124</sup> *Id.* at 106.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 106–07.

<sup>127</sup> *Id.* at 106.

<sup>128</sup> CABANISS, *supra* note 88, at 57.

resigned their positions several months later,<sup>129</sup> after only four students enrolled in the fall and the trustees suspended the university.<sup>130</sup> Stearns's professorship would sit vacant until the department's revival in 1866, and the trustees would not resurrect Trotter's seat for over thirty-five years.<sup>131</sup>

Fearful of the coming destruction, Stearns sent his wife and daughter to stay with his wife's family in New York.<sup>132</sup> He intended to follow them, but by the autumn of 1862, Ulysses S. Grant's troops occupied northern Mississippi and movement in the region would be precarious.<sup>133</sup> Stearns packed several trunks with belongings, left his house in the care of a trusted friend, and prepared to "get out of the way of the approaching Federal forces."<sup>134</sup> But he was too late:

Just as I got opposite the Masonic Hall a squad of U.S. Cavalry made their appearance from behind the Court House on the east side of the square, and fired a volley at me. The bullets flew all around me. I was exceedingly surprised, and, I will candidly acknowledge, not a little alarmed. Taking out a white handkerchief, I waved it at the advancing troops. The reply was another volley. Upon this, I executed an extra double-quick, a "change of base" in order to get behind the Cumberland Church.<sup>135</sup> Before I could gain its shelter, several

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<sup>129</sup> SANSING, *supra* note 27, at 104.

<sup>130</sup> CABANISS, *supra* note 88, at 58.

<sup>131</sup> LANDON, *supra* note 28, at 34. Thomas H. Somerville was offered the second professorship in 1897.

<sup>132</sup> Stearns, *supra* note 51, at 13.

<sup>133</sup> STEPHEN ENZWEILER, *OXFORD IN THE CIVIL WAR* 80 (2010).

<sup>134</sup> Stearns, *supra* note 51, at 14.

<sup>135</sup> The Cumberland Presbyterian Church survived the burning of Oxford by Federal troops. It was torn down in the 1940s for commercial development and William Faulkner lamented the loss:

Your cause is doomed. They will go the way of the Old Cumberland Church. It was here in 1861; it was the only building on or near the Square still standing in 1865. It was tougher than the Yankee Brigadier Chalmers and his artillery and all his sappers with dynamite and crowbars and cans of kerosene. But it wasn't tougher than the ringing of a cash register bell. It had to go—obliterated, effaced, no trace left—so that a sprawling octopus covering the country from Portland, Maine to Oregon can dispense cut-rate soda, bananas and toilet paper.

Jack Mayfield, *Oxford's Cumberland Presbyterian Church; Part II*, OXFORD EAGLE (Oxford, Miss.), Jan. 22, 2017, <https://bit.ly/2EtOr1o>.

blue and whistling invitations to stop were sent after me, but I did not heed them. It was not long before I was snugly ensconced in Milley Cook's parlor. Waiting there about half an hour until the firing ceased, I started to go home by a back street, and was met on the way and arrested.<sup>136</sup>

That night, soldiers pillaged Oxford, and Stearns "lost [his] horses, the contents of three large trunks, all [his] clothing except what [he] had on . . . [and] every dollar of [his] money."<sup>137</sup> The Federals allowed him to travel north towards his family, but forced him to swear that "if allowed to continue his journey he would not give out any information relating to the movements of the U.S. Army that he might learn," and if he did disclose those movements, then he would be punished with death.<sup>138</sup> After several months of difficult travel, he was reunited with his family, but his "appearance was so changed by a full beard and moustache that few of [his] former acquaintances were able to penetrate [his] disguise."<sup>139</sup> Even his daughter did not recognize him.<sup>140</sup>

Unable to return to the war-ravaged South, Stearns found work in Chicago, and he was violently mugged there in May 1865.<sup>141</sup> Apparently, his muggers strangled him and took his watch, money, and keys.<sup>142</sup> At the moment of his asphyxiation, the "interruption of the flow of blood to the brain" changed Stearns, and he soon became aware that he was not quite himself: "When he reached to touch his mind, it was not where he expected it to be, doing the things he had always expected of it."<sup>143</sup> A physician

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<sup>136</sup> Stearns, *supra* note 51, at 14.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 13.

<sup>139</sup> *Id.*

<sup>140</sup> Stearns included the following in a letter to his sister-in-law:

"Papa's baby", however, did not know me; but this did not surprise me, . . . she insisted that I was not "her own dear papa." HE, she said, was in Mississippi. At length, upon my assurance that I WAS her own dear papa with hair on his face, she seemed at once to comprehend the mystery before her, and our former relations were speedily reestablished.

*Id.*

<sup>141</sup> *Id.* at 16.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

cautioned him to “do as little intellectual work as possible, under penalty of soon being able to do none at all.”<sup>144</sup>

He briefly returned to Oxford during the spring of 1866, likely seeking to resume his professorship, but the trustees had not yet resurrected his law department.<sup>145</sup> So, he continued his struggling practice in Chicago, and, in the fall of 1867, he shot himself in a hotel room at Albert Lea, Minnesota.<sup>146</sup> Several of the hotel’s other patrons had heard the gunshot and the body hit the floor, so they rushed to Stearns’s room and found him dead: “The ball entered his eye, causing instant death.”<sup>147</sup> Stearns had left a letter:

To the Public:

I overheard today the conversation of a number of persons who, set on by I know not whom, were banded together to capture and torture and bodily hang me, for what cause I know not. I suppose they have heard false accusations against me which I should be allowed to refute. The insults which they would inflict upon me living would be unendurable. It may be that my lifeless body would not be insulted.

Is out of police that the conspiracy was formed against me, as I have heard myself being accused of being a Secessionist. There is and can be no other cause, because I have not been in Minnesota until last week, and do not know that I am acquainted with no persons in the state with as much as one week’s standing.

Appealing to that omniscient God before whom I am all ready to appear, and praying that he will pardon those who intended violence, and caused me to lay violent hands upon myself, I declare that I came to Albert Lea for the sole purpose of transacting some business with Mr. Daniel Q. Parker for the Hon. Alexander M. Clayton of Marshall Co., Miss., post office Holly Springs, in reference to some law books, which business was this day arranged, although on Sunday, because I learned that Mr. Parker was about to leave

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

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 18.

<sup>147</sup> *Id.*

on the stage today, as I understand he did do. I intended to set out tomorrow morning for Rockford, Floyd County, Iowa, to visit my brother Horatio, who resides there.

William F. Stearns of Chicago<sup>148</sup>

Whether Stearns was, as a later biographer pondered, “possibly the last rebel to die,” and “a victim of his adopted loyalty to the South and its cause,”<sup>149</sup> is difficult to say. It is more likely that his demise was the result of his decreasing mental health; his illness probably caused a state of delusional paranoia. Regardless, Stearns, who only five years before had taught the eager youth of Mississippi, met a violent death away from his beloved family, former law students, and his adopted home.<sup>150</sup> But his impact was profound. Stearns had established an effective law curriculum for the university and taught 124 students during his tenure. And although about 24% would die during the war,<sup>151</sup> many would impact the state and region as small-town attorneys, state constitutional drafters, and U.S. Senators. This Yankee-turned-Southron had accomplished his goal of indoctrinating Mississippians with his Southern political and legal views.

### *C. Lamar: Respite from Politics*

For generations, writers have been fascinated by Lucius Quintus Cincinnatus Lamar. The earliest upheld him as a virtuous statesman,<sup>152</sup> but the modern—likely because of his

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<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 19.

<sup>150</sup> After Stearns’s suicide, his wife moved with her daughter to California, where her son-in-law, Dr. Horace B. Wing, served as a professor of medicine at the University of Southern California. *Obituary Notes*, 73 MED. REC. 403, 403 (1908) (“Dr. Horace B. Wing of Los Angeles, Cal., died on February 13, at the age of fifty years. Dr. Wing was born in Collinsville, Ill., and received his medical degree from the Chicago Medical College in 1886. The following year he went to Los Angeles and had practised [sic] there ever since. For some years he had been professor of clinical medicine in the Medical School of the University of Southern California.”). Stearns left land to his former slave, Harrison Stearns, who later deeded that land to the Methodist Church. On it was built the Burns United Methodist Church, Oxford’s first black church. LONDON, *supra* note 28, at 18.

<sup>151</sup> See *infra* Part II.A.

<sup>152</sup> See, e.g., PERCY, *supra* note 11, at 62–63 (“In any event aristocratic virtues and standards themselves never die completely and never change at all. General Lee and

association with and participation in violent racial movements, like secession, overthrow of Reconstruction government, and advocacy of the Lost Cause—decry him as a dangerous demagogue.<sup>153</sup>

His students fell into the earlier camp, and often referred to him as “that prince of teachers.”<sup>154</sup> His tenure at the law department was brief and was merely a respite from his political career. Despite its brevity, however, his professorship greatly impacted his students. They continued to honor and adore their “preceptor, the illustrious L. Q. C. Lamar” throughout their careers.<sup>155</sup>

Born into a prominent Georgia family,<sup>156</sup> Lamar first came to Mississippi as a young man in 1849, “with high and honorable prospects of success before him in his future.”<sup>157</sup> He had graduated from Emory College, which “doubtless contributed largely to produce in him those sentiments and opinions anent the question of slavery . . . which made him shortly afterwards a conspicuous and aggressive leader in Southern politics.”<sup>158</sup> And, like many other attorneys of his time, he received his legal education during an apprenticeship.<sup>159</sup>

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Senator Lamar would have been at ease, even simpatico, with Pericles and Brutus and Sir Philip Sidney, as Washington was with Lafayette.”)

<sup>153</sup> Jaz Brisack, *Racism is a symptom of white supremacy*, DAILY MISSISSIPPIAN, Sept. 27, 2018, <https://bit.ly/2EMBbFF>; Stephanie Saul, *Ole Miss Edges Out of Its Confederate Shadow, Gingerly*, N.Y. TIMES, Aug. 9, 2017, <https://nyti.ms/2wtzu7G> [<https://perma.cc/5ZKU-RBUR>]; *Chancellor’s Advisory Committee on History and Contextualization* 22–24 (2017), <https://bit.ly/2zdxFOx> [<https://perma.cc/9UQZ-S9TD>].

<sup>154</sup> UNIVERSITY OF MISSISSIPPI, HISTORICAL CATALOGUE OF THE UNIVERSITY OF MISSISSIPPI 1849–1909 61 (Nashville, Marshall & Bruce Co. 1910).

<sup>155</sup> *A Beautiful Tribute to the Memory of the Late Hon. J. B. H. Hemingway*, DAILY CLARION-LEDGER (Jackson, Miss.), Oct. 16, 1896, at 3.

<sup>156</sup> Other notable family members include Mirabeau B. Lamar, who served as a president of the Republic of Texas, and Joseph Rucker Lamar, who was an associate justice of the U.S. Supreme Court. *See generally* PHILIP GRAHAM, *THE LIFE AND POEMS OF MIRABEAU B. LAMAR* (1938); *see generally* CLARINDA PENDLETON LAMAR, *THE LIFE OF JOSEPH RUCKER LAMAR 1857–1916* (1926).

<sup>157</sup> WADDEL, *supra* note 33, at 458.

<sup>158</sup> EDWARD MAYES, *LUCIUS Q. C. LAMAR: HIS LIFE, TIMES, AND SPEECHES* 34 (Nashville, Methodist Episcopal Church, South 1896).

<sup>159</sup> *Id.* at 37 (“Upon his graduation, in the year 1845, Mr. Lamar began a study of the law. This work was prosecuted at Macon, in the office and under the direction of the Hon. Absalom H. Chappell, a lawyer of distinction who had married his youngest aunt, Loretto.”). His father—the first Lucius Quintus Cincinnatus Lamar—actually

By the fall of 1849, Augustus B. Longstreet had been elected president of the University of Mississippi, and he encouraged his new son-in-law, Lamar, to remove to Oxford to practice law.<sup>160</sup> Lamar did so, but quickly set his sights upon employment at the university “to provide [himself] with ready money until [he got] a practice.”<sup>161</sup> He began his affiliation with the institution as an adjunct professor of mathematics and would serve in various positions in the antebellum years, frequently interrupted by his political ambitions and law practice.<sup>162</sup> And although Lamar was not a naturally violent person,<sup>163</sup> he would occasionally act violently in the political sphere “to stand upon his own principle of action.”<sup>164</sup> During the Keitt and Grow Fight in Congress in February 1858, Lamar brawled Senator Owen Lovejoy of Illinois “for ten minutes . . . neither gaining any particular advantage, and both getting pretty well pounded.”<sup>165</sup>

Lamar last rejoined the faculty after Stearns’s encouragement, who asserted that Lamar, “without question, would be happier here than at the bar.”<sup>166</sup> And perhaps the natural teacher was happier at the university. But, in the fall of

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received more formal legal training at the Litchfield Law School. SPARKS, *supra* note 19, at 185.

<sup>160</sup> MAYES, *supra* note 158, at 45.

<sup>161</sup> *Id.*

<sup>162</sup> SANSING, *supra* note 27, at 49.

<sup>163</sup> Daniel J. Meador, *Lamar and the Law at the University of Mississippi*, 34 MISS. L.J. 227, 243 (1963) (“Lamar was not a bully, nor was he anxious to fight; but he never ran from a threatened encounter.”).

<sup>164</sup> MAYES, *supra* note 158, at 393.

<sup>165</sup> *Id.* at 75. Lamar’s political aggression surfaced again after the war, when he confronted Senator Omar Conger of Michigan:

In the Senate, Conger, of Michigan, once snarled some innuendo at Lamar about his fighting proclivities; but the Mississippian paid no attention to it until the next day, when he stepped to Conger’s desk, and said: “Conger, you are always talking about fighting, but never fight; that’s where you and I are a good deal unlike. I don’t talk about fighting, but I am ready for it any time.” Then he made his way back to his seat in the coolest manner possible. It was some time before Conger heard the last about his “duel,” and his Republican colleagues tried their best to egg him on to a fight with Lamar.

*Id.* at 393.

<sup>166</sup> *Id.* at 63.

1861, his professorship ceased when he resigned to join the Confederate cause.<sup>167</sup>

Lamar returned to Mississippi after serving in various capacities in the Confederate military and government. After the war, his adopted state was certainly different,<sup>168</sup> and Lamar was certainly depressed.<sup>169</sup> Yankee cavalry had burned his plantation near Abbeville, called “Solitude,”<sup>170</sup> two of his brothers had died on the battlefield,<sup>171</sup> and several of his close friends—including Burton N. Harrison (Class of 1862)<sup>172</sup>—were still incarcerated in Federal prisons.<sup>173</sup> He practiced law at Coffeerville but was unsuccessful and unhappy.<sup>174</sup> So, when the faculty at the University of Mississippi offered him the “[C]hair of Ethics and

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<sup>167</sup> SANSING, *supra* note 27, at 104.

<sup>168</sup> That Mississippi lay in a state of ruin is irrefutable:

In 1865 the state lay in ashes. Solitary chimneys were all that remained in parts of Jackson; pockmarked streets and buildings at Vicksburg testified that a battle had taken place there; forests around Corinth had been leveled. Even small towns like Okolona fell victim to the torch. In the interior of the state, weeds flourished where cotton had once grown; fences and farmhouses sagged after four years without maintenance.

BRADLEY G. BOND, *POLITICAL CULTURE IN THE NINETEENTH-CENTURY SOUTH: MISSISSIPPI, 1830–1900* 135 (1995).

<sup>169</sup> MAYES, *supra* note 158, at 120 (“Not only was he disfranchised and proscribed, but also the fate of the Confederacy and the outcome of the movement for secession weighed heavily upon him.”).

<sup>170</sup> ENZWEILER, *supra* note 133, at 81.

<sup>171</sup> Jefferson Mirabeau Lamar was an 1854 graduate of the University of Mississippi who died at the Battle of Crampton’s Gap (Burkittsville) in 1862. Compiled Service Records, Cobb’s Legion, Georgia, Jefferson M. Lamar. Lamar wrote later that he “never knew a more perfect being, from the time of his childhood up to the day of his death.” MAYES, *supra* note 158, at 102. His other deceased brother was Thompson Bird Lamar who died during the Siege of Petersburg. Compiled Service Records, 5th Regiment, Florida Infantry, T. B. Lamar.

<sup>172</sup> Harrison was the personal secretary to Jefferson Davis and the last prisoner to be released from Fort Delaware in January 1866. DALE FETZER & BRUCE MOWDAY, *UNLIKELY ALLIES: FORT DELAWARE’S PRISON COMMUNITY IN THE CIVIL WAR* 146 (2000). Harrison married Constance Cary, a prolific Southern author who implored her friend, Emma Lazarus, to compose “The New Colossus,” an excerpt of which adorns the pedestal of the Statue of Liberty. *See generally* MRS. BURTON HARRISON, *REFUGITTA OF RICHMOND: THE WARTIME RECOLLECTIONS, GRAVE AND GAY, OF CONSTANCE CARY HARRISON* (Nathaniel Cheairs Hughes, Jr. & S. Kittrell Rushing eds., 2011); MRS. BURTON HARRISON, *RECOLLECTIONS GRAVE AND GAY* 313–14 (1911).

<sup>173</sup> MAYES, *supra* note 158, at 121.

<sup>174</sup> *Id.* at 120–24.

Metaphysics,” he quickly accepted and moved his family back to Oxford.<sup>175</sup>

The university reopened soon after the war, in the summer of 1865.<sup>176</sup> It no longer was the flourishing antebellum campus that students had excitedly left four years before. “After Shiloh, wounded inundated the buildings,”<sup>177</sup> and Grant’s troops inflicted serious damage on university property “before Federal officers placed guards to keep the ground safe.”<sup>178</sup> But the law department remained inactive until the trustees sought a professor to run it in June 1866.<sup>179</sup> By this time, Stearns had removed to Chicago and was in quick mental decline.<sup>180</sup> Trotter, the second professor of law, had died at Holly Springs earlier that year.<sup>181</sup> So the trustees looked for another prominent attorney to teach the students returning from war, and they approached Horatio F. Simrall.<sup>182</sup>

While the offer was pending, the trustees asked Lamar to “discharge the duties of law professor also.”<sup>183</sup> But Simrall never responded, apparently concerned with “pressing business at home,”<sup>184</sup> and the trustees took his silence as declination.<sup>185</sup>

<sup>175</sup> *Id.* at 124.

<sup>176</sup> SANSING, *supra* note 27, at 116.

<sup>177</sup> TIMOTHY B. SMITH, MISSISSIPPI IN THE CIVIL WAR: THE HOME FRONT 190 (2010).

<sup>178</sup> *Id.*

<sup>179</sup> MAYES, *supra* note 44, at 144.

<sup>180</sup> Stearns, *supra* note 51, at 16.

<sup>181</sup> LYNCH, *supra* note 20, at 210. One of his last political activities was to serve as a delegate to the Constitutional Convention of 1865, which “strove to preserve antebellum ideals without alarming the directors of Reconstruction residing in Washington.” BOND, *supra* note 168, at 156–57.

<sup>182</sup> MAYES, *supra* note 44, at 144. Apparently, it was always unlikely that Simrall would accept the position:

The trustees of the University of the State meet to-morrow in this city. A professor of law and one of chemistry are to be elected. For the former office the name of Hon. H. F. Simrall is mentioned. No abler or better jurist could be selected; it is, however, doubtful whether he will accept.

*Editorial Correspondence*, NATCHEZ DAILY COURIER (Natchez, Miss.), Oct. 23, 1866, at 2.

<sup>183</sup> MAYES, *supra* note 44, at 144.

<sup>184</sup> 2 BIOGRAPHICAL AND HISTORICAL MEMOIRS OF MISSISSIPPI, *supra* note 80, at 775.

<sup>185</sup> MAYES, *supra* note 44, at 144. Despite his refusal, Simrall later lectured at the law department in the 1870s. LANDON, *supra* note 28, at 26. He was also an ardent Republican:

Lamar resigned the “Chair of Ethics and Metaphysics” and became the “Professor of Governmental Science and Law” in January 1867.<sup>186</sup>

Although nineteen students enrolled at the law department in the fall of 1866, only one was a member of the senior class: Charles B. Howry (Class of 1867).<sup>187</sup> The sole graduate that academic year, Howry was the son of a university trustee, and would later become a trustee himself during his extended career with the federal government.<sup>188</sup> One year later, the Class of 1868 had twelve graduates,<sup>189</sup> and it may have been Lamar’s celebrity that caused several prominent Southern families, many of whom now lived in desolate conditions, to send their sons to the law department. Among this number included William Montgomery Forrest (Class of 1868)—who fought alongside his father, Nathan

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After Grant’s election as president in November 1868, several important Mississippians edged toward the Republican Party. Horatio Simrall, soon to be appointed by his old friend Governor Alcorn to the Mississippi Supreme Court, declared himself a Republican in spring 1869. He said he was “disposed to take [his] state from her isolation and hitch her onto the car of progress; to place her in such condition that the rich streams that flow out from the national treasury may not float past her.” Simrall, who had served in the Kentucky as well as the Mississippi legislature, said he wanted to “open wide the door that people from the North, the East, and the West; from Europe, and if you please from Asia may . . . dwell amongst us.” To attract capital and labor to Mississippi, he said, there would have to be “absolute freedom of opinion of the tongue and pen, [and] obedience to and enforcement of the laws.” This he believed could best be brought about by the Republican Party.

JAMES ALEX BAGGETT, *THE SCALAWAGS: SOUTHERN DISSIDENTS IN THE CIVIL WAR AND RECONSTRUCTION* 253 (2003).

<sup>186</sup> MAYES, *supra* note 44, at 144; MAYES, *supra* note 158, at 124.

<sup>187</sup> MAYES, *supra* note 44, at 146; OFFICIAL CONGRESSIONAL DIRECTORY: 63D CONGRESS, 2D SESSION 337 (1914) [hereinafter OFFICIAL CONGRESSIONAL DIRECTORY]

<sup>188</sup> He was a U.S. district attorney, an assistant attorney general, and a judge on the Court of Claims. OFFICIAL CONGRESSIONAL DIRECTORY, *supra* note 187, at 335 (1914). *See also* *infra* Part II.C.3.

<sup>189</sup> MAYES, *supra* note 44, at 146.

Bedford Forrest, during the war<sup>190</sup>—and J. W. T. Falkner (Class of 1869)—whose grandson became the famed Southern novelist.<sup>191</sup>

“The burden of the Lost Cause weighed heavily” upon the students of the revived university.<sup>192</sup> In addition to the campus’s somber atmosphere, their wartime experiences caused the students to be more studious than their antebellum predecessors. About 74% of law students during Lamar’s professorship were Confederate veterans.<sup>193</sup> A representative moment of their painful collective memory occurred during the commencement exercises of 1866. Francis A. Pope (Class of 1862) spoke on behalf of his antebellum class, about 12% of whom had perished during the war<sup>194</sup>:

At one point during his emotional address, Pope turned and recognized a special member of the board of trustees—Charles Clark, the three-times wounded and disabled Confederate general who was elected governor in 1863 and imprisoned at Fort Pulaski in 1865. His gracious gesture “loosed the pent up emotions” of those in attendance and the “big college hall . . . rang with . . . applause.”<sup>195</sup>

The student body’s general austerity may have allowed Lamar to prosper as a successful law professor. When instructing his students, he drew on his own education and background.<sup>196</sup> He taught the law “within a broad framework” and “eschewed details and trivialities.”<sup>197</sup> Furthermore, his instruction had a particular moral bent, likely due to his own Methodist educational background at Emory College.<sup>198</sup> Students remembered him as

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<sup>190</sup> Compiled Service Records, General and Staff Officers (Confederate), William M. Forrest. Called “Willie,” Forrest enlisted with his father and uncle in the Confederate cause a few months before his fifteenth birthday. JACK HURST, NATHAN BEDFORD FORREST: A BIOGRAPHY 67 (1993).

<sup>191</sup> For a brief biography on Falkner, *see generally* WILLIAMSON, *supra* note 119, at 71–74.

<sup>192</sup> SANSING, *supra* note 27, at 120.

<sup>193</sup> *See infra* Part II.A.

<sup>194</sup> SANSING, *supra* note 27, at 120.

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

<sup>196</sup> JAMES B. MURPHY, L. Q. C. LAMAR: PRAGMATIC PATRIOT 90 (1973).

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

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

“always accessible and kind,”<sup>199</sup> and he frequently waived their \$50 annual tuition.<sup>200</sup> These students even expressed their admiration and affection for Lamar many years later:

The love and affection which he aroused in the hearts of young men was wonderful. I know of no criticism to which a professor can be subjected more to be dreaded than that of young men assembled from all portions of the State in the classes of a university. You will not find a graduate of that institution who was educated there during the period that Mr. Lamar acted as professor that does not feel for him and has not borne for him in all the changing stages of life that perfect affection and profound admiration that he inspired in the hearts of all young men who came in contact with him.<sup>201</sup>

Lamar resigned the professorship in June 1870. His reasoning was likely political,<sup>202</sup> as he had “kept steadily in view the career of statesmanship,”<sup>203</sup> but his son-in-law, Edward Mayes (Class of 1870), later stated that Lamar had left “because of the political embarrassments surrounding the institution.”<sup>204</sup>

During the commencement exercises of 1870, Lamar addressed his law-department graduates for the final time: “And now, young gentlemen, as you go home I pray that you may have prosperity and happiness through life, with just enough of sorrow to remind you that this earth is not your home.”<sup>205</sup>

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<sup>199</sup> MAYES, *supra* note 158, at 125.

<sup>200</sup> Meador, *supra* note 163, at 237.

<sup>201</sup> MAYES, *supra* note 158, at 126.

<sup>202</sup> Mayes asserted that Lamar resigned because of his animus towards Governor Alcorn, whose election he opposed. *Id.* at 127 (“Altogether he expected but little consideration from the new administration, and felt that his own self-respect demanded his resignation.”). Sansing, too, believed his resignation to be political, but he attributes it to the trustees’ refusal to admonish Lamar for his support of the Ku Klux Klan at the federal courthouse. SANSING, *supra* note 27, at 129. This, however, is chronologically impossible, as Lamar resigned in June 1870 and the Klan episode occurred in June 1871. See Jack Mayfield, *Ku Klux Klan Trials and the arrest of L. Q. C. Lamar, Part 1*, OXFORD EAGLE (Sept. 27, 2015), <https://bit.ly/2QM0gK>.

<sup>203</sup> WADDEL, *supra* note 33, at 459.

<sup>204</sup> MAYES, *supra* note 44, at 145.

<sup>205</sup> MAYES, *supra* note 158, at 127.

But the termination of his affiliation with the university did not end his status as a mentor and teacher.<sup>206</sup> In fact, Lamar maintained relationships with many of his former students long after he left Oxford. Some, like I. T. Blount (Class of 1870), would name their sons after him.<sup>207</sup> Others, like John M. Allen (Class of 1870), would shape their careers according to his advice.<sup>208</sup> And several—including Charles B. Howry (Class of 1867),<sup>209</sup> J. B. H. Hemingway (Class of 1870),<sup>210</sup> and Otway L. Carter (Class of 1870)<sup>211</sup>—would occupy prominent positions in the federal government under President Grover Cleveland, whom Lamar served as Secretary of the Interior.

Lamar's professorship also had a significant impact on his future political and legal career, in that it allowed him a respite from that career:

Perhaps the chief significance of Lamar's law professorship is that it came at this period. It afforded him a relative

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<sup>206</sup> Even William Howard Taft, later a Republican President and Chief Justice of the United States, remembered Lamar's guidance fondly:

Mr. Taft was assistant attorney-general when Justice Lamar was on the United States supreme bench. The first time the big Ohio man appeared before that august tribunal, he stumbled through a small duty just as the judges were about to retire. He was much embarrassed and felt that he had not appeared at all to advantage. As he was about to hurry away Justice Lamar came over, threw an arm over his shoulder and said in kindly tones: "It's all right, my boy. Don't you be afraid of those old fellows on the bench. They won't bite you. Even if they wanted to their teeth are too old and worn to do much damage. If you but knew it, yours are twice as sharp." The secretary in telling of this incident says: "From that day to this I have never ceased to thank the lovable Mississippian for making me have faith in myself."

*The Lighter Side*, 17 THE GREEN BAG 614, 614 (1905).

<sup>207</sup> Lucius Lamar Blount (1875–1952) attended the University of Mississippi, was elected the circuit court clerk at Yalobusha County several times, and is buried at Potts Camp Cemetery in Marshall County, Mississippi. 3 DUNBAR ROWLAND, MISSISSIPPI: COMPRISING SKETCHES OF COUNTIES, TOWNS, EVENTS, INSTITUTIONS, AND PERSONS, ARRANGED IN CYCLOPEDIA FORM 86–87 (1907); Headstone, Potts Camp Cemetery, Potts Camp, Marshall County, Mississippi.

<sup>208</sup> CLAUDE GENTRY, PRIVATE JOHN ALLEN 11 (1951) ("The acquaintance began between instructor and pupil that ripened into a life long and intimate friendship.").

<sup>209</sup> ENCYCLOPEDIA OF MISSISSIPPI 241–42 (2000).

<sup>210</sup> A. H. W., *A Beautiful Tribute*, DAILY CLARION-LEDGER (Jackson, Miss.), Oct. 16, 1896, at 3.

<sup>211</sup> FRANCES BEAL SMITH HODGES, THE GENEALOGY OF THE BEALE FAMILY 52 (1956).

withdrawal from public life and provided him with time to read and think about fundamentals. He needed time to get his bearings again after the disintegration of the society he had known since birth. As a law teacher he was forced to simplify and explain basic legal principles. Such life and work was conducive to the kind of thought needed in groping for an adjustment within the constitutional framework. This was a gestation period for Lamar's ideas which later came to fruition in Congress, first and most dramatically in the eulogy on Charles Sumner, then in many other ways during the last two decades of his life.<sup>212</sup>

After Lamar left the law department, his political career rapidly escalated. In December 1873, he "quietly took his seat" as the first Mississippi Democrat elected to the U.S. House of Representatives since the war.<sup>213</sup> After eulogizing Senator Charles Sumner in 1874 with a speech widely seen as conciliatory—"My countrymen! *know* one another and you will *love* one another"<sup>214</sup>—he entered the U.S. Senate in March 1877.<sup>215</sup> And after a three-year tenure as President Grover Cleveland's Secretary of the Interior in the 1880s,<sup>216</sup> Lamar became an associate justice of the U.S. Supreme Court and served in that capacity until his 1893 death.<sup>217</sup>

Lamar's professorship at the law department was brief: he taught only 61 students. But the impact on those individual students—the vast majority of whom were Confederate veterans<sup>218</sup>—was great. And as time wore on, it seems as though Lamar's abrupt career at the law department "took on the proportions of a heroic legend, a southern *Götterdämmerung*,"<sup>219</sup> similar to the mythical legend of Robert E. Lee.<sup>220</sup> Here was a

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<sup>212</sup> Meador, *supra* note 163, at 254.

<sup>213</sup> MURPHY, *supra* note 196, at 112.

<sup>214</sup> *Id.* at 117 (emphasis in original).

<sup>215</sup> *Id.* at 121.

<sup>216</sup> *Id.* at 247 ("[Lamar] joined Cleveland's cabinet as Secretary of Interior and remained there three years relatively unchallenged as evidence of the South's regained national stature.")

<sup>217</sup> *Id.* at 260–70.

<sup>218</sup> *See infra* Part II.A.

<sup>219</sup> JAMES M. MCPHERSON, *BATTLE CRY OF FREEDOM: THE CIVIL WAR ERA* 854 (1988).

<sup>220</sup> *See, e.g.,*

Mississippian who had risen from the poverty, destruction, and humiliation of the Civil War and had been elevated to the highest court in the land. Three different buildings that housed the law department—later the law school—from 1911 until 2011 were named after Lamar,<sup>221</sup> Lamar’s portrait still hangs in the law school,<sup>222</sup> and even the law school’s alumni-giving association is called “the Lamar Order.”<sup>223</sup> No early law-department figure had more lasting an impact on the institution than L. Q. C. Lamar.

#### *D. Walton: Reconstructed Confederate*

Professor Thomas John Walton was a brilliant but hot-headed son of the Mississippi Delta.<sup>224</sup> His life was turbulent and violent, and his tenure at the law department was no different.

In 1854, Walton graduated with honors from the university’s department of arts, where a professor lauded him as “a man of *genius*.”<sup>225</sup> He failed to secure an appointment to the U.S. Military Academy and matriculated at the University of Mississippi’s law department,<sup>226</sup> graduating with the eight other members of the Class of 1857.<sup>227</sup> He first settled at Vicksburg—a town with “a

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Born of this humility, this sense of unworthiness in the sight of God, was submission to Divine will. There was nothing of blind fatalism in [Lee’s] faith. Resignation is scarcely [sic] the name for it. Believing that God was Infinite Wisdom and Eternal Love, he subjected himself to seeming ill-fortune in the confidence that God’s will would work out for man’s good. Nothing of his serenity during the war or of his silent labor in defeat can be understood unless one realizes that he submitted himself in all things faithfully to the will of a Divinity which, in his simple faith, was directing wisely the fate of nations and the daily life of His children. This, and not the mere physical courage that defies danger, sustained him battle; and this, at least equally with his sense of duty done, made him accept the results of the war without a single gesture of complaint.

RICHARD HARWELL, LEE: AN ABRIDGMENT IN ONE VOLUME 587 (1961).

<sup>221</sup> LANDON, *supra* note 28, at 49, 70, 135.

<sup>222</sup> *Id.* at 192.

<sup>223</sup> *Id.* at 139 (internal quotation marks omitted).

<sup>224</sup> 1850 U.S. Census, Tallahatchie County, Mississippi, population schedule, p. 760 (written), dwelling 202, family 202, Jno Thomas Walton.

<sup>225</sup> 6 THE PAPERS OF JEFFERSON DAVIS: 1856–1860 679 (Lynda Lasswell Crist ed., 1989).

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

<sup>227</sup> Evidently, he was popular among his peers: He was an early initiate of the university’s chapter of Delta Kappa Epsilon and his classmate, Littleton Wilde Moore

national reputation for extralegal violence”<sup>228</sup>—to practice law and soon caused trouble:

A case of stabbing occurred Wednesday, at the Washington Hotel, which it is thought will probably result in the death of one of the parties. The circumstances, as far as we are able to learn them, are as follows: Mr. Thomas Walton, a law student the office of Messrs. Brooke & Smedes, as he went into supper, left with a servant, a dog secured by a small rope, which he instructed him to hold until his return from tea. While holding him, Mr. James A. Smith, of Issaquena county, came up and attempted to take the dog from the servant, and on his refusing to give him up, struck the servant several times. Mr. Walton was informed of the matter, and immediately came out, when some high words passed between them. Mr. W. then started to return to the dining room, and Mr. Smith following him up, he turned and stabbed him in the heart with a pen knife. The wound is in the neighborhood of the lungs, and it is feared will prove fatal.<sup>229</sup>

Walton was later exonerated from all blame and discharged.<sup>230</sup> He then unsuccessfully ran for district attorney,<sup>231</sup> and during the election, proved a proponent of states’ rights and slavery. In a widely publicized speech, he argued at Warrenton that “laws prohibiting the trade in slaves between these States and Africa are unconstitutional and ought to be nullified.”<sup>232</sup>

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(Class of 1857), named his son “Thomas Walton Moore” in his honor. CATALOGUE OF THE DELTA KAPPA EPSILON FRATERNITY: BIOGRAPHICAL AND STATISTICAL 360 (New York, Council Publishing Company 1890); FRANK LOTTO, FAYETTE COUNTY: HER HISTORY AND HER PEOPLE 223 (1902).

<sup>228</sup> CHRISTOPHER WALDREP, ROOTS OF DISORDER: RACE AND CRIMINAL JUSTICE IN THE AMERICAN SOUTH 1817–80 15 (1998).

<sup>229</sup> *A Case of Stabbing*, VICKSBURG WEEKLY WHIG (Vicksburg, Miss.), Dec. 16, 1857, at 1.

<sup>230</sup> *Id.*

<sup>231</sup> *We Add to Our List*, DAILY VICKSBURG WHIG (Vicksburg, Miss.), Aug. 3, 1858, at 3.

<sup>232</sup> The *Mississippian State Gazette* reprinted the speech, and it likely represents greater political ambitions than that of the district attorney:

If Mississippi and our sister states do not at once begin the restoration of southern equality in this government when it only requires a little firmness on their part to accomplish that restoration, and thus save the Union from destruction—then will our people, and this southern people, receive, as they will deserve, very little sympathy, very little other than

By 1859, Walton, “one of the most promising of the rising young men of our State,”<sup>233</sup> had moved to Tallula—then the county seat of Issaquena—to practice law and had married a niece of Augustus B. Longstreet.<sup>234</sup>

After the firing on Fort Sumter, Walton’s familial connection to the Longstreets proved beneficial: his wife’s cousin was General James Longstreet, and Walton used the General’s “influence . . . [to] receive[] an appointment in the Commissary Department.”<sup>235</sup> Walton first experienced battle at First Manassas (First Bull Run), where Longstreet noted that “under [his] first fire and in [his] first service, [he was] worthy of [his] newly-adopted profession,” and that Walton “seemed to take peculiar delight in having occasion to show to those around [him his] great confidence in our cause and our success.”<sup>236</sup> But as war progressed, Walton gained a reputation as a fiery-tempered poker player, and appeared “always supercilious” to his comrades.<sup>237</sup> Another aide-de-camp under Longstreet described Walton in his later memoirs:

Walton was quite a friend of mine and fond of me. Gifted with uncommon intellectual attainments, the favorite scholar of L. Q. C. Lamar at the University of Mississippi, he was of the most uncertain, unexpected temper and exactions; he could be dangerous at times, and only the greatest firmness held him in check until the humor passed off and then he was all lovely.<sup>238</sup>

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contempt, for their lamentations over the departure of their glory, and the triumph of their enemies.

*Nullification and the Slave Trade*, MISSISSIPPIAN STATE GAZETTE (Jackson, Miss.), Aug. 11, 1858, at 2.

<sup>233</sup> *Thomas Walton, Esq.*, WEEKLY VICKSBURG WHIG (Vicksburg, Miss.), Dec. 8, 1858, at 3.

<sup>234</sup> EDWARD MAYES, GENEALOGICAL NOTES ON A BRANCH OF THE FAMILY OF MAYES AND ON THE RELATED FAMILIES OF CHAPPELL, BANNISTER, JONES, PETERSON, LOCKE, HARDAWAY, THWEATT AND OTHERS D-28 (1928).

<sup>235</sup> LONGSTREET’S AIDE: THE CIVIL WAR LETTERS OF MAJOR THOMAS J. GOREE 203 (Thomas W. Cutrer ed., 1995).

<sup>236</sup> Miscellaneous Documents H.R., 52d Cong., 2d Sess. 463 (1893).

<sup>237</sup> *E.g.*, LONGSTREET’S AIDE, *supra* note 235, at 203-04.

<sup>238</sup> G. MOXLEY SORREL, RECOLLECTIONS OF A CONFEDERATE STAFF OFFICER 36 (1905).

Walton served throughout the war and was wounded at the Battles of Seven Pines (Fair Oaks) and Sharpsburg (Antietam).<sup>239</sup> He also worked as a Confederate judge advocate.<sup>240</sup>

After the war, Walton returned to the Mississippi Delta, locating in Sunflower County.<sup>241</sup> He practiced law and dabbled again in the political sphere,<sup>242</sup> but his “uncertain, unexpected temper” continued to cause him trouble.<sup>243</sup> Authorities prevented his attempted duel with Harold Bellamy in May 1866,<sup>244</sup> but when the opportunity came again, Walton shot and killed Bellamy:

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<sup>239</sup> Compiled Service Records, General and Staff Officers (Confederate), Thomas Walton. A letter from Burton N. Harrison (Class of 1862) to James Seddon, the Confederate States Secretary of War, describes Walton’s Confederate service and prominence in Confederate circles:

Sir:

My solicitude in [sic] behalf of a friend will, I trust, prove a sufficient apology for calling your attention to a matter which has already been before you. It is the case of Major Thomas Walton, of Gen’l Longstreet’s staff, who applies for change of Commission from the Commissary to the Adj. Genls. Dept.

He came to Virginia with the first troops from Mississippi & has done excellent service ever since for a long time without a Commission. He has frequently distinguished himself in battle & has been twice severely wounded on the field. He has brilliant parts, an excellent character & very considerable attainments as a lawyer.

The President knows him very well & esteems him. Upon a recent application of Major Walton, now on file in the war office, for apptmt. on the Military Court, the President endorsed: “Major W. is entirely worthy.” Though as Mississippi had already a full representation on the Mil. Court, the place for which my friend applied was given, I believe, to an Alabamian.

. . . .

Your obd. servt:

Burton N. Harrison

*Id.*

<sup>240</sup> *Id.*

<sup>241</sup> National Archives and Records Administration, Amnesty Papers 1865–1867 (No. 656621), Mississippi, Thomas Walton.

<sup>242</sup> *For Reporter*, AMERICAN CITIZEN (Canton, Miss.), Oct. 29, 1865, at 2 (“Thomas Walton, of Sunflower county, will be a candidate before the next Legislature for Reporter of the decisions of the High Court of Errors and Appeals.”).

<sup>243</sup> SORREL, *supra* note 238, at 36.

<sup>244</sup> The origin of their dispute is unclear, but a Natchez newspaper chronicled the event in detail:

On last Sunday evening about dusk, Walton and his overseer while riding near Bellamy's house, met that gentleman, who was also on horseback, and Walton pointing him out, asked the overseer who he was, who replied, "It is Captain Bellamy, don't you know him?" Whereupon, Captain B. hearing his name, turned in the saddle facing them. Walton also turned to see if the overseer was correct, and Bellamy asked him if he was armed. At this juncture, both belligerents dismounted, and fired their pistols almost simultaneously, the result being a ball in Walton's right shoulder. They immediately cocked their pistols again, fired a second round, and Bellamy was shot through the heart, but with this mortal hurt, he supported himself against a projecting panel on the fence, and fired two shots at random, falling dead at the last report. Walton's wound is a severe one.<sup>245</sup>

After he murdered his rival, Walton left the state and practiced law at New Orleans.<sup>246</sup>

He returned to Mississippi and was at Oxford during Lamar's episode supporting the Klan at the federal courthouse in 1871.<sup>247</sup> During the confrontation, Walton, along with another law-school alumnus,<sup>248</sup> "sprang to [Lamar's] side, pistols in hand, to defend him or fall with him."<sup>249</sup> But his support of Lamar's pro-Klan

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The affair of honor between Major Thomas Walton and Capt. Harold Bellamy, of Sunflower county, which was to have taken place on the 17th, was prevented by the arrest of Capt. Bellamy. Both these gentlemen were well known in the Virginia army. Major Walton distinguished himself on several occasions, on the staff of General Longstreet; while Capt. Bellamy commanded a company in the 48th Mississippi regiment, of Harris' Brigade. We trust the friends of both these gentlemen, now that a meeting is prevented, will endeavor to adjust the difficulty satisfactorily to the honor of both.

*Duel Prevented*, NATCHEZ WEEKLY COURIER (Natchez, Miss.), May 28, 1866, at 2. While dueling was illegal in Mississippi, Mississippians and Southerners more generally were of split opinion on the distinctly Southern activity. See DICKSON D. BRUCE, JR., VIOLENCE AND CULTURE IN THE ANTEBELLUM SOUTH 27-43 (1979).

<sup>245</sup> NATCHEZ DAILY COURIER (Natchez, Miss.), Nov. 28, 1866, at 2.

<sup>246</sup> HINDS COUNTY GAZETTE (Raymond, Miss.), Sept. 20, 1871, at 3.

<sup>247</sup> MAYES, *supra* note 158, at 133.

<sup>248</sup> That alumnus was E. O. Sykes (d. 1911), who graduated with the Class of 1868 and served as a Monroe County delegate to the Mississippi Constitutional Convention of 1890. *Judge Sykes Passes Away*, SIMPSON COUNTY NEWS (Mendenhall, Miss.), Oct. 19, 1911, at 1.

<sup>249</sup> MAYES, *supra* note 158, at 133.

tactics apparently did not deter the Republican trustees when they elected him to the position of professor of law in August 1871.<sup>250</sup> Perhaps this is because by the time of his election, Walton—much like his former boss and cousin-in-law, General Longstreet<sup>251</sup>—had already embraced the Republican Party with the same vigor he had once shown for the Confederacy and its cause.<sup>252</sup> Strange as it seems, this party affiliation was not abnormal for members of the Delta elite, like Walton.<sup>253</sup> And although he was undoubtedly a white supremacist,<sup>254</sup> Walton supported the Party of Lincoln because he believed its success was the only guarantee to “restore[d] . . . order and prosperity” in the state.<sup>255</sup> It is also clear that he felt his political affiliation to be one of his defining characteristics:

That state of things has brought great reproach in the State of Mississippi upon every white man connected with the

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<sup>250</sup> MINUTES OF THE BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI 16 (1871).

<sup>251</sup> For details on General Longstreet’s embrace of the Republican Party in Louisiana, see WILLIAM GARRETT PISTON, LEE’S TARNISHED LIEUTENANT: JAMES LONGSTREET AND HIS PLACE IN SOUTHERN HISTORY 104–112 (1987).

<sup>252</sup> *The New Radical Law Professor of the Mississippi University Essays to Address a Loyal League Meeting and Gets the Cold Shoulder*, WEEKLY CLARION (Jackson, Miss.), Sept. 28, 1871, at 1. L. Q. C. Lamar likely similarly lamented Walton’s politics as he did Longstreet’s. PISTON, *supra* note 251, at 110–11.

<sup>253</sup> Many Delta planters eagerly embraced the Grand Old Party:

[P]ro-Republican sentiment among native whites in the Delta and other black majority counties was perceptibly stronger than elsewhere in the state. After analyzing such “scalawag” support for the Republican party in Mississippi during the first half of the 1870s, Warren C. Ellem concluded that “the bulk of the scalawags were located in the Delta counties.” . . . Ellem linked the strength of the native white Republican vote in the Delta to the region’s traditionally Whiggish inclinations during the antebellum era, but he might have cited as well the overwhelming desire of self-interested Delta planters to stabilize race relations and secure the black workers needed to grow their cotton and clear their land.

JAMES C. COBB, THE MOST SOUTHERN PLACE ON EARTH: THE MISSISSIPPI DELTA AND THE ROOTS OF REGIONAL IDENTITY 61–62 (1992).

<sup>254</sup> *E.g.*, 1 MISSISSIPPI IN 1875 55 (Washington, D.C., Government Printing Office 1876) (Walton testifying that black Mississippians “work better in obedience to orders”).

<sup>255</sup> STEPHEN CRESSWELL, MORMONS AND COWBOYS, MOONSHINERS AND KLANSMEN: FEDERAL LAW ENFORCEMENT IN THE SOUTH & WEST, 1870–1893 54 (1991).

republican party, a reproach which requires an enormous weight of personal character to oppose and weigh down. The truth is, that the fact of a white man being a republican in the South, especially a white southern man, is a surprise to every person in the South. It strikes every mind with astonishment. . . . I may say that a white man must be very well known in the South for a true gentleman to overcome the presumption which arises there *prima facie* that he must be a rogue if he is a republican. And I find even here in Washington, when my friends present me even to northern republicans, there are signs of this same feeling, as they always feel it necessary to certify to my character after saying that I am a southern republican.<sup>256</sup>

Since Lamar's departure in 1870,<sup>257</sup> the law department languished: the professorship was merely titular, enrollment sharply declined, and conservative political outrage engulfed the university's reputation.

The trustees first approached Josiah Abigail Patterson Campbell to replace Lamar.<sup>258</sup> And despite Campbell's Confederate and conservative *bona fides*, several state newspapers questioned the choice, merely, it appears, because Republicans seemed satisfied with him. The *Semi-Weekly Clarion* asked of its readers, "[W]hy, if Lamar's withdrawal is a subject of Radical congratulation on account of his 'politics,' does Campbell's appointment afford[] them delight?"<sup>259</sup> Campbell declined the appointment, and the trustees turned next to a Memphis attorney, Henry Kirk White Craft.<sup>260</sup> Craft accepted, but never relocated to

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<sup>256</sup> 1 MISSISSIPPI IN 1875, *supra* note 254, at 50–51.

<sup>257</sup> *Contra* DUNBAR ROWLAND, COURTS, JUDGES, AND LAWYERS OF MISSISSIPPI: 1798–1935 215 (1935) (Robert Harvey Thompson (Class of 1871) writing that "[t]he law school was discontinued in February, 1870, and the university came near suspending its functions because the carpetbag and negro legislature of that day threatened to require the admission of negroes as students of the institution.").

<sup>258</sup> MAYES, *supra* note 44, at 145. Samuel M. Davis avers that his correct middle name is Abigail, named for his maternal grandmother. Samuel Marion Davis, *J.A.P. Campbell: Lawyer, Statesman, and Judge*, 86 MISS. L.J. 777, 777–78 (2017).

<sup>259</sup> *Hon. J. A. P. Campbell's Autobiography in Which He Stops at the Point of Chief Interest*, SEMI-WEEKLY CLARION (Jackson, Miss.), Sept. 9, 1870, at 2 (emphasis omitted).

<sup>260</sup> Henry Kirk White Craft (1823–1894) was a son of Hugh Craft of Holly Springs, Mississippi. JAMES M. CRAFTS & WILLIAM F. CRAFTS, THE CRAFTS FAMILY 735–36 (Northampton, Mass., Gazette Printing Co. 1893). He studied at Oglethorpe and

Oxford.<sup>261</sup> In his place, Professor Jordan McCullough Phipps taught the law students during the 1870–71 academic year.<sup>262</sup> But the law students Phipps instructed were few in number: the *Weekly Clarion* noted that the department was “virtually broken up,” and that its four students only “claimed to be members and their attendance is semi-occasional.”<sup>263</sup> University advertisements, however, attempted to portray this low attendance positively, asserting that a law department “not overcrowded with students” allowed “every student every day” to be examined.<sup>264</sup>

By the time Walton became professor of law, public opinion was that the university served as a “nursery of radicalism.”<sup>265</sup> Walton’s election as professor did not help to abate this opinion.<sup>266</sup> He used his platform at the law department to instruct his young pupils on the supremacy of federal law and to encourage their

Princeton Universities, and although he was an antebellum Whig, he “never [took] an active part in politics, either by canvassing, making speeches or attending conventions.” WILLIAM S. SPEER, SKETCHES OF PROMINENT TENNESSEANS 16 (Nashville, Tenn., Albert B. Tavel 1888). He was also a close friend of L. Q. C. Lamar, as they “were born in houses a stone’s throw apart in Georgia, went to school together and at the same time moved to Mississippi to practice law.” *Personal Paragraphs*, EMPORIA DAILY REPUBLICAN (Emporia, Kans.), Aug. 31, 1894, at 1. It is possible that his apolitical career, antebellum Whiggish leanings, and a recommendation from Lamar led the trustees to offer him the professorship.

<sup>261</sup> Craft, however, may have managed the law program from Memphis. See *University of Mississippi, Department of Law*, SEMI-WEEKLY CLARION (Jackson, Miss.), Jan. 6, 1871, at 4 (“Under the direction of Henry Crafts, Esq., Professor, and J. M. Phipps, Adjunct Professor of Law, this Department is now in regular operation, with the usual facilities.”).

<sup>262</sup> Jordan McCullough Phipps (1827–1911) received his B.A. (1851) and M.A. (1854) from the university. He practiced law and served as mayor of Oxford during his professorship. Chancellor John N. Waddel remembered him as “a quiet, unassuming gentleman, and was much esteemed as a faithful and competent teacher.” WADDEL, *supra* note 33, at 308. He later moved to Key West, Florida to practice law. HUBBELL’S LEGAL DIRECTORY FOR LAWYERS AND BUSINESS MEN 1122 (1903).

<sup>263</sup> *The State University*, WEEKLY CLARION (Jackson, Miss.), Jan. 26, 1871, at 1. *Contra* Edward Mayes indicates that seven students attended the law department during the 1870–71 academic year in MAYES, *supra* note 44, at 146.

<sup>264</sup> *University of Mississippi, Oxford*, SEMI-WEEKLY CLARION (Jackson, Miss.), July 23, 1872, at 3.

<sup>265</sup> *The State University*, WEEKLY CLARION (Jackson, Miss.), Jan. 26, 1871, at 1.

<sup>266</sup> *The University at Oxford*, SEMI-WEEKLY CLARION (Jackson, Miss.), Sept. 8, 1871, at 2 (“We learn that the Board of Trustees of the State University have elected Thomas Walton, an avowed Republican, Professor of the Law Department. The work of Radicalising [sic] the institution is gradually going forward.”).

acceptance of the Reconstruction amendments.<sup>267</sup> Indeed his students may have been more willing to accept Walton's radical lectures because not one of them was a Confederate veteran.<sup>268</sup>

With Walton at the helm, the trustees made other departures from the Stearns-Lamar era: no longer was the head of the department called the "Professor of Governmental Science and Law," he was merely a "professor of law."<sup>269</sup> The change in nomenclature may have reflected the law department's retreat from the old Jeffersonian model and embrace of the practitioner-focused school.<sup>270</sup> Therefore, the law department would no longer inculcate Southern statesmen focused on Southern issues; it instead may have intended to produce local practitioners who understood the supremacy of federal law and could navigate the new legal waters of Reconstruction-era Mississippi. That the entire law program was shortened from two years to one in June 1872 may also have reflected this change.<sup>271</sup>

Walton remained active in politics during his tenure,<sup>272</sup> which likely caused increased political outrage.<sup>273</sup> Reconstruction politics reached a boiling point, and the law department was transformed into something that the antebellum Mississippian would never have recognized. The outrage continued as the Legislature passed radical legislation, including an authorization for the law department to move to Jackson and merge with Alcorn University as a racially integrated institution:

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<sup>267</sup> SANSING, *supra* note 27, at 129.

<sup>268</sup> See *infra* Part II.A.

<sup>269</sup> MAYES, *supra* note 44, at 143, 145.

<sup>270</sup> *E.g.*, REED, *supra* note 45, at 46.

<sup>271</sup> MAYES, *supra* note 44, at 145.

<sup>272</sup> *The Radical Party of the State in General Convention*, VICKSBURG HERALD (Vicksburg, Miss.), Aug. 28, 1873, at 1 ("Major Thomas Walton, of Oxford University, in a highly eulogistic speech, nominated Gen. Ames for Governor.").

<sup>273</sup> *E.g.*,

[O]ur attention is called to an address delivered before the Republicans of Lafayette county, Miss., by Thos. Walton, Esq., Professor of Law in the Oxford University. The Professor takes strong grounds against the outrages of local self-government, the only corrective of which, in his opinion, is to be found in the vigor and strength of Federal authority.

*Race Tendencies*, NEW-ORLEANS TIMES (New Orleans, La.), Jan. 9, 1873, at 4.

SECTION 1. Be it enacted by the Legislature of the State of Mississippi, That the Trustees of the University of Mississippi be authorized, in their discretion, to remove the law shool [sic] of that institution to the Capital of the State.

SEC. 2. Be it further enacted, That the Trustees of the Alcorn University be authorized, in their discretion, to co-operate with the Trustees of the University of Mississippi, each Board appointing a committee for that purpose, in the establishment of such law school at Jackson.

SEC. 3. Be it further enacted, That the school, if established at Jackson, shall be known as the State Law School.<sup>274</sup>

Neither university took such action, but many white Mississippians were sufficiently perturbed by the radicalism that they began to withdraw their sons and protect them from Walton's instruction.<sup>275</sup> Attendance dwindled, and the trustees suspended the department.<sup>276</sup>

In the summer of 1875, Walton left the university after Governor Adelbert Ames appointed him Chancellor of the Twelfth District.<sup>277</sup> He preferred his position as a professor,<sup>278</sup> and his chancellorship met with some controversy: many white Mississippians faulted Walton—the “well-known Southern renegade”<sup>279</sup>—when he allowed a carpetbagger accused of murdering a Democratic sheriff to post bail.<sup>280</sup> But he left the

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<sup>274</sup> Act of April 3, 1874, ch. 61, 1874 Miss. Laws 74–75.

<sup>275</sup> SANSING, *supra* note 27, at 129 (“When Walton's views reached south Mississippi, the Crystal Springs *Monitor* called on Mississippians to take their sons out of the university . . .”).

<sup>276</sup> *Id.* at 133–34. During Reconstruction, the university as a whole, however, advanced. *Id.* at 130 (“The University of Mississippi actually prospered under the Reconstruction government, and, during that volatile era, whatever damage it suffered came from those who claimed to be its friends.”).

<sup>277</sup> THE TESTIMONY IN THE IMPEACHMENT OF ADELBERT AMES AS GOVERNOR OF MISSISSIPPI 138–39 (Jackson, Miss., Power & Barksdale 1877) [hereinafter TESTIMONY]. At the time, this district included Yazoo, Holmes, Sunflower, and Leflore counties. *Twelfth District*, DAILY MISSISSIPPI PILOT (Jackson, Miss.), July 28, 1875, at 4.

<sup>278</sup> TESTIMONY, *supra* note 277, at 140.

<sup>279</sup> *The Farce Ended*, NEWTON WEEKLY LEDGER (Newton, Miss.), Apr. 9, 1874, at 2.

<sup>280</sup> The carpetbagger, named Albert T. Morgan, was an Oberlin College-educated man who had moved to Mississippi after the war to seek his fortune. Morgan, an unsuccessful businessman, married a black schoolmistress, founded the first school for

position after he was confirmed as U.S. Attorney for the district of northern Mississippi in May 1876.<sup>281</sup>

He immediately determined to use federal power to bring cases to a grand jury under the Enforcement Act of 1871, also known as the Ku Klux Klan Act.<sup>282</sup> His witnesses testified about the intimidation of black voters by Democrats, including how “Democrats in Noxubee County grabbed black voters’ ballots and altered them or replaced them with Democratic ballots.”<sup>283</sup> And although the grand jury found that “[t]he fraud, intimidation, and violence perpetrated at the late election is without a parallel in the annals of history,” it refused to indict a single individual.<sup>284</sup> Disheartened, Walton turned instead to the successful prosecution of moonshiners.<sup>285</sup>

In the 1876 U.S. House of Representatives election, Walton ran as a Republican. Because he “avoided speaking out on racial issues,”<sup>286</sup> many Republicans thought him no better than a Democrat. In fact, Senator Blanche Bruce wrote to President Ulysses S. Grant that Walton had “stood high in our party . . . as an open and fearless advocate of [Republican] principles,” and that he thought his “character was without stain or blemish.”<sup>287</sup> But he had turned upon those principles when he defended Jefferson Davis, Walton’s old friend.<sup>288</sup> Therefore, Bruce advised the president that he could no longer support Walton as U.S. Attorney, and requested his removal.<sup>289</sup> Walton was not removed, but his campaign appearances were “broken up by violence, and a

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black children in Yazoo County, and won the 1873 sheriff’s election in Yazoo County. When the incumbent refused to vacate the sheriff’s office, Morgan took it by force, and in the resulting conflict, the incumbent was shot and killed. See NICHOLAS LEMANN, *REDEMPTION: THE LAST BATTLE OF THE CIVIL WAR* 100–03 (2006).

<sup>281</sup> CRESSWELL, *supra* note 255, at 32; *Thos. Walton*, *YAZOO CITY DEMOCRAT* (Yazoo City, Miss.), May 16, 1876, at 2.

<sup>282</sup> CRESSWELL, *supra* note 255, at 32.

<sup>283</sup> *Id.*

<sup>284</sup> *Id.* at 33.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.* at 38.

<sup>287</sup> 27 *THE PAPERS OF ULYSSES S. GRANT: JANUARY 1–OCTOBER 31, 1876* 237 (John Y. Simon ed., 2005).

<sup>288</sup> Compiled Service Records, *supra* note 239.

<sup>289</sup> *THE PAPERS OF ULYSSES S. GRANT*, *supra* note 287, at 237.

number of his supporters [were] shot.”<sup>290</sup> His Democratic opponent defeated him by nearly 8,000 votes.<sup>291</sup>

He remained at his post as U.S. Attorney, despite his aspirations for higher-level federal positions, including the ambassadorship to Brazil.<sup>292</sup> And, like several other former students of the law department, Walton met his end during the Yellow Fever Epidemic of 1878.<sup>293</sup> In a time of tragedy, several members of the public put aside politics and commended Walton’s heroic actions:

. . . I here say that Judge Walton deserves the everlasting thanks of all the citizens of every class. He is entitled to more thanks . . . for he had a buggy and horses here, and in six hours could have been out of the danger, and I here request that in case of Powell’s and my death that you will insist that the people show by their acts that they appreciate Walton’s noble work. He has risked his life, given his money and name without limit.<sup>294</sup>

Articles in several newspapers and journals throughout the region lamented Walton’s death,<sup>295</sup> but none more eloquently than an anonymous letter published in the *Weekly Clarion*:

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<sup>290</sup> CRESSWELL, *supra* note 255, at 34.

<sup>291</sup> *Result in Congressional Districts*, WEEKLY CLARION (Jackson, Miss.), Nov. 29, 1876, at 3.

<sup>292</sup> Interestingly, he was endorsed by both Senators Blanche Bruce and L. Q. C. Lamar of Mississippi:

Mr. Partridge, the present Minister to Brazil, is also about to return. Among the twelve applicants for the mission the name of Thos. J. Walton, of Mississippi, appears to be favorably considered. Both Senators from that State, Lamar and Bruce, and leading men of both parties, have indorsed his application. Walton is at present United States District Attorney and a native Republican.

*The Mission to Brazil*, WEEKLY CLARION (Jackson, Miss.), May 23, 1877, at 2.

<sup>293</sup> For an explanation of how the Yellow Fever came to Grenada, Mississippi from Memphis, see DEANNE STEPHENS NUWER, PLAGUE AMONG THE MAGNOLIAS: THE 1878 YELLOW FEVER EPIDEMIC IN MISSISSIPPI 75–77 (2009).

<sup>294</sup> *An Interesting Letter*, GRENADA SENTINEL (Grenada, Miss.), June 13, 1885, at 4. (quoting letter from R. Mullin to E.C. Walthall (Aug. 16, 1878)).

<sup>295</sup> *E.g.*, *Miscellaneous*, 1 MEM. L.J. 257, 351 (1878) (“Some of the brightest ornaments of the Mississippi Bar died during the late epidemic: such as Judge Gray and Thomas Walton, of Grenada . . .”).

When I saw that Judge Thomas Walton had fallen, I forgot all wherein we differed [sic], and shed a tear at the final absence of a man of intellect, of courage and of power. He was a man who had worshipped at the shrine of the muses, had studied deeply the great science of jurisprudence, and had met death and risked all that young life holds dear on the field of battle. Then he met death face to face, as the soldier is wont to confront the grim monster. He fell, however, in a struggle with the same death coming in a more hideous form, when he could have honorably avoided the conflict. Moved by sense of duty to his brother man, he met his end in the throes of a terrible struggle that made his body a frightful and dreaded spectacle. All honor to this heroic man! In him humanity claims a common legacy. Nor minister of the gospel, nor sister of charity, who has yielded life in seasons of woe, deserve superior praise.<sup>296</sup>

In his three years of teaching at the law department, Walton instructed only nineteen students, none of whom were Confederate veterans. But included in this number were several pupils who would later rise to regional prominence: Walter M. Denny (Class of 1873) and David S. Fearing (Class of 1873) were both members of the 1890 Constitutional Convention<sup>297</sup>; James A. Lyon, Jr. (Class of 1873) taught for many years at the Southwestern Presbyterian University<sup>298</sup>; and A. H. Whitfield

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<sup>296</sup> *Letter from William*, WEEKLY CLARION (Jackson, Miss.), Sept. 11, 1878, at 2.

<sup>297</sup> JOURNAL OF THE PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MISSISSIPPI: BEGUN AT THE CITY OF JACKSON ON AUGUST 12, 1890, AND CONCLUDED NOVEMBER 1, 1890, at 6 (1890).

<sup>298</sup> Lyon had an extensive education for his time:

Professor Lyon was the son of Dr. J. A. Lyon, who while serving as pastor of the Presbyterian Church at Columbus, Mississippi, had originated the idea of a strong Presbyterian University for the entire South. Professor Lyon was a boy not yet ten years of age at the outbreak of the Civil War, but in 1869 at the age of seventeen he entered college at Princeton and graduated in 1872 with the second honor in a class of ninety-seven members. He then studied law for two years at the University of Mississippi, receiving the degree of LL.B. in 1874. Later he again entered Princeton, receiving the degree of A.M. from that institution in 1875, and the degree of Ph.D. in 1882.

WALLER RAYMOND COOPER, SOUTHWESTERN AT MEMPHIS: 1848–1948 74–75 (1949).

(Class of 1874) would later occupy Walton's seat as professor of the law department at the university from 1892 until 1894.<sup>299</sup>

## II. THE LAW STUDENTS

### A. Statistics

The table below lists each class at the law department, with four corresponding categories: (1) the total members of the class; (2) the number of living members at the beginning of the war; (3) the number of members who served the Confederacy; and (4) the number of those served and died during their service. All percentages are approximate.

<b>Class</b>	<b>(1) Total</b>	<b>(2) Living</b>	<b>(3) Served (%)</b>	<b>(4) Died (%)</b>
1856	10	10	9 (90%)	4 (44%)
1857	16	13	11 (85%)	1 (9%)
1858	12	12	12 (100%)	1 (8%)
1859	13 <sup>300</sup>	12	11 (92%)	5 (45%)
1860	29	27	26 (96%)	6 (23%)
1861	19	18	16 (89%)	6 (38%)
1862	25 <sup>301</sup>	25	25 (100%)	3 (12%)
1867	1	--	1 (100%)	--
1868	24	--	22 (92%)	--
1869	13	--	8 (62%)	--
1870	15	--	8 (53%)	--
1871	7	--	4 (57%)	--
1872	3	--	0 (0%)	--
1873	11	--	0 (0%)	--
1874	5	--	0 (0%)	--

124 students attended the antebellum law department under William F. Stearns's tutelage. At the start of the war, 117 of those students were still living. 110, or about 94%, of those students served the Confederacy in some capacity. And of those 110 who

<sup>299</sup> LANDON, *supra* note 28, at 32.

<sup>300</sup> William R. Barksdale was a member of both the Class of 1857 and the Class of 1859. Because he graduated in 1859, he is included in that class in this table.

<sup>301</sup> Francis A. Pope was a member of both the Class of 1862 and the Class of 1869, although he never graduated from the university. In this table, he is included in the Class of 1862.

served, 26, or about 24%, died during their service. This, of course, does not account for the former soldiers who were so debilitated by wounds or disease that they perished soon after the war.

L. Q. C. Lamar faced different challenges with students who were returning veterans. Of the 61 who attended the law department before his departure in the summer of 1870, 44, or 72%, were veterans of the Confederate cause.

The student body under Thomas J. Walton, however, looked starkly different: not a single student served during the war.

### *B. Violence*

#### 1. War

Many of these men met gruesome and violent deaths on the battlefield. Their bodies were often buried, quite hastily, where they fell. For example, James K. Morton (Class of 1860) had just been elected colonel of the 11th Mississippi infantry when he was shot in the abdomen during the bloody Battle of Sharpsburg (Antietam).<sup>302</sup> Federal troops found the dead man lying where he had been shot, buried him, and carved his name on a nearby apple tree.<sup>303</sup>

Other former students of the law department were better able to prepare for their own deaths with detailed, and especially beautiful, letters. The act of letter writing itself was “[a] very important part of the soldier’s life,”<sup>304</sup> but these letters were particularly important, as they served as assurances to family members that the soldier was able to die an honorable death—a “Good Death”—and not experience the “sudden and all but unnoticed end of the soldier slain in the disorder of battle.”<sup>305</sup> Jeremiah S. Gage (Class of 1861) was with the University Greys

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<sup>302</sup> Compiled Service Records, 11th Regiment, Mississippi Infantry, James K. Morton.

<sup>303</sup> A DESCRIPTIVE LIST OF THE BURIAL PLACES OF THE REMAINS OF CONFEDERATE SOLDIERS, WHO FELL IN THE BATTLES OF ANTIETAM, SOUTH MOUNTAIN, MONOCACY, AND OTHER POINTS IN WASHINGTON AND FREDERICK COUNTIES IN THE STATE OF MARYLAND 17 (Hagerstown, Md., Free Press Print 1869); DREW GILPIN FAUST, THIS REPUBLIC OF SUFFERING 69 (2008) (“Responsibility for the dead usually fell to the victor, for it was his army that held the field.”).

<sup>304</sup> BELL IRVIN WILEY, THE LIFE OF JOHNNY REB 192 (1943).

<sup>305</sup> FAUST, *supra* note 303, at 9.

when he died after the Battle of Gettysburg. He wrote his last letter to his mother:

My dear Mother

This is the last you may ever hear from me. I have time to tell you that I died like a man. Bear my loss best you can. Remember that I am true to my country and my greatest regret at dying is that she is not free and that you and my sisters are robbed of my worth whatever that may be. I hope this will reach you and you must not regret that my body can not be obtained. It is a mere matter of form anyhow. This is for my sisters too as I can not write more.

Send my dying release to Miss Mary . . . you know who.

J S. Gage<sup>306</sup>

As Gage took opium for the pain, he said, “Come around, boys, and let us have a toast. I do not invite you to drink with me, but I drink the toast to you, and to the Southern Confederacy, and to victory!”<sup>307</sup> Before he finally died, Gage asked “to be buried like my comrades. But deep, boys deep, so the beasts won’t get me.”<sup>308</sup>

Another member of the Class of 1861, J. R. Montgomery, also first enlisted with the University Greys.<sup>309</sup> He later transferred into the Confederate Signal Corps, a group tasked with battlefield observation and intelligence gathering,<sup>310</sup> and was mortally wounded at the Battle of Spotsylvania Court House. Dying, he wrote the following letter to his father:

Dear Father

This is my last letter to you. I went into battle this evening as Courier for General Heth. I have been struck by a piece of

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<sup>306</sup> PICKETT’S CHARGE: EYEWITNESS ACCOUNTS AT THE BATTLE OF GETTYSBURG 119–20 (Richard Rollins ed., 1994).

<sup>307</sup> MICHAEL A. DREESE, *TORN FAMILIES: DEATH AND KINSHIP AT THE BATTLE OF GETTYSBURG* 57 (2007).

<sup>308</sup> FAUST, *supra* note 303, at 63.

<sup>309</sup> Compiled Service Records, 11th Regiment, Mississippi Infantry, James R. Montgomery.

<sup>310</sup> See generally Edmund H. Cummins, *The Signal Corps in the Confederate States Army*, 16 S. HIST. SOC’Y PAPERS 93, 93–107 (1888).

shell and my right shoulder is horribly mangled & I know death is inevitable. I am very weak but I write to you because I know you would be delighted to read a word from your dying son. I know death is near, that I will die far from home and friends of my early youth but I have friends here too who are kind to me. My friend Fairfax will write you at my request and give you the particulars of my death. My grave will be marked so that you may visit it if you desire to do so, but it is optionary with you whether you let my remains rest here or in Miss. I would like to rest in the grave yard with my dear mother and brothers but it's a matter of minor importance. Let us all try to reunite in heaven. I pray my God to forgive my sins & feel that his promises are true that he will forgive me and save me. Give my love to all my friends my strength fails me. My horse & my equipments will be left for you. Again a long farewell to you. May we meet in heaven.

Your Dying son,

J. R. Montgomery<sup>311</sup>

The letter, purposely stained with Montgomery's blood, was sent to Montgomery's family to show that he had died a "Good Death."<sup>312</sup> His friend wrote to the family that he had "never witnessed such an exhibition of fortitude and Christian resignation," and that he had marked Montgomery's grave.<sup>313</sup> And although the grave was marked—ensuring that Montgomery's body would not suffer the fate of the thousands of Union and Confederate dead at Spotsylvania who remained unburied and

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<sup>311</sup> Letter from J. R. Montgomery, Confederate Signal Corps, to A. V. Montgomery (May 10, 1864) (on file with the American Civil War Museum).

<sup>312</sup> For more information on the "Good Death" during the Civil War, as well as a brief discussion of Montgomery's letter, see FAUST, *supra* note 303, at 3–31.

<sup>313</sup> *Id.* at 17.

decomposing in piles<sup>314</sup>—his family never found it and, thus, was unable to remove him to the Mississippi graveyard.<sup>315</sup>

Other families were also unable to recover their sons' bodies. Roger Barton, Jr. (Class of 1857) died at the Battle of Jonesborough. Despite being unable to retrieve the body, his family erected a monument in the family plot in Holly Spring's Hill Crest Cemetery. It reads:

To the kindred dust of Nature's noble man,  
 We invoke the spirit of a valiant noble son.  
 Un-armed on Jonesboro's desperate field he sleeps,  
 No monumental stone its faithful vigil keeps.  
 On those who fell on that blood deed Battle-field  
 A generous Foe has set this afflicting seal —  
 No prouder Epitaph can one engrave —  
 "Tread lightly, Comrades. Here sleep the Brave."  
 A truer Patriot, or a more patient Sage,  
 A stouter heart, of more mercurial gage —  
 Ne'er left his State for his Country's good.  
 Or thence ascended to his Country's God.<sup>316</sup>

Of course, other former students died outside of battle. Death by disease was not unusual, and twice as many soldiers died of disease as of battle wounds during the war.<sup>317</sup> This number includes Stephen M. Wells (Class of 1860), who died from measles in a Texas hospital in June 1862,<sup>318</sup> and Lemuel R. Mullins (Class of 1861), who died from smallpox in November 1862.<sup>319</sup>

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<sup>314</sup> Even burials that did happen were extraordinarily unceremonious. See MCPHERSON, *supra* note 219, at 730–31 ("Blood flowed as copiously as the rain, turning trench floors into a slimy ooze where dead and wounded were trampled down by men fighting for their lives. . . . Next morning the Bloody Angle contained only corpses; Union soldiers on a burial detail found 150 dead southerners piled several deep in one area of trench measuring 200 square feet, and buried them by simply pushing in the parapet on top of them.").

<sup>315</sup> FAUST, *supra* note 303, at 17.

<sup>316</sup> Headstone, Hill Crest Cemetery, Holly Springs, Marshall County, Mississippi.

<sup>317</sup> FAUST, *supra* note 303, at 4. See also MCPHERSON, *supra* note 219, at 485 ("The Civil War soldier was eight times more likely to die of a wound and ten times more likely to die of disease than an American soldier in World War I.").

<sup>318</sup> Compiled Service Records, 5th Regiment, Texas Cavalry, Stephen M. Wells.

<sup>319</sup> Compiled Service Records, 19th Regiment, Mississippi Infantry, Lemuel R. Mullins.

There were other noncombatant casualties: Howell B. Harris (Class of 1859) left Holly Springs after graduation from the law department and settled in Texas. During the war, he enlisted as a quartermaster sergeant and served for a brief time before he received an honorable discharge.<sup>320</sup> A fraternity catalog describes him as having been “[a]ccidentally shot and killed by a Lt. of his Regt. on failing to give password” at Corinth in April 1862.<sup>321</sup> A deposition by a lieutenant in his regiment, however, describes Harris’s bizarre death differently:

Last night between 2 and 3 o’clock I was sleeping in my tent. Mr. Wallace and Heath were lying near me also asleep. I was aroused by Mr. Heath calling to Mr. Wallace to know who it was in the tent. Mr. Wallace and myself then raised up to ascertain who it was an in raising up, I saw a strange man sitting between Mr. Wallace and Mr. Heath. I asked him who he was and what he was doing here. He made no reply. Mr. Wallace asked him whose company he belonged to and what was his name—he said his name was Jones . . . . He rose on his feet as he made this reply, as he left the tent Mr. Wallace hailed him and asked him what Reg’t he belonged to. He made no reply. Thinking that all was not right and that he was a spy or a thief, I took my pistol and started after him. I called to him to halt. He started to run, but stopped and turned around and looked at me. I then called Mr. Wallace. Mr. Wallace came out with a Colt six shooter in his hand. As Mr. Wallace came up the deceased started to run when I cocked my pistol and again ordered him to halt telling him that if he ran I would kill him. He then kept moving backwards and threw his arms up under his blanket as though he had a pistol or pistols and intended shooting. Mr. Wallace then fired. He fell and started to get up again when Mr. Wallace again fired. He ran some eight or ten paces and fell. He never spoke a word from the time he left the tent.<sup>322</sup>

William Cowper Nelson, another Holly Springs man, wrote to his own father shortly after Harris’s death, noting that he was “very much shocked to hear of poor Howell Harris [sic] untimely

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<sup>320</sup> Compiled Service Records, 3rd Regiment, Texas Cavalry, Howell Harris.

<sup>321</sup> CATALOGUE OF THE DELTA KAPPA EPSILON FRATERNITY, *supra* note 227, at 694.

<sup>322</sup> Compiled Service Records, 3rd Regiment, Texas Cavalry, E. S. Wallace.

end, a sad fate indeed thus to be cut off without the privilege of being in one's right mind."<sup>323</sup>

## 2. Disease

Both before and after the horrors of the war, death by disease was not uncommon in the South.<sup>324</sup> Because of environmental and cultural problems, malaria—the “disease[] of laziness”—yellow fever—the scourge of the South—and a host of other diseases plagued the region.<sup>325</sup> And the war worsened Southern health: “On the one hand, the hostilities left untold thousands of southerners, noncombatants as well as combatants, in precarious or weakened health. On the other, the conflict's legacy of poverty exacerbated the region's tradition of poor health.”<sup>326</sup>

Joseph W. Embree (Class of 1861) died from an unnamed disease in the autumn of 1859 while he was a student at the law department. His classmates published the following resolution in several Mississippi newspapers:

WHEREAS, In the dispensation of Providence, we, the members of the law department of the University of Mississippi, are called upon to lament the death of our fellow-student, Joseph Embree, united to us by the ties of college friendship, and by the associations of generous intercourse, it is our peculiar privilege and duty to pay a proper tribute to his memory, and to mingle our sorrows with those of the bereaved family, for an affliction which has cut off one in

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<sup>323</sup> NELSON, *supra* note 26, at 90.

<sup>324</sup> Breeden posits that disease shaped Southern culture:

[T]he South's unique health history undoubtedly contributed to making the region a distinctive national subculture in two principal ways. First, a reputation for poor health helped perpetuate a negative image of the South that retarded regional development by discouraging immigration and investment. Second, to many, a high rate of disease symbolized the distinctive South, a region of poverty, ignorance, backwardness, and insularity. Without doubt, the high incidence of disease and its effects retarded social and economic development and contributed to the national image of southern backwardness.

James O. Breeden, *Disease as a Factor in Southern Distinctiveness*, in *DISEASE AND DISTINCTIVENESS IN THE AMERICAN SOUTH* 1, 8 (Todd L. Savitt & James Harvey Young eds., 1988).

<sup>325</sup> *Id.* at 11.

<sup>326</sup> *Id.*

early manhood, who was so pre-eminently worthy of affection and esteem for his social virtues, his high moral qualities, and for his intellectual endowments; be it, therefore,

RESOLVED, That we, the members of the law school, feel deep sorrow for the death of Joseph Embree, and will fondly cherish the memory of one who, as a student, was marked with an earnest devotion to the acquisition of legal knowledge, and as a friend, by truthfulness and generous disinterestedness.

2d, That we cordially sympathize with the afflicted family in the loss of one whose gentle and amiable disposition, and whose kindness and warmth of affection, and whose kindness and warmth of affection, endeared him so strongly to them.

3d, That we wear a badge of mourning for thirty days.<sup>327</sup>

Other graduates also died at early ages from disease. Christopher E. Frith (Class of 1857), a “talented young member of the Legislature,”<sup>328</sup> and “democrat of the right school,”<sup>329</sup> died from pneumonia at Liberty, Mississippi in 1860.<sup>330</sup> Benjamin Hicks, Jr. (Class of 1870) died at Vicksburg only one year after his graduation. A rabid dog bit Hicks’s hand and, “the horrors of hydrophobia . . . accumulating,” Hicks died only several weeks later.<sup>331</sup>

### 3. Murder

Professor Thomas J. Walton would testify at the U.S. Senate that, in Mississippi “almost every man, black or white, who has money enough to buy firearms, has them,”<sup>332</sup> that Mississippi is “the greatest place on the face of the earth for pistols,”<sup>333</sup> and that “[n]o man is comfortable down [in Mississippi] unless he has got

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<sup>327</sup> *Tribute of Respect*, DAILY MISSISSIPPIAN (Jackson, Miss.), Nov. 14, 1859, at 2.

<sup>328</sup> *Death of Hon. C. E. Frith, of Amite*, WEEKLY VICKSBURG WHIG (Vicksburg, Miss.), Dec. 19, 1860, at 1.

<sup>329</sup> *The Democracy of Amite*, WEEKLY MISSISSIPPIAN (Jackson, Miss.), Sept. 7, 1859, at 2.

<sup>330</sup> *Death of Hon. C. E. Frith, of Amite*, *supra* note 328.

<sup>331</sup> *Death from Hydrophobia*, WEEKLY CLARION (Jackson, Miss.), Oct. 12, 1871, at 1.

<sup>332</sup> 1 MISSISSIPPI IN 1875, *supra* note 254, at 56.

<sup>333</sup> *Id.*

his pistols.”<sup>334</sup> It follows, therefore, that dueling and other forms of gun violence plagued the early students of the law department.

One of these more violent episodes concerns David A. Herring (Class of 1861). A Franklin County, Mississippi man, Herring was expelled by Centenary College’s faculty for “misconduct in the Chapel” when he was a sophomore at that institution.<sup>335</sup> He then enrolled at the University of Alabama, where he lived at a local boarding house. Although he was reportedly “quiet, peaceable, [and] orderly,”<sup>336</sup> he apparently drew the ire of several housemates who, in addition to insulting Mississippi women, would ridicule the young Mississippian over his state’s repudiation of its debt in the early 1840s.<sup>337</sup> The torment became so severe that Herring purchased a pistol for self-defense.<sup>338</sup>

At supper one evening, one of Herring’s housemates, Walter Gilkey, again referenced Mississippi’s debt repudiation and remarked to Herring that he “wonder[ed], if England will tell (or swear to) a lie and swear (or get) out of it as Mississippi did.”<sup>339</sup> Herring made a retort about Gilkey’s own truthfulness, and Gilkey “cursed Herring and shook his fist in his face.”<sup>340</sup> The next morning, Gilkey and Herring went outside of the boarding house to settle the matter:

Eyewitnesses disagreed about what happened next. Some said that when Herring drew his pistol and started toward Gilkey, Nabers went to Gilkey’s aid. Others said that Gilkey struck a blow with a stick before Herring drew and that Nabers, intervening, struck Herring on the head with another heavy stick. Still others insisted that Nabers rushed at Herring without provocation and that Herring drew in self-

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<sup>334</sup> *Id.*

<sup>335</sup> Faculty Minutes of the College of Louisiana and of Centenary College of Louisiana 178 (1944) (unpublished transcript) (on file with the Centenary College of Louisiana Archives and Special Collections).

<sup>336</sup> *Tragedy at the University of Alabama*, MISSISSIPPIAN STATE GAZETTE (Jackson, Miss.), June 23, 1858, at 3.

<sup>337</sup> *Id.* Mississippi’s debt repudiation gained international attention. See THE INTERNATIONAL ASPECT OF THE DEBTS OF THE STATE OF MISSISSIPPI REPUDIATED BEFORE THE CIVIL WAR (1931).

<sup>338</sup> 1 JAMES B. SELLERS, HISTORY OF THE UNIVERSITY OF ALABAMA 253 (1953).

<sup>339</sup> *Tragedy at the University of Alabama*, *supra* note 336.

<sup>340</sup> *Id.*

defense. But all agreed on one fact: Herring had fired his pistol—and Nabers was dead.

Herring took refuge from the rage of the students in the Battles' home until the civil authorities could get him safely out of town. He was tried on June 5, and acquitted on grounds of self-defense. He left town again at once.<sup>341</sup>

The murder split the community. The people of Tuscaloosa sided with Herring, but many students were so appalled by the affair that they withdrew from the university.<sup>342</sup> Herring quickly left the state and enrolled at the law department of the University of Mississippi. After graduation, he enlisted as a lieutenant in a Mississippi infantry company called the Franklin Guards,<sup>343</sup> and he fell at the Battle of Peachtree Creek in July 1864.<sup>344</sup> His remains—unceremoniously placed in a mass grave at the battlefield—were probably later reinterred in Atlanta's historic Oakland Cemetery.

Francis D. Barnes (Class of 1868) also participated in an honor-related duel, but was not as fortunate as Herring to escape with his life. Barnes, despite his “devoted[] attach[ment] to the government of the Republic,”<sup>345</sup> joined the Confederate cause as an artilleryman and later as a clerk under a paymaster.<sup>346</sup> After the war, Barnes attended the law department. He left before graduation to practice at Oakland, Mississippi, where “from his moral character, close attention to business, and more than common talent as a young lawyer, he obtained quite a lucrative practice.”<sup>347</sup>

At Oakland, Barnes shared an office with a close friend, Dr. Arthur J. Lott. Lott—a fellow Confederate veteran—was significantly older than Barnes and had returned to Mississippi

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<sup>341</sup> SELLERS, *supra* note 338, at 253.

<sup>342</sup> *Id.*

<sup>343</sup> Compiled Service Records, 33d Regiment, Mississippi Infantry, David A. Herring.

<sup>344</sup> *Id.*

<sup>345</sup> *Biographical Sketch of Francis Durrett Barns*, WEEKLY CLARION (Jackson, Miss.), Sept. 9, 1869, at 3.

<sup>346</sup> Compiled Service Records, 14th Battalion, Mississippi Light Artillery, F. D. Barnes.

<sup>347</sup> *Biographical Sketch of Francis Durrett Barns*, *supra* note 345.

from Texas after the death of his wife. In the fall of 1869, a dispute arose between the two over a common love interest:

[I]t appears that Dr. Lott was addressing a young lady of [Oakland], and he had made a confidant of his love affair to his roommate, Capt. Barnes. Capt. Barnes remarked that he intended soon to seek her and make her acquaintance and call upon her, which he did. The next evening after his visit to her, Dr. Lott called upon her and was discarded. This incensed him to a very great extent, and he seemed to labor under the impression that Captain Barnes had prejudiced her against him in some manner. The next day arming himself with a six shooter, he said to Captain Barnes, "Have you not betrayed my confidence? Answer me truly, for your life depends upon it." Captain Barnes attempted to explain, but before he could do so, Lott fired, the ball passing through the heart of his victim causing instant death. Notwithstanding this, he stood over the lifeless and prostrate man and fired the remaining five charges into him. He then mounted his horse and rode away.<sup>348</sup>

Newspapers from around the country chronicled the murder, lamenting the loss of the young lawyer "who was destined to be an ornament to society and country."<sup>349</sup> Lott fled Oakland, and Barnes's relatives placed a bounty for his capture. A detective finally caught up to him; Lott had been hiding in various relatives' homes. He was jailed at Coffeenville for several weeks when a group of masked men dragged him from the prison and lynched him.<sup>350</sup>

Some murders seem more senseless: J. Jefferson Hyde (Class of 1862) returned from the war to practice law at Quitman, where a man shot him for stepping on his dog's tail.<sup>351</sup>

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<sup>348</sup> *Dr. Lott*, VICKSBURG DAILY HERALD (Vicksburg, Miss.), Aug. 20, 1869, at 2.

<sup>349</sup> *Biographical Sketch of Francis Durrett Barnes*, *supra* note 345.

<sup>350</sup> *The Close of a Melancholy Chapter*, HINDS COUNTY GAZETTE (Raymond, Miss.), Nov. 17, 1869, at 1.

<sup>351</sup> Several newspapers chronicled the bizarre incident:

The victim was a citizen named Jeff Hyde, and the perpetrator of the deed flourished under the cognomen of Towner—a gentleman . . . of the Pelham style of architecture in dress, accoutrements and opinions—a man who considered it a point of etiquette to be in debt to his tailor and to have the life's blood of him who dared to tread on his pointer dog's

## 4. Race

The political power structure of antebellum Mississippi was devoted to slavery.<sup>352</sup> And in a region with a population of slaves that outnumbered slaveholders, that structure had to exist on the fear of its white inhabitants. “[R]eports of arson and rapes and poisonings by slaves crowded the southern press,”<sup>353</sup> and served to frighten slaveholders and non-slaveholders alike. S. G. Spencer (Class of 1868) was a teenager when his family narrowly escaped death after three slaves tried to poison them:

Three negro men, two of them slaves to M. L. Spencer, and the other owned by Mr. John A. Johns, were convicted in Lunenburg county, Va., last week, of an attempt to poison the family of Mr. Spencer, and sentenced to be hung on Friday, the 9th day of November next. The slave of Mr. Johns has a wife at the residence of Mr. Spencer, and thus he became implicated in the diabolical plot. The effort to kill was arranged by placing a strong admixture of some poisonous herb or plant into a basin of milk. The peculiar odor of the poison proved to be so strong that the suspicions of those for whom it was intended were aroused before the milk was drank.<sup>354</sup>

The Spencer family soon left their native Virginia for Panola County, Mississippi.<sup>355</sup>

After the war, Reconstruction and Republican governments ensured the violent wrath of Southern conservatives: Many Confederate veterans refused to accept the outcome of the war, particularly if it meant full citizenship for former slaves.<sup>356</sup> They joined organizations that promoted white supremacy, typically

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tail; . . . he put a pistol ball through Mr. Hyde for the above insult to his canine property. We had begun to hope that no more living types of the Count D’Orsay school remained on earth.

*Mississippi*, TRI-WEEKLY CLARION (Jackson, Miss.), Aug. 28, 1869, at 2.

<sup>352</sup> BOND, *supra* note 168, at 7.

<sup>353</sup> MCPHERSON, *supra* note 219, at 228.

<sup>354</sup> *Three Negroes Sentenced to be Hung*, DAILY DISPATCH (Richmond, Va.), Oct. 15, 1860, at 1.

<sup>355</sup> 1870 U.S. Census, Panola County, Mississippi, Panola City, population schedule, p. 2 (written), dwelling 15, family 16, S. G. Spencer.

<sup>356</sup> LEMANN, *supra* note 280, at 25.

through violent means. Some even sported their membership openly: When Walter P. Acker (Class of 1868) died at Austin, Texas in 1933, his obituary noted that he “served as Cyclops of the original Ku Klux Klan; and, when that body disbanded, he became captain of the Central Group of the Order of 76.”<sup>357</sup>

With the antebellum political structure overturned and “[t]he easy brutality bred in a slave society and exacerbated by wartime deprivations” running rampant, racially motivated violence was naturally on the rise as well.<sup>358</sup> This includes the deaths of George P. Calhoun (Class of 1868) and G. F. F. Thompson (Class of 1869), both of which represent the social and racial upheaval of the Reconstruction Era. Calhoun,<sup>359</sup> who left the law department after his junior year, read law under his father, a retired attorney in Jasper County. Before seeking admission to the bar, Calhoun—who “possessed a magnetism that made him exceedingly popular with those who came in contact with him”<sup>360</sup>—spent the spring of 1868 assisting his father with plantation duties.

Apparently, one of the newly freed black men who sharecropped on the plantation threatened Calhoun’s father, and the father returned home and asked his son, who “managed the freedmen better than his father,”<sup>361</sup> to assist him:

Young George Calhoun put a pistol in his pocket, mounted a horse and rode to the field where the negro was at work; told him about how he treated his father and that he had come to tell him that he must leave; that he must come to the house and he would go over the books and see what was due him, if anything, and he would pay it, and that he must get off the place and never come back. The negro said to him flatly that he was not going to do it; that he had a contract and he was

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<sup>357</sup> D. A. Simmons, *Memorial on Walter Acker*, 11 TEX. L. REV. 112, 113 (1933). The Order of ‘76 was a “secret political society . . . organized in 1870 . . . at Somerville, Noxubee county” that worked to intimidate black voters. 2 DUNBAR ROWLAND, ENCYCLOPEDIA OF MISSISSIPPI HISTORY 361 (1907).

<sup>358</sup> BOND, *supra* note 168, at 155.

<sup>359</sup> His brother-in-law was James Argyle Smith, the noted West Point graduate and Confederate general.

<sup>360</sup> W. H. Hardy, *Recollections of Reconstruction in East and Southeast Mississippi*, in 7 PUBLICATIONS OF THE MISSISSIPPI HISTORICAL SOCIETY 199, 199–200 (Franklin L. Riley ed., 1903).

<sup>361</sup> *Id.* at 200.

going to say [sic] there, and dared him to send him off. George Calhoon drew his pistol, told him to drop his hoe and leave instantly and never to come back; if he did, it would be at his peril.

The negro obeyed promptly, left the field, going towards the “quarters,” and young Calhoon returned to the house. It happened that the night following this occurrence was the night on which weekly rations were issued to the “field hands”—usually three pounds of bacon and a peck of cornmeal for each hand.

Young Calhoon, who attended to this business, had finished weighing and measuring the meat and meal, locked the smokehouse and turned to go back to his room, having a lantern in his hand. When he was about twenty feet from the smokehouse he was shot in the back with a load of buckshot. He fell to the earth and died almost instantly. The family rushed out and bore the dead body of the idol of that home into the house.<sup>362</sup>

The former slave was later arrested for the murder. He informed his captors that “he had killed [Calhoon] and would do it again if it were to do over,”<sup>363</sup> and that he had already notified the occupying Federal army of the conflict. He was tried for murder, convicted, and publicly hanged only a few days later.<sup>364</sup>

Before the overthrow of the Reconstruction government, on a Saturday in 1875, local Republicans hosted a meeting and barbecue at Clinton, Mississippi.<sup>365</sup> They invited several Democratic opponents to send a speaker for a debate, and the Democrats accepted their invitation.<sup>366</sup> But “in addition to their speaker, a contingent of local White Line young men carrying concealed weapons came to the barbecue.”<sup>367</sup> And after the

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<sup>362</sup> *Id.* at 200–01.

<sup>363</sup> *Id.* at 202.

<sup>364</sup> *Id.*

<sup>365</sup> LEMANN, *supra* note 280, at 111.

<sup>366</sup> *Id.*

<sup>367</sup> *Id.* The White Lines, similar to the White Leagues, formed during Reconstruction “with the avowed purpose of overthrowing Republican governments and restoring white supremacy.” *White Leagues*, in *THE MISSISSIPPI ENCYCLOPEDIA* 1323, 1323 (Ted Ownby et al. eds., 2017). They destabilized Republican governance and terrorized blacks and white Republicans. *Id.*

Democrat spoke to a peaceful audience, it was the Republican speaker's turn. But the White Lines began to heckle him and things turned violent:

People were shouting back and forth and shoving each other. The band next to the podium struck up something lively to distract the crowd. . . . [S]oon guns were being fired. Most witnesses later testified that a white man had fired the first shot, killing a Negro named Lewis Hargraves with a bullet point-blank to the head. And the Republican witnesses, at least, remembered the first shot being followed very quickly by a series of coordinated volleys, such as one would hear from troops drawn into a battle line. . . . Gunfire was exchanged, but mainly both sides beat a disorganized retreat—the Negroes because they feared for their lives, the whites because they had substantial and heavily armed reinforcements, companies of Democrats who had been waiting in the nearby railroad-depot towns of Edwards and Bolton, as well as in Jackson and Vicksburg, for a signal to come rushing to Clinton to defend their compatriots.<sup>368</sup>

Likely one of the White Liners, G. F. F. Thompson (Class of 1869) was the white man who had fired that first shot. The *Weekly Clarion* claimed that he had discharged his pistol “accidentally, the ball going in the ground at his feet.”<sup>369</sup> Accidental or not, Thompson did not survive the riot and local pro-Democrat newspapers described his death:

Thompson had fled northward, on the Bolton's road, on horseback. A crowd had followed him close. About two miles from the scene, near John O. Bank's, he was caught up with, and ere they reach him, it is supposed he turned in his saddle and shot a negro, one of his pursuers, as one was found lying dead about a half mile this side of where Thompson fell. It will be remembered that Thompson had already been shot in the leg. His pistol had been discharged, and he, having no other weapons, was unarmed. . . . When he was found, shortly

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<sup>368</sup> LEMANN, *supra* note 280, at 112.

<sup>369</sup> *The Clinton Riot*, WEEKLY CLARION (Jackson, Miss.), Sept. 29, 1875, at 1.

after, he had been beaten almost to a jelly. [His body was] tenderly gathered up and escorted to Raymond.<sup>370</sup>

White militiamen then murdered between thirty and fifty black Mississippians and white carpetbaggers.<sup>371</sup> The riot served as the impetus for the “Mississippi Plan,” the overthrow of Reconstruction government.<sup>372</sup> Clearly race—and specifically racial violence—was a significant component in the lives of the early law-department students.

### C. Politics

Many of the young men who attended the law department in the early years were sons of prominent Southern families who shaped the state’s politics and culture. Some of these names include Barksdale, Falkner, Bledsoe, Pettus, Forrest, Branham, Brown, Humphreys, Sessions, and Matthews. Others, however, came from more common backgrounds. Taken as a whole, these men provide excellent examples of the region’s diverse and divisive politics.

#### 1. Anti-Secessionists

Even on the eve of war, Mississippi was not a political monolith: many Mississippians still opposed secession.<sup>373</sup> Several early law-department students were among the number who had harbored those anti-secessionist views, including Francis D. Barnes (1868),<sup>374</sup> who was “devoted[] . . . to the government of the

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<sup>370</sup> *Murder*, WEEKLY MISSISSIPPI PILOT (Jackson, Miss.), Sept. 11, 1875, at 3. Another man further described Thompson’s dead body:

The body was lying on the back, with a pistol-shot in the thigh, and another just over the left eye, and his skull mashed in over the left eye, apparently with some heavy edged instrument. Skull seemed to have been mashed and then shot, the flesh around the wound being powder-burnt, and gash in the neck, apparently made with a knife. I have been told by others that his watch and the contents of his pockets were taken from him.

1 MISSISSIPPI IN 1875, *supra* note 254, at 365.

<sup>371</sup> CHANGES IN LAW AND SOCIETY DURING THE CIVIL WAR AND RECONSTRUCTION 166 (Christian G. Samito ed., 2009).

<sup>372</sup> MICHAEL LES BENEDICT, THE FRUITS OF VICTORY 143 (1986).

<sup>373</sup> BEN WYNNE, MISSISSIPPI’S CIVIL WAR: A NARRATIVE HISTORY 25–27 (2006).

<sup>374</sup> See *supra* Part II.B.3.

Republic.”<sup>375</sup> Ultimately, however, these views did not deter them from fighting for Dixie.

F. J. Lovejoy (Class of 1856) came from a family of Methodist abolitionists.<sup>376</sup> He served as the Buchanan-appointed U.S. Attorney after his graduation,<sup>377</sup> and, despite his abolitionist heritage, joined the Confederate war effort with seven of his brothers.<sup>378</sup> But by July 1862, his former professor, William F. Stearns, wrote that “Poor Lovejoy” had died and that Lovejoy’s wife and child were “in destitute condition” and residing at Stearns’s home.<sup>379</sup>

Tishomingo County elected John A. Blair (Class of 1858) to serve as a delegate to the Mississippi Secession Convention. He, like other representatives from the northeastern part of the state,<sup>380</sup> was a cooperationist and favored remaining in the Union, at least for the time being.<sup>381</sup> He voted against secession, arguing that “the highest duty of a delegate [is] to remain faithful, in every contingency, to the people whom he may represent.”<sup>382</sup> But he did not hesitate to enlist once the war began, and served as a lieutenant colonel in an infantry company.<sup>383</sup> He was the first secession delegate to be wounded during the war,<sup>384</sup> and afterwards he became “a successful lawyer, and even though the

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<sup>375</sup> *Biographical Sketch of Francis Durrett Barns*, *supra* note 345.

<sup>376</sup> CLARENCE EARLE LOVEJOY, *THE LOVEJOY GENEALOGY WITH BIOGRAPHIES AND HISTORY* 342 (1930).

<sup>377</sup> 2 DUNBAR ROWLAND, *MISSISSIPPI: COMPRISING SKETCHES OF COUNTIES, TOWNS, EVENTS, INSTITUTIONS, AND PERSONS, ARRANGED IN CYCLOPEDIA FORM* 842 (1907).

<sup>378</sup> LOVEJOY, *supra* note 376, at 342.

<sup>379</sup> Compiled Service Records, 11th Regiment, Mississippi Infantry, Flavius J. Lovejoy.

<sup>380</sup> WYNNE, *supra* note 373, at 26.

<sup>381</sup> SMITH, *supra* note 177, at 59. Wynne defines the cooperationist:

Although the label included men of varied political leanings, during the actual canvas the term “cooperationist” generally came to mean anyone who was not for immediate secession. Most Cooperationists believed that the South had rights under the Constitution and that secession meant giving up those rights. They maintained that while Lincoln’s election was legal from a technical standpoint, it violated the spirit of the Constitution.

WYNNE, *supra* note 373, at 26.

<sup>382</sup> SMITH, *supra* note 177, at 74.

<sup>383</sup> Compiled Service Records, 2d Regiment, Mississippi Infantry, John A. Blair.

<sup>384</sup> SMITH, *supra* note 177, at 177.

hardships suffered in the war had weakened his body, he never retired.”<sup>385</sup>

## 2. Scalawags

Southern-born white Republicans, scalawags dominated Reconstruction government and their fellow white Southerners despised them for it: They called scalawags “local leper[s] of the community” and “white negroes.”<sup>386</sup> About 70% of scalawags were attorneys,<sup>387</sup> so it follows that several former students of the law department were among that number, despite their political indoctrination at the hands of Stearns and Lamar.

William D. Miller (Class of 1862), like “[m]any younger scalawags without government experience,” probably “had politics rub off on [him] from [his] kinfolk.”<sup>388</sup> He was the son of a lawyer and the grandson of a Presbyterian minister.<sup>389</sup> His grandfather was educated at Princeton and came to Mississippi from New Jersey to serve as a president of Mississippi College.<sup>390</sup>

Like his classmates, Miller left the university when the war began. He joined a Mississippi cavalry company and fought in several notable battles, including the battles of Franklin, Atlanta, and Vicksburg.<sup>391</sup> After the war, Miller practiced law at Sardis, Mississippi with his father.<sup>392</sup> He served in the lower house of the state legislature in the late 1870s, and in 1896, he unsuccessfully ran for a seat in the U.S. congress as an independent candidate.<sup>393</sup> The *Democratic Herald* vilified Miller as “well known over the district as a man who has no political convictions outside the Republican party,” and that he could not “hide his hideous

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<sup>385</sup> John Alan Blair, *The Civil War Diary of John A. Blair* 4 (Mar. 4, 1949) (unpublished M.A. thesis, University of New Mexico) (on file with the University of New Mexico).

<sup>386</sup> STANLEY TURKEL, *HEROES OF THE AMERICAN RECONSTRUCTION* 111 (2005).

<sup>387</sup> BAGGETT, *supra* note 185, at 26.

<sup>388</sup> *Id.* at 31.

<sup>389</sup> 2 *BIOGRAPHICAL AND HISTORICAL MEMOIRS OF MISSISSIPPI*, *supra* note 80, at 441–42.

<sup>390</sup> CECELIA C. BOTTING & ROLAND B. BOTTING, *COMFORT FAMILIES OF AMERICA: A COLLECTION OF GENEALOGICAL DATA* 266 (1971).

<sup>391</sup> 2 *BIOGRAPHICAL AND HISTORICAL MEMOIRS OF MISSISSIPPI*, *supra* note 80, at 442.

<sup>392</sup> *Id.*

<sup>393</sup> *Id.*

deformity from the good people of the district.”<sup>394</sup> After the loss, Miller left the state and settled at Memphis.

The family of Rasselas Boyd (Class of 1862) came from northern Kentucky to Mississippi, where his uncle was an antebellum mayor of Jackson.<sup>395</sup> He was briefly in an infantry company,<sup>396</sup> and returned to Mississippi to serve as a Republican in the state legislature. He supported the reelection of President Ulysses S. Grant over Horace Greeley in 1872.<sup>397</sup> His embrace of the Republican Party was likely similar to Walton’s, in that he saw it as a way to restore order in the state. A local historian later included Boyd’s name in a list of men who “had the confidence of the people, and the negroes regarded their word as law.”<sup>398</sup>

### 3. Redeemers

Many white Mississippians fought Reconstruction and Republican rule. After Appomattox, Mississippi became the first former rebel state to hold a constitutional convention.<sup>399</sup> An amnesty oath excluded most voters, which resulted in more former Whigs and far fewer Democrats than antebellum conventions,<sup>400</sup> but some redeemers still managed to be elected. W. T. Stricklin (Class of 1858) was one of these representatives. He campaigned as a conservative, and urged “Southern men” to “vote the conservative ticket” unless they wanted to elect “men who encouraged the burning of your houses, insults to your wives and your families, and the seizure and appropriation of your property.”<sup>401</sup> Once at the convention, Stricklin proved difficult,<sup>402</sup> and he ultimately resigned:

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<sup>394</sup> DEMOCRATIC HERALD (Charleston, Miss.), Oct. 1, 1896, at 2.

<sup>395</sup> PATRICIA CHAMBERS WALKER & THOMAS GRAHAM, DIRECTORY OF HISTORIC HOUSE MUSEUMS IN THE UNITED STATES 183 (2000).

<sup>396</sup> Compiled Service Records, 30th Regiment, Mississippi Infantry, Rasselas Boyd.

<sup>397</sup> WEEKLY CLARION (Jackson, Miss.), Aug. 15, 1872, at 2 (“The Kosciusko Leader says it is a mistake that Mr. Rasselas Boyd has repudiated Grantism. The report was true, however, as to other leading Republicans in Attala . . .”).

<sup>398</sup> Edward Clarke Coleman, Jr., *Reconstruction in Attala County*, in 10 PUBLICATIONS OF THE MISSISSIPPI HISTORICAL SOCIETY 147, 149 (Franklin L. Riley ed., 1909).

<sup>399</sup> JOHN W. WINKLE III, THE MISSISSIPPI STATE CONSTITUTION 9–10 (2d ed. 2014).

<sup>400</sup> *Id.* at 10.

<sup>401</sup> EXECUTIVE DOCUMENTS PRINTED BY ORDER OF THE H.R., 40TH CONG., 3D SESS. 604 (1869).

I resign my seat as a member of this Convention, and tender it to some abler man. I do this first, because I believe the acts of Congress under which we are assembled, are unconstitutional, unjust, tyrannical, and oppressive. Next, because whether the acts of Congress are unconstitutional or not, the members of this Convention are transcending the limit of whatever power they may have derived by virtue of their constitutionality. . . . Lastly, because I am totally disgusted with its nonsense.<sup>403</sup>

Dominated by former Whigs, eager Republicans, and newly freed slaves, the convention that wrote the 1869 Constitution made several vast departures from former state constitutions, including abolishing slavery, absolving the state of war debt, eliminating elected appellate judgeships, and providing for free public education.<sup>404</sup> This differed from Mississippi's reactionary 1890 Constitution, which attempted to return the state to its antebellum political structure.

The convention that wrote the 1890 Constitution included eight former students of the law department: John A. Blair (Class of 1858), H. L. Muldrow (Class of 1858), George H. Lester (Class of 1860), E. O. Sykes (Class of 1868), Edward Mayes (Class of 1870), R. H. Thompson (Class of 1871), Walter M. Denny (Class of 1873), and David S. Fearing (Class of 1873). With a common goal of restoring elite rule and white supremacy,<sup>405</sup> the convention

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<sup>402</sup> He was perhaps no more difficult than other redeemers, including Charles P. Neilson (Class of 1856). The *Daily Clarion* chronicled the following exchange:

Mr. Orr said that one of the arguments against capital punishment was the hanging of a man in one of the Southern States, to whom afterwards the American armies of liberty sung praises of peace to, as they marched on their way through this land of slavery. He alluded to John Brown, and he would say here to-day that if Virginia could undo the hanging of John Brown she would gladly do so.

Mr. Neilson said that she would, to have the pleasure of hanging him over again.

*Mississippi State Convention*, DAILY CLARION (Jackson, Miss.), Mar. 2, 1868, at 2.

<sup>403</sup> JOURNAL OF THE PROCEEDINGS IN THE CONSTITUTIONAL CONVENTION OF THE STATE OF MISSISSIPPI 411 (Jackson, Miss., E. Stafford 1871).

<sup>404</sup> WINKLE, *supra* note 399, at 11–12.

<sup>405</sup> *Id.* at 12.

enacted strict voting qualifications and aggregated votes to favor rural interests.<sup>406</sup>

Other redeemers used the federal government to further their political goals. Charles B. Howry (Class of 1867) was approached to serve as an assistant federal prosecutor of the Klan in the 1870s, but turned down the offer because he believed that the terroristic faction “served a great and useful purpose in protecting the native white population from intolerable oppression and degradation.”<sup>407</sup> President Grover Cleveland later appointed him U.S. Attorney for the district of northern Mississippi — Thomas J. Walton’s old seat—and, as U.S. Attorney, he chose to not bring one single Enforcement Act case during his tenure.<sup>408</sup>

#### 4. Beyond Mississippi

Several early law-department attendees left Mississippi after the war to settle western states. There, they became prominent lawmakers, politicians, and members of the bar. Littleton W. Moore (Class of 1857) was an honor graduate of the university’s academic department before attending the law department.<sup>409</sup> He was a captain of a company of Texas infantry,<sup>410</sup> and after the war, he was a member of the Texas Constitutional Convention of 1875, served as a U.S. Representative, and was appointed a state judge.<sup>411</sup>

At least four former students served in the Texas state legislature. Finis E. Piner (Class of 1860) served as a Texas district attorney, state legislator, and district judge.<sup>412</sup> E. A. Jones (Class of 1862) settled at Waco after his service with Forrest’s Cavalry Corps during the war and was elected a state

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<sup>406</sup> *Id.* at 14–16.

<sup>407</sup> CRESSWELL, *supra* note 255, at 40.

<sup>408</sup> *Id.*

<sup>409</sup> CATALOGUE OF THE OFFICERS AND STUDENTS OF THE UNIVERSITY OF MISSISSIPPI AT OXFORD, MISSISSIPPI 59 (Jackson, Clarion Steam Printing Establishment 1883).

<sup>410</sup> Compiled Service Records, 16th Regiment, Texas Infantry, Littleton W. Moore.

<sup>411</sup> LOTTO, *supra* note 227, at 223.

<sup>412</sup> BIOGRAPHICAL SOUVENIR OF THE STATE OF TEXAS, CONTAINING BIOGRAPHICAL SKETCHES OF THE REPRESENTATIVE PUBLIC, AND MANY EARLY SETTLED FAMILIES 674 (Chicago, F. A. Battey & Co. 1889).

representative.<sup>413</sup> Walter P. Acker (Class of 1868) was a four-time Democratic representative, and “had the distinction of being the last Confederate Veteran to represent a Texas district in the Legislature.”<sup>414</sup> And Samuel Collier Patton (Class of 1868) had moved to Texas from Mississippi as a child, and after graduating from the law department at the University of Mississippi, he returned to Texas.<sup>415</sup> He was a member of the state legislature that established the University of Texas in 1881.<sup>416</sup>

Others went farther westward. Albert M. Stephens (Class of 1868) and William D. Stephens (Class of 1868) were brothers who left Memphis in the 1870s and settled in California.<sup>417</sup> Albert was the first president of the Los Angeles Bar Association and a county court judge,<sup>418</sup> and William was a bankruptcy referee.<sup>419</sup>

#### CONCLUSION

This Article has explored the history of the University of Mississippi’s law department through the lenses of violence and politics. While the institution may not have been exceptionally violent or political—as these were inherently violent and political times—it is clear that both violence and politics played dominant roles in the early history of the law department. When William F. Stearns accepted the first professorship after the legislature established the law department to appease the trustees, the mandate was clear: use this institution to train lawyers and politicians who will not only be sympathetic to pro-states’ rights and pro-slavery policies, but will also use their positions and careers to further entrench those policies. And in the Stearns-Lamar era, the law department generally succeeded in this goal. It

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<sup>413</sup> Compiled Service Records, 28th Regiment, Mississippi Cavalry, E. A. Jones; MICHAEL R. BRADLEY, *THEY RODE WITH FORREST* 20 (2012); PERSONNEL OF THE TEXAS STATE GOVERNMENT FOR 1885 33 (Austin, J. M. Snyder 1885) (“To say that [Jones] was an intrepid soldier is as superfluous as to write that one of Caesar’s Tenth Legion or Napoleon’s Old Guard, was never known to shun the shock of battle.”).

<sup>414</sup> S. Simple Res. 51, 43d Leg. (Tex. 1933).

<sup>415</sup> A LEGISLATIVE MANUEL FOR THE STATE OF TEXAS: 1882–83 240 (Austin, E. W. Swindells 1883).

<sup>416</sup> *Id.*

<sup>417</sup> GORDON MORRIS BAKKEN, *PRACTICING LAW IN FRONTIER CALIFORNIA* 40 (1991).

<sup>418</sup> *Id.*; *Albert M. Stephens*, L.A. TIMES, June 11, 1935, at 24.

<sup>419</sup> *William D. Stephens Dead*, L.A. TIMES, Sept. 5, 1901, at 12.

was only when Thomas J. Walton assumed the professorship after L. Q. C. Lamar's departure, and with the Reconstruction government's blessing, that many white Mississippians realized the dangerous potential of a state university's law department in the hands of political enemies.

Furthermore, this Article showed that the roles that violence and politics specifically played at the early law department likely also shaped its earliest students. These students were sons of prominent men and poor men. They hoped to redeem the state or they cast their lots with newly freed slaves and the Republican Party. Their lives were destroyed by shocking violence or they existed and prospered in an economic and social structure built on that shocking violence. And they may have been among the Southrons named by William T. Sherman as "dangerous subjects in every sense."