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**“OUR GOOD AND FAITHFUL SERVANT”:
JAMES MOORE WAYNE AND GEORGIA UNIONISM**

by

JOEL C. MCMAHON

Under the Direction of Dr. Wendy H. Venet

ABSTRACT

Since the Civil War, historians have tried to understand why eleven southern states seceded from the Union to form a new nation, the Confederate States of America. What compelled the South to favor disunion over union? While enduring stereotypes perpetuated by the Myth of the Lost Cause cast most southerners of the antebellum era as ardent secessionists, not all southerners favored disunion. In addition, not all states were enthusiastic about the prospects of leaving one Union only to join another. Secession and disunion have helped shape the identity of the imagined South, but many Georgians opposed secession.

This dissertation examines the life of U.S. Supreme Court Justice James Moore Wayne (1790-1867), a staunch Unionist from Savannah, Georgia. Wayne remained on the U.S. Supreme Court during the American Civil War, and this study explores why he

remained loyal to the Union when his home state joined the Confederacy. Examining the nature of Wayne's Unionism opens many avenues of inquiry into the nature of Georgia's attitudes toward union and disunion in the antebellum era. By exploring the political, economic and social dimensions of Georgia Unionism and long opposition to secession, this work will add to the growing list of studies of southern Unionists.

INDEX WORDS: James Moore Wayne, Unionism, Disunion, Secession, American South, Savannah, Georgia, Supreme Court of the United States, Civil War, Antebellum Georgia

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by

JOEL C. MCMAHON

A Dissertation Presented in Partial Fulfillment of the Requirements for the Degree of

Doctor of Philosophy

In the College of Arts and Sciences

Georgia State University

2010

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2010

**“OUR GOOD AND FAITHFUL SERVANT”:
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Georgia State University

May 2010

DEDICATION

For my parents, James and Genevieve McMahon.

Because of them, I am a Yankee by birth and Southern by the grace of God.

ACKNOWLEDGMENTS

Writing a dissertation often can be an infuriatingly lonely endeavor; however, researching a dissertation topic is not. Though often conceived as a solo effort, the dissertation, because of the assistance of so many people from so many places, is really a group project. It is a long-term process that requires the author to weave together threads of information gathered from disparate sources and stitch together patches of knowledge garnered from many archives and libraries. Behind every yellowed document and fragile book I touched, and within every library and archive I visited, are the people who help make history come alive. I have chased quite a few ghosts while trying to understand the life and times of James Moore Wayne, and I am indebted to many who helped me research, write and complete this dissertation.

First, I would like to thank the archivists and librarians at the following institutions: the Georgia Historical Society in Savannah, Georgia; the Atlanta History Center; the King-Tisdell Cottage Foundation in Savannah, Georgia; the Independent Presbyterian Church in Savannah, Georgia; the Savannah College of Art and Design Library in Savannah, Georgia; the Girl Scouts of America; the Juliette Gordon Low Birthplace and Museum in Savannah, Georgia; National Archives and Records Administration in Morrow, Georgia; the Georgia Archives in Morrow Georgia; Pullen Memorial Library at Georgia State University and the Georgia State University Law Library in Atlanta, Georgia; Woodruff Memorial Library at Emory University Library in Atlanta, Georgia; Weltner Library at Oglethorpe University in Atlanta, Georgia;

Georgia Institute of Technology Library and Information Center in Atlanta, Georgia; Princeton University Library; the Morris County, New Jersey Historical Society; the Supreme Court Historical Society; Clemson University Library in Clemson, South Carolina; the North Georgia College and State University Library in Dahlonega, Georgia; the University of Georgia Library in Athens, Georgia. In particular, I would like to thank archivist and genealogist Willard Rocker of the Washington Memorial Library in Macon, Georgia, who patiently and proficiently helped me decipher census records and tax digests.

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Third, without the support and sound advice Dr. Wendy Hamand Venet of Georgia State University, under whose direction I wrote this dissertation, I would have never finished this project. Dr. Venet tolerated my periodic vents, listened attentively when I launched on speculative tangents, lured me back to *terra firma*

when I rambled about the “flawed historical methodologies” I encountered, and understood without question when I put the project on hold several times over the years. For every false start I made and every delay I imposed, Dr. Venet always made herself available upon my return. Dr. Venet helped me transform passion into practice and realize the process was much more important than proving a hypothesis. I am indebted to the other members of my committee, Dr. Chuck Steffen and Dr. Cliff Kuhn, both of whom helped me close gaps in my analysis and identify possible avenues of inquiry.

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CHAPTER ONE

JAMES WAYNE AND GEORGIA UNIONISM: MEMORY, HISTORY AND METHOD

“For men adapted their recollections to what they were suffering.”¹

Thucydides

“I know it is high treason,” wrote John Adams to Thomas Jefferson in 1819, “to express doubt of the perpetual duration of our vast American Empire and our free institutions . . . but I am sometimes Cassandra enough to dream that slavery might rend this mighty fabric in twain.” John Adams was not the only member of the Revolutionary generation who feared disunion. Noting that many of Adams’s contemporaries grappled uncomfortably with the peculiar institution, historian Elizabeth Varon states that “sectional antagonisms related to slavery shaped the constitutional Convention of 1787.” Subsequent generations inherited Adams’s fear and insecurity about the staying power of the nation, but this “jarring fear” of disunion was countered by the enduring and steadfast hope of those who held that

¹ Thucydides, *The History of the Peloponnesian War*, Vol. 1, Henry Dale, trans. (London: George Bell and Sons, 1902), 123.

the bonds of union were strong enough to withstand the many political divisions, economic challenges, and competing social visions posing threats to the stability and survival of the Union.²

United States Supreme Court Justice James Wayne, a staunch and steadfast Georgia Unionist before and during the Civil War, was one of those who believed resolutely in the promise, the pragmatism, and the perpetuity of the Union. Erroneously remembered by history as a man whose views departed dramatically from those of other men of prominence in Georgia, evidence suggests that Wayne was not such an anomaly in his home state. Many antebellum Georgia leaders and ordinary Georgians exhibited “militantly Unionist” tendencies similar to those so strong and enduring like the ones of Wayne. The idea of a South that was “militantly Unionist” runs contrary to the conclusions of some historians such as Varon and Eric Schoen have found evidence of a puissant southern nationalism and a threatening predilection for disunion. This study examines the life of James Wayne and the nature of his Unionism. Through an examination of this largely overlooked but significant Georgian, this dissertation hopes to shed light on the nature of Georgia’s conflicting attitudes about secession, union and disunion before the Civil War. The

² John Adams to Thomas Jefferson, December 21, 1819 in *The Adams-Jefferson Letters: The Complete Correspondence between Thomas Jefferson and Abigail and John Adams*, Lester J. Capon, ed. (Chapel Hill: University of North Carolina Press, 1988), 550; Elizabeth Varon, *Disunion!: The Coming of the American Civil War, 1789-1859* (Chapel Hill: University of North Carolina Press, 2008), 3-10; Alexander A. Lawrence, *James Wayne: Southern Unionist* (Chapel Hill: University of North Carolina Press, 1943).

project explores Georgia's Unionism in three dimensions: political, economic and social, so as to illuminate, hopefully, the reasons Georgia cast its lot with the states that formed the Confederacy in 1861.³

Recent studies suggest that disunion was a stronger and more enduring sentiment than the belief in a perpetual union of the states. According to some historians, "the discourse of disunion was pervasive in antebellum rhetoric among northerners and southerners alike." In the North and the South, disunion was a "threat" and a "prophecy," both of which suggested "that the beloved Union might be . . . fatally flawed." Recognizing the flawed nature of their republican experiment, Americans climbed a wall of worry in regard to the endurance of the Union. The ubiquitous debates over slavery, state rights, and the vast political, economic and social differences between the sections were woven into the fabric of the nation, a fragile tapestry torn apart by war. The seemingly constant threat of secession, and the string of decades-long Sisyphean compromises and political bargains that attempted to temper the threat of disunion, culminated in a bloody and brutal war of rebellion.⁴

³ Walter Fraser, *Savannah in the Old South* (Athens: University of Georgia Press, 2003), 313; Elizabeth Varon, *Disunion!: The Coming of the American Civil War, 1789-1859* (Chapel Hill: University of North Carolina Press, 2008), 3-10; Degler, *The Other South*, 27; Brian Schoen, *Fragile Fabric of the Union: Cotton, Federal Politics and the Global Origin of the Civil War* (Baltimore: Johns Hopkins University Press, 2009), 7-12; Nicholas Onuf and Peter S. Onuf, *Nations, Markets and War: Modern History and the American Civil War* (Charlottesville: University of Virginia Press, 2006), 187-183.

⁴ Varon, *Disunion!*, 3-10.

David Blight called the Civil War “the most divisive and tragic event in American history.” James McPherson has said that no war, and no combination of wars, has had “such an abiding impact as the Civil War.” According to Eugene Genovese, “all wars test the fibers of a nation, and each war in a special way.”⁵ As we approach the sesquicentennial of the Civil War, it remains, according to Eric Foner, the “central event in American history and an enduring source of public controversy.” The Civil War is, for the American imagination, “the single great event in our history” and demonstrated that the North and the South were “radically different.”⁶

The battle over sectional difference resulted in a total war that consumed the nation for four long years. At its heart, the Civil War was a political conflict that forced the South to choose disunion or union. It forced southerners to choose their loyalty: loyalty to their people, however conceived, or loyalty to their nation, however constructed; it forced southerners to appropriate old traditions in an effort to reconstruct new ones; and it forced southerners to redefine their patriotism. The southern concept of patriotism was constructed upon a faithfulness to a particular

⁵ David Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge: Harvard University Press, 2001), 1; James M. McPherson, *Writing the Civil War: The Quest to Understand* (Columbia: University of South Carolina Press, 1998), 174; Eugene Genovese, *A Consuming Fire: The Fall of the Confederacy in the Mind of the White Christian South* (Athens: University of Georgia Press, 1998), 237.

⁶ Eric Foner, Review of *Race and Reunion* by David Blight. *New York Times Book Review*, March 4, 2001; Robert Penn Warren, *The Legacy of the Civil War* (Lincoln: University of Nebraska Press), xi; Eugene Genovese, conversation with the author in seminar, June 2004, Athens, Georgia.

place and people in their past, not upon some abstract idea such as “democracy,” “freedom” or “union,” principles generating few sparks in ordinary men’s minds unless they were conceived as synonyms for personal and familial security and self-regard. Honor was seen as for southerners as their “theology,” one “endowed with sacred symbolism.” The “cardinal principle of honor was family defense,” and “war was seen as preferable to dishonor.”⁷ As southerners with a distinct identity separate from that of the North, many Georgians believed in traditional notions of patriotism and honor. Some Georgians such as James Wayne acknowledged that while the South was distinct, so too were the states that comprised it.⁸

James Wayne served on the United States Supreme Court during one of the most pivotal and transformative periods of American history. Andrew Jackson appointed Wayne to the court in 1835, and his selection was applauded by the northern press, which hailed Wayne “a gentleman, scholar, and friend of the Union.” He served briefly under John Marshall, until the highly revered chief justice died in 1836. Upon the death of the long-serving and controversial chief justice, many in the nation felt “melancholy to reflect that such men . . . must grow old, become infirm and die.” Wayne’s good friend, Roger B. Taney of Maryland, assumed Marshall’s position as chief justice, and the two southerners embarked upon a

⁷ Michael Johnson, *Toward a Patriarchal Republic: The Secession of Georgia* (Baton Rouge: Louisiana State University Press, 1977); Bertram Wyatt-Brown, *Southern Honor* (New York: Oxford, 1982), viii and 112; and Bertram Wyatt-Brown, *Honor and Violence in the Old South* (New York: Oxford, 1986), vii and 7; Varon, *Disunion!*, 7.

⁸ Peter Kolchin, *American Slavery, 1619-1877* (New York: Hill and Wang, 2003), 171.

mostly affectionate but sometimes contentious relationship that lasted thirty years. Wayne served on the Supreme Court until his death in 1867. Though a slave owner from Savannah, Georgia, Wayne vehemently opposed secession and remained loyal to the Union when Georgia voted to secede from the Union in January 1861 and formally joined the Confederacy a month later. While the press periodically commented on the makeup of the court . . . literally . . . and designated Wayne “the handsomest man on the bench,” he was no judicial flower pot; Wayne served on the U.S. Supreme Court from the Age of Jackson, through the Civil War and into Reconstruction, and during his nearly thirty-three-year tenure, as will be seen, he wrote opinions and influenced decisions in some of the most controversial, groundbreaking, and significant cases of the antebellum era.⁹

Putting in practice the theory of nineteenth-century military theorist Carl von Clausewitz that “war is nothing but a continuation of political intercourse, with a mixture of other means,” the Civil War divided the nation on many levels, from the political to the personal. Wayne’s family was not immune to this sad fact. While James Wayne retained his seat on the U.S. Supreme Court after Georgia seceded, his son, Major Henry C. Wayne, resigned his position in the U.S. Army and became

⁹ *The Daily Atlas* (Boston, MA), December 12, 1834; *Niles Weekly Register*, March 26, 1831; Gustavus Meyers, *History of the Supreme Court of the United States* (Chicago: C. H. Kerr and Co., 1918); see also Bernard Schwartz, *A History of the Supreme Court* (New York: Oxford University Press, 1995); for the Taney-Wayne relationship see Lawrence, *Southern Unionist* and James F. Simon, *Lincoln and Chief Justice Taney: Slavery, Secession and the President’s War Powers* (New York: Simon and Schuster, 2006), 29; *The New York Herald*, January 25, 1847.

Adjutant and Inspector General of the State of Georgia. Later, Henry Wayne served as a major general in the Confederate army and helped defend Savannah against Sherman's advance in December 1864. With father against son in the mighty struggle that was to come, the Civil War, for the Wayne family, was personal. The personal divisions of the Wayne family reflected the political divisions in Georgia in the antebellum period.¹⁰

While he served on the court, Wayne was silent about his presidential aspirations and never indicated if his political ambitions included the highest office in the nation; however, he was often considered as a candidate for president by the Democratic Party and later by the some in the Republican Party. Because he was cast as a "Jackson man," he was considered to be a candidate to succeed Jackson in 1836. Jackson's vice president, Martin Van Buren, became the nominee, and even though Wayne served on the Supreme Court at the time, he vigorously campaigned for the New Yorker during the summer and fall of 1836, this in spite of the fact that Georgia was not inclined to vote for a northern candidate or a Jackson successor.¹¹

¹⁰ *Niles Weekly Register*, November 24, 1864; in a letter Henry C. Wayne wrote to William T. Sherman, June 1876, Wayne defended himself against allegations of cowardice and his inability to hold the line against Sherman, who was unflattering of Wayne's leadership in his memoirs in *Letters of William T. Sherman*; Carl von Clausewitz, *On War*, Vol. 3, J. J. Graham, trans. (London: Paul, Trench and Trubner, 1908), 121; Alexander A. Lawrence, *James Wayne: Southern Unionist* (Chapel Hill: University of North Carolina Press, 1943).

¹¹ *Daily Cleveland Herald*, (Cleveland, OH) June 4, 1836

Though active in local, state and national politics throughout the 1840s, Wayne was not considered as a possible presidential candidate again until the 1850s. In 1856, Wayne's name was mentioned as a possible candidate for president, but this time by elder statesman and lifelong Democrat Thomas Hart Benton. In the 1856 presidential election, Benton was an early advocate of Wayne over his own son-in-law and ultimate Republican standard-bearer, John C. Fremont. Benton thought it should be "some such man as Justice Wayne of Georgia, as the man unconnected with the slavery contest, who ought to be taken up by the people for the Presidency."¹²

In 1860, it was Benjamin Rush, Pennsylvania lawmaker and grandson of Dr. Benjamin Rush, founding father and signer of the Declaration of Independence, who advocated for Wayne's candidacy for president during that tumultuous election year. Rush reported that many in the North viewed Wayne's candidacy with "much enthusiasm." Rush suggested that the uncontroversial and nonpartisan Wayne would be a compromise candidate who would hold together both the Democratic Party and, quite possibly, the nation. Rush believed Wayne was "an entirely new man . . . from the extreme South" who was "moderate in his views," "a conservative statesman, educated at the North, and a man of honor." Rush believed Wayne's

¹² *The Daily South Carolinian* (Columbia, South Carolina), April 24, 1856; Varon, *Disunion!*, 270.

views were “broad enough and strong enough for all the friends of the Union . . . North, South, East and West.”¹³

Presidential possibilities were minor marks on the long list of Wayne’s political accomplishments. Wayne’s career, both in Georgia before his tenure on the Supreme Court and in Washington while serving on the court, has been largely overlooked. Some encouraged Abraham Lincoln to choose Wayne to succeed Chief Justice Taney upon the Marylander’s death in 1864, but by this time Wayne was in poor health. Lincoln probably chose Salmon P. Chase over Wayne, the senior justice on the court at the time, for this reason. In considering the possibility of Wayne to replace Taney as chief justice, Lincoln may have hoped to signal to the South his desire to bring the states of the Confederacy back into the Union with honor and without malice. Selecting a southerner as chief justice, albeit one considered a traitor by many in the South, might have been one way of conveying those intentions. In a similar line of reasoning, Lincoln’s running mate in the 1864 election, Andrew Johnson of Tennessee, was selected, in part, as an effort to signal to the South that Lincoln was open to a peaceful reunion and a cooperative reconstruction.¹⁴

¹³ Benjamin Rush to James M. Wayne, June 10, 1857 and June 18, 1857; Benjamin Rush to James M. Wayne, June 9, 1860. James M. Wayne Papers. The Georgia Historical Society, Hodgson Hall, Savannah, Georgia.

¹⁴ Simon, James F., *Lincoln and Taney: Slavery, Secession and the President’s War Powers* (New York: Simon and Schuster, 2006), 260; Goodwin, Doris Kearns, *Team of Rivals: The Political Genius of Abraham Lincoln* (New York: Simon and Schuster, 2006), 681; *The Daily Cleveland Herald*, (Cleveland, OH) June 9, 1864.

James Wayne's slow descent into historical obscurity comes at the hands of several forces. His role in Georgia history is mostly forgotten, in part, because many in Georgia considered Wayne a traitor when he remained loyal to the Union in 1861. Because of this, Wayne has remained outside the mainstream of historical inquiry. Over time, the myth of the Lost Cause and the memory of the Civil War at the South have not included the stories of those characterized as traitors like Wayne. He has long been overshadowed by Georgia's more famous political players, giants such as Alexander Stephens, the vice president of the Confederacy; Robert Toombs, Confederate Secretary of State and Confederate general; Howell Cobb, the first president (provisional) of the Confederacy; and Joseph Brown, Georgia's controversial wartime governor. Though Wayne stood long in the shadow of these political giants after the Civil War, evidence suggests that during the antebellum period many of Georgia's political leaders stood on Wayne's shoulders to develop their varied political ideologies and cultivate their own political careers. In spite of his influence, Wayne's significant contributions to Georgia and the nation have escaped the historical account.¹⁵

The Civil War always has been and is still a hot topic for the professional historian and for popular consumption. As such, interest in southern Unionism increasingly has been a topic of scholarly research and publication over the last

¹⁵ Ulrich B. Phillips, *The Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb* (New York: DeCapo 1970); William C. Davis, *The Union that Shaped the Confederacy: Howell Cobb and Alexander H. Stephens* (Lawrence: University of Kansas Press, 2001).

decade, but Georgia Unionism, particularly its many manifestations and expressions in the decades before the Civil War, is still an area worthy of further examination.¹⁶ As local and regional studies of the South began to uncover a greater number of Unionists, it was only a matter of time before stories of southern Unionists began to challenge the predominance of social history, with its emphasis on group behavior. In social history, individual people “are ignored, entirely absent, victims of historians’ painstaking analysis of group behavior.” The narrative that follows alternates between an interrogation into the life of Wayne and an examination of the behavior of the groups to which Wayne belonged.¹⁷

In this dissertation, James Wayne hopefully will serve as a window that will attempt to allow an additional view into the nature of Georgia Unionism prior to the Civil War. How Wayne transmitted his identity, values and views in light of the contingencies he encounters while being a member of various political, economic and social collectives offers insight into both individual and collective identity. This work examines Wayne’s legal opinions before and after his tenure on the court. In addition, it will examine his evolving political ideology. Wayne was one of Georgia’s economic elite. Because of the significance of his economic position, this study will explore his personal and public economic behavior over a period of several decades. Finally, this project will explore Wayne’s and Georgia’s evolving moral and social

¹⁶ William Freehling, *The South vs. The South* (New York: Oxford University Press, 2001).

¹⁷ Eric H. Walther, *The Fire-Eaters* (Baton Rouge: Louisiana State University, 1992), 4.

views in regard to race and slavery. *Writ large*, this work seeks to include James Wayne among Georgia's more heavily examined antebellum political operators. The two-fold task of this project is to return James Wayne to his place in Georgia history and to use Wayne as a means to understand Georgia's attitudes about secession, disunion and union. Since this project is not a cradle-to-grave biography, it will attempt to present Wayne's biography as what Eugene Genovese calls the "great man in abstract."¹⁸

Demonstrating Wayne's uniqueness among his peers, prior to 1900 only four justices served on the court for more than thirty years: John Marshall, Stephen Field, Joseph Story, and Wayne. Wayne served as associate justice under three legendary chief justices: John Marshall, Roger Taney, and Salmon Chase.¹⁹ Wayne was the first Georgian to serve on the court, and served from 1835 until 1867, two years after the collapse of the Confederacy. Two other southern justices, Justice Catron of Tennessee and Justice Campbell of Alabama, with whom Wayne frequently locked horns, both resigned their seats on the bench once the Civil War began. Why Wayne remained loyal to the Union and how he defined, expressed and defended his unique brand of Unionism are goals of this project. Several broad themes support this work, and the pages that follow are certainly biographical, but the

¹⁸ Eugene Genovese, conversation with the author. June 24, 2005, Athens Georgia; Bertram Wyatt-Brown, *The House of Percy: Honor, Melancholy and Imagination in a Southern Family* (New York: Oxford, 1994), vii.

¹⁹ Timothy S. Huebner, *The Taney Court: Justices, Rulings and Legacy* (Oxford, England: ABC-CLIO, 2003), 31-105.

primary topics that James Wayne will help us understand are the many dimensions of Georgia's enduring and overlooked Unionism. Sources in Wayne's own hand, such as letters, receipts of exchange, and other correspondence, are infuriatingly scarce because his wife allegedly burned all of her husband's personal papers upon his death. Why she would destroy the important artifacts of a man of major state and national importance and who served as president of the Georgia Historical Society for nearly thirty years defies explanation. One could only speculate as to what secrets would be revealed in Wayne's personal correspondence, but Wayne's active life, extensive travels throughout the South and nation, and his longevity on the Supreme Court provide ample evidence of who he was and how he defined himself in the public sphere and how he articulated his unique brand of Unionism.²⁰

Secession and the Location of Sovereignty

"The people of the South," said Abraham Lincoln in 1860, "have too much good sense to ruin the government."²¹ Abraham Lincoln judged incorrectly. In the months before Lincoln's election in November 1860, several southern states prepared to secede or to debate whether or not to remain in the Union. The Democratic Party, split into sectional factions and in disarray over the issue of

²⁰ Bernard Schwartz, *A History of the Supreme Court*, (New York: Oxford, 1993), 98, 113, 153, and 116.

²¹ Abraham Lincoln, *The Collected Works of Abraham Lincoln* Vol. 4, Roy Basler, ed. (Springfield, Illinois: University of Illinois Press, 1955), 95.

slavery, lost the 1860 presidential election to dark-horse and “Black Republican” candidate Abraham Lincoln.²² Lincoln’s Republican Party, new on the political scene in 1856 and comprised mostly of northerners and Westerners, was perceived to threaten the existence of the peculiar institution and the southern way of life. Lincoln and his party took advantage of the politically dismantled Democrats and won the Presidency, but lost the Union. To the white South, the “Rubicon was passed.”²³

Before and after his election, Lincoln promised to preserve the Union and warned the South against secession. He would, he promised the South, use force to preserve the nation, just as Andrew Jackson had promised thirty years before during the Nullification Crisis.²⁴ Though Lincoln won a decisive electoral victory with 180 or 55% of the electoral votes, he polled less than forty percent in the popular vote.²⁵ This was hardly a mandate. Regardless, Lincoln won. As a result of Lincoln’s election, southern governors and state legislators called for conventions to

²² See “1860 Presidential Election Results” available from <http://www.uselectionatlas.org/USPRESIDENT/GENERAL/pe1860.html>; Internet; accessed 2 May 2009; Varon, *Disunion!*, 330.

²³ Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Antebellum South* (New York: Knopf (1956).

²⁴ See Robert V. Remini, *Andrew Jackson* (New York: Twayne, 1966); *Jacksonian Era* (Arlington Heights, Ill.: H. Davidson, 1989); *The Legacy of Andrew Jackson: Essays on Democracy, Indian Removal and Slavery* (Baton Rouge: Louisiana Southern University Press, 1988). In addition, see the works of Arthur M. Schlesinger, *The Age of Jackson* (Boston: Little, Brown and Company, 1945).

²⁵ See “1860 Presidential Election Results.”

determine the appropriate response to the election of a “black Republican” as president. The South feared that Lincoln was not just opposed to the expansion of slavery but also that he was an abolitionist, intent to end slavery, not just prevent its expansion into the territories and future states. Like all northerners, so went the dominant view of southerners at the time, Lincoln was a liar whose intent was to violate the constitutionally guaranteed right to own and transport a particular and peculiar type of property.²⁶

South Carolina led the way out of the Union, and in the three months following Lincoln’s election, ten other southern states followed suit. A vacuous sense of uncertainty hung over all parts of the nation through the late fall of 1860 and winter of 1861. Most of President James Buchanan’s cabinet, many of whom were southerners, such as Howell Cobb of Georgia, resigned *en masse* after the election. This contributed significantly to the sense of disarray and fostered fatalistic feelings in the nation. By February 1861, one nation seemed to be at the brink of perishing, as a new nation, the Confederate States of America, was formed. Though South Carolina’s radical departure from the Union was unprecedented, the discourse of disunion was not. Though perceived by some as a threat and a prophecy, disunion and the mechanism that made it possible, secession, were

²⁶ *Daily National Intelligencer*, (Washington, DC) Tuesday, December 18, 1860; Varon, *Disunion!*, 338.

always conceived as a measure of last resort, particularly for James Wayne and for many in Georgia.²⁷

In the late fall and winter of 1860, citizens across the South sent delegates to their respective state conventions to vote yes or no to the question of secession.²⁸

Though southern state houses debated secession in the winter of 1860-61, the secession debate and its many forms permeated the national political discourse from the collapse of the Articles of Confederation in 1787 to the founding of the Confederacy in 1860. The history of the nation prior to the Civil War is pierced with fierce debates that led to compromises to produce consensus. Sometimes consensus was elusive, but always within reach.²⁹

During the constitutional Convention in Philadelphia, Benjamin Franklin witnessed repeated contentious and heated debates throughout the long, hot summer of 1787. He doubted the convention would result in a “more perfect union” or any union at all. Throughout the convention, Franklin famously pondered the sun that was carved on the president’s chair, which was sitting on the dais in

²⁷ William Freehling, *The Road to Disunion: Secessionist Triumphant, 1854-1861* (New York: Oxford University Press, 2007); Varon, *Disunion!*, 2-18.

²⁸ Michael P. Johnson. *Toward a Patriarchal Republic: The Secession of Georgia*

²⁹ Joseph Ellis, *Founding Brothers: The Revolutionary Generation* (New York: Random House, 2000), 9-10.

front of the convention delegates, and wondered if the sun carved on the chair was a rising sun or a setting sun: one rising or setting on the new nation.³⁰

In 1799, James Madison's Virginia Resolution expressed his fear that the national government was transforming "the present republican system of the United States, into an absolute, or at best a mixed monarchy." Madison believed that centralized federal power was encroaching upon state rights. Madison articulated what would become the justification for secessionist threats from both sections of the nation for over sixty years. In his interpretation of the Constitution he helped author, Madison declared:

That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.³¹

³⁰ Ibid., 42; Walter Isaacson, *Benjamin Franklin: An American Life* (New York: Simon and Schuster, 2004), 247. Joseph Ellis, *Founding Brothers: The Revolutionary Generation* (New York: Vintage, 2002).

³¹ For the Virginia Resolution, see "Virginia Resolution" available from *The Avalon Project* at Yale University, http://avalon.law.yale.edu/18th_century/virres.asp; Internet; accessed 4 May 2009.

In spite of his authorship of the *Virginia Resolutions*, Madison believed that “disunion would come only if people were misled.”³²

Echoing James Madison, fellow Virginian Thomas Jefferson posited that individual or several states could nullify laws. Jefferson wrote emphatically that:

The principle and construction contended for by sundry of the state legislatures, that the general government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism; since the discretion of those who administer the government, and not the constitution, would be the measure of their powers: That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a Nullification, by those sovereignties, of all unauthorized acts done under color of that instrument, is the rightful remedy³³

Though Congress rejected the Virginia and Kentucky Resolutions, Jefferson and Madison clearly articulated the intense fear of federal power as well as the attendant mistrust of the national government that became hallmarks of southern identity. For seven decades, from the framing of the Constitution to the founding of the Confederate States of America, states’ rights and the location of sovereignty in the federal system had been hotly contested. Regardless of how frequent or fiery the debates, secession was always seen as a measure of last resort, particularly in Georgia. This was not the case for Georgia’s neighbor to the northeast, South

³² Degler, *The Other South*, 103.

³³ For the Kentucky Resolution, see “Kentucky Resolution” available from *The Avalon Project* at Yale University, http://avalon.law.yale.edu/18th_century/kenres.asp; Internet; accessed 4 May 2009; Ellis, *Founding Brothers*, 77-84

Carolina. During the Nullification Crisis of 1830-31, President Andrew Jackson threatened to use any means necessary to enforce tariffs and force South Carolina to stand down and moderate its Nullification stance.³⁴

Though a strong nationalist in his early political career, John C. Calhoun of South Carolina and those who followed him often leaned on the foundations of the Virginia and Kentucky resolutions when building their case for Nullification and, later, secession. Calhoun, “the great nullifier,” stood against what he perceived to be an oppressive and dictatorial federal government that threatened the southern way of life. In articulating the “Carolina Doctrine,” Calhoun said, “I presume we will hear no more of Nullification being a modern invention . . . and will find more favor when traced to the Virginia and Kentucky Resolutions of ’98 and ’99.” Calhoun believed that Nullification was a “peaceable act and an efficient remedy against an unconstitutional act of the General Government.”³⁵

While the seemingly perpetual and emphatic cries of Nullification, states’ rights, and secession seem to pervade the popular historical record and the memory of the Old South, the South was not the only section of the nation to suggest

³⁴ Ibid., 77-78; Daniel Farber, *Lincoln’s Constitution* (Chicago: University of Chicago Press, 2003), 30-31; Robert V. Remini, *Andrew Jackson* (New York: Harper Collins, 1969), 155.

³⁵ H. Lee Cheek Jr., *John C. Calhoun: Selected Writing and Speeches*, (Washington: Regnery, 2003), 365-398, and 431; Charles M Wiltse, *John C. Calhoun: Nullifier, 1829-1835*, (New York: Russell & Russell, 1949), 198-211; David F. Ericson, “The Nullification Crisis, American Republicanism, and the Force Bill Debate,” *Journal of Southern History*, vol. 61 (1995): 249; *United States’ Telegraph* (Washington, DC) March 22, 1830; *National Daily Intelligencer* (Washington, DC), July 28, 1830.

secession as a means of resolving discontent with the nature of the Union. During the War of 1812, for example, some representatives of the Hartford Convention advocated secession and dissolution of the Union “by reason of multiplied abuses of bad administrations.”³⁶

New England radicals continued to threaten secession from 1830 to 1860, but this time slavery was the cause. William Lloyd Garrison, labeling a nation complicit with the South and acquiescing to the will of the slaveholders a “sinful Union,” suggested, along with fellow abolitionist Wendell Phillips, “disunion” and “repeal” of the sinful Constitution as an option. Garrison said, “down with the federal constitution” as “a league with death and a covenant with hell.”³⁷ Another New England abolitionist, Henry Clarke Wright, reflected Garrison’s view when he warned in 1842 that slavery must be abolished, or “we shall dissolve the Union.”³⁸

³⁶ *National Daily Intelligencer* (Washington, DC), July 28, 1830; See “The Hartford Convention” available from *The Avalon Project* at Yale University, http://avalon.law.yale.edu/19th_century/hartconv.asp; Internet; accessed 4 May 2009. James M. Banner, Jr., *To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts, 1789–1815* (New York: Alfred A. Knopf, 1970).

³⁷ James Brewer Stewart, *Wendell Phillips: Liberty’s Hero* (Baton Rouge: Louisiana State University Press, 1986), 109–112; Bruce Laurie, *Beyond Garrison: Antislavery and Social Reform* (New York: Cambridge University Press, 2005), 5. See “On the Constitution and the Union (12/29/1832)”, by William Lloyd Garrison, available from <http://fair-use.org/the-liberator/1832/12/29/on-the-constitution-and-the-union>; Internet, accessed 30 April 2009.

³⁸ Henry Clarke Wright, “The Only Alternative—Dissolution of the Union, or the Abolition of Slavery,” *The Liberator*, April 29, 1842; William Lloyd Garrison, “Dissolution of the Union,” *The Liberator*, June 6, 1845; Wendell Phillips,

The American Anti-Slavery Society, led by Garrison, adopted as its official motto: “No Union with Slaveholders!”³⁹

Yet in spite of the periodic and sometimes emphatic threats of disunion from both the North and the South, traditional historical wisdom seems to couple the terms “The South” and “secession,” which contributes to the creation of a false identity of the American South and suggest the inevitability of secession and Civil War at the hands of Rebel “fire eaters.”⁴⁰ But this was hardly the case. Contrary to mythical renditions of secessionism of the Old South, most of the southern states were, as historian Carl Degler claims, almost “militantly Unionist” in the decades leading up to the Civil War. And no more was this the case than in Georgia.⁴¹

“Selections,” *The Liberator*, November 7, 1845; *The New York Herald* (New York, NY) September 16, 1860.

³⁹ See also *The Anti-slavery History of the John-Brown Year: Being the Twenty-seventh Annual Report of the American Anti-Slavery Society*, By the American Anti-Slavery Society, Executive Committee Published by American Anti-Slavery Society, 1861 (New York: Oxford University)

⁴⁰ Eric Foner claims that secession was an “inevitable conclusion” to the series of events leading up to the Civil War. See Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1867* (New York: Harper and Row, 1989); *A Short History of Reconstruction* (New York: Harper, 1990).

⁴¹ Carl Degler, *The Other South: Southern Dissenters in the Nineteenth Century* (New York: Harper and Row, 1974); In addition, see Jacqueline Jones, *Saving Savannah: The City and the Civil War* (New York: Alfred A. Knopf, 2008). The most recent account of Unionism and the endurance of secessionist thought throughout the South is Elizabeth Varon, *Disunion!: The Coming of the American Civil War, 1789-1859* (Chapel Hill: University of North Carolina Press, 2008). For the endurance of Unionism throughout the Civil War is Edward Ayers, *In the Presence of Mine Enemies: The Civil War in the Heart of America, 1859-1863* (New York: W. W. Norton, 2004).

Even though Georgia joined the Confederacy, and Unionist sentiment throughout the South seemed ultimately to have collapsed after Lincoln's election in November 1860, evidence suggests that Georgia, "unique among its neighbors," was not necessarily part of a monolithic South and stood foursquare for Union, at least until its leaders perceived no other option existed than to cast its lot with its southern neighbors. In spite of the fact that Georgia ultimately joined the Confederacy, many in the state were well motivated on many levels to resist secession in the decades leading up to the Civil War, during the pivotal months after Lincoln's election, and even throughout the conflict. Granted, most whites in Georgia were unhappy with Lincoln's election, but Georgia's decision to secede was not necessarily causally related to Lincoln's election. Consequence does not imply causation. Had Georgia remained in the Union in 1861, the Confederacy would have lost the linchpin that connected the eastern and western legs of the fledgling nation. With Georgia out of the Confederacy, the Civil War likely would have been quite brief, if not averted.⁴²

Even Alexander Stephens, who later became the Vice President of the Confederate States of America, doubted that his home state of Georgia would cast its lot with South Carolina and the other "fire eaters" when the Georgia Secession Convention met in January 1861. Prior to his famous "Cornerstone Speech" which linked slavery and secession in no uncertain terms, a wavering Stephens said, "if we

⁴² Johnson, *Toward a Patriarchal Republic*, xxiii.

had but one more man” to help him and fellow Unionist delegates rally his fellow Georgia cooperationists, then secession might have been avoided. Union and disunion, therefore, depended on Georgia. Georgia, according to historian William W. Freehling, was the “hinge” that was critical to connecting the upper South with the lower South of the Confederacy.⁴³

Echoing the sentiments of Abraham Lincoln and Alexander Stephens, James Wayne said in December 1860 that Georgia would not secede “because four-fifths there oppose secession.”⁴⁴ While Wayne, a Savannah native and staunch Unionist, was wrong about Georgia seceding from the Union, evidence suggests that he was correct about Unionist sentiment in the Georgia on the eve of the Civil War. Regardless of Wayne’s widely published opinion of the slim possibility of Georgia voting in favor of secession, Georgia delegates voted to secede from the Union in January 1861, though by a very narrow margin. According to historian Michael Johnson, the vote for delegates for and against disunion, a vote which served as proxy for a popular vote to secede in Georgia, was 42,744 in favor of secession and 41,717 against. Michael Johnson points out that the true results of the vote were suppressed for years. The popular numbers reflected not a referendum on

⁴³ William W. Freehling, *The Road to Disunion: Secessionists at Bay, 1776 – 1854* (New York: Oxford University Press, 1990), 5-6. Georgia, according to Freehling, was the “hinge” that was critical to connecting the upper South with the lower South of the Confederacy.

⁴⁴ *New York Herald*, November 20, 1860.

secession, but, rather, a vote for secessionist-leaning delegates or unionist-leaning delegates. Georgia was never given the option for a popular vote on secession.⁴⁵

Why, then, did Georgia secede if a majority of Georgians purportedly opposed secession? Why did Georgia join the Confederacy if, as James Wayne claimed, a majority of Georgia residents detested the thought of disunion? If Unionist sentiment was so strong and almost militant, why did Georgia cast its lot with South Carolina and the other states of the Confederacy? While I am not the first to ask these vexing questions, nor I am I the first to direct inquiry at southern Unionism, Georgia's Unionism merits further inquiry because, as historian Michael P. Johnson said, "Georgia was somewhat atypical" compared to its neighbors. Further demonstrating Georgia's vehement opposition to secession was James Wayne's friend and fellow Georgia Unionist, John Elliot Ward, who before the war chose to "denounce that miserable abortion known as the southern Confederacy." Though their high numbers lend support to the "unique among its southern neighbors" theory advanced by this narrative, many Georgia Unionists "succumbed to southern patriotism" and buckled under the pressure of the fire-eaters.⁴⁶

Georgia's atypical nature during the antebellum period inspires this inquiry. Contemporary observers in the North and the South commented on Georgia's unique position among its southern neighbors, and the state's political tendencies,

⁴⁵ Michael P. Johnson, *Toward a Patriarchal Republic: The Secession of Georgia*, 63.

⁴⁶ Ibid., 17; William M. Gabard, "The Confederate Career of John Elliot Ward," *Georgia Historical Quarterly*, 55(2) (March 1971): 177-202, 187 and 177.

economic diversity and social possibilities emphasized in this study will attempt to illustrate this view. While finding the answers to why Georgia seceded may prove elusive, this study will address and attempt to answer the questions that have baffled historians and the popular audience since the era that is the subject of this inquiry. Some of these questions include: Why would a majority of Georgia leaders be willing to exchange its position in one imperfect union of states only to join another more impractical one? What factors led to Georgia's decision to secede? And could have anyone or anything have prevented Georgia from choosing disunion? Alexander Stephens said that "the presence of one or two strong Union men could have saved the state from seceding." Stephens wished one more man was with him to help persuade Georgia leaders to reject secession and remain in the Union, and though it is purely conjecture, it is possible that James Wayne was one of the men Stephens sought.⁴⁷

⁴⁷ Thomas E. Schott, *Alexander H. Stephens of Georgia: A Biography* (Baton Rouge: Louisiana State University Press, 1988); William C. Davis, *The Union that Shaped the Confederacy: Robert Toombs and Alexander H. Stephens* (Lawrence: University Press of Kansas, 2001); William M. Gabard, "The Confederate Career of John Elliot Ward," *Georgia Historical Quarterly*, 55(2) (March 1971): 177-202, 177.

“Our Good and Faithful Servant”⁴⁸

James Wayne is an obscure and forgotten figure, and the meager biographical information about him and his family frustrates any deep probe into his personal, professional or political relationships. The spottiness of available sources renders any study of Wayne a bit uneven. The oblique angles of observation into his life and into the lives of his family members yield sporadic clarity. Nonetheless, his rich story, long overshadowed by examinations of Georgia’s hallowed antebellum political triumvirate of Howell Cobb, Robert Toombs, and Alexander H. Stephens, merits more than the singular biography penned over sixty years ago.⁴⁹ Further, Lost Cause mythmakers, who manufactured a nostalgic version of the southern past in the decades after the Civil War, had little interest in securing the memory of someone like Wayne who was considered a traitor.⁵⁰ The “reminiscence industry,” as historian David Blight calls it, seldom sought adherents to the Union as raw material for its product. Great men of the battlefield such as Robert E. Lee, Jeb Stuart, William T. Sherman and Ulysses S. Grant, and powerful politicians such as

⁴⁸ *Boston Courier*, September 13, 1832.

⁴⁹ Alexander A. Lawrence, *James Wayne: Southern Unionist* (Chapel Hill: University of North Carolina Press, 1943).

⁵⁰ Charles Dew, *Apostles of Disunion* (Charlottesville: University of Virginia, 2002), 7-9 ; Charles Dew, question and answer session with the author, July 2004; David Goldfield, *Still Fighting the Civil War: The American South and Southern History* (Baton Rouge: Louisiana State University Press, 2002), xii; Fitzhugh Brundage, *The Southern Past: A Clash of Race and Memory* (Cambridge: Harvard, 2005).

Lincoln, Jefferson Davis, Alexander Stephens, and Howell Cobb dominated history's retelling well into the twentieth century.⁵¹

After the Civil War, southern heroes dominated southern History. Though considered a heroic champion of the Union and state rights prior to the Civil War, James Wayne's absence from historical accounts does not mean he was absent from history. Legendary Speaker of the House Tip O'Neill often said that "all politics is local," which would have been an accurate description of politics in the nineteenth-century Georgia.⁵² Wayne could have in no way experienced such a meteoric rise in Georgia and national politics without being politically connected, economically successful, and socially influential. James Wayne, though on the Supreme Court in Washington much of his adult life, was, through and through, a Georgia politician.⁵³

Wayne adroitly wielded his political, economic, and social influence in Georgia for over fifty years. He was connected. He was respected, revered and often referred to as "Noble Wayne." He was one of Georgia's elite. He was valued for his influence, both personal and political, and this was no more evident than after the Civil War when fellow Georgian Alexander Stephens sought Wayne's help

⁵¹ David Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge: Harvard, 2001), 2-3; Wyatt-Brown, *The House of Percy*, viii.

⁵² Thomas P. O'Neill, *Man of the House: The Life and Political Memoirs of Speaker Tip O'Neill* (New York: Random House, 1987); Freehling, *The Road to Disunion: vol. II, Secessionists Triumphant, 1854-1861*, 286; Michael Holt, *The Political Crisis of the 1850s* (New York: Wiley, 1978).

⁵³ *Augusta Daily Chronicle and Sentinel*, September 22, 1855.

to secure his release from prison when the former was arrested for treason.

Stephens wrote to a friend while languishing at Fort Warren in the fall of 1865, “see Judge Wayne; he might do something for me, perhaps.”⁵⁴

Before ascending to the Supreme Court, James Wayne lived something of a charmed but paradoxical life. He was born in 1790 outside of Savannah, Georgia. His father, Richard C. Wayne, was a failed Charles Town entrepreneur who was ostracized by his community and forced by act of the legislature of the state to leave South Carolina in 1781 because he remained loyal to the British Crown during the American Revolution. Richard C. Wayne was a traitor to his new nation. During the Revolution Loyalist sentiment quite possibly was strongest in the South, especially in South Carolina where Wayne might have found sympathy, he was none-the-less ostracized by his community and even contemplated returning to England after the war, as was the case for many Tories.⁵⁵

Deciding to remain in the United States and start over, Richard Wayne begged a favor from a distant cousin, Revolutionary War hero General “Mad Anthony” Wayne. Wayne asked his cousin to help him obtain some land and give letters of introduction to prominent Savannah business leaders. Wayne moved his

⁵⁴ Thomas Gamble, *Savannah Duels and Duellists, 1733-1877* (Athens: University of Georgia Press, 1928), 231; Thomas Schott, *Alexander H. Stephens of Georgia: A Biography* (Baton Rouge: Louisiana State University Press, 1988), 229; Alexander Stephens to Mr. R. J. Parrot of Cartersville, Georgia, August 4, 1865, *Recollections of Alexander H. Stephens* (New York: Doubleday, 1866 and 1910), 414-415,

⁵⁵ Alexander A. Lawrence, *James Wayne: Southern Unionist* (Chapel Hill: University Press of North Carolina, 1943), 4-22.

family from Charles Town, now Charleston, across the river to Savannah, Georgia. Through Mad Anthony Wayne's influence, Richard Wayne acquired land on the Savannah River and, more importantly, connections to Savannah's elite. Richard Wayne made his fortune as a rice planter on Red Knoll, a plantation on Argyles Island.⁵⁶ Through his personal connections and professional aptitude, he redeemed himself and gradually removed the stigma of his Tory past. The memory of Richard Wayne's disloyal past faded, in spite of the efforts by some of his personal enemies and political adversaries in Savannah to publish reminders of his traitorous past. The Waynes quickly became part of the social elite of Savannah.⁵⁷

Richard Wayne entered politics and served the growing town of Savannah as alderman and city councilman. During one political challenge, Richard Wayne again called on his more famous cousin, "Mad Anthony" Wayne, to make an appearance during a campaign rally in Savannah to remind voters of his connection to the heroes of the Revolution. Richard Wayne's past always haunted him, and political rivals tried to use his loyalty to the British and disloyalty to the United States to influence voters.⁵⁸

Richard Wayne and his wife, Mary, raised thirteen children on Red Knoll and their son, James Moore, the twelfth child, was afforded the best education and

⁵⁶ Ibid.

⁵⁷ Ibid.; *The Columbian Museum and State Intelligencer* (Savannah, Georgia), March 6, 1796, December 9, 1796, November 21, 1797, April 14, 1803,

⁵⁸ Ibid; *The Georgia Gazette* (Savannah, Georgia), January 7, 1802, February 7, 1802.

accorded all the accoutrements fitting the son of one of Savannah's planter elite. Red Knoll Plantation, at its peak, boasted nearly one hundred slaves and sold the rice produced on his sprawling plantation to satisfy the growing demand of both domestic and foreign markets of the Atlantic world. Though a wealthy planter, Richard Wayne was not merely a farmer, for he skillfully wielded his entrepreneurial acumen and negotiated the often choppy conditions that characterized the economy of coastal Georgia. In addition to Red Knoll, Richard Wayne owned two other plantations, Wayne Mountain and Wayne Hill, as well as a general merchandising and trading company, Wayne's Wharf.⁵⁹

Though Wayne's family was quite large, none of his brothers and sisters reached the level of prominence and fame attained by the youngest son. Little is known about Wayne's family, but a nephew of James Wayne served as mayor of Savannah in the mid 1800s. James Wayne attended the College of New Jersey, which was later to become Princeton, and though evidently bright, he was not known to be a particularly attentive student. While at the College of New Jersey, Wayne engaged in what appears to be a rather common collegiate experience: excessive social activity. The jocular Wayne was often cited by college officials for his absence from lecture. After graduating from the College of New Jersey in 1808, and at the urging of his father, Wayne read law under the tutelage of Judge Charles Chauncey in New Haven, Connecticut. Upon completion of most of his studies with

⁵⁹ Huebner, *The Taney Court*, 85; Lawrence, *Southern Unionist*, 19.

Judge Chauncey, Wayne returned to Savannah in 1808 and apprenticed under his brother-in-law, prominent Savannah attorney, Richard M. Stites. Thereafter he practiced law in Savannah with a partner, Samuel M. Bond.⁶⁰

Richard Wayne died in 1808, the same year James Wayne returned to Savannah, and left Red Knoll Plantation and nearly one hundred slaves to James. In 1813, he married a young woman he had met while in school in New Jersey, Mary Johnson Campbell, and from this union came three children, only two of whom survived to adulthood.⁶¹

During the War of 1812, Wayne served with the Georgia Hussars, a militia regiment tasked with protecting the Georgia coast, but his regiment rarely saw action. Nevertheless, the Savannah press labeled Wayne a hero. After the War of 1812, Wayne continued to practice law, but decided to enter Savannah politics, ran for mayor of Savannah, and was elected for a two-year term in 1818. Wayne's star was on the rise.⁶²

In 1818, Wayne purchased a corner lot at the intersection of Oglethorpe Avenue and Bull Street and began construction of a home that still sits across from

⁶⁰ Lawrence, *Southern Unionist*, 20.

⁶¹ *The Georgia Journal* (Milledgeville, Georgia), March 11, 1812; *Ibid.*, 19-20.

⁶² *The Georgia Journal* (Milledgeville, Georgia), October 11, 1815, January 24, 1816; Lawrence, *James Wayne: Southern Unionist*, 24.

the Independent Presbyterian Church.⁶³ Wayne's home was in very close proximity to the town homes of the rising planter and industrial elite.⁶⁴ His neighbors in Savannah included Lamars, Andersons, Cuylers, Barriens, Gordons, Kinseys, and others whose families had been in Savannah since the days of James Oglethorpe, Georgia's founder. Historic in its own right for a multitude of reasons which will be recounted later, the Wayne House, which took two years to complete, hosted President James Monroe when he visited Savannah in 1820. Mayor Wayne, just twenty-nine years old, served as master-of-ceremonies during the Presidential visit and escorted Monroe on his tour of the city.⁶⁵

In 1820, shortly after Wayne's term as mayor ended, the worst fire in Savannah's history destroyed much of the city. Papers throughout the nation reported on the "dreadful conflagration" and reported that "half of Savannah was in ruins." As the fire jumped from meticulously manicured square to meticulously manicured square, destroying all wooden structures and other buildings in its path, Savannah residents scurried from home to home to seek shelter from the raging fire, until those refuge homes came in the path of the fire. The newly constructed

⁶³ Lowry Axley, *Holding Aloft the Torch: A History of the Independent Presbyterian Church of Savannah* (Madison: University of Wisconsin, 1958).

⁶⁴ Erik Calonius, *The Wanderer: The Last American Slave Ship and the Conspiracy that Set its Sails* (New York: St. Martin's Press, 2006), 1-2. Walter Fraser, *Savannah in the Old South* (Athens: University of Georgia Press, 2003), 229.

⁶⁵ *Daily National Intelligencer*, (Washington, DC) May 20, 1819; *Raleigh Register*, and *North-Carolina Gazette*, (Raleigh, NC) May 21, 1819; Lawrence, *Southern Unionist*, 26.

Wayne mansion served as a safe house during and after the fire, and was one of the few structures to survive the fire. A generation before, a similar fire devastated the city during Richard Wayne's time on the Savannah city council. Ironically, Mayor James Wayne instituted strict fire safety measures mere months before the Savannah fire of 1820, but the inferno preceded the implementation of those measures.⁶⁶

The Waynes spent the majority of their time in Savannah, enjoying their new home, as Wayne term as mayor ended. Wayne returned to his private law practice for a couple of years, but again sought public office and was elected by the state legislature to be a municipal judge in 1822. Local politics vaulted him to the state level, and in just over a decade, Wayne became a national player. Thus began Wayne's engagement in what political scientist Lester Milbrath calls "gladiatorial activities," which is the highest level of activity in the "hierarchy of political involvement." Wayne engaged in political activity at the highest levels, and for the rest of his life, remained firmly entrenched in the complex political, social and economic nexus that made success in Georgia possible. The next chapter elaborates on Wayne's "gladiatorial activities."⁶⁷

⁶⁶ *Daily National Intelligencer* (Washington, DC), January 20, 1820; *Columbian Museum and State Intelligencer* (Savannah, Georgia), December 9, 1796.

⁶⁷ For elaboration of political participation, the gamesmanship of politics and "gladiatorial activities" of political combat see Craig A. Rimmerman, *The New Citizenship: Unconventional Politics, Activism and Service* (Boston: Westview Press, 2005); and Lester Milbrath, *The Handbook of Political Behavior* (Los Angeles: University of California, 1981), 217, 224.

While Wayne's personal accomplishments and professional benchmarks say much about the man and *what he did*, his accomplishments are also somewhat suggestive of *who he was*. A closer look exposes Wayne to be a man at center stage during one of the most transformative times in Georgia and American history, a key player in dramas that unfolded the way they did in part *because* of his role in some of the most far-reaching national and state events and legal, political, economic and moral decisions of the nineteenth century.

This study will suggest that the trajectory of Georgia's political biography, one that resulted in secession, was far from a foregone conclusion in the antebellum period and the state's economy hardly was predetermined. Some in Georgia, like Wayne, began to create conditions to break the state from the shackles that bound it to and perpetuated the firmly entrenched agrarian slave society that the South had become.⁶⁸ Throughout the antebellum era, Wayne and many in Georgia were looking for a way out of the state's dependence on slavery and for a way to end the economic dominance of the north. Some scholars claim that the long history of storied "southern separatism made the Civil War a predictable outcome."⁶⁹ Eric Foner claims that "North-South dissimilarities" rendered secession and a bloody Civil War "logical." Some have identified strong tendencies in the South to form a

⁶⁸ Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge: Harvard, 1998).

⁶⁹ Eugene D. Genovese, *The Political Economy of Slavery: Studies in the Economy and Society of the Slave South* (New York: Pantheon, 1965).

Confederate nation and exchange one union for another, a theory this study rejects. These views quite possibly use retrospective logic, presentism, and hard determinism, all of which might underemphasize the agency of potent operators who could have made outcomes less “logical” or foreordained. Over his long career, James Wayne became a potent political operator and a leader to whom many sought for an expression of their political voice.⁷⁰

A Crowded Historiography

With the sesquicentennial of the Civil War approaching, the conflict remains deeply embedded in the nation’s historical memory. Though the war lasted only four years, interest in the struggle has lasted generations. Secession studies continue to be popular among scholars and the general public, and the stacks bend under the weight of all the books written about the Civil War. Historian Daniel Rogers claims that there is something of a “crowded historiography” of the Civil War, but much of that history, for more than a half-century after the war, centered on stories of generals, tactics of battle, and legacies of a harsh Reconstruction. In the first half of the twentieth century, few historians paid much attention to slavery. In many accounts of the southern past, the valor of a vanquished South and myths of the Lost Cause overshadowed the reasons the South went to war in the first place. Forgotten in early mythical accounts of the southern past was the fact that

⁷⁰ Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (London: Oxford, 1970).

the rebellious states formed a new nation, the Confederate States of America, and challenged, by force, the American democratic experiment.⁷¹

Regarding the Civil War, historian David Goldfield claims that the “North won the war, but the South won the history.”⁷² Even though the South was a conquered, vanquished, and occupied nation, relegated to playing agricultural periphery to the industrial core of the victorious North, it still controlled the trajectory of its own biography.⁷³ “The South,” claimed the famed Robert Penn Warren “was born at Appomattox.” Warren further claimed that “in the moment of death, the Confederacy entered upon its immortality.”⁷⁴

In *The Other South*, historian Carl Degler noted that anti-secessionist southerners made a sizable and influential number before and during the Civil War. Some of those who resisted secession turned opposition into action, for James Roark notes that “over 100,000 white southerners fought for the North.” The eleven states that eventually joined the Confederacy had many similarities, and those

⁷¹ Daniel Rogers, “American Exceptionalism,” in *Imagined Histories*, 121; Peter Kolchin, *American Slavery: 1619-1877* (New York: Hill and Wang, 2003), 241.

⁷² David Goldfield, *Still Fighting the Civil War: The American South and Southern History* (Baton Rouge: Louisiana State University Press, 2002), xii. Bertram Wyatt-Brown, *The American People in the Antebellum South* (West Haven, Conn.: Pendulum Press, 1973); *Honor and Violence in the Old South*, (New York: Oxford, 1986); *Southern Honor: Ethics and Behavior in the Old South*, (New York: Oxford, 1982).

⁷³ Immanuel Wallerstein, *The Modern World System* (New York: Academic, 1974).

⁷⁴ Robert Penn Warren, *The Legacy of the Civil War* (Lincoln: University of Nebraska, 1961, 1998), xvi and xvii; Varon, *Disunion!*, 9-20.

similarities translated into a shared identity that made compelling reasons to resist a Congress and president that were, in their views, determined to limit their rights; however, as Elizabeth Fox-Genovese points out, “the South was no monolith.” The southern states were unique, some with stark differences, and those differences merit further inquiry, which is an aim of this dissertation since it claims that Georgia stands out among states of the Deep South on three levels: political, economic, and social. James Wayne, who was an adroit political operator, a successful businessman, and who was considering a social order that attempted to address the lingering national race question, represented those who created and perpetuated Georgia’s “bell weather” nature before the Civil War.⁷⁵

After the Civil War, southern mythmakers and storytellers quickly won the war of words almost as quickly as southern Democrats regained political control after the Civil War and into Reconstruction and beyond.⁷⁶ According to historian Fitzhugh Brundage, state-funded archival repositories, historical societies, and remembrance societies quickly proliferated in the New South in the decades after

⁷⁵ Carl Degler, *The Other South: Southern Dissenters in the Nineteenth Century*; William H. Freehling, *The South Versus the South* (New York: Oxford, 1992); James Roark, “Behind the Lines,” in James M. McPherson, *Writing the Civil War: The Quest to Understand* (Columbia: University of South Carolina Press, 1998), 216-217; Elizabeth Fox-Genovese, *Within the Plantation Household: Black and White Women of the Old South* (Chapel Hill: University of North Carolina Press, 1988), 56; for a discussion of “bell weather states” that trend the rest of the nation, see John Naisbitt, *Megatrends: Ten New Directions Transforming Our Lives* (New York: Warner Books, 1982).

⁷⁶ Coleman, *A History of Georgia*, 215-217.

Reconstruction to preserve a version of the southern past that did not include blacks, Native Americans, or Unionist traitors such as James Wayne.⁷⁷ Not until the second Civil Rights era of the 1950s did nostalgic renditions of the southern past loosen their grip on southern memory.⁷⁸ This seismic shift in focus during the middle of the twentieth century reflected what some call the “neo-abolitionist mood of the 1950s,” one in which invigorated studies of emancipation coincided with the profound currents of change that swelled under and swept over the midpoint of the twentieth century.⁷⁹ In 1950, political historian W. Darrell Overdyke said that southern Unionists had been “long neglected and deserved further inquiry.” Over the last fifty years, scholars responded to his invitation, albeit sporadically.⁸⁰

Writing during the Progressive Era, Ulrich Bonnell Phillips was the first major historian of the South and slavery and emerged as the nation’s foremost southern historian. In 1913, he edited and published *The Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb* and published *The Life of Robert Toombs*. Phillips held that the planters’ imperative for racial dominance and harmony is what united and held the antebellum South together because it was destined to be a

⁷⁷ Fitzhugh Brundage, *The Southern Past: A Clash of Race and Memory* (Cambridge: Harvard, 2005); 72-97.

⁷⁸ Goldfield, *Still Fighting the Civil War*, 75; Blight, *Race and Reunion*, 2-10.

⁷⁹ Charles T. Davis and Henry Louis Gates, Jr., eds., *The Slave’s Narrative* (New York: Oxford University Press, 1985), 49.

⁸⁰ W. Darrell Overdyke, *The Know-Nothing Party in the South* (Baton Rouge: LSU, 1950), 11.

“white man’s country,” and southern studies throughout much of the twentieth century proved to be variations on that theme: solidarity based on race. In the 1950s and 1960s, Kenneth M. Stampp challenged Phillips’s dominance over the historical account of the South by claiming that the peculiar institution was not the benign, paternalistic institution claimed by Phillips and the popular imagination.⁸¹

Stampp’s work opened the flood gates, and it was during the late 1950s that historians began to focus on slavery as the primary cause of the Civil War, yet even the definitiveness of that assertion continues to be challenged. According to William N. Parker, “surrounding all studies of the American antebellum South, the subject of slavery lies like a great fetid swamp from which historians emerge like alligators to snap at one another.”⁸² Historians examined slavery for the first time in a meaningful way as something other than a failed economic institution; it was examined as the primary life experience of several million Americans. With groundbreaking works from legendary scholars such as C. Vann Woodward, David C. Potter and Carl Degler, many of whom followed the lead of Stampp and built on his seminal works, new histories removed the veil of tradition that covered southern memory, and scholars and social historians examined the antebellum South in a new

⁸¹ John David Smith and John C. Inscoe, eds. *Ulrich Bonnell Phillips: A Southern Historian and His Critics* (Westport, Conn.: Greenwood Press, 1990); Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (New York: Vintage, 1964), 18-25, 254

⁸² William N. Parker, ed., *The Structure of the Cotton Economy of the Antebellum South* (Washington: Agriculture Historical Society, 1970), 1-4.

light. Though new social histories focused on the masses and mass movements, they tended to obscure the contributions of individuals or the experiences of smaller collectives such as communities or individual states.⁸³

The enormous popularity of Ken Burns' documentary, *The Civil War* (1990) coincided with a flood of popular works on the Civil War during the decade that followed. Films such as *Glory* (1989), *Amistad* (1996), *Gettysburg* (1998), and *Cold Mountain* (2002) demonstrated that as a consumable product, the Civil War still had a market. Even the politically incorrect, tongue-in-cheek, low-budget spoof *The Confederates States of America* (2004), which imagined a Confederate victory that perpetuated the peculiar institution into the late twentieth century, generated considerable controversy.⁸⁴

In the 1970s and 1980s, historians such as Eugene Genovese, Michael Johnson, Philip Morgan and Ira Berlin focused more on the human aspect of the institution of slavery. Popular interest in the plight of antebellum and Jim Crow African Americans mimicked that of the academia. Popular writers weighed in more vigorously on the nature of slavery and its ugly cousin, Jim Crow, over the last few decades. Alex Haley's seminal work *Roots* (1976); Ernest J. Gaines's *The Autobiography of Miss Jane Pittman* (1971); and Alice Walker's *The Color Purple*

⁸³ Eugene G. Genovese, *Roll, Jordan, Roll* (New York: Pantheon, 1974); Wyatt-Brown, *The House of Percy*, xvii.

⁸⁴ William C. Davis, *The Cause Lost: Myths and Realities of the Civil War* (Lawrence, Kansas: University of Kansas Press, 1996), 191.

(1982), piqued the popular imagination and began to purge the memory of the Old South forged and fomented by Margaret Mitchell's *Gone With the Wind* (1936).

In 1998, journalist and National Book Award winner Edward Ball confronted his slave-owning ancestry with *Slaves in the Family* and helped validate oral history as a means of knowing the past and, particularly for Ball, of knowing his relatives of color who shared a past long forgotten on the plantations of low country South Carolina.⁸⁵ But the history of the Civil War is more than a collection of stories of slavery and secession; it was an event that, according to historian Michael Holt, demonstrated "the interdependence of culture, ideology, and discourse."⁸⁶ And new stories of the South during the Civil War bent further already burdened stacks with groundbreaking, multi-disciplined approaches to history.

From an economic standpoint, monolithic interpretations of an industrially retarded agrarian antebellum South removed the region and its history from its rightful place in global economic history.⁸⁷ While the South was still primarily an agrarian society at the outbreak of the Civil War, this was by no means strictly true of Georgia. Georgia's growing textile industry, expansive railroad and ancillary

⁸⁵ Edward Ball, *Slaves in the Family* (New York: Ballentine, 1998).

⁸⁶ Michael Holt, "Explaining Racism in American History," in *Imagined Histories*, 116.

⁸⁷ Mary DeCredico, *Patriotism for Profit: Georgia's Urban Entrepreneurs and the Confederate War Effort* (Chapel Hill: University of North Carolina Press, 1990), 41, 69, and 170; Susan Delfino and Michele Gillespie, *Global Perspectives on Industrial Transformation in the American South* (Columbia: University of Missouri Press, 2005), 50 and 67.

business, and significant lumber export industry suggest that Georgia was more of an aspiring industrial center than an agrarian, cotton-based monoculture. According to some scholars, the New South, a notion manufactured and articulated by Henry Grady after the Civil War and long considered the beginning of an economically diversified and industrial Georgia began well before the Civil War.⁸⁸

According to historian David Goldfield in *Southern Histories: Public, Personal, and Sacred* (2003), the South, especially Georgia, was well-networked within the global marketplace. More than its southern neighbors, Georgia was linked to the growing, market-driven global economy.⁸⁹ In the popular imagination, however, the story of a defeated nation whose sons died honorably, defending their way of life, is much sexier than the story of southern industrial retardation, the moral turpitude of slavery, or the economic failure of an antiquated and inefficient agrarian system.⁹⁰

Carl Degler “destroyed the notion of the South as a nineteenth-century monolith”⁹¹ with the 1974 publication of *The Other South: Southern Dissenters in the*

⁸⁸ Erik Colonius, *The Wanderer: The Last American Slave Ship and the Conspiracy that Set its Sails* (Boston: St. Martins, 2006), 1-4.

⁸⁹ David Goldfield, *Southern Histories: Public, Personal, and Sacred* (Athens, Georgia: University of Georgia Press, 2003); Onuf and Onuf, *Nations, Markets and War*, 1-12, 275; Schoen, *The Fragile Fabric of the Union*, 2-20.

⁹⁰ Ferald J. Bryan, *Henry Grady or Tom Watson?: The Rhetorical Struggle for the New South, 1880-1890* (Macon, Georgia: Mercer University Press, 1994), xii; Charles Sellers, *Market Revolution: Jacksonian America, 1815-1840* (New York: Oxford, 1991).

⁹¹ Carl Degler, *The Other South: Southern Dissenters in the Nineteenth Century*, 87-94.

Nineteenth Century. During the heady decade after the Civil Rights movement, historians of the American South, and comparative historians of all regions, began to focus on slavery and started to write more colorful monographs in an effort to revise pale histories of coerced labor – and to meet the growing demand for stories of the marginalized. Degler paved the way with *The Other South* and began shaking the foundational underpinnings of southern memory and southern identity by considering the role of southern abolitionists. However, by Degler’s own admission, he focused more on the political, social and economic forces that perpetuated the institution of slavery, and those southerners who opposed it, and failed to elaborate, or even recognize, the decades-long, heated debate over disunion and union.⁹²

Degler concluded that the South, from the Revolution on, was almost militantly Unionist, but that “one era’s Unionism might not have been able to withstand the strains of the next.”⁹³ In spite of the “difficulty in defining Unionism,” Unionists continue to be a topic of interest for historians and the popular audience. Thomas Dyer’s *Secret Yankees: The Union Circle in Confederate Atlanta* (1999), examines southern Unionists in Atlanta in the years just before the Civil War and during the conflict. Atlanta was a growing and bustling metropolis on the eve of the Civil War, but in 1860 Savannah eclipsed Atlanta in terms of political power, economic prowess, and sheer size. Atlanta, which experienced tremendous growth

⁹² Ibid., 102.

⁹³ Ibid.

in the 1850s, was still considered backcountry to coastal Georgians, so finding Unionist sentiment in Atlanta and other areas in close proximity to the mountains of north Georgia before and during the war is not overly surprising. What is lacking is a meaningful examination of Unionism in South and central Georgia, particularly in the economic capital of the state, Savannah. Savannah's proximity to Charleston, the seat and center of secession in the South, as well as the political, economic and social linkages between the two bustling coastal towns merit further inquiry and comparison.⁹⁴

Similarly centering his period of examination on the war years, Daniel Sutherland's compilation, *Guerillas, Unionists, and Violence on the Confederate Home Front* (1999) takes readers to communities in almost all the states of the Confederacy to demonstrate Unionist activity and reaction to it, but the authors examine the years just before, during, and directly after the war. One would have a hard time blaming too many southerners for jumping sides once the bloom was off the rose of a Confederate victory.⁹⁵

James Baggett's *The Scalawags: southern Dissenters in the Civil War and Reconstruction* (2003) similarly centers his time of focus on the war years and Reconstruction. Kenneth Coleman's *History of Georgia* (1991) gives a sound

⁹⁴ Thomas G. Dyer. *Secret Yankees: The Union Circle in Confederate Atlanta*. (Baltimore: Johns Hopkins University Press, 1999), 4; Degler, *The Other South*, 5.

⁹⁵ Daniel Sutherland, *Guerillas, Unionists and Violence on the Confederate Home Front* (Little Rock: University of Arkansas Press, 1999).

overview of Georgia's great political debates during the 1830s and 1840s and the fragmentary nature of the states' political parties under the leadership of Alexander H. Stephens, Howell Cobb and Robert Toombs a decade later. But James Wayne plays a minor role in Coleman's account.⁹⁶

Prior to the Civil Rights era, historians of Georgia built on the work of early Ulrich Bonnell Phillips. Phillips, who studied under Frederick Jackson Turner at the University of Wisconsin during the 1890s, became something of the gatekeeper of both the sources and the stories of antebellum Georgia. Concerning the study of the history and politics of antebellum Georgia, all roads lead to Phillips. Scholars suggest Phillips influence has "obscured the inquiry of the South." It is almost without question that for one to examine Georgia politics and history, one will run into Phillips either through his work or through the work of those who followed. Phillips's landmark studies of Cobb, Toombs, and Stephens seems to have put a fictitious restriction upon the research; many antebellum Georgia politicians, Unionist and States' Rights, have been overshadowed by his studies.⁹⁷

Evidence suggests that James Wayne does not appear in many historical accounts because Phillips did not include him. Influenced by "great man" studies

⁹⁶ James A. Bagget, *The Scalawags: Southern Dissenters in the Civil War and Reconstruction* (Baton Rouge: Louisiana State University Press, 2004); Kenneth Coleman, *A History of Georgia* (Athens: University of Georgia Press, 1991), 135.

⁹⁷ Davis and Gates, *The Slave's Narrative*, 49; Phillips source. John C. Inscoe, *Ulrich Bonnell Phillips: A Southern Historian and His Critics* (Lansing: University of Michigan Press, 1990).

similar to those written by Phillips and other historians of that generation, Alexander A. Lawrence, who was a Savannah attorney and who was distantly related to Wayne, wrote the only book about James Wayne in 1943. In it, Lawrence sought “to show the impact of such a southerner upon the Supreme Court during the critical period from 1835 to 1867, and to glance along the way at the men who composed the court.”⁹⁸ This study seeks to do the opposite and consider what influence, if any, James Wayne, the U.S. Supreme Court Justice exerted on a politically complex, economically diverse and socially transformative antebellum Georgia.⁹⁹

“The past is always changing,” according to historian Charles Dew, and cultural historians from the Civil Rights era and beyond continued a deeper examination of the South.¹⁰⁰ The cultural turn presented history from the bottom up as stories of the downtrodden and marginalized in society forced a reevaluation of old sources and enabled the emergence of new sources previously considered unworthy of attention.¹⁰¹ Social and cultural historians provided a richer view from

⁹⁸ Lawrence, *Southern Unionist*, vi-ix.

⁹⁹ Ulrich Bonnell Phillips, *Georgia and States Rights: A Study of the Political History of Georgia from the Revolution to the Civil War, with Particular Regards to Federal Relations* (Washington: Government Printing Office, 1902); *The Course of the South to Secession: An Interpretation*, E. Merton Coulter, ed. (Gloucester, Massachusetts: P. Smith, 1958).

¹⁰⁰ Charles Dew, Interview with the author, July 2004.

¹⁰¹ Lynn Hunt, *Beyond the Cultural Turn: New Directions in the Study of Society and Culture*, ed. Victoria Bonnell and Lynn Hunt (Berkeley: University of California Press, 1999).

below. Additionally, gender studies focused on the experiences of slave women *and* slave-owning women.¹⁰²

In the last decade, scholarly books and articles on southern memory and southern identity give a “thicker” understanding of the South and shake the foundations of southern solidarity at the outbreak of the Civil War. Historian William W. Freehling has made a career out of examining Carl Degler’s “other South,” a South opposed to secession. Freehling, in several books, examines anti-Confederate southerners during the Civil War, but through his studies and others, the depth and breadth of Georgia Unionism remains largely unexamined. Recent studies related to southern Unionism during the Civil War, dissenters of the Confederacy, and economic and political struggles of the Antebellum South include the works of John Inscoe, Stephen Hahn, and Joseph Reidy.¹⁰³

Many have built on Degler’s work as well as on Carlton Beals’s seminal work of the 1960s, *War within a War*. Victoria Bynum in her book, *The Free State of*

¹⁰² Elizabeth Fox-Genovese, *Within the Plantation Household: Black and White Women of the Old South* (Chapel Hill: University of North Carolina Press, 1988). Also Gwendolyn Midlo-Hall, *Africans in Colonial Louisiana: The Development of Afro-Creole Culture in the Eighteenth Century* (Baton Rouge: Louisiana State University, 1992).

¹⁰³ Jurgen Habermas, *The Philosophical Discourse of Modernity: Twelve Lectures*, Fredrick G. Lawrence, trans. (Cambridge, Massachusetts: MIT Press, 1987); for an anthropological understanding of “thicker descriptions of human behavior and culture,” see Clifford Geertz, *Available Light: Anthropological Reflections on Philosophical Topics* (Princeton: Princeton University Press, 2000); and “Thick Description: Toward an Interpretive Theory of Culture,” In *The Interpretation of Cultures: Selected Essays*. (New York: Basic Books, 1973), 3-30.

Jones, relates the story of a willful county in Mississippi that seceded from the state during the war. While revealing the voice of dissent within the South during the war is vital to understanding the deeper currents of southern Unionism, one could find it logical that many southerners, upon seeing the possibility of victory slipping rapidly, would disavow the Confederacy and embrace the Union.¹⁰⁴

Recently, scholars have examined the correspondence and memoirs of southern Unionists during the Civil War. Arthur Bergeron, Jr. edits the memoir and “thrilling narrative” of Captain Dennis E. Haynes, a renegade Unionist from Texas who fought a guerilla war against Confederate regulars in the Trans-Mississippi theatre. Finally, in *Bitterly Divided*, historian David Williams recounts the South’s bitter inner Civil War as the prospect of independence faded. As more of these stories come to light, an entirely new dimension in Civil War dissent in the South will emerge.¹⁰⁵

¹⁰⁴ See J. Mills Thornton, *Politics and Power in a Slave Society: Alabama, 1800-1865* (Baton Rouge: Louisiana State University Press, 1978); Bill Cecil-Fronsman, *Common Whites: Class and Culture in Antebellum North Carolina* (Lexington: University Press of Kentucky, 1992); John C. Inscoe, ed., *Enemies of the Country: New Perspectives on Unionists in the Civil War South* (Athens: University of Georgia Press, 2001); John C. Inscoe, *Race, War and Remembrance in the Appalachian South* (Lexington: University Press of Kentucky, 2008); Steven H. Hahn, *Political Worlds of Slavery and Freedom* (Cambridge: Harvard, 2009). Victoria Bynum, *The Free State of Jones: Mississippi’s Longest Civil War* (Chapel Hill: University of North Carolina Press, 2001).

¹⁰⁵ Arthur W. Bergeron, Jr. ed. *A Thrilling Narrative: The Memoir of a Southern Unionist by Dennis E. Haynes* (Fayetteville, Arkansas: University of Arkansas Press, 2006); David Williams, *Bitterly Divided: The South’s Inner Civil War* (New York: New Press, 2008).

Aside from the Lawrence biography penned over sixty years ago, few articles or monographs have referenced or mentioned Wayne since his obituary in 1867. A 2006 legal history, *Lincoln and Chief Justice Taney: Slavery, Secession, and the President's War Powers*, by James M. Simon suggests Wayne's prominent role several landmark court cases. This is in stark contrast to the fact that from 1820 until 1865, Wayne appeared or is mentioned in no fewer than one thousand national newspaper articles. His movements were announced, his speeches reprinted, his legal opinions reproduced, and his character honored. One newspaper proclaimed Wayne a "gentleman, scholar, and friend of the Union."¹⁰⁶ Prior to the Civil War loyalty to the Union was so admired in Georgia and disunion so derided that up to and into the Civil War, those who favored nullification and secession in Georgia and other states were ridiculed, declared traitors, and derogatorily labeled "Nullies."¹⁰⁷

Most recently Elizabeth Varon's award winning book, *Disunion!*, examines the decades before the Civil War through a lens of dissent. Varon claims that seething just beneath a patina of national stability was the near constant threat of secession. Released around the same time as Varon's book is Jacqueline Jones's award winning book, *Saving Savannah: The City and the Civil War*, which explores the coastal city on the eve of the war, during the conflict and into Reconstruction.

¹⁰⁶ *Boston Courier*, September 25, 1836.

¹⁰⁷ *Ibid.*; *Macon Telegraph* (Macon, Georgia), September 3, 1831.

Publication of both of these books demonstrates an increasing interest in both regional studies and the exploration of political dissent in the South.¹⁰⁸

In part because many white southerners emerged from the Civil War largely unrepentant, they “fabricated a collective memory of the past.” For southerners, the Myth of the Lost Cause was, according to Allan Nevins, a “cover up” for the atrocities of a war they instigated, waged in defense of a morally repugnant and peculiar institution they refused to abandon. Myths passed from generation to generation become “perceived facts,” especially those myths manufactured by a defeated people. Defeat places an “enormous strain on the loser,” so a manufactured reality is somewhat understandable since the Confederacy, so costly and so tragic, never really became an “imagined community” and never became an “emotional reality” until long after the war was over.¹⁰⁹

Methodology and Structure

Biography is a well-worn genre, and Ralph Waldo Emerson said, “There is no history, only biography.”¹¹⁰ Arthur M. Schlesinger, Jr. said that “biography offers an easy education in American history, rendering the past more human, more vivid,

¹⁰⁸ Varon, *Disunion!*; Jacqueline Jones, *Saving Savannah: The City and the Civil War* (New York: Vintage, 2008).

¹⁰⁹ Gary Gallagher, *The Myth of the Lost Cause in Civil War History* (Bloomington: Indiana University Press, 2000), 1-5.

¹¹⁰ Ralph Waldo Emerson, *Representative Men: Seven Lectures* (Cambridge: Harvard, 1996).

more intimate, more accessible, more connected to ourselves.”¹¹¹ Historian Kenneth Stampf underscored the challenge for historians when he noted, “history is not an exact science.” Stampf further stated that even “the most meticulously weighed and finely measured data, both numerical and literary, must be subjectively interpreted by the historian, for historical facts do not speak for themselves.”¹¹²

The historian must operate under three laws: Faith, hope, and brevity. And the greatest of these is brevity. With infuriatingly scant private correspondence available, a degree of brevity is to be expected in any biographical sketch of Wayne. Wayne’s judicial decisions and public utterances, as well as newspaper accounts about him will allow this study to move beyond conjecture and toward demonstrating Wayne’s importance in Georgia. In addition to examining Wayne’s political activity and legal decisions, this study will look to his economic behavior and his evolving attitudes about slavery and race in order to draw conclusions about Georgia.¹¹³

While narrative, particularly biography, lends itself to a chronological disposition, this study will not follow a strict chronological retelling of events. Three biographies serve as models for my project: Steven Kantrowitz’s *Ben Tillman and*

¹¹¹ Arthur M. Schlesinger, Jr., “Editor’s Note,” in John Patrick Diggins, *John Adams* (New York: Oxford, 2003), xviii.

¹¹² Kenneth Stampf, *And the War Came; the North and the Secession Crisis, 1860-1861* (Baton Rouge: Louisiana State University), 73.

¹¹³ Anthony Gene Carey, *Parties, Slavery and the Union in Antebellum Georgia* (Athens: University Of Georgia Press, 1997), vii.

the Reconstruction of White Supremacy (2000); Gordon S. Wood's *The Americanization of Benjamin Franklin* (2004); and William Miller's *Lincoln's Virtues: An Ethical Biography* (2002). All three resurrect their respective subjects, thrust them into brighter light, and allow the reader to know not only *what* they did, but *who* they were.

Further, Jo Burr Margadant's *The New Biography: Performing Femininity in Nineteenth-Century France* informs this study because the collection Margadant edits creates and defines a "fresh approach to a well-worn genre." According to Margadant, "performing the self" and "self-recreation" have long histories in Western culture. For the past fifty years, historical actors were collectives (classes, occupational groups, minorities) but the recent trend is to emphasize the individual and how he presents himself in the public sphere. Granted, "biography remains the profession's unloved stepchild, occasionally but grudgingly let in the door, more often shut outside with the riffraff." Nevertheless, biography "continues to be a vital genre of historical writing." Margadant suggests that biography is once again in fashion because historians "endlessly turn over the debris of earlier generations in search of fresh lessons to us about ourselves."¹¹⁴

Chapter Two "turns over debris" and introduces the reader to James Wayne, the political operator. Paying attention to Wayne as an actor within a specific,

¹¹⁴ Jo-Burr Margadant, *The New Biography: Performing Femininity in Nineteenth-Century France* (Berkeley: University of California Press, 2000), 1-8; David Nasaw, "Historians and Biography," *American Historical Review* 114 (June 2009): 573-586.

though evolving, time and place, attempting to interrogate Wayne helps us to find out more about his “thoughts, language and contests with the world,” and in particular the political world.¹¹⁵ For much of the antebellum era, many in Georgia were as diametrically opposed to secessionist-minded leaders in states like South Carolina as Andrew Jackson was to John C. Calhoun. And Wayne, a U.S. Congressman at the time of the Nullification crisis and a proponent of the tariff, which was called the “tariff of abominations” in the South, was a staunch ally of Andrew Jackson and a firm believer in a perpetual Union. And Andrew Jackson rewarded his political friends. Wayne resigned from Congress in 1835 and accepted his reward: a seat on the United States Supreme Court.¹¹⁶

During the Age of Jackson, the fragile national political structure of the Second Party System created strange political bedfellows, and Georgia was not immune to the fallout from the creation of various national alliances, political compromises, and third party upstarts that perpetuated political change. National political parties were in flux in the Age of Jackson, and Georgia rocky political landscape was no different. Georgians, especially political giants like Wayne, Stephens, Toombs, and Cobb wrangled with the question of how to remain loyal to the Union and still advocate states’ rights. Most political parties, according to historian Michael Holt, offered not long-term and lasting ideologies, but short-term

¹¹⁵ Alice Kessler-Harris, “Why Biography?” *American Historical Review* 114 (June 2009): 627.

¹¹⁶ *Ibid.*, 575; Alexander A. Lawrence, *James Wayne: Southern Unionist*.

and temporary solutions to somehow balance Union and States' Rights.¹¹⁷ With a tightrope over the national debate, Georgia leaders in the statehouse, the Governor's mansion, and Congress hedged their bets as they walked the fine line between Union and secession; they proposed compromises, formed parties, and forged alliances that would help appease their constituents and, at the same time, ease the national tensions that tempted Civil War. Georgia politics was personality-driven, a factor that possibly contributed to its vulnerability to secession as the next chapter hopes to illustrate. Chapter Two will plot Wayne's political movements from his entry into "gladiatorial activities" of Georgia politics by using his public utterances, decisions while on the Supreme Court, and activities while working the circuit in Georgia.

The third chapter will discuss Wayne's economic behavior and his decisions on the Supreme Court that favored the economic advances of his state and nation. As such, it is influenced by those historians who believe that Georgia's entry into the Industrial Revolution predated that of most other southern states. To bolster the argument that Georgia was exceptional among her neighbors in the South, consider that by 1860, among all southern states, Georgia had the highest number of miles of rail, a vast network of canals, the fastest growing number of business, the most textile mills, and capital growth that outpaced that most *northern* states and dwarfed that of her neighbors. In other words, Georgia was growing into an

¹¹⁷ Ibid.

industrial powerhouse, perhaps one more akin to a manufacturing-based, northern state than a agriculturally dependent southern state. Two factors quite possibly diverted that probable trajectory: westward expansion, and, of course, the Civil War.¹¹⁸

Evidence suggests that if not for westward expansion into neighboring states and Texas, which was not subject to tariffs, Georgia would have retained many of those influential citizens (and their capital) who decided to leave. Would the “escaped capital” have fostered greater industrialization, diversification, and stability? Possibly. And if Georgia was more industrialized, would have Georgia voters have had the will to remain in the Union in 1861? After all, as discovered by historian Michael Johnson, the popular vote for delegates to the secession convention was razor thin. Perhaps Georgia could have minimized secessionist fervor, if not stopped the Civil War. This dissertation is not an attempt to breathe new life into economic history, which reached its zenith in the 1960s and 1970s, but statistical analysis will suggest that Georgia’s economic diversity influenced Georgia

¹¹⁸ U.S. Census Bureau, “Comparative Exhibit of the Total Manufactures of Each State and Territory for the Years Ending June 1, 1860, and 1850,” available from <http://www2.census.gov/prod2/decennial/documents/1860c-16.pdf> ; Internet; accessed 4 May 2009. Harold S. Wilson, *Confederate Industry: Manufactures and Quartermasters in the Civil War* (Jackson: University of Mississippi Press, 2002); Peter Onuf and Nicholas Onuf, *Nations, Markets, and War: Modern History and the American Civil War* (Charlottesville: University of Virginia Press, 2006); Huston, *Calculating the Value of the Union: Slavery, Property Rights, and the Economic Origins of the Civil War* (Chapel Hill: University of North Carolina Press, 2003).

Unionism.¹¹⁹ Georgia was on a trajectory to be on par with and to be a legitimate competitor to industrialized states north of the Mason-Dixon Line. James Wayne's business interactions reflect this possibility. Many in Georgia, such as James Wayne, and an examination of the state's economic diversity might offer clues as to why.¹²⁰

After the Civil War, white Georgians, just as citizens in most states of the former Confederacy, were reluctant to stop waving the "bloody shirt" after the war and into the Reconstruction years and beyond, just as most former Confederate states. Seeking to create a solid, albeit imagined, South, mythmakers included Georgia as one of the noble but vanquished states of the former Confederacy. The pace of Georgia's industrial recovery during Reconstruction bested her neighbors not because proponents like Henry Grady advanced a vision of the New South *after* the Civil War, but because Georgia's industrial roots ran very deep. The aftermath of the Civil War did not spawn Georgia's industrial growth (measured by number of mills, miles of rail, number of businesses, and amount of capital), but, rather, it

¹¹⁹ David R. Meyer, "The Industrial Retardation of Southern Cities," *Explorations in Economic History* 25, no. 4 (1988): 366-386; and Douglass C. North, *The Economic Growth of the United States: 1790-1860* (New York: Norton, 1966).

¹²⁰ Michele Gillespie, *Free Labor in an Unfree World: White Artisans in Slaveholding Georgia, 1789-1860* (Athens: University of Georgia Press, 2000). Robert S. Davis Jr., "The First Golden Age of Georgia Industry, 1828-1860," *Georgia Historical Quarterly* 72 (winter 1988): 699-711.

merely interrupted a promising trajectory that began well before the first battles of the Civil War.¹²¹

The fourth chapter, which focuses on James Wayne's complex and changing attitudes toward slaves, free people of color and Indians, fitting evidence to show similar changes in Georgia's attitudes toward slavery and the growing presence of free blacks, and offers an examination of the possible solutions to the "race problem." By 1860, Georgia had the second largest number of enslaved humans of all states and the third largest free black population. James Wayne owned slaves most of his life. At one point he owned over one hundred slaves, but over time tax and census records show that his ownership in human property decreased dramatically, decade by decade, from one hundred, to ninety, to eighty, to sixteen, to ten. Why he gradually divested himself of most of his slaves and almost all of his male laborers is a complicated yet provocative question. Wayne was not an outward abolitionist by any stretch of the imagination, but Wayne's version of Unionism included a peculiar solution to the peculiar institution.¹²² Wayne was an enthusiastic supporter of African colonization, spoke often at the meetings of the American Colonization Society, and served frequently as the society's officers.

¹²¹ U.S. Census Bureau, "Statistics of the Wealth and Industry of the United States, Embracing the Tables of Wealth, Taxation and Public Indebtedness," available from <http://www2.census.gov/prod2/decennial/documents/1870c-01.pdf>; Internet; accessed 4 May 2009.

¹²² Eric Burin, *Slavery and the Peculiar Solution: A History of the American Colonization Society* (Gainesville: University Press of Florida, 2008), 1-9; Varon, *Disunion!*, 78-82.

Further, Wayne's legal opinions and actions might reveal him to be not just a Unionist but also an accidental, but reluctant, abolitionist.¹²³

The final chapter concludes the examination and offers, hopefully, the next steps in studying Unionists like James Wayne. Further, the last chapter highlights some of the most significant of Wayne's decisions while he was on the Supreme Court. James Wayne, largely ignored by history, was one of the most important Georgians never known. The pages that follow will attempt to answer some questions, but it will raise others. In sum, the examination of James M. Wayne and Georgia Unionism that follows will suggest a stronger Unionist sentiment than historical wisdom has indicated, which will be illustrated in three dimensions: political, economic, and social. Through a biographical interrogation of James Wayne, the pages that follow will examine the three dimensions of Georgia Unionism. While obliquely implicating the Myth of the Lost Cause in distorting the memory of James Wayne and the enduring significance of Unionism in Georgia, this study will attempt to show how "circumstances make men just as much as men make circumstances."¹²⁴

¹²³ U.S. Census Bureau, "Classified Population of the States and Territories, by Counties, on the First Day of June, 1860," available from <http://www2.census.gov/prod2/decennial/documents/1860a-04.pdf>; Internet; accessed 11 May 2009.

¹²⁴ Karl Marx and Frederick Engels, *The German Ideology, Part One*, ed. C. J. Arthur (New York: Oxford, 1970), 59.

CHAPTER TWO

JAMES WAYNE AND THE POLITICAL DIMENSION OF GEORGIA UNIONISM

“Another pillar, noble Wayne
Fair Georgia’s hope, and a ‘that;
Whose fame remains without a stain;
So pure and free, and a ‘that.”

Union Party Campaign Song, 1832¹

James Wayne became Georgia’s standard bearer for Unionism in the 1830s, a time when Georgia politics in many ways ran contrary to national trends. At the time, newspapers throughout the country hailed Wayne as the “Georgian for the Country” because he had “all the decency, all the morality and all the ability” for rejecting the “heresy of Nullification.” Wayne was praised for his “integrity, consistency, talents and attainments” by courageously challenging John C. Calhoun, defending the Union and exposing Nullification “in all its deformity, as the dying effort of its architect, the Great Mogul of a neighboring state.”² Before James Wayne reached national political prominence in the Age of Jackson, he spent almost

¹ The Papers of Alexander A. Lawrence, Georgia Historical Society, Savannah, Georgia, MS 2019, Series 5: Box 1: Folder 2, notes related to Thomas Gamble, *Savannah Duels and Duelists* (Chapel Hill: University of North Carolina Press, 1923), 156.

² *U.S. Telegraph*, Washington D.C., April 10, 1833; *The Globe*, Washington D.C., September 26, 1834 and October 29, 1834.

twenty years forming a solid political base and engaging in the “brass-knuckled” activities that characterized politics in the late Jeffersonian Republic and in early Jacksonian America. This chapter plots the trajectory of James Wayne’s political biography and attempts to demonstrate his overlooked importance and lasting influence in Georgia before and during his tenure on the United States Supreme Court. In addition, this chapter offers an account of the political dimension of Georgia Unionism in the antebellum period.³

James Wayne entered politics in 1815 as a neophyte, but his ambitions matched those of his father, Richard, who embarked on a successful Savannah political career in the 1790s and remained involved in Savannah’s leadership until his death in 1808. James Wayne’s desire to enter politics directed him not only to follow in his father’s footsteps but also to tread new ground into state and national political arenas. Many of his experiences in the seven years after his father’s death readied him for a swift and smooth entry into the rough and tumble landscape of Georgia politics. However, his political aspirations were simultaneously delayed and hastened by his father’s will.⁴

³ Carleton Beals, *Brass-Knuckle Crusade: The Great Know-Nothing Conspiracy, 1820-1860* (New York: Hastings House, 1960), 27-34; and *War within a War: The Confederacy Against Itself* (Philadelphia: Chilton Books, 1965), 75; and Anthony G. Carey, *Parties, Slavery and the Union in Antebellum Georgia* (Athens: University of Georgia Press, 1997), ix, 19, 166..

⁴ *Columbian Museum and State Intelligencer* (Savannah, Georgia), August 16, 1795; Alexander A. Lawrence, *James M. Wayne: Southern Unionist* (Chapel Hill: University of North Carolina Press, 1943).

When Richard Wayne died in 1808, he was one of Savannah's wealthiest men with assets estimated between \$50,000 and \$100,000, a considerable sum at the time.⁵ The elder Wayne made his youngest son, James, only eighteen at the time, the executor of his estate and bequeathed to him the bulk of his assets. Why he would give his youngest son to such an important role is unknown, but it surely is a testament to Wayne's maturity, leadership and ability. To his eldest son, Richard, he left virtually nothing; however, he did leave Richard Wayne, Jr. an annual income of \$400 and made provisions in his will to take care of Richard's two children. James's brother, Richard, according to their father, "failed in his mercantile endeavors," so James shouldered the responsibility of being *pater familias* in the stead of his dead father. James cut short his legal apprenticeship so he could tend to his father's estate, manage the family business interests, and take care of his family.⁶

A biographer writing in 1943 argued that Wayne cut short his legal apprenticeship so he could return to Savannah to fend off creditors who were attaching Richard Wayne's estate. According to archival sources, the senior Wayne was not in debt. In fact, Wayne was owed money by several customers and business associates. It is more likely that the creditors were those of Richard Wayne, Jr., the

⁵ Charles Somers Miller, ed., "Chatham County, Georgia: Inventories and Appraisements, 1777-1836," in the possession of Washington Memorial Library, Macon, Georgia.

⁶ "The Last Will and Testament of Richard C. Wayne," Chatham County Ordinary Estate Records, Will Book, Vol. E, Georgia Archives, Morrow Georgia, Microfilm Drawer 17, Box 26, pp. 105-112.

wayward son, and that his creditors were seeking assets from his father's estate. James Wayne returned to Savannah to help prevent his brother's creditors from attaching his father's assets. In addition, James Wayne spent considerable time tracking down and collecting from his father's many business associates and customers who owed money to the estate of Richard Wayne, Sr. James collected more than just cash, for on more than one occasion he collected items like "one trunk, one large iron pot, one Dutch oven, two weeding hoes, three tea spoon taken as property" to satisfy debts owed the estate of Richard Wayne.⁷

Richard and James Wayne were the oldest and youngest sons, respectively, of Richard and Mary Wayne, who had thirteen children. Richard was, by far, the most troublesome of the thirteen. He challenged men to duels. Adversaries called him a "scoundrel" in the local press. He skipped on his debts. He drove businesses into the ground, endeavors his father had helped him start. And his young wife died under mysterious circumstances three years after they were married. He declared bankruptcy and "departed the city of Savannah for Augusta" in 1803 because creditors sought him, which became a tremendous embarrassment to the Wayne family. Savannah was a tight-knit community, so Richard Wayne surely seethed with

⁷ *The Georgia Journal* (Milledgeville, Georgia), March 11, 1812; "Last Will and Testament of Richard C. Wayne"; Lawrence, *Southern Unionist*, 17.

anger when his son was forced to appear before bankruptcy judges whose families were close with the Waynes.⁸

Richard Wayne, Jr. was a troublemaking playboy who enjoyed spending money and engaging in many risky activities that required him to come often to his father for money and caused him to rack up significant debt. Richard Wayne hated debt. The senior Wayne amassed his considerable real and liquid assets through cash transactions, a lesson he learned when he encountered economic and social difficulties when he remained a Tory in Charles Town, South Carolina during the Revolution. This was an experience he endeavored to overcome, and a stigma he fought hard his whole life to erase. Though Richard Wayne hated debt, he loved his family and kept his brood together through repeated trials. A few years arriving in Savannah with his family, disgraced and nearly penniless, the family home was destroyed by a fire. The fire killed one of his thirteen children. Again, the Wayne family was forced to recover from tremendous loss.⁹

Although Richard Wayne's will gave instructions to pay James an annual income of \$400 from the accumulated assets of the estate, just as was the case for his older brother, the bulk of the assets were to be held until James turned twenty-five in 1815. Richard Wayne's economic control from the grave forced his son James

⁸ *Georgia Gazette* (Savannah, Georgia), November 1, 1805, January 1, 1802, February 17, 1803, and April 11, 1806.

⁹ *Columbian Museum and State Intelligencer* (Savannah, Georgia), December 9, 1796, January 24, 1797, June 17, 1796; Lawrence, *Southern Unionist*, 12.

to work, earn a living, manage Red Knoll Plantation, and avoid the fate of his older, debt-laden brother, but wealth and privilege also allowed his son to devote a portion of his career to public service once he received his inheritance at age twenty-five. In addition, the elder Wayne expected his son to take care of his brothers and sisters, as well as their “servants and people” – all the slaves who inhabited Red Knoll and kept the Wayne economic engine running. The instructions in the will said: “keep the Negroes together, especially the families.” Paternalistic and condescending attitudes about slaves, feelings often confused with love and kindness, shaped the identity of many of the master class in coastal Georgia.¹⁰

In the formative years after his father’s death, James Wayne practiced law in Savannah with several partners, built his practice, and, as was the custom at the time, took on apprentices who “read law” under his tutelage. Many of those who apprenticed under him formed the next generation of elites in Savannah, Chatham County and Georgia. One of Wayne’s apprentices was William Washington Gordon, who would later become one of the founders and the first president of the Central Railroad and Banking Company of Georgia (later the Central of Georgia Railway). Gordon’s granddaughter, Juliet, would become the founder of the Girl Scouts. In addition, Wayne managed and later owned Red Knoll, one of two massive rice

¹⁰ “The Last Will and Testament of Richard C. Wayne”; Letter of Edward C. Anderson, nephew of James Wayne, to Mary Anderson, August 18, 1858, in Wayne-Stites-Anderson Papers, Georgia Historical Society, Savannah, Georgia MS 846, Box 20, Folder 489-493 asks his mother to “remember me to all the servants and people.”

plantations at the northern end of Argyle Island. He also oversaw the other remaining business interests and property in his father's estate, which included Wayne's Wharf, Wayne's Mill, and nearly ninety slaves. James Wayne would become a very rich man by the time he was twenty-five. Until then he involved himself in the expected political, economic and social activities of the landed gentry, the elite master class that wielded control of the growing port city of Savannah through its development of trade and transportation networks, connections that linked the far reaches of the Georgia frontier to the rest of the nation and the Atlantic world. He followed in his father's footsteps by becoming active in politics, commerce and society and immersing himself in the dynamic, interlinking networks that made success possible if not probable.¹¹

Between 1810 and 1820, Savannah's population grew by over 44%, from 5200 inhabitants to over 7500 inhabitants. Though growing, Savannah was still a small town.¹² Roughly 1000 of the city's inhabitants from 1810 to 1820 were men

¹¹ *Georgia Gazette* (Savannah, Georgia), November 1, 1805; *The Georgia Journal* (Milledgeville, Georgia), January 24, 1816 and October 11, 1815; Lawrence, *Southern Unionist*, 18 – 30; See Robert C. Black, III, *Railroads of the Confederacy* (Chapel Hill: University of North Carolina Press, 1997), 1-26; Charles M. Sellers, *The Market Revolution: Jacksonian America, 1815-1846* (New York: Oxford University Press, 1994), 44-156; Jackson McQuigg, Tammy Galloway, and Scott McIntosh, *Central of Georgia Railway* (Charleston, S.C.: Arcadia, 1998); Wilber Caldwell, *The Courthouse and the Depot: The Architecture of Hope in an Age of Despair - A Narrative Guide to Railroad Expansion and Its Impact on Public Architecture in Georgia, 1833-1910* (Macon: Mercer University Press, 2001), 72 and 126.

¹² 1810 and 1820 U.S. Census, *U.S. Census Bureau*
<http://www.census.gov/prod/www/abs/decennial/1810.htm> and

between the ages of twenty-one and thirty, so it would be relatively easy for a young man like James Wayne, rich, educated, handsome, and eloquent, to make a name for himself on so many levels: political, economic and social. He was an opportunist and took advantage of his economic and social status at every turn. He was what sociologist Malcolm Gladwell calls an “outlier.” An “outlier” is a scientific term to describe things or phenomena that lie outside normal experience. In the realm of human experience, outliers are “men and women who, for one reason or another, are so accomplished and so extraordinary and so outside of ordinary experience that they are puzzling.”¹³

Success for the outlier is not merely based on the exploitation of singular opportunities, an individual’s hard work or high IQ, or even inherited position. Success is a group project, which means that multiple contributions from a multitude of contributors conspire to create and energize the possibilities that make success possible. When outliers become outliers it is not just because of their own efforts. It is because of the contributions of lots of different people and lots of different circumstances. James Wayne experienced success early and exploited his relationships within many groups to achieve success. The purpose of this line of thought is to show that Wayne’s incredible political ascent was the result of his

<http://www.census.gov/prod/www/abs/decennial/1820.htm>; Internet, retrieved June 30, 2009.

¹³ Malcolm Gladwell, *Outliers: The Story of Success* (New York: Little, Brown and Company, 2008), vii-ix.

many levels and layers of lasting connectedness. He was an outlier, and in contrast to his brother, afforded the same opportunities, who was an outcast.¹⁴

A tradition of political involvement and community leadership was not unique to Savannah, the South, or even the early Republic, for that matter. The masculine culture of the southern landed gentry demanded a “quickenings” of sorts of the young men who would enter the public sphere once they reached a point where they exhibited maturity, demonstrated the capacity for accomplishment, and displayed responsibility.¹⁵ The inheritors of the power structure would be sent away at the brink of manhood to see the nation, experience the world, earn a classical education at the North, and, most importantly, connect with others like themselves.¹⁶

The tradition of political “quickenings” and political involvement in republican societies dates back to the Ancient Greeks, and it was in this tradition that the master class elites of Georgia, those like James Wayne and his contemporaries, operated. The burden of leadership was left to the elites of society for it was they who had the capacity, the education, and resources to lead, govern, and exert

¹⁴ Ibid.

¹⁵ ““Let Us Manufacture Men”: Educating Elite Boys in the Early National South,” in Craig T. Friend and Lori Glover, ed. *Southern Manhood: Perspectives on Masculinity in the Old South* (Athens: University of Georgia Press, 2004), 22-48;

¹⁶ “The Letters of Edward C. Anderson,” MS, The Wayne-Stites-Anderson Papers, in possession of the Georgia Historical Society, Savannah, Georgia.

influence. Leadership fell to the elites, and the wielding of influence was part of the collective identity of the ruling class and a requirement for success for those within its ranks.¹⁷

While away at the College of New Jersey shaping his own identity, James Wayne studied the works of Socrates and would have learned in Plato's *Republic* that a just state is not ruled by laws, but by just men who were well educated and well versed in the principles of logic, rhetoric, and debate. It was in these subjects that Wayne excelled while in college, and it was from these subjects that Wayne developed his ability to debate, reason and dismantle opponents' arguments, skills that would be invaluable to him throughout his life.¹⁸ Chosenness was an integral part of the southern masculine identity, especially among the master class, and it is crucial to what shaped Wayne's identity.¹⁹ In order to lead, just men must be

¹⁷ Glover, *Southern Manhood*, 27.

¹⁸ James M. Wayne, Interview in *United States Monthly Law Magazine*, V (March, 1852).

¹⁹ Eugene Genovese, *Mind of the Master Class* (Athens: University of Georgia Press, 2005), 180-199; and Eugene Genovese, Panel Discussion: "Mind of the Master Class," University of Georgia, October 2003; David Goldfield, *Southern Histories: Public, Personal, and Sacred* (Athens: UGA Press, 2003), 5 and 75; and Goldfield, *Still Fighting the Civil War: The American South and Southern History* (Baton Rouge: Louisiana State University, 2004), 164; Charles Wilson Reagan, *Baptized in Blood: The Religion of the Lost Cause, 1865-1920* (Athens: University of Georgia Press, 1983), ix and 48; William C. Davis sees the founding of the South and southern notions of manhood and honor grounded in the ideals of 1776 and in the teachings of the Greeks in *Look Away: A History of the Confederate States of America* (New York: Free Press, 2002), ix.

“carefully selected in youth and become wise and good by long training.”²⁰ In addition, Wayne would have learned that Socrates believed that “until kings were philosophers and philosophers were kings” then there would be no justice.²¹ The leader of a state was like the captain of a ship, and a captain “must of necessity pay attention to the seasons, the heavens, the stars, the winds, and everything proper to the craft if he is really to rule a ship.” This may have resonated with Wayne because his life experiences were so thoroughly steeped in the maritime culture of coastal Georgia.²² While Wayne was no “philosopher-king,” it was a goal of the southern masculine culture to approximate this ideal, however it was understood. For example, Michael Beschloss shows that James Madison and many of the southern founders were sent to the North to earn a classical education. Madison, considered the architect of the Constitution, attended the College of New Jersey. Though of a younger generation, Wayne too was sent to the College of New Jersey.²³

Wayne, through his study of the classics, would have been familiar with Aristotle’s “good citizen.” Aristotle’s good citizen is defined in terms of his eligibility for the offices of the state, for “what effectively distinguishes the good citizen is his

²⁰ Huntington Cairns and Edith Hamilton, eds., *The Collected Dialogues of Plato: The Republic* (Princeton: Princeton University Press, 1961), 575-576; Davis, *Look Away*, x.

²¹ Plato, *The Republic* IV, 488, 575-576; Lawrence, *Southern Unionist*, 110.

²² Ibid., *The Republic* IV 488 d., 725.

²³ Michael Beschloss, *Presidential Courage: Brave Leaders and How They Changed America, 1789-1989* (New York: Simon and Schuster, 2007), 37.

participation in giving judgment and in holding office.”²⁴ It was Aristotle who recognized that a just and effective state needed more than educated and just men. A just and effective state needed active leadership by those who exhibited wisdom, justice and “civic virtue.” Aristotle believed that those who exhibited the virtues necessary for leadership were duty-bound to serve and preserve the state, and in this, James Wayne believed firmly.²⁵

Gladiatorial Activities: The Political Biography of James Wayne

Before engaging in the activities that political scientist Lester Milbrath deemed as “gladiatorial activities,” such as being an active member in a political party, being a candidate for office, and holding public office, James Wayne helped defend Savannah and coastal Georgia during the War of 1812.²⁶ He served as a member of the elite Chatham Light Dragoons, part of the Georgia Hussars, a troop of mounted rangers formed by Georgia founder James Edward Oglethorpe in 1763. The Chatham Dragoons were prepared to repel an assault on Savannah by a much

²⁴ Richard Kraut, *Aristotle: Political Philosophy* (Oxford: Oxford University Press, 2002).

²⁵ Ibid.; and Davis, *Look Away*, ix.

²⁶ Craig A. Rimmerman, *The New Citizenship*, 6; Lester Milbrath, *Political Participation: How and Why People Get Involved in Politics* (Chicago: Rand McNally College Publications, 1977), 44; G. Judson Smith Jr., ““All’s Not Well”: The U.S. Navy Expedition to Sunbury in 1812,” *Georgia Historical Quarterly* 81 (winter 1997): 964-973.

larger British force in February 1815, but the British force halted operations after receiving news that English and American representatives had signed the Treaty of Ghent. Wayne's comrades elected him to serve as captain, in part perhaps in deference to his class and elite status, and he led the Dragoons in the tense days before the rumored British siege of Savannah. He was only twenty-four years old, but was perceived as a hero even though the Chatham Dragoons saw no real action.²⁷

The Savannah press praised the service of the Georgia Hussars as well as Wayne's leadership of the Chatham Light Dragoons. Wayne, according to an often published report, displayed a "most willing and gallant spirit" in defense of "their country's cause." Once the war was over, troops returned home, and Americans across the nation celebrated their victory over the British. A wave of patriotism and nationalism emerged in the wake of victory, and many war veterans returned home as heroes. Many veterans took advantage of their status, and communities, large and small, responded by showering the victors with fame, fortune and favored position. As has been the case from George Washington to John McCain, hero status often becomes political capital.²⁸

²⁷ *The Savannah Evening Ledger*, January 17, 1815 found in Alexander A. Lawrence, *Southern Unionist*, 19-22; Tom W. Campbell, *Four Score Forgotten Men: Sketches of the Justices of the U.S. Supreme Court* (Little Rock, Arkansas: Pioneer Publishing, 1950), 150-162.

²⁸ Michael A. Genovese and Thomas E. Cronin, *The Paradoxes of the American Presidency* (New York, NY: Oxford University Press, 1998); Gil Troy, *See How They*

After the War of 1812, and in the new political dynamic that was to characterize the subsequent five decades and beyond, military heroes readily exchanged accumulated political currency for positions of power. Success on the battlefield, it was assumed, would translate to success in the political field, but it was something of a coin toss whether or not the “halo effect” of success would pan out.²⁹ For example, Andrew Jackson, already a regional and national hero because he subdued the Creek and Seminole during the War of 1812, propelled himself to a level of fame, admiration, and love not seen since Washington’s victory over Cornwallis at Yorktown in 1781.³⁰ And this pattern was repeated across the nation and at all levels. The same heady nationalism, patriotism, and pride that launched Andrew Jackson’s political career helped give Wayne an opportunity to become not

Ran: The Changing Role of the Presidential Candidate (Cambridge: Harvard University Press, 1996); for the impact of heroic stories on the electorate see Evan Cornog, *The Power and the Story: How the Crafted Presidential Narrative has Determined Political Success from George Washington to George Bush* (New York: Penguin, 2004), ix.

²⁹ For an explanation of the halo effect, see E. L. Thorndike, “Forming Impressions of Personality,” *Journal of Applied Psychology* Vol. 4 (1920): 25-29; and Phil Rozenzweig, *The Halo Effect: And the Eight Other Business Delusions that Deceive Managers* (New York: Free Press, 2007).

³⁰ Robert Rimini, *Andrew Jackson* (New York: Palgrave Publishing, 2008); *Election of Andrew Jackson* (Philadelphia: Lippincott, 1963); *The Legacy of Andrew Jackson: Essays on Democracy, Indian Removal and Slavery* (Baton Rouge: Louisiana State University, 1988); *The Revolutionary Age of Andrew Jackson* (New York: Harper and Row, 1976), x and 15; Arthur Schlesinger, *The Age of Jackson* (Boston: Little Brown, 1945), 38; H. W. Brands, *Andrew Jackson: His Life and Times* (New York: Doubleday, 2005), 302, 530.

just an active participant in Georgia politics, but a member of the political elite. He was to become a leader of the leaders as he recrafted himself from patriot to politician.³¹

Wayne exploited his exposure in the local press and parlayed his new-found popularity into a political career just a few short months after the war. In October 1815, Wayne ran for his first public office and handily won a seat in the Georgia General Assembly, representing Chatham County in Milledgeville, then the state capital. It was the same year, coincidentally, that he received the full benefit of his inheritance, so James Wayne was young, heroic, famous *and* rich. As his political career grew, so too did his law practice and other businesses in Savannah and Chatham County.³²

Wayne decided to run for the Georgia General Assembly because the state had recently passed a law that prohibited punishing debtors for skipping out on the debts owed their creditors and further prohibited creditors from seeking compensation from debtors once solvent. This infuriated many business leaders and merchants in Chatham County, so Wayne campaigned on the promise of repealing the debt laws passed in Milledgeville. Along with others Georgia leaders, Wayne

³¹ *The Georgia Journal* (Milledgeville, Georgia), October 11, 1815; Thomas Campbell, *Four Score Forgotten Men: Sketches of the Justices of the U.S. Supreme Court* (Little Rock, Arkansas: Pioneer Publishing, 1950), 550-555.

³² Lawrence, *Southern Unionist*, 26.

was successful in repealing the laws, and Chatham County returned him to Milledgeville for another term.³³

After his second term in the Georgia General Assembly, Wayne decided not to run again. Instead, he took a year off from public office and began a new law practice with partner John Cuyler. The following year, in 1818, the internal urge to serve and the external urging to run must have lured Wayne back to elective office for he ran for Savannah City Council, where his fellow councilmen elected him mayor, a position his father once held and one James Wayne held until 1820.³⁴

In addition to presiding over the Savannah City Council, one of the duties that fell to the office of mayor was to play host to any visiting dignitaries. In 1819, Savannah hosted President James Monroe, which was the first visit to the city by a sitting president. Wayne gave President Monroe a tour of the city and the Georgia low country and entertained the president at the Wayne House, the young mayor's recently completed home at the corner of Oglethorpe Avenue and Bull Street in downtown Savannah. President Monroe publically complimented Wayne and Savannah for the hospitality he experienced on his trip to Georgia. Wayne's political connections had reached the center of power of the nation. His popularity in the

³³ *The Georgia Journal* (Milledgeville, Georgia), October 11, 1815; Huebner, *The Taney Court*, 85.

³⁴ Campbell, *Four Score Forgotten Men*, 150-159; Lawrence, *Southern Unionist*, 25.

state and throughout the region increased dramatically, and so began a lifetime of favorable treatment by the national press.³⁵

By his thirty-first birthday, Wayne had exhausted the popularly elective offices available to him in Savannah, for he pushed his elective experience options to the limit in the low country, exhausted his options, and set his sights on the next level. More importantly, his personal, professional and political interactions established relationships that would serve him well in the years and decades to come. For example, in 1815, the twenty-five-year-old College of New Jersey graduate was asked to serve on the Board of Trustees of the University of Georgia in Athens, the first state-chartered university in the United States. Chartered in 1785, the university first held classes in 1801, and Wayne's position as trustee was a reward for his service with the Chatham Light Dragoons. His service to the University of Georgia gave Wayne the opportunity to meet influential Georgians from all over the state, and his network grew as a result. Over many years, he served as trustee along with William Crawford, his son, Joel Crawford, John M. Berrien, Howell Cobb, George Gilmer and Wilson Lumpkin among many other prominent Georgians. Though the university was struggling and ready to shut its

³⁵ Monroe, James, *The Papers of James Monroe*, Edited by Daniel Preston, et al. (Westport, Conn.: Greenwood Press, 2003), Monroe toured the nation during the end of his first term; Noble E. Cunningham, *The Presidency of James Monroe* (Lawrence: University Press of Kansas, 1996); W. P. Cresson, *James Monroe* (Chapel Hill: University of North Carolina Press, 1946); Lawrence, *Southern Unionist*, 32; *The Daily Georgian (Savannah)*, July 15, 1819.

doors by the time Wayne became a trustee, he considered his service on the board an honor, which was the case, especially by someone so young. Wayne served on the Board of Trustees of the University of Georgia for most of his life.³⁶

Wayne traveled to Athens twice a year in spite of the great distance and extreme difficulty. The 225 miles from Savannah to Athens was an enormous distance to cover for early nineteenth-century land-based travelers. The condition of the roads was contingent upon the weather and determined by the will of various communities to provide clear passage. The navigability of the waterways was unpredictable. The river crossings were unreliable at best. In spite of the great difficulty and distance, it was a role that allowed Wayne to travel to the expanding Georgia upcountry once or twice a year, experience Georgia's growth, and witness the state's development first-hand. Travel through the state was often dangerous. The first UGA president under whom Wayne served died within a year of arriving in Georgia from his home in New Jersey after he developed a fever and fell ill while on a hunting trip with students, faculty and trustees.³⁷

³⁶ *The Southern Banner* (Athens, Georgia), April 10, 1836; "History of the University of Georgia," *Senatus Academicus of the University of Georgia*; Lawrence, *Southern Unionist*, 32; See Thomas G. Dyer, *The University of Georgia: A Bicentennial History, 1785-1985* (Athens: University of Georgia Press, 1985), 22-24.

³⁷ "History of the University of Georgia," *Senatus Academicus of the University of Georgia*; Lawrence, *Southern Unionist*, 32; Thomas G. Dyer, *The University of Georgia: A Bicentennial History, 1785-1985* (Athens: University of Georgia Press, 1985), 22-24.

The periodic trips to Athens prepared Wayne for an activity that he endured for most of his life: circuit riding. While Wayne expanded his influence, “enlarged his circle of acquaintances,” and grew his commercial enterprises, including his law firm, Wayne & Cuyler, the Georgia General Assembly elected Wayne Judge of Common Pleas to serve Southeast Georgia. Wayne rode the South Georgia circuit from the early days of his legal career, but from 1820 until 1824 Wayne rode the Eastern Circuit of Georgia, this time as a judge, and heard criminal cases, property and contract disputes, divorces, and any other issue that appeared on his docket. This position allowed Wayne to continue practicing law as a private attorney, as well as make a multitude of personal, professional and political connections as he traveled throughout the state from county seat to county seat riding the circuit.³⁸

Circuit riding judges and lawyers traveled throughout their territories like a band of gypsies and traipsed across the countryside plying their trade. Cases docketed in batches in each town matched the travel schedule of the presiding judge. Often, judges would arrive accompanied by lawyers from opposing sides. These men would travel together, dine together, sleep together, and share the

³⁸ George White, *Historical Collections of Georgia: Containing the Most Interesting Facts, Traditions, Biographical Sketches, and Anecdotes Relating to its History from its Settlement to the Present Time* (New York: Pudney and Russell, 1854), 380-385; Lawrence, *Southern Unionist*, 24; Maeva Marcus and James R. Perry, *The Documentary History of the Supreme Court of the United States, 1789-1800* (New York: Columbia University Press, 1985), 339-342; Peter Fish, *Federal Justice in the Mid-Atlantic States: United States Courts from Maryland to the Carolinas, 1789-1835* (Washington, D.C.: Administrative Office of the United States Courts, 2002), 19-21; *Daily National Intelligencer* (Washington, DC), January 11, 1820.

travails of traveling from town to town until they met in the courtroom at the assigned time to prosecute, defend, or judge a case. Circuit riding yielded a unique mix of rivalry and revelry born out of necessity because the transportation revolution was still in its infancy in most of the nation, but especially in Georgia, one of the largest states by land mass east of the Mississippi River. As these men traveled from town to town, a symbiotic relationship developed between the men and the communities in which they practiced.³⁹

The men who traveled the circuit developed a high degree of familiarity with the community to which they were assigned, and the communities themselves came to know the lawyers and judges who visited regularly. Circuit riders made connections among themselves and in the communities. They dropped names; established partnerships; formed bonds; developed friendships; made business deals; traded services, goods and land; shared information; debated politics; lamented the torturous travel conditions; and otherwise made the best use of their shared time on the road. Sometimes they even shared the same bed. Abraham Lincoln and other attorneys who traveled the judicial circuit in Illinois, even when Lincoln was a well-known lawyer, regularly shared beds. Nothing was unusual or irregular about the arrangement; it was rare for single men or men who traveled alone to have a private room, for it was “customary for men to share a bed.” Doris

³⁹ David Herbert Donald, *Lincoln* (New York: Simon and Schuster, 1996), 70; Brian Dirck, *Lincoln the Lawyer* (Chicago: University of Illinois Press, 2008), 218.

Kearns Goodwin claims that Abraham Lincoln cut his political teeth as a circuit rider, for it was that experience that gave him the opportunity to test his mettle against some of the great debaters of his state.⁴⁰

Some of the circuit riders became minor celebrities in the towns they visited, and many local newspapers announced the arrival of the circuit riders as a public service announcement, for one, and because there probably was not much news to report in the frontier towns of antebellum Georgia. Because they established connections in towns throughout the state, judges and lawyers readily transitioned into politics; their constituents knew their names because of regular circuit runs. They knew the law, but they also came to know the lay of the political landscape throughout the state.⁴¹

Frequent contact allowed circuit riders to establish valuable networks ripe for later exploitation. George Washington recognized the benefit of having seasoned politicians traveling throughout the country and instructed the first Supreme Court circuit riders to report to him “information and remarks . . . as you shall from time to time judge expedient to communicate.” Circuit riding justices were the only federal officials with such regular and ongoing contact with the

⁴⁰ Donald, *Lincoln*; 70-71; Doris Kearns Goodwin, *A Team of Rivals: The Political Genius of Abraham Lincoln* (New York: Simon and Schuster, 2005), 455.

⁴¹ Marcus and Perry, *The Documentary History of the Supreme Court of the United States, 1789-1800*, 339-342; Fish, *Federal Justice in the Mid-Atlantic States: United States Courts from Maryland to the Carolinas, 1789-1835*, 19-21.

citizenry, so many presidents established good relationships with Supreme Court justices so they could reap the benefits of the valuable information yielded from circuit runs.⁴²

James Wayne rode the circuit in Georgia and South Carolina for most of his life, from 1808 until 1860. More than any other experience, this one made him a man of Georgia. He had his finger on the pulse of the people, even when he was an associate justice of the United States Supreme Court. Circuit riding generated many benefits, including immense contact with the people, but it was not without its hazards. Supreme Court Justices complained often about their double duty. The Judiciary Act of 1789 created circuits, but no circuit judges, so Supreme Court justices filled the void. For well over a century, the practice, reviled by most justices, transformed the justices into “republican schoolmasters,” in the view of one justice. Wayne loathed the practice and logged nearly three thousand miles each year riding his expansive circuit, which included Georgia, South Carolina and, later, North Carolina. Justices such as James Iredell believed circuit riding reduced the role of judge “to that of a traveling post boy.”⁴³

⁴² Ibid.

⁴³ Letter from George Washington to the Chief Justice and Associate Justices of the Supreme Court (April 3, 1790), in Maeva Marcus, *The Documentary History of the Supreme Court of the United States, 1789-1800* (New York: Columbia University Press, 1985), 278; Joshua Glick, “On the Road: The Supreme Court and the History of Circuit Riding,” *Cardozo Law Review* 24 (April 2003): 1753-1775; Fish, *Federal Justice*, 20; Christopher Tomlins, *The United States Supreme Court: Pursuit of Justice* (Boston: Houghton Mifflin, 2005), 50-51.

Circuit riders throughout the nation lamented the practice, but often seemed to appreciate the experience in retrospect. For example, an Indiana judge commented in his memoirs that circuit riders would “ride for hundreds of miles through wilderness, not knowing if a ferry, road or bridge would be clear from the previous night’s storms.” Lodging was spotty at best, but after a long day of riding, “corn dodgers, boiled squirrels and sassafras tea would seem the epicures of the five o’clock table of the Astor and St. Nicholas.” The roads were unsafe, horses bolted without warning, and when they did not “spend the night out with bugs, heat and rats,” the riders often slept in “low, one-room log cabins,” which often seemed “sumptuous and thankfully received.”⁴⁴

Wayne rode the circuits for over four decades, starting with his unanimous election by the state legislature to serve as Judge of Common Pleas for Chatham County in 1820. In 1823 the Georgia General Assembly elected Wayne to be Superior Court Judge of the Eastern Circuit of Georgia, a position he held until 1829, after which he was elected in 1828 to represent Georgia in the United States House of Representatives. Just like Andrew Jackson, who had been elected in November 1828 in a wave of democratic passion, James Wayne was going to Washington.⁴⁵

⁴⁴ O. H. Smith, *Early Indiana Trails and Sketches* (Cincinnati: Moore, Wilsatch, and Keys, 1858), 168-169, Microfilm, *American Culture Series II*, Reel 292.

⁴⁵ Lawrence, *Southern Unionist*, 32; *Niles’ Weekly Register*, October 25, 1828; *The Daily Georgian* (Savannah, Georgia), October 15, 1828.

Wayne in Congress: Politics, Personalities, and Georgia's Anti-Party System

The true nature of Georgia politics in the antebellum period is unknown and unknowable, but evidence suggests little was systematic about politics in antebellum Georgia.⁴⁶ James Wayne entered Congress with many new “Jackson Men” in 1828. During his time in Congress, Wayne met James Buchanan of Pennsylvania; John Bell, Davy Crocket and James Polk of Tennessee; and later John Q. Adams of Massachusetts. In 1829 only 213 men occupied seats in the House of Representatives, so it was a cozy group. Wayne called the election of 1828 a “political revolution,” but whatever shared American identity or temporary party solidarity that emerged after the election’s record voter turnout shattered soon after Jackson’s landslide victory.⁴⁷

In the 1960s, political scientists attempted to give a distinct framework to party realignments that the nation experienced in its history. Scholars settled on five “party systems” dating from the founding to the present. The taxonomic structures created assume a series of national two-party rivalries under which regional, state, and local politicians and voters aligned. Since the 1960s, historians and political scientists have called the era of antebellum politics (1828 – 1856) the

⁴⁶ Anthony G. Carey, *Parties, Politics and Slavery in Antebellum Georgia* (Athens: University of Georgia Press, 1997), 20-46, 54 and 105-115.

⁴⁷ James Wayne delivered a speech on members’ pay, March 30, 1830, *Gales and Seaton’s Debates*, 21st Congress 1829-1830, 701.

“Second Party System,” with the two national parties at play being the Democrats and the Whigs. While descriptive, a national two-party binary does not seem to mesh well with the realities of Georgia’s antebellum political realities.⁴⁸

While creating a taxonomy of parties might help organize the past’s political landscapes and clear the view for those who examine the past from the present, it does little to explain the subtle contours of personal relationships, political alliances and the not-so-subtle cleavages that persisted in spite of or because of the national issues that arose in the antebellum period. While scholars have tried to organize American political history into five discreet party systems, the antebellum political era was anything but systematic. In an attempt to bring order out of chaos, scholars created “periodization schemes” and examined “party systems,” but these tools of inquiry might neglect the relationships that propelled people into leadership roles and miss the multi-layered motivations for voter decisions. Further, artificial boundaries of inquiry could put fictitious restrictions on the boundaries of research

⁴⁸ See Walter Dean Burnham, “Periodization Schemes and ‘Party Systems’: The ‘System of 1896’ as a Case in Point,” *Social Science History*, Vol. 10 (Autumn 1986), No. 3, 263-314; William Nisbet Chambers and Walter Dean Burnham, eds., *The American Party Systems: Stages of Political Development*, (New York: Oxford University Press, 1967); Richard L. McCormick, *The Party Period and Public Policy: American Politics from the Age of Jackson to the Progressive Era* (New York: Oxford University Press, 1988), 161 and 210; William Nisbet Chambers, *Political Parties in a New Nation: The American Experience, 1776–1809* (New York: Oxford University Press, 1963); Hofstadter, Richard. *The Idea of a Party System: The Rise of Legitimate Opposition in the United States, 1780-1840* (Berkeley: University of California Press, 1970), 212 – 220; Coleman, A *History of Georgia*, 175; Michael Holt, *Political Parties and American Political Development: From the Age of Jackson to the Age of Lincoln* (Baton Rouge: Louisiana State University Press, 1992), 68-120.

and limit access to those historical actors who dwelled “outside of the brackets of history,” such as James Wayne.⁴⁹

Historian Joel Silbey posited that “parties became indispensable” in the 1830s and “were stronger than at no other time in history.” The parties of the antebellum era “provided mechanisms” for people “to incorporate individual political effort within centralizing activities and institutions for maximum political effect.” Silbey concludes that the era produced a “model of a responsible and responsive party system.” In spite of a “confusion of voices,” argued Silbey, “the 1840s was the high point of party unity.” Yet he conceded that examinations of “mass political behavior over generalizes” and moves academic interest “away from statesmen studies.”⁵⁰

In stark contrast, Edward Pessen believed that “personal ambition, not party ideology, was the prime mover” in antebellum politics. Most “party realists were happy to obtain support from any quarter and . . . were willing to reverse previously

⁴⁹ Jennifer Smith, “The Concept of Political Party in Comparative Perspective: Ontology and Taxonomy,” (Paper Presented at the Annual Meeting of the Southern Political Science Association, New Orleans, Louisiana, January 3, 2007), Internet: www.allacademic.com/meta/p143783_index.html; see also John H. Aldrich, *Why Parties?: The Origin and Transformation of Political Parties in America* (Chicago: University of Chicago Press, 1995); Frank J. Sorauf, *Political Parties in the American System* (Boston: Little, Brown and Company, 1964); Carey, *Parties*, 158-77; Lacy K. Ford Jr., *Origins of Southern Radicalism: The South Carolina Upcountry, 1800-1860* (New York: Oxford University Press, 1988), 185-205.

⁵⁰ Joel Silbey, *The Partisan Imperative: The Dynamics of American Politics Before the Civil War* (New York: Oxford, 1984), 55-68; and *The Shrine of Party: Congressional Voting Behavior, 1841-1852* (Pittsburg: University of Pittsburg Press, 1967), vii and 142.

held positions or reject previous party loyalties in order to appeal to localities and capitalize on new opportunities.” According to Pessen, “parties foundered disastrously” in the antebellum era, an era before the “two party system became traditional.” Echoing Pessen is Anthony Carey, who argues that “Georgia’s association with national parties was mutable and conditional.” The “conditional” nature and mutability made Georgia susceptible to the influences of personalities, strong politicians like James Wayne who were able to cobble together coalitions and tap vast networks of support. To illustrate the tenuous ties that bound Georgia politicians to national parties, consider John M. Berrien of Georgia resigned from the U.S. Senate in early 1842 because he was uncomfortable being cast with the Whigs of the north. A few months later, the Georgia legislature reelected him to his vacant seat. Like Berrien, Alexander Stephens considered himself “nominally a Whig, yet held few sentiments in common with the national party.” Georgia avoided replicating the two-party political structure of the North, but replaced bifurcation with fragmentation as Georgia voters tended to follow the most charismatic and convincing voice rather than latching quixotically to party ideology.⁵¹

⁵¹ Edward Pessen, *Jacksonian America* (Georgetown, Ontario: Dorsey Press, 1978), 150-151; Anthony Gene Carey, *Parties, Slavery, and the Union in Antebellum Georgia* (Athens: University of Georgia Press, 1999), 75; Edward Pessen, *New Perspectives on Jacksonian Parties and Politics* (Boston: Allyn and Bacon, 1969), 18 and 248; Stephen Frank Miller, *Bench and Bar of Georgia: Memoirs and Sketches* (Philadelphia: Lippincott, 1858), 31; *Acts and Resolutions of the Georgia General Assembly, 1837*, 30-31; Alexander H. Stephens, *The Recollections of Alexander Hamilton Stephens* (New York: DeCapo, 1971), 17.

During the antebellum period, Georgia seldom exhibited a cohesive political party identity that aligned consistently with national parties until Reconstruction.⁵² Both prior to 1828 and beyond, Georgians resisted national party alliances and chose to align themselves with the charismatic men who best represented their various interests, a strong localism inherent to Georgia politics. Even in the early years of the Republic, Federalism did not resonate with Georgians because it was, in their minds, a “party of the North,” and Georgia repeated this pattern of resisting national parties for decades, even though Georgia exhibited “habits of factional opposition” for generations. In addition, mere practice likely contributed to a lack of party cohesion in Georgia because elections were held frequently, staggered throughout the year, and not just in November to coincide with national election cycles. Without the popular election of U.S. senators, party rhetoric was confined to the General Assembly.⁵³

Until 1828, Georgia politicians and the men that voted them into office fell in line behind either the faction led by George M. Troup of Dublin, Georgia, or the faction led by John Clark of Washington, Georgia. In general, Troup represented the interests of the landed gentry of the tidewater and coastal regions, and Clark

⁵² Burnham, *American Parties*; Magliocca, V.O. Key, *Southern Politics in State and Nation* (Knoxville: University of Tennessee Press, 1977); Hofstadter, *The Idea of a Party System*, 221-226.

⁵³ Carey, *Parties*, 48-56, and 104-107; Daniel W. Howe, *The Political Culture of the American Whigs* (Chicago: University Press of Chicago, 1979), 3.

represented the interests of the frontier and yeoman farmers of the state. The parties organized around the men themselves rather than any particular party ideology, and certainly not one associated with the North, which was lampooned in the southern press as the “land of isms.” In addition, politics was “more sport than system” in Georgia.⁵⁴

During the presidential election of 1828, incumbent President John Q. Adams of Massachusetts garnered very little support in Georgia, but both opposing factions in Georgia aligned behind Andrew Jackson. The rival factions were called the Clark-Jackson Party and the Troup-Jackson Party. If state parties in Georgia exhibited voting patterns similar to those of national parties, it was out of expedience and coincidence more so than out of allegiance or loyalty to the national party. Party loyalty and cohesiveness, despite attempts by national party leaders who articulated platforms, was essentially nonexistent prior to Reconstruction. (This was true both in Georgia, and on the national stage, as well. For example, the Whig party put forth three presidential candidates in 1836, and two in 1844. In an 1848 convention, the Whigs could not agree on a platform, so they did not offer one. The Whigs were not alone; the Democrats offered two candidates in 1860, making that monumental

⁵⁴ Coleman, *A History of Georgia*, 120-150; James F. Cook, *The Governors of Georgia, 1754-2004* (Macon, Ga.: Mercer University Press, 2005), 92-99; *Augusta Chronicle*, May 7, 1852; Howe, *Political Culture*, 3.

election a four-way race, and suffered from repeated defections and realignments in the previous several election cycles.)⁵⁵

Not to be outdone, the Republicans seemed to lose their way during Lincoln's administration because even Lincoln did not remain loyal to the Party of Lincoln beyond an election cycle. Lincoln ran as the National Union candidate in 1864, not as a Republican. Just as the nation consolidated power after the Civil War, so, too, did national political parties. But before then, it was a political party hodgepodge, perhaps especially in Georgia.⁵⁶

One contemporary observer of Georgia politics in the 1830s could not make sense of the division between the two factions that had "so long and violently waged war upon one another . . . [while] both seem influenced by the same general principles."⁵⁷ A writer in *Niles' Weekly Register* derided Georgia for naming their political parties after men rather than choosing the names of national parties its readers could understand and with which they could identify. The writer objected to the "continued use of names of persons to designate parties because the meanings

⁵⁵ Lawrence, *Southern Unionist*, 39; Huston, *Calculating the Value of the Union*, 48; Beals, *Brass-Knuckle Crusade*, 98-120.

⁵⁶ See Coleman, *A History of Georgia*, 175; Michael Holt, *Political Parties and American Political Development: From the Age of Jackson to the Age of Lincoln* (Baton Rouge: Louisiana State University, 1992); and Holt, *Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (New York: Oxford University Press, 1999).

⁵⁷ *Niles' Weekly Register*, July 3, 1830 and September 1, 1832.

of these classifications are understood only in the state and nowhere else.” The same writer condemned “the practice because it is confusing to readers.” Though Georgia ultimately, albeit reluctantly, relented to the prodding of the press, Clark and Troup and the men that aligned behind them alternated leadership positions in the governor’s mansion, the state house, judicial appointments, mayoral positions, city councils and trusteeships. Historians have likened the dynamics of this era of Georgia politics to the same brand of gang power struggles by in New York during the same era.⁵⁸

The Troup-Clark factional binary defined Georgia politics until Andrew Jackson’s administration, a time when national questions more and more became local questions. James Wayne aligned with the Troup faction, which was very loosely connected to the National Republican Party. Because one of their own, Georgia’s longtime Troup man William H. Crawford served as Secretary of the Treasury under National Republican President James Monroe, many state politicians aligned with the National Republicans. Georgians aligned with the man, not the message of the party or the president under whom he served, so those loyal to Crawford adopted similar political views and gave allegiance to those views. In

⁵⁸ Beals, *Brass-Knuckled Crusade*, 221.

addition, it was a source of great pride for Georgians to see one of their state leaders serve in Washington as a cabinet member.⁵⁹

During the Age of Jackson, the emerging though fragile national political structure of the day, and the various issues that contributed to party flux, created strange political bedfellows. Andrew Jackson's election as president abruptly halted whatever longevity and dominance the National Republicans enjoyed through the first two decades of the nineteenth century. Georgia experienced a massive wave of democratic zeal that swept the nation during the election of 1828, and many in Georgia and throughout the South gladly fell in line behind Jackson because of he was, after all, one of them. If there was any southern alignment with a national party, the new Democratic Party of Andrew Jackson, it was because southern men identified with Andrew Jackson. Jackson's promise to challenge the Old Guard and seize power from those who long held it appealed to Georgians. Even South Carolina gave Jackson all eleven of its electors in 1828, and Georgia gave the Tennessean its ten electors as well. This shared identity with a national political leader and the attendant assumptions and expectations southern states had about a southerner in the Executive Office soon faltered. What would become known as the "Tariff of Abominations" in the South passed during the final months of John Quincy

⁵⁹ Edward J. Harden, *The Life of George M. Troup* (Savannah: E. J. Purse, 1859); Chase Mooney, *William H. Crawford, 1772-1834* (Lexington: University Press of Kentucky, 1974); and Phillip Green, *The Life of William Crawford* (Chapel Hill: University of North Carolina Press, 1965); Lawrence, *Southern Unionist*, 30-32.

Adams's administration and was in force even before Andrew Jackson took the oath of office in March 1829. The tariff and nullification crisis were the first issues Wayne faced in Congress. As will be seen, these events culminated in Wayne's defining moment, for the debates thrust him into the national spotlight and demonstrated a sea change in his view of the relationship between the state and the national government. Wayne's six years in Congress transformed Wayne and helped him define his brand of Unionism, both at a time when Georgia itself was transforming.⁶⁰

Georgia politicians bypassed national parties and articulated a stance that demonstrated both independence of national parties and allegiance to the national union, and one of the architects of this stance was James Wayne. As early as 1824, before he was elected to Congress, Wayne and other leading Georgians helped create anti-tariff committees throughout the state. These committees attempted to build awareness about harmful protective tariffs supported by many in the North, rally the public around their cause, and draft measures to oppose protective tariffs. The grass roots political organizations that Wayne helped create and motivate in the 1820s to oppose tariffs became models for the state political organizations he and other party leaders established in the 1830s and 1840s. Wayne recognized the value of a political network, and he always energized the county-level party operatives

⁶⁰ Magliocca, *Andrew Jackson and the Constitution*, 7-31; Remini, *Andrew Jackson: The Course of American Democracy*, 241; Michael Beschloss, *Presidential Courage*, 65-80; Schlesinger, *The Age of Jackson*, 30-56; Sean Wilentz, *Andrew Jackson*, 35-54; *Niles' Register*, November 15, 1828; Jon Meacham, *American Lion: Andrew Jackson in the White House* (New York: Random House, 2008), 218.

when he traveled the state or rode his circuit. The county party model Wayne helped create lasted well into the twentieth century. Legendary political scientist V. O. Key applauded the longevity and effectiveness of the county system in Georgia, but he believed that the rest of the South traditionally suffered from “the cold hard fact that it, as a whole, has developed no system or practice of political organization or leadership adequate to cope with its problems.”⁶¹

Prior to his arrival in the nation’s capital as a representative from Georgia, Wayne and most in Georgia and neighboring South Carolina considered protective tariffs harmful and unconstitutional. Politicians debated not *whether* to oppose protective tariffs, but *how* to oppose protective tariffs. Before Georgia’s manufacturing sector developed, the state’s agrarian interests dominated state politics, so it became a matter of tradition for Georgians to oppose tariffs instituted by the federal government. Tariffs enacted after the War of 1812 to spur American manufacturing in the North were feared by many in the South, especially after the tariffs increased in 1824. Many feared the deleterious effects of the tariff on southern planter and agrarian interests. As a member of Congress, Wayne continued to oppose protective tariffs, but when the heated debate over the 1828 tariff reached a fever pitch and led to the Nullification Crisis of 1832, Wayne and Georgia stood foursquare for Union. Wayne moderated his stance regarding the

⁶¹ *Augusta Chronicle* (Augusta, Georgia), August 20, 1828; *Macon Telegraph* (Macon, Georgia), July 14, 1828; Lawrence, *Southern Unionist*, 56-65; V.O. Key, *Southern Politics in State and Nation* (Knoxville: University of Tennessee Press, 1961), 4.

tariff once he came to realize that state's manufacturing interests and his own business interests would benefit from tariffs.⁶²

More than any issue since the founding, Nullification exposed fissures in the national foundation and revealed regional fractures that foreshadowed secession and the Civil War. John C. Calhoun, Andrew Jackson's vice president through most of his first term, resigned as vice president in 1832, returned to his home state of South Carolina to fight against the Tariff of Abominations, and defended his state's right to nullify any law that threatened to infringe upon the rights of the citizens of the state of South Carolina. Calhoun replaced Senator Robert Hayne, who left the Senate to become governor of South Carolina in 1832. Calhoun remained in the Senate until his death in 1850, and became the architect of the South's state rights political ideology.⁶³

Nullification, the theory Calhoun advocated, and State Rights, the rallying cry of the men that aligned behind him, created a new set of political bargains not only in South Carolina but also in Georgia, South Carolina's neighbor across the Savannah River. William Freehling contends that "Calhoun always considered Nullification a

⁶² See John Niven, *John C. Calhoun and the Price of Union: A Biography* (Baton Rouge: Louisiana State University, 1993), 190-195; Irving Bartlett, *John C. Calhoun: A Biography* (Boston: Norton, 1994), 139-152; David Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848* (New York: Oxford University Press, 2007), 386; William J. Cooper, *The American South: A History* (New York: Rowan and Littlefield, 2008), 168-171.

⁶³ Ibid.

way of preserving the South *in* the Union, the South, *and* the Union.” Others point out that Calhoun’s influence in the state was nearly constant, in spite of a few Unionist voices among a “small, elite group of planter-politicians” who underwent “frequent reshuffling.”⁶⁴

As a result of the Nullification Crisis in Georgia, party lines were considerably confused, loyalties shifted, and change rather than stability became the norm.⁶⁵ Georgia’s representatives in Congress and their constituents, unlike the unanimity often displayed by South Carolina politicians, split regarding Andrew Jackson’s Force Bill, which Congress passed and Jackson signed into law in 1833. The “Bloody Bill,” as the Force Bill was called, demonstrated the executive’s right and duty to perpetuate and consolidate the Union by force, if necessary. Reflecting his belief in the perpetuity of the Union, Wayne sided with Jackson. As a result, old factional alignments shifted as “Troupites” became the Union Party and aligned with Jacksonian Democrats, and the “Clarkites” became the State Rights Party, who aligned with the Calhounites and radical nullifiers, or “Nullies,” of South Carolina.

Wayne bargained that his constituency in Georgia opposed tariffs, for he once

⁶⁴ Ibid. 150; See also Coleman, *A History of Georgia*, 134-140; Remini, *Jackson*, 147; “Calhoun’s Warning to the North,” in Kenneth Stampp, *The Causes of the Civil War* (New York: Touchstone, 1992 revised edition), 40-44; William H. Freehling, *The Road to Disunion: Volume I: Secessionists at Bay, 1776-1754* (New York: Oxford University Press, 1990), 213-259; Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina* (New York: Oxford University Press), 290 -295.

⁶⁵ James L. Huston, “Southerners Against Secession: The Arguments of the constitutional Unionists in 1850-51,” *Civil War History*, v. 46, no. 4 (2000), 281.

opposed them. However, he knew opposition had limits for he bet that Georgia was solidly Unionist. He was right, time and time again, in spite of an increasing number of Georgians who created a sizeable minority sympathizing with South Carolina, at least theoretically. Georgia Calhounites opposed an over-encroaching federal government and supported states rights, but their voices were few. Wayne's view, however, was that Jackson, and by logical extension, the government, were flexible and responsive to the states if the states offered reasonable requests and equally flexible demands. As will be seen, Wayne believed the fair exchange between the state and the national government, a *quid pro quo* of sovereignty, served both state and nation well, and this view became foundational to his Unionist political ideology.⁶⁶

Most Jackson historians tend to agree that Jackson's motivations regarding the tariff, Nullification, the Bank of the United States, and Indian Removal were purely political, so much so that often pragmatic considerations mattered not to Jackson, or were secondary, at best. In spite of this interpretation, Andrew Jackson's words paint a different picture. In many instances, of course, pragmatic issues of power and governance came before the politicization of the issues. For example, regarding the rechartering of the Bank of the United States, called the Bank War,

⁶⁶See Remini, *Age of Jackson*; and Beschloss, *Presidential Courage*, 65-90; *Gales and Seaton's Debates*, 22nd Congress (Second Session), February 14, 1833, p. 1706; *Daily National Intelligencer* (Washington DC), September 10, 1830; *United States Telegraph* (Washington DC), March 12, 1833; Harry Watson, *Liberty and Power* (New York: Hill and Wang, 1990), 106.

historians Robert Remini and H. W. Brand extol the virtues of the Bank's efficiency and ability to maintain stable markets and flow of currency. Jackson and his acolytes, like Wayne and John Forsyth of Georgia, whom Jackson later made Secretary of State, were concerned about the power of the Bank in manipulating Congressmen and newspapers. Henry Clay, for example, received several loans from Biddle's bank, which was proof positive of the corrupting influence of the bank.⁶⁷

Concurrent with the fiery debate over Nullification was the equally divisive issue of the rechartering of the Bank of the United States. Though the Bank issue was not as pressing for Georgians as was the debate over the right of a state to nullify a federal law, it still thrust a national issue into the local political dialogue in Georgia. Georgians continued to resist national parties during the 1830s, even when clear lines in the sand were drawn and party ideologies of other sections of the nation began to resonate with Georgia voters. But resistance to national parties should not be confused with resistance to the national Union. Regarding Jackson's desire to dismantle the Bank of the United States and distribute federal funds to state banks or "pet banks," Wayne represented a unified coalition of Georgia leaders who stood with Jackson regarding his desire not to recharter of the Bank of the United States in 1836. In Congress, Wayne said he feared the "silent, unseen, sure

⁶⁷ Remini, *Age of Jackson*; Beschloss, *Presidential Courage*, 68; H.W. Brands, *Andrew Jackson, His Life and Times* (New York: Doubleday, 2005), 333, 495, 502, 534.

creation of a fourth department of our Government, stronger than the other three, wielded by the capitalists of the nation.”⁶⁸

State rights Georgians grew in number as they watched neighboring South Carolina buckle under the weight of Jackson’s Force Bill. Many in Georgia balked at displays of power politics, such as those exhibited by Jackson in regard to the Bank of the United States. In the press, some branded Jackson a “hypocrite, usurper, and tyrant.”⁶⁹ State rights Georgians bristled that the president’s “dangerous assumption of power” violated the Constitution, but few in Georgia supported the claim of those who opposed Jackson on this issue that a national bank, at least as it existed then, would stabilize national or regional economies. To demonstrate that the purse was more powerful than national politics in the state, many economic elites in Georgia who supported Jackson’s desire to crush the Bank of the United States would benefit personally as state banks received federal deposits. James Wayne was one of these beneficiaries, for over the course of his life he was a large shareholder and served on the boards of several Georgia banks.⁷⁰

⁶⁸ *Gales and Seaton’s Debates*, 21st Congress, 1830-1831, p. 351, December 9, 1830.

⁶⁹ *Augusta Chronicle* (Augusta, Georgia), December 25, 1832.

⁷⁰ Lawrence, *Southern Unionist*, 36; “The Last Will and Testament of James Moore Wayne,” The Papers of James Moore Wayne, The Stites-Anderson Collection in possession of the Georgia Historical Society; The Papers of Alexander A. Lawrence, Research Material for *James Moore Wayne: Southern Unionist*, in possession of the Georgia Historical Society, Savannah, Georgia.

Jackson sought to diminish the power of the Bank of the United States well before the charter was set to renew in 1836. As early as 1830, Jackson urged Congress in his annual message not to renew the bank's charter because doing so would "shorn . . . the influence which makes that bank formidable." After the bank's demise, "the States would be strengthened by having in their hands the means of furnishing the local paper currency through their own banks."⁷¹ Eager for stronger state banks, and essentially serving as an agent of the president, James Wayne, while in Congress, repeatedly tried to raise the bank issue before his colleagues by proposing an investigation of the bank for violations of its charter, offering resolutions to dissolve the bank, and taking on northern defenders of the bank and opponents of the president.⁷²

Wayne steadfastly and enthusiastically sided with Jackson, who said that the "Bank of the United States was converted into a permanent electioneering engine." To Jackson, the Bank was a "hydra-headed monster" that purchased the press and Congressmen "by the Dozen" corrupting the "morals of our people."⁷³ It was not

⁷¹ Jackson's second message to Congress: Internet:
<http://www.synaptic.bc.ca/ejournal/JacksonSecondAnnualMessage.htm>

⁷² James Wayne quoted in *Record of Debates of Congress, Cong. Deb.* xiii (1833). Wayne challenges John Q. Adams, 2182; Wayne and the Bank of the United States: 1428, 1432; Wayne and the Tariff: 3683.

⁷³ Andrew Jackson to Martin Van Buren, quoted in Robert Remini, *Andrew Jackson and the Bank War: A Study in the Growth of Presidential Power* (New York: Norton, 1967), 15.

the economic power of the Bank of the United States that Jackson and Wayne feared; it was the political influence it purchased. For Jackson said, ever casting himself as the defender of the masses:

Whether the people of the United States are to govern through representatives chosen by their unbiased suffrages or whether the money and power of a great corporation are to be secretly exerted to influence their judgment and control their decisions. It must now be determined whether the bank is to have its candidates for all offices in the country, from the highest to the lowest, or whether candidates on both sides of political questions shall be brought forward as heretofore and supported by the usual means. At this time the efforts of the bank to control public opinion, through the distresses of some and the fears of others, are equally apparent, and, if possible, more objectionable.⁷⁴

Later Jackson called the bank “the scourge of the people.”⁷⁵ Wayne, echoing Jackson, said the Bank of the United States “benefits individuals involved with the bank and not citizens and not the Government.”⁷⁶

In Georgia, some voters and the men they elected looked to the north and saw two dangerous behemoths looming over them: an ever growing federal government with a powerful executive, and a national bank captained by northern men with suspect motivations. Fear forced many to become defensive and see the threats from the North as reason to align with other men like themselves who

⁷⁴ Jackson’s Fifth Annual Message to Congress:
<http://www.synaptic.bc.ca/ejournal/JacksonFifthAnnualMessage.htm>

⁷⁵ Jackson’s Sixth Annual Message to Congress:
<http://www.synaptic.bc.ca/ejournal/JacksonSixthAnnualMessage.htm>

⁷⁶ James Wayne, *Register of Debates in Congress*, 23rd Congress (1833), 1428, 1432.

shared the same fear, insecurity and defensiveness. They looked to their local political leaders, not national parties, to represent their interests, articulate their fears, and help them decide issues. Georgians were caught in the crossfire of an uncomfortable choice: support a potentially dangerous and powerful president, or oppose the president by supporting a somewhat obscure financial institution that might vaguely pose a threat to them. Fearing presidential power, some Georgians chose the latter.⁷⁷

For many Georgians, the Bank War, as it was called, did not resonate or appear as a problem because it was so distant and far removed from their day-to-day experiences, but coupled with the Nullification Crisis, Jackson's struggle with the Bank of the United States created many anti-administration voters in Georgia. In spite of fear of a powerful government, loyalty to Jackson ran strong in Georgia because of his promise, desire and willingness to remove the Indians from the state. It seemed that many in Georgia feared a powerful executive, unless, of course, that power was wielded on their behalf.⁷⁸

In 1828, white settlers discovered gold in Dahlonega, Georgia. Site of the nation's first gold rush, Dahlonega also was the location of a regional capital of the Cherokee Nation, a sacred site occupied by the Cherokee for generations. Over 15,000 whites descended on the north Georgia mountains around Dahlonega. Many

⁷⁷ Carey, *Parties*, 32; Magliocca, *Andrew Jackson*, 11 – 19.

⁷⁸ Ibid.

new arrivals, opportunistic short-timers who sought quick riches, intended to leave the area once the mines were tapped out, but most stayed in north Georgia. The new arrivals built new towns and villages around the many mines that peppered the land, and claimed title to land held by the Cherokee. The Cherokee resisted the white advance and used the courts to defend their positions. From 1828 to 1838, Georgia Cherokees fought to keep their land, but Georgians found a powerful friend in Andrew Jackson, who believed there would be “no peace for Indians east of the Mississippi.”⁷⁹

Though the Cherokee successfully defended before the Supreme Court of the United States their right to possess sovereign lands within the state of Georgia, Georgians and Jackson balked. Jackson, who, according to Arthur Schlesinger, liked Indians about as much as he liked Henry Clay, rejected the Supreme Court’s ruling *Worcester v. Georgia*, which said that the Cherokee nation was a “distinct community” with self-government “in which the laws of Georgia can have no force.” Jackson replied: “The decision of the Supreme Court has fell still born, and they find that they cannot coerce Georgia to yield to its mandate.” Using his rejection of *Worcester* as a springboard to launch a greater, more sweeping campaign against Indians, Jackson supported and signed the Indian Removal Act of 1830. Georgians

⁷⁹*Daily National Intelligencer* (Washington DC), September 10, 1830; Watson, *Liberty and Power*, 106; David Williams, *The Georgia Gold Rush: Twenty-Niners, Cherokee and Gold Fever* (Columbia: University of South Carolina Press, 1995); Brands, *Andrew Jackson*, 435.

cheered, and James Wayne in Congress said: "Sovereignty over soil is the attribute of the States; and it can never be affirmed of tribes living in a savage condition, without any elements of civilization."⁸⁰

By 1831, many of the Cherokee in Georgia had been counted and removed to Western lands. Andrew Jackson, in his annual message to Congress, said: "At the request of the authorities of Georgia the registration of Cherokee Indians for emigration has been resumed, and it is confidently expected that half, if not two-third, of that tribe will follow the wise example of their more westerly brethren. Those who prefer remaining at their present homes will hereafter be governed by the laws of Georgia, as all her citizens are, and cease to be the objects of peculiar care on the part of the General Government." Though the laws of Georgia governed the Indians, the federal government assisted Georgia in removing the Indians from within its borders before and after 1838 when the "Trail of Tears" commenced.⁸¹

⁸⁰ See Remini, *Andrew Jackson and His Indian Wars*, 254-277; and Remini, *The Legacy of Andrew Jackson: Essays on Democracy, Indian Removal, and Slavery* (Baton Rouge: Louisiana State University, 1990), 29, 30, 69, and 70; Magliocca, *Andrew Jackson and the Constitution*, 26; On Indian Removal and the impact and potency of *Worcester v. Georgia* see Magliocca, *Andrew Jackson and the Constitution*, 34-47; *The Cherokee Phoenix* (New Echota, Georgia), March 12, 1831; January 19, 1833; *Daily National Intelligencer* (Washington, DC), May 25, 1830; Wayne quoted in *Register of Debates*, 21st Congress (1830), 1103, 1124.

⁸¹ Jackson's First Inaugural Address as quoted in *The Cherokee Phoenix* April 8, 1829; Jackson's Third Annual Message to Congress: <http://www.synaptic.bc.ca/ejournal/JacksonThirdAnnualMessage.htm>; Remini, *Andrew Jackson*, 82-83, 121, and 148-149; Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848* (New York: Oxford University

After his successful bid to return to Congress 1832, and after the light and heat around the tariff, Nullification, Indian Removal and the Bank War subsided, Wayne declared that a new era of politics had begun. He told a supportive Savannah crowd in 1833 that Georgia, through his re-election and the election of other Jackson men throughout the state, affirmed its “independence of parties, distinguished from each other by the names of men and rally under the designation of descriptive principle.” He criticized the efforts of Calhoun and his followers and rejected those who threatened the Union.⁸²

Georgia, he had surmised, demonstrated its independence of parties by standing with the Union and against divisive party players such as Calhoun and the “Nullifiers” of South Carolina whose factionalism was a threat to both Union *and* State Rights. Shortly after he declared his and Georgia’s independence of parties, he promptly formed one, the appropriately named “Union Party.” The newly formed Union Party elected Wayne its leader, and Wayne recommended that every county in the state have a Union Party representative responsible for communicating the

Press, 2007), 350-359; Andrew William Anderson, *Cherokee Removal: Before and After* (Athens: University of Georgia Press, 1991).

⁸² *The Globe* (Washington DC), May 25, 1833; Ulrich B. Phillips, *Georgia and State Rights: A Study of the Political History of Georgia from the Revolution to the Civil War, with Particular Regard to Federal Relations* (Cambridge: Harvard University Press, 1902), 175-194. Lawrence, *Southern Unionist*, 75; Carey, *Parties, Slavery, and the Union in Antebellum Georgia*, 80-95; Michael P. Johnson, *Toward a Patriarchal Republic: The Secession of Georgia* (Baton Rouge: Louisiana State University, 1977), 28-32.

message of the party and of Unionism. Wayne instinctively knew how to energize his base. It is in this period that Wayne began to develop his Unionist political ideology.⁸³

Though Wayne held compatible and complementary the notions of state rights and devotion to the Union, a given society weighs each circumstance in which it finds itself to determine if secession is a viable option. In other words, the decision to secede has a relative, not absolute, value. Secession was an option of last resort, and option chosen only if no other option was available. Further, the decision to secede can be affected by changes in circumstances and conditions. In contrast, Calhoun and his followers believed in the absolute value of secession, which implies that secession was a viable first option and blind devotion to Union was equivalent to submission; therefore, it was dishonorable. Wayne and those like him in Georgia believed in the relative value of secession. Andrew Jackson, James Wayne, and, later, Abraham Lincoln believed in the absolute value of Union.⁸⁴

As paradoxical as it sounds, Wayne and other Georgia Unionists believed that inherent in an understanding of Unionism was an advocacy of state rights. It was the right of a state to choose the protection of Union and the benefits of a symbiotic relationship with the federal government. While it was the *right* of an individual

⁸³ Ibid.

⁸⁴ See Viva Ona Bartkus, *The Dynamics of Secession* (London: Cambridge University Press, 1999), 216-225; Christopher Wellman, *A Theory of Secession* (Chapel Hill: University of North Carolina Press, 2005).

state to be part of the Union, Wayne believed, it was the *duty* of individual states to perpetuate and defend the Union. Unionism for Georgia Unionists such as Wayne was synonymous with loyalty, and just as mind was part of body, state rights was part of Unionism: distinct, but inseparable. Definitions of union, disunion, Nullification and secession have always been confusing. One contemporary observer stated: "It is not easy to obtain what "union" or "Nullification" is. It would seem to us much like the difference between tweedle-dum and tweedle-dee. Or when we say that "orthodoxy means *our* doxy, and heterodoxy some *other* man's-doxy.""⁸⁵

Wayne believed that the factionalism of Calhoun and his followers would spell the demise of the Union and that the brand of state rights rhetoric espoused by the Nullifiers was singular in nature. In other words, Wayne believed that South Carolinians who followed Calhoun believed in *their* right to nullify laws and secede from the Union, but this view cannot be examined without acknowledging South Carolina's receding power in Washington. According to Elizabeth Varon, South Carolina was "profoundly insecure about its waning national power." Further, Wayne believed firmly in the contractual nature of the relationship between a state and the federal government. In 1860, Abraham Lincoln articulated the symbiosis Wayne began to develop in the 1830s when he said that if a state could declare itself

⁸⁵ Carey, *Parties, Slavery and the Union*, 19; *Niles' Weekly Register*, December 27, 1834.

free from the encumbrances of a national union, then the national union likewise could extract itself from the contractual arrangement and expel a state from the Union.⁸⁶

After 1828, as suggested by Varon, South Carolina politicians became insecure about their state's national political atrophy. The state shrank in population and significance relative to other states, particularly relative to Georgia. South Carolina's voice was becoming less significant in Washington, but that same voice was becoming ever louder and ever more threatening. From 1830 until 1860, South Carolina politicians believed that secession was always an available option. Though couched in terms of rights and liberty, South Carolina was, in fact, trapped by its own undiversified monoculture. Like an addict, the state experienced serial dependencies from its time as colony until its entrance into the Confederacy. The state's historic dependence on cash crops such as indigo, rice and cotton in turn made the state utterly dependent upon slavery. In turn, slavery was dependent upon power resting in the hands of the master class; and the power of the master class depended upon prosperity. As South Carolina's representation in the nation's capital diminished and the boom and bust cycles of the Market Revolution hobbled

⁸⁶ Varon, *Disunion!*, 92; and Freehling, *The Road to Disunion*, Volume I, 270-275; H. Van Holst, *The Constitutional and Political History of the United States, 1859-1861* (Chicago: Callaghan and Company, 1892), 330, 348.

the Palmetto State's economy, state leaders responded with aggressive tactics designed to protect the state and lure like-minded southerners to their side.⁸⁷

Economic fear often spawned radical political ideology in South Carolina, and the representatives of Georgia led the resistance to secessionist ideology in Congress. And Georgia's defender of the Union and leader in Congress at the time, James Wayne, owned a plantation a mere fifty feet from the border of South Carolina. South Carolina became more isolated by mere population atrophy, whereas Georgia continued to grow and attract new arrivals, but likewise fell victim to periods of significant exoduses to other states. South Carolina steadily lost seats in Congress. For example, in 1810 the state had eleven electors, then ten in 1820, then eight through the 1840s and 1850s, then, finally, seven by 1860. In additions, John C. Calhoun's fears appeared to be well founded, for Andrew Jackson continued to try to isolate South Carolina.⁸⁸

⁸⁷ Ibid.

⁸⁸ Bartkus, *Dynamics of Secession*, 220; Recent historians have contrasted "secession," which was seen as a constitutional issue, with "disunion" which was seen as a "threat, a dark prophecy, a dysfunction or disease." For these historians, "disunion" loomed large and was a constant "poison, whip, arrow, fire, spell, curse, or storm" that was overwhelming and lurking from the founding. This contrasts sharply with other historians who claim that the South was almost militantly Unionist. See Elizabeth Varon, *Disunion!: The Coming of the Civil War, 1789 – 1859* (Chapel Hill: University of North Carolina Press, 2008), 3-10; and Carl Degler, *The Other South: Southern Dissenters in the Nineteenth Century* (Gainesville: University Press of Florida, 2000), 2-18; See Schlesinger, *Age of Jackson*, 34, 54, and 95; *Niles' Weekly Register*, December 27, 1834.

Hailed as a champion of the state and the Union, Wayne could have written his political ticket in 1834. Throughout the terms of the 21st and 22nd Congresses, he seemed to become more confident in House debates, for he challenged northern opponents more aggressively, particularly John Quincy Adams of Massachusetts, and held them in debate longer over issues important to both Georgia and Jackson, his president. Wayne wanted to be Speaker of the House to replace Virginian Andrew Stevenson, who was to be tapped for a diplomatic position. Although Wayne had President Jackson's support and that of many of his colleagues in the House of Representatives, he yielded to the incumbent when the Virginian decided to continue in the position. At the same time, Georgia's long-time Senator and fellow Unionist, John Forsyth, resigned from the Senate to become Jackson's Secretary of State, leaving a vacancy. The Union Party of Georgia indicated that it would support Wayne if he wanted to move to the Senate, a position he considered, but the party leaders indicated they would rather have Wayne return to Georgia and run for governor against a State Rights candidate. The Georgia Union Party nominated Wayne as their gubernatorial candidate to run in 1834 against a weak State Rights candidate, but Wayne declined the nomination because Andrew Jackson intended to nominate Wayne to serve on the Supreme Court.⁸⁹

⁸⁹ Lawrence, *Southern Unionist*, 77-90; Magliocca, *Andrew Jackson and the Constitution*, 29 and 66; *Niles' Weekly Register*, December 20, 1834.

**“Noble Wayne”:
Georgia’s First Supreme Court Justice**

U.S. Supreme Court Justice William Johnson of South Carolina died in 1834, which gave Andrew Jackson an opportunity to fill the position with a much-needed ally who would serve as a counter-balance to Jackson’s judicial nemesis, Chief Justice John Marshall. During his first term, Jackson filled two seats on the bench, one with John McLean of Ohio, and the other with Henry Baldwin of Pennsylvania.⁹⁰ To a degree, Jackson’s choices were politically motivated, but in reality his choices reflected the necessary pragmatism practiced by presidents in the antebellum era. Prior to the Civil War, presidential Supreme Court choices were influenced more by geography and less by ideology. All Supreme Court justices rode their home circuit when the Supreme Court was not in session. Before the influence and business of the Court expanded, and before the nation itself expanded, Supreme Court dockets were relatively small, and justices met in Washington to hear cases for just two months, January and February. The rest of the year, they rode their home circuits.⁹¹

Andrew Jackson chose six justices during his two terms, and each one represented the circuit from which they were chosen. All three branches of

⁹⁰ Albert P. Blaustein and Roy M. Mersky, *The First Hundred Justices: Statistical Studies of the Supreme Court of the United States* (Hamden, Connecticut: Archon, 1978), 52-72; *U.S. Reports, 1790-1870*.

⁹¹ *Ibid.*, *Daily Commercial Bulletin and Missouri Literary Register* (Columbia, Missouri), January 25, 1837; *Daily National Intelligencer* (Washington DC), March 15, 1838.

government, including the judicial branch, were considered to be representative bodies. Jackson was compelled by pragmatism, tradition, and common sense to select judges who knew their circuits and the people they represented. Far from being a disinterested third party that blindly weighed the scales of justice, the Supreme Court was a representative body whose members were activists in the sense that they enthusiastically participated in the business and politics of their home circuit. Alexander Hamilton considered the Supreme Court an intermediary between the people and the legislature and believed it was to serve as a representative body and as protector of the rights of the people. For a president, Supreme Court justices, as the position became more politicized, could be ambassadors and informants as to the temper of their home circuits or as to the timing or direction of landmark cases before the courts.⁹²

Andrew Jackson sought to expand the number of justices on the Supreme Court in 1834 from seven to nine not to pack the court, but rather to ensure that recently admitted states were fairly represented on the Supreme Court and that the circuits had appropriate coverage. For example, in his sixth message to Congress in 1834, Jackson said:

Nothing can be more desirable than the uniform operation of the Federal judiciary throughout the several States, all of which, standing on the same

⁹² Publius [Alexander Hamilton], *The Federalist*, No. 78 (Boston: Wesleyan University Press, 1982), 525-545; James A. Rawley, *Race and Politics: Bleeding Kansas and the Coming of the Civil War* (New York: Lippincott, 1969), 275-290.

footing as members of the Union, have equal rights to the advantages and benefits resulting from its laws. This object is not attained by the judicial acts now in force, because they leave one quarter of the States without circuit courts. It is undoubtedly the duty of Congress to place all the States on the same footing in this respect, either by the creation of an additional number of associate judges or by an enlargement of the circuits assigned to those already appointed so as to include the new States.⁹³

He asked Congress to create more circuits, or add more seats on the Supreme Court, so that the new states could be represented fairly and served properly.⁹⁴

When Judge Johnson of South Carolina died in 1834, creating a vacancy on the Court, Jackson's liberty in selecting a replacement was limited; he was compelled to choose someone from the sixth circuit, which covered Georgia and South Carolina. In spite of his reputation for rewarding cronies, Jackson could not arbitrarily choose someone from his home state or from a distant circuit to fill South Carolina's vacant position on the Supreme Court. Jackson needed to ensure that the circuit would continue to be represented on the Supreme Court, and so that a judge would be assigned to ride the circuit and hear cases when the Supreme Court was not in session. Ideology did not determine Jackson's choice; geography did. Though

⁹³ Henry J. Abraham, *Justices and Presidents: A Political History of the Appointments to the Supreme Court* (New York: Oxford University Press, 1974), 13-80; Magliocca, *Andrew Jackson and the Constitution*, 68-75; Andrew Jackson's sixth message to Congress: Internet: <http://www.synaptic.bc.ca/ejournal/JacksonSixthAnnualMessage.htm> .

⁹⁴ Ibid.

Wayne's steadfast support of Jackson and his defense of the issues that defined Jackson's presidency were instrumental in influencing Jackson to choose Wayne, what likely made Jackson choose James Wayne might have been the fact that Wayne was *not* from South Carolina. Historians have assumed that Wayne was selected because of his loyalty to Jackson, which may have been a secondary or tertiary consideration for Jackson. Jackson chose a Georgian because Georgia was part of the sixth circuit. In light of the conflict Jackson believed his former vice president, John C. Calhoun, caused, it is doubtful Jackson would have chosen anyone from South Carolina in 1834.⁹⁵

In October 1835, James Wayne wrote his first opinion for the Supreme Court. He spoke for the majority in *Fenwick v. Chapman* and in this opinion defended the rights of manumitted slaves who had been freed by the wills of their deceased masters. Over the next thirty-two years, he would write nearly two hundred opinions, but very few were landmark cases and most of the times when he wrote for the majority, it was in his capacity as an expert in contract and admiralty law. Though many of his opinions, both dissents and majority opinions, demonstrated Marshall-like nationalism and showed how his Unionist ideology evolved over time, it was not only his actions when the court was in session that demonstrated his staunch Unionism. Wayne's actions while he was in Georgia riding circuit during his

⁹⁵ Remini, *The Life of Andrew Jackson*, 175-180; Jon Meacham, *American Lion: Andrew Jackson in the White House* (New York: Random House, 2009), xxi, 53, 75, and 178.

tenure on the Supreme Court demonstrate not only his involvement in Georgia's political processes but also his influence on Georgia Unionism. For example, while he was riding his circuit during the election of 1836, Wayne campaigned for Martin Van Buren, Jackson's vice president and anointed successor. Because Wayne was so active campaigning in Georgia and South Carolina, the Supreme Court delayed beginning session in 1836. This was a pattern he and other Supreme Court justices repeated until 1860. Before the Civil War, Wayne campaigned for unionist candidates in Georgia, whether Whig or Democrat, and continued to energize the Union Party network throughout Georgia. Supreme Court justices spent more time in their circuits than they did in Washington, so they were far from being far removed.⁹⁶

Supreme Court justices complained year in and year out about circuit riding. Thomas Johnson, one of George Washington's first appointees, lamented the fatigue and separation that the office required. When Johnson complained and threatened to quit, Washington chastised the judge in his reprimand and said that "the resignation of persons holding that high office conveys to the public mind a want of stability in that Department, where it is perhaps more essential than in any other."⁹⁷ Washington reinforced the importance of the longevity of court members if for no

⁹⁶ Lawrence, *Southern Unionist*; Marcus and Perry, *The Documentary History of the Supreme Court of the United States*, 340-342.

⁹⁷ *Ibid.*, 341.

other reason than to construct an image of the permanence of the court. Though the justices hated riding circuit and lobbied year after year to end the practice, they slogged on. Most years, Wayne logged close to three thousand miles riding circuit in Georgia and South Carolina. He commented often that he spent more miles on the circuit than he did traveling from Savannah to Washington each year. Wayne capitalized on his circuit riding obligation, but according to him, it was arduous. Wayne's brother-in-law, James Stites, who was also a Wayne and Cuyler law partner, died while riding the circuit. Salmon Chase, chief justice during Reconstruction, refused to allow his justices to ride circuit because of the danger and because "it would be inappropriate for Justices to hold court concurrently with military courts." (Congress abolished circuit riding after the Civil War, but the practice merits further examination because little has been written about the topic.)⁹⁸

Another example of Wayne's continued activism and continuous influence in Georgia occurred in 1839 when he was elected to serve as delegate from Chatham County to the Georgia constitutional convention. When the 240 delegates convened in Milledgeville, the state capital, they *unanimously* elected Wayne to serve as its president. He had been elected as the convention's president six years earlier while he was in Congress, but not unanimously. Apparently his position as a Supreme Court justice and being a staunch Unionist did more to enhance Wayne's stature

⁹⁸ Marcus and Perry, *The Documentary History of the Supreme Court*, 3-7; See also Bernard Schwartz, *A History of the Supreme Court* (New York: Oxford University Press, 1993), 73-80; and Simon, *Lincoln and Taney*, 245-250.

than diminish it. Though some historians have claimed that positions on the Court necessarily removed justices from their home states and detached them from the local political events, it appears that the opposite was true in the antebellum era.⁹⁹

In 1847, Wayne demonstrated his lasting influence in state and national politics by inviting Daniel Webster to Savannah and hosting the revered elder statesman from Massachusetts while he visited Georgia. Massive crowds greeted Wayne and Webster as they toured the city, and both men spoke about the importance of the Union and the hope of its future. Wayne said to Webster, “tell those to whom you may speak that you have been among people who feel manifest attachment to our northern and Eastern brethren, and show that their feeling is devotion to our Union.” In reply, Webster said, “Georgians! Shall we not cherish our recollections of those common sufferings” of the Revolution? He continued, “I wish to see our attachment extended not by telegraphic communication or railroad, but through the medium of American sympathies, acting upon the American heart.”¹⁰⁰

In 1850, after a decade of debate concerning fugitive slaves and the status of slavery in western territories and those territories won from Mexico after the war, the Compromise of 1850 thrust the nation into a decade of division. The

⁹⁹ *Niles' Weekly Register*, May 18, 1833; Campbell, *Four Score Forgotten Men*, 150-159; Magliocca, *Andrew Jackson and the Constitution*, 78.

¹⁰⁰ *Daily National Intelligencer* (Washington DC), June 4, 1847.

Compromise of 1850 was a series of laws that attempted to resolve the controversies that arose from the slavery, expansion, and the Mexican War.¹⁰¹ Though the compromise delayed civil war for nearly a decade, opposition to the measure was strong in the South because many felt the Compromise favored the North. Most worrisome to many in the South was the admission of California as a free state.¹⁰² In response to the Compromise of 1850, Georgia leaders issued the Georgia Platform in December 1850 after the Governor of the state, Robert Towns, called for a special convention to determine Georgia's response to the Compromise. The authors of The Georgia Platform, Alexander Stephens and Charles Jenkins affirmed loyalty to nation while drawing a line in the sand and stated:

“That we hold the American Union, secondary in importance only to the rights and principles it was designed to perpetuate. That past associations, present fruition, and future prospects, will bind us to it so long as it continues to be the safeguard of those rights and principles If the thirteen original parties to the contract, bordering the Atlantic in a narrow belt, while their separate interests were in embryo their peculiar tendencies scarcely developed, their revolutionary trials and triumphs, still green in memory, found Union impossible without Compromise, the thirty-one of this day, may well

¹⁰¹ For the Compromise of 1850, see Michael Holt, *The Fate of Their Country: Politicians, Slavery Extension, and the Coming of the Civil War* (New York: Hill and Wang, 2004); and Michael Holt, *The Political Crisis of the 1850s* (Boston: W.W. Norton, 1978), 90-120.

¹⁰² Ibid.; Lawrence, *Southern Unionist*, 69-84. David M. Potter, *The Impending Crisis, 1848-1861* (New York: Harper, 1977), 52-97; Emory M. Thomas, *The Confederacy as a Revolutionary Experience* (Columbia: The University of South Carolina Press, 1992), 1-23; William J. Cooper, *Jefferson Davis: American* (New York: Vintage, 2001), 224-226; and Cooper, *Liberty and Slavery: Southern Politics to 1860* (Columbia: The University of South Carolina Press, 2000), 192-286.

yield somewhat, in the conflict of opinion and policy, to preserve that Union.”¹⁰³

Hailed as a victory for Unionists as well as a reflection of the will of the people of the state, the Georgia Platform became the stance of Georgia and the South for the remainder of the decade. The authors of the Georgia Platform were credited with saving the Union in late 1850, but the true architect of the position outlined in the Georgia Platform had spoken similar ideas in the United States House of Representatives twenty years earlier.¹⁰⁴

In 1830 while still in Congress, James Wayne had said in language remarkably similar to that of the Georgia Platform:

“The powers voluntarily given to the States, to sustain their national Union, Georgia will be among the foremost to maintain, against every attempt to abridge: but such as were retained by the States, and which she believes cannot be surrendered but at the hazard of this government’s becoming a consolidated empire, in which the persons and property of individuals will be subject to such edicts as may be thundered from your Capitol, she will struggle to guard from usurpation by inference or interested combination; and when the cause is to be hopeless – *if it shall ever be so* – relying upon

¹⁰³ For more on the Georgia Platform see William J. Cooper, *The South and the Politics of Slavery, 1828-1856* (Baton Rouge: Louisiana State University, 1978); William C. Davis, *The Union that Shaped the Confederacy: Robert Toombs and Alexander Stephens* (Lawrence: The University Press of Kansas, 2001); Michael Johnson, “A New Look at the Popular Vote for Delegates to the Georgia Secession Convention,” *Georgia Historical Quarterly*, LVI (Fall 1972): 259-275; James L. Huston, “Southerners Against Secession: The Arguments of the constitutional Unionists in 1850-1851,” *Civil War History* 46 (Fall 2000); Coleman, *A History of Georgia*, 190-220; Phillips, *Georgia and State Rights*, 165-180.

¹⁰⁴ Ibid.

her own energies . . . she will throw herself on first principles and no longer form a pillar in a temple which neither yields her safety or happiness, nor an equality of political burdens.”¹⁰⁵

Not only were Wayne’s words foundational to the Georgia Platform of 1850, his words seem to reflect what Wayne knew about Georgia’s sentiment in regard to secession, disunion and union. When Georgians went to the polls in the fall of 1850 to elect delegates who would be tasked with the responsibility of determining Georgia’s response to the Compromise of 1850, over 80% opposed secession. In spite of the rising voice of a growing minority, Unionist strength remained consistently high throughout the decade. Historians claim that the foundation of the Georgia Platform was found in the Virginia and Kentucky Resolutions of 1798 and 1799, as well as in Thomas Jefferson’s and John Dickinson’s Olive Branch Petition offered by the Second Continental Congress to King George III, which said, essentially, “we are loyal, but we will fight.” But this view bypasses the impact of Wayne’s Union speech of 1830.¹⁰⁶

¹⁰⁵ “Speech of James M. Wayne, of Georgia, on the Bill to Provide for the Removal of the Indians West of the Mississippi,” pamphlet in possession of The Georgia Historical Society.

¹⁰⁶ Ibid.; William J. Cooper, *The South and the Politics of Slavery, 1828-1856* ; William C. Davis, *The Union that Shaped the Confederacy: Robert Toombs and Alexander Stephens*; Michael Johnson, “A New Look at the Popular Vote for Delegates to the Georgia Secession Convention,” *Georgia Historical Quarterly*, LVI (Fall 1972): 259-275; James L. Huston, “Southerners Against Secession: The Arguments of the constitutional Unionists in 1850-1851,” *Civil War History* 46 (Fall 2000); Coleman, *A History of Georgia*, 190-220; Phillips, *Georgia and State Rights*, 165-180.

As the nation tumbled closer to disunion in the 1850s, national parties disintegrated and fragmented around the issue of slavery. The Democratic Party looked for a standard bearer to rival a new party, the Republican Party. Democratic stalwart Thomas Hart Benton suggested in 1856 that James Wayne be the Democratic nominee for president. Benton looked to the Georgian for leadership in the national party because he believed that Wayne was not associated with slavery and was not tainted by secessionist ideology. Likewise, Benjamin Rush of Pennsylvania encouraged Wayne to run for president in 1860 because selecting a Georgian would appease the radicals in the South. Despite the calls to run, Wayne declined, likely due to his advanced age.¹⁰⁷

Four years later in November 1860, just a few days after Lincoln's election, Wayne was in Charleston, South Carolina riding his circuit. In what can only be seen as an effort to quell the growing fury in what would be called by William T. Sherman, "that hellhole of secessionism," Wayne entered the growing storm. While in Charleston, he attended a celebration of Savannah and Charleston leaders who were in Charleston celebrating the first rail line connecting the two cities. Wayne was a shareholder in the railroad, so he had a direct financial interest in being in Charleston. In addition, he was still hearing circuit court cases. More importantly, Wayne had a political objective in being in Charleston during election week 1860 because he wanted to counter secessionist sentiment with appeals to patriotism and

¹⁰⁷ *The Daily South Carolinian* (Columbia, South Carolina), April 24, 1856.

reason. While at dinner, the mayor of Charleston toasted the Supreme Court and, in particular, toasted James Wayne for rendering verdicts favorable to the South, presumably such as *Dred Scott*. Wayne, in reply, toasted the nation and prayed that all governors of the South exercise restraint in the weeks ahead. Wayne was in South Carolina at the moment the state seceded from the Union, and in his last days of circuit riding, Wayne was campaigning for the Union in Charleston, South Carolina.¹⁰⁸

Though he recognized that South Carolina would secede, despite his efforts to influence that outcome, he was convinced Georgia would not follow South Carolina's lead. Back in Washington to attend Lincoln's inauguration in March 1861, Wayne said that Georgia would remain in the Union because "four-fifths there oppose secession." The northern press applauded Wayne who was "admonishing" the disunionists "of the fatal course of their actions."¹⁰⁹ He was wrong about Georgia seceding, but evidence suggests he was somewhat correct about the strength of opposition to secession by many Georgia, as later chapters will attempt to demonstrate.¹¹⁰

¹⁰⁸ *The Charleston Courier* (Charleston, South Carolina), October 30, 1860 and November 8, 1860; Freehling, *The Road to Disunion: Secessionists Triumphant, 1854-1860*, 395-444; Varon, *Disunion!*, 305-330.

¹⁰⁹ *Daily Evening Bulletin* (San Francisco, CA), November 24, 1860

¹¹⁰ *Milwaukee Daily Sentinel* (Milwaukee, WI), November 20, 1860.

James Wayne was not the only disciple of Unionism in Georgia, and the voice of Union was hardly silent in Georgia during the three-decade gap between the Nullification Crisis and secession. Just as political parties were ill-defined in antebellum Georgia, so too were politicized terms such as nationalism, disunion, secession, state rights, and unionism. Historians describe Georgia as ambivalent in regard to secession. Some claim that Georgia politicians were moderate in their views of disunion and union. More accurately, Georgia soundly rejected secession for decades, but with no clear articulation of Unionism and with no cohesive voice or vision to tie together varied anti-secessionist views, the state fell prey to secessionist radicals. Unionism, however well or poorly articulated in Georgia, transcended politics because it was not merely a political expression. Though Unionism is often couched in political terms, other dimensions of Georgia Unionism can explain both its breadth and depth, and the next chapter discusses the economic dimension of Georgia Unionism.¹¹¹

¹¹¹ Coleman, *A History of Georgia*, 125-175; Alvin L. Duckett, *John Forsyth: Political Tactician* (Athens: University of Georgia Press, 1962); Thomas E Schott, *Alexander H. Stephens of Georgia: A Biography* (Baton Rouge: Louisiana State University Press, 1988); Freehling, *The Road to Disunion*, 429-435; Phillips, *Georgia and State Rights*, 146.

CHAPTER THREE

JAMES WAYNE AND THE ECONOMIC DIMENSION OF GEORGIA UNIONISM

“Massachusetts cannot vie with Georgia in boundless facilities of internal improvements, which will render Georgia, at no distant day, one of our mightiest states.”¹

Daniel Webster

James Wayne’s broad political influence and national reputation as a staunch Unionist continued while he served on the Supreme Court, but his Unionism was more than a statement of political ideology. Wayne’s Unionism included an economic dimension manifested in his private and public actions, and evidence suggests that Georgia expressed a similar economic dimension of Unionism. Wayne recognized early in his political career that Georgia’s development and the strength of its position in the Union depended on a broadly diversified economy. Throughout his career, he was instrumental in linking his state to the rest of the nation, both literally and figuratively. Wayne’s good friend Daniel Webster idealistically hoped to hold the Union together when he told a crowd of Wayne’s fellow Savannahians, “not

¹ Webster speech in Savannah quoted in *Daily National Intelligencer* (Washington DC), June 4, 1847.

by telegraphic communications or railroad, but through the medium of American sympathies.”²

Wayne appreciated Webster’s idealism and told the aging Massachusetts Senator that he honored the “duty we owe to our fathers and our posterity to maintain, defend and preserve the Union . . . for future generations,” he also recognized the importance of developing Georgia’s dual economy, one in which both industrial and agrarian interests thrived side-by-side in healthy and complementary competition. The challenge for Wayne and others in Georgia who shared a similar vision was to prevent the state from developing an antagonistic “dueling” economy, one in which manufacturing and planter interests jostled for dominance and attempted to thwart the other’s growth. For Wayne, the one way to preserve the Union was through creating diversified, relatively unrestricted, mutually beneficial, yet interdependent state economies.³

Before the Civil War, many who traveled through Georgia often remarked in awe at the state’s abundant natural resources and sheer size. In 1847, Daniel Webster toured the state with Wayne and reflected on “the great destinies open to the people and opportunities within their power.” Fredrick Law Olmstead shared a similar view and observed that Georgia had a “natural advantage” over neighboring states and that “nature’s gifts had not been distributed equally” for Georgia’s share

² Ibid.

³ Ibid.

was far greater. Natural advantage combined with financial ability and political will would secure Georgia's importance in the region and the nation.⁴

Jumping ahead to a decade after Reconstruction, New South proselytizer Henry Grady challenged many in his home state of Georgia to harness the state's natural abundance, modernize its economy, develop efficiencies, cut costs and "out-Yankee the Yankees." Twenty years after the Civil War, Grady sought to develop "diversified industry that meets the complex needs of this complex age." Grady's frequent pleas for economic diversification from his perch at the *Atlanta Constitution* echoed those made by a number of forward thinking Georgians sixty years earlier.⁵

Many of Georgia's economic leaders launched a model of the New South decades before the Civil War and Grady's vision of a New South. James Wayne, instrumental in making Georgia the "Yankeeland of the South" well before the Civil War, preached economic diversification in his public life and practiced economic diversification in his personal life. South Carolina's former governor and perennial

⁴ Daniel Webster quoted in Ibid.; Fredrick Law Olmstead, *A Journey in the Seaboard Slave States in the Years 1853-1854, with Remarks on their Economy* (New York: Putnam, 1904), 16-26; John L. Larson, *Internal Improvements: National Public Works and the Promise of Popular Government in the Early United States* (Chapel Hill: University of North Carolina Press, 2001), 66.

⁵ Ibid.; Daniel S. Margolies, *Henry Watterson and the New South: The Politics of Empire, Free Trade and Globalization* (Lexington: University Press of Kentucky, 2006); Henry W. Grady, *The New South* (Charlottesville: University of Virginia Press, 1890), 182; Chad Morgan, *Planters' Progress: Modernizing Confederate Georgia* (Gainesville: University Press of Florida, 2006), ix.

politician, Andrew McGrath, with whom James Wayne shared circuit court duties for twenty years, said of his good friend, “he was in no sense an ordinary man.”

McGrath eulogized Wayne at his funeral and spoke of his friend’s career, but Wayne was not an ordinary southern man in another way because, unlike many of his contemporaries, he died a rich man. Wayne was seventy-seven years old when he died, and upon his death in the nation’s capital on July 5, 1867, he left his heirs a highly diversified estate estimated to be between \$50,000 and \$100,000, which would be the equivalent of over \$1,000,000 in 2006 dollars. The details of Wayne’s estate will be recounted later. Just as Wayne practiced economic diversification in his personal economic behavior, he had hoped his state would follow suit.⁶

In stark contrast to Wayne, many of his contemporaries suffered the expected fate of a defeated people when the southern economy collapsed. Fortunes evaporated as land and other asset values sank. Land of all kinds comprised the largest asset class of the South in 1860, at a value of roughly \$7 billion, and land was worth less than half that value in 1870. In Georgia, farm land was worth \$157 million in 1860, and in 1870, five years after the war, farm land was worth less than half that value at \$75 million. Slaves, the second largest collective asset of the South, accounted for roughly half the value of land at roughly \$3.5 billion. By the end of the war, the value of slaves, which enjoyed a dramatic rise in

⁶ Andrew McGrath quoted in the *Charleston Courier*, July 7, 1867; James M. Wayne, “Last Will and Testament;” Dollar analysis found at Measuring Worth: www.measuringworth.com/uscompare, retrieved October 15, 2009.

value during the 1850s, dropped to zero. Other asset classes, such as Confederate currency and bonds, stocks, agricultural commodities, and business valuations similarly reflected the decimation to the public and private sectors as wrought by war. Because slaves collateralized much of southern wealth, the value of highly leveraged assets dropped precipitously and flooded the market, which exacerbated an already significant drop in value.⁷

While James Wayne's friends and former associates fell victim to extraordinary economic losses, not all aspects of Georgia's economy suffered. In Georgia, only the value of manufacturing interests increased in value from 1860 to 1870. Moreover, Georgia's manufacturing capital increased from \$5.5 million in 1850, to \$11 million in 1860, and to a remarkable \$14 million in 1870. Similarly, the value of manufactured goods produced in Georgia enjoyed a similar steady increase in value. In 1850, Georgia's manufacturing output was a rather healthy \$7 million, but in just ten years, that number more than doubled to \$17 million. More astonishingly, Georgia's manufacturing output exceeded \$31 million in 1870.

Georgia's manufacturing prowess did not appear during Reconstruction *ex nihilo*, so

⁷ Susan B. Carter, ed., *Historical Statistics of the United States: Colonial Times to 1970, Millennial Edition* (New York: Cambridge University Press, 2006); James L. Huston, *Calculating the Value of the Union: Slavery, Property Rights, and the Economic Origins of the Civil War* (Chapel Hill: University of North Carolina Press, 2003), 27-30; Robert W. Fogel and Stanley L. Engerman, *Time on the Cross: The Economics of American Negro Slavery* (Boston: Little/Brown, 1974), 44-46, Figure 13; Robert W. Fogel, *Without Consent or Contract: The Rise and Fall of American Slavery* (New York: Norton, 1989), iv; Don Dodd, *Historical Statistics of the United States, 1790-1970* (Tuscaloosa: University Press of Alabama, 1973), 18-25.

tracing the foundation of Georgia's industrial development to its roots will suggest that Georgia's Unionism or at least the state's repeated and strong opposition to secession in part was embedded in economics.⁸

Because Wayne remained loyal to the Union when the South seceded in the winter of 1861, some historians and contemporary observers speculated that Wayne kept his job as Associate Justice of the Supreme Court of the United States because he quite simply needed the income. Speculation swirled in the press once the news reached Georgia after Lincoln's election that Wayne would remain on the Supreme Court. Rumors of bad debts, womanizing, illegitimate black children, investments gone bad, and other attempts to slight his character marked the beginning of the demonization of James Wayne, and the assault on his reputation contributed to his slow descent into historical obscurity. These characterizations have persisted to this day, but Wayne was in sound financial condition at the end of the war. Just as Wayne's father, Richard, who remained loyal to England during the American Revolution, James Wayne remained loyal to the nation he had defended and served for nearly five decades. Just as Wayne's father was branded a traitor, so, too, was

⁸ Ibid., 18; David W. Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge: Harvard, 2001); Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper and Row, 1989); Stephen Budiansky, *The Bloody Shirt: Terror after Appomattox* (New York: Viking, 2008).

James Wayne. Richard Wayne recovered from past characterizations that branded him a traitor, but his son's recovery would be an incomplete one.⁹

The similarities between Richard Wayne and James Wayne are striking, in particular when examining their conservative political tendencies and steadfast loyalty to nation, however conceived. While the similarities are striking, so, too, are the differences, in particular when examining the economic behavior of both men. An exploration of the two men's wills reveals much about father and son and the transfer of wealth between one generation and the next, but, more importantly, the examination also sheds light on the transformation of Georgia's antebellum economy over the same period of time. As both private and public documents, the wills offer a revealing glimpse into the intimate life of a prominent Georgia family before the Civil War. In addition, a comparison of the wills opens an avenue of inquiry into Georgia's evolving antebellum economy. The evidence might suggest a reevaluation of the lingering methodological binaries dominating the historical debate over the nature of Georgia's economy in the antebellum era.¹⁰

⁹ *Lowell Daily Citizen and News*, (Lowell, MA) March 07, 1861; *Fayetteville Observer*, (Fayetteville, NC) November 26, 1860; *Semi-weekly Mississippian*, (Jackson, MS), December 25, 1860; Alexander A. Lawrence, *James Moore Wayne: Southern Unionist* (Chapel Hill: University of North Carolina Press, 1943), 18-35; James M. Wayne, "Last Will and Testament," copy in possession Georgia Historical Society, Savannah, Georgia, *The Wayne-Stites-Anderson Collection*. Richard Wayne, "Last Will and Testament," Chatham County, State of Georgia, *Court of Ordinary Wills*, 1807-1817; Interview with James Jordon, Savannah Oral Historian, October 2004.

¹⁰ A splendid treatment of analytical binaries and their limits can be found in Gary Y. Okihiro, *Common Ground: Reimagining American History* (Princeton: Princeton

The Wills and Ways of Two Generations of Georgians

As was mentioned in Chapter Two, Richard Wayne died in 1808 and left his eighteen-year-old son the executor of his estate. Moreover, Richard Wayne asked his youngest son to be the caretaker of his family and family fortune. The fastidious and highly organized elder Wayne gave very specific instructions to be followed and was very clear about his “will, wishes and desires” after his death. In being so meticulous in his manner and in exerting control from the grave, Richard Wayne gave a revealing inventory of the assets he accumulated over the last twenty-five years of his life. His estate reveals the nature of a life economic. When he arrived in Savannah in 1783, after being expelled from Charleston by an act of the state legislature because he was a Tory, Richard Wayne, stripped of his dignity and left virtually penniless, started anew.¹¹

In less than twenty-five years, Richard Wayne redeemed his reputation and regained his wealth by engaging in the activities that offered the greatest opportunity to any man aspiring success in the Georgia low country. He was in the right place at the right time because “economic and political revolutions of the late eighteenth century advanced the spread of capitalism in the Atlantic basin” as “as new areas were drawn into the capitalist economy.” He engaged in the economic

University Press, 2001), 18-35; and William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York: Hill and Wang, 1983).

¹¹ “The Last Will and Testament of Richard Wayne.”

activities with which he was familiar, activities that offered the greatest chance of replicating his previous success in South Carolina, and that promised the greatest profit potential. Just as any entrepreneur, he took risks, but his calculated risks gestured toward the conservative, land-based aspirations espoused by Wayne and his contemporaries. As a planter, land owner, merchant, and entrepreneur, Wayne's fortunes depended on the regional, national and global demand for rice, for it was this staple-crop that gave rise to a rich and powerful planter elite in low country Georgia.¹²

Richard Wayne owned plantations and business interests related to the planting, cultivating, transporting, financing, and marketing of rice. In addition to being a commodity broker, he owned and traded slaves, a human commodity that proved indispensable to the earlier producers of indigo in the Georgia and South Carolina coastal regions, to Wayne and other planter elite who expanded rice operations, and, later, to those who shifted to the cultivation of cotton.¹³ To secure

¹² Richard Wayne, "Last Will and Testament;" James M. Wayne, "Last Will and Testament;" Lawrence, *Southern Unionist*, 24-30; Timothy Pitkin, *A Statistical View of the Commerce of the United States*, (Lansing: University of Michigan, 1817), 131-135; Joyce E. Chaplin, "Tidal Rice Cultivation and the Problem of Slavery in South Carolina and Georgia," *William and Mary Quarterly* 49 (January 1992): 29-61; Joseph Reidy, *From Slavery to Agrarian Capitalism* (Chapel Hill: University of North Carolina Press, 1992), 5.

¹³ Allan Gallay, "Jonathan Bryan's Plantation Empire: Land, Politics and the Formation of a Ruling Class in Colonial Georgia," *William and Mary Quarterly* 45 (April 1988): 253-279; James C. Bonner, *A History of Georgia Agriculture* (Athens: University of Georgia Press, 2009), 18-21.

his growing wealth and to demonstrate, presumably, his dedication to his new community, he became involved in politics. Laws are value transmitters of a given society and usually reflect the will of the elite, so it would call to reason that southern lawmakers created laws to protect their interests and advance their economic and social agendas. This is one of the reasons both Waynes entered politics. Richard Wayne's success in Savannah as a planter, entrepreneur and politician was hard fought, and he protected his assets throughout his life and, as his will demonstrates, after his death.¹⁴

Richard Wayne became one of the richest men in Savannah. In 1808, his net worth was estimated to be between \$50,000 and over \$100,000. Regardless of the real value of Richard Wayne's estate, he was among the wealthy elite of Savannah.¹⁵ At the time of his death, his assets included plantations, business interests, thousands of dollars worth of personal property, and several families of slaves. As this inventory indicates, Richard Wayne was no yeoman farmer; he was a plantation owner, slave master, businessman and entrepreneur, making him typical of Georgia's planter elite. Though Richard Wayne was atypical in his personal history as related to his contemporaries, which is exemplified by the what was perceived to be the scandalous trajectory of his biography during the Revolution, his personal

¹⁴ Richard Wayne, "Last Will and Testament;" Lawrence, *Southern Unionist*, 27.

¹⁵ Richard Wayne, "Last Will and Testament;" Lawrence, *Southern Unionist*, 24; Richard Wayne's net worth at the time of his death would be the equivalent of over \$1,000,000 in 2006 dollars.

assets at the time of his death revealed him to be typical of those who historians since Ulrich Bonnell Phillips have labeled the planter elite, planter class, and master class of the South.¹⁶

Through the first decade of the nineteenth century, much of Georgia was still frontier, and various Indian nations claimed much of that. However, yeoman farmers, large planters and slaves, all of whom were firmly engaged in the economic activities associated with an entrenched and predominantly agrarian society, populated the black belt, the land extending from the piedmont through the low

¹⁶ For examinations of the transformation of Georgia's economy in the antebellum era see Ulrich Bonnell Phillips, *American Negro Slavery: A Survey of the Supply, Employment, and Control of Negro Labor as Determined by the Plantation Regime* (Baton Rouge: Louisiana State University Press, 1918); *Life and Labor in the Old South* (New York: Grosset and Dunlap, 1929); *A History of Transportation in the Eastern Cotton Belt to 1860* (New York: Columbia University Press, 1908); *The Slave Economy of the Old South: Essays in Economic and Social History*, Eugene Genovese, ed. (Baton Rouge: Louisiana State University Press, 1968); Kenneth M. Stampp, *The Causes of the Civil War* (Englewood Cliffs, New Jersey: Prentice-Hall, 1959); *America in 1857: A Nation on the Brink* (New York: Oxford University Press, 1990); Eugene D. Genovese, *The Mind of the Master Class: History and Faith in the Southern Slaveholders' View* (New York: Cambridge University Press, 2005); *Roll, Jordan, Roll: The World the Slaves Made* (New York: Pantheon, 1974); *Slavery in Black and White: Class and Race in the Southern Slaveholders' New World Order* (New York: Cambridge University Press, 2008); and *Fruits of Merchant Capital: Slavery and Bourgeois Property in the Rise and Expansion of Capitalism* (New York: Oxford University Press, 1983); Brian Schoen, *The Fragile Fabric of the Union: Cotton, Federal Politics and the Global Origins of the Civil War* (Baltimore: Johns Hopkins Press, 2009).

country and to the coast. Much of Georgia was, as historian Ira Berlin has identified, a slave society.¹⁷

Richard Wayne's will gives a snapshot of the place and space that Georgia's planter elite occupied on the eve of the War of 1812. The war transformed the nation's economy, and Georgia, like all states, experienced a seismic economic shift during the ensuing market and transportation revolutions. Richard Wayne's will allows us to see not only the economic value of his assets but also his economic values as an agrarian capitalist. Richard Wayne's individual economic behavior and financial position at the time of his death suggest that his behavior reflected many of the same behaviors of his contemporaries, which allows Wayne to serve as an example of the planter elite operating in Georgia on the eve of the War of 1812.

James Wayne faced a choice when he inherited his father's fortune: Maintain the agrarian-based assets within the estate as he received them, or expand the Wayne empire by adapting to the changing economic conditions that confronted Georgia's economic elite during the antebellum period. James Wayne chose the latter. Upon receipt of his inheritance, Wayne at first retained the agrarian nature of his father's estate, but over the course of his own life, created a personal portfolio

¹⁷ The most comprehensive survey of Georgia history is Kenneth Coleman, *A History of Georgia* (Athens: University Press of Georgia, 1991); Ira Berlin, *Many Thousands Gone: The First Two Hundred Years of African Slavery* (Cambridge: Harvard University Press, 1998); and *Generations of Captivity: A History of African-American Slavers* (Cambridge: Harvard University Press, 2003); Eugene Genovese, *Roll Jordan Roll: The World the Slaves Made*, 33, 141 and 165.

consisting of assets reflecting the economic opportunities available to Georgians of means. A view of James Wayne's will illustrates this point.¹⁸

When James Wayne died in 1867, his son and executor, Henry Wayne, discovered that four years of war and two years of reconstruction did little to diminish Wayne's net worth. The Confederacy collapsed, its economy decimated by the end of the war, but the Waynes emerged from the war in relatively sound financial condition. While many of Wayne's contemporaries barely hobbled out from under the wreckage of their four-year foray into nationhood, Wayne emerged unscathed, at least financially. The Confederacy indirectly contributed to the preservation of James Wayne's net worth throughout the war.¹⁹

In April 1861, the Confederate government issued orders to confiscate all assets of known Unionists, Union sympathizers, and even family members of northerners. Confederate states confiscated "an amazing array of property . . . with great speed." Confiscated assets were quickly sold, and the proceeds used for the Confederate war effort. This proved quite problematic in Georgia because "many businesses were jointly owned by northern and southern men," so early

¹⁸ Richard Wayne, "Last Will and Testament;" James M. Wayne, "Last Will and Testament."

¹⁹ *Daily Evening Bulletin*, (San Francisco, CA), July 25, 1861; Jacqueline Jones, *Saving Savannah: The City and the Civil War* (New York: Alfred A. Knopf, 2008); Walter Fraser, Jr., *Savannah in the Old South* (Athens: University of Georgia Press, 2003); Lawrence, *Southern Unionist*, 81; Michael Johnson, *Toward a Patriarchal Republic: The Secession of Georgia* (Baton Rouge: Louisiana State University, 1977), 17, 50-51.

confiscation measures met with stern opposition. In spite of opposition of leading businessmen in Georgia, the Confederacy moved quickly and targeted Wayne's assets, but he anticipated this possibility as early as January 1861. Once it became clear that Wayne was not returning to Georgia, he was labeled an "alien enemy" and his extensive properties throughout the state confiscated.²⁰

Georgia's decision to secede surprised and dismayed James Wayne, but he knew he had to move quickly to protect his interests in Georgia. Shortly after news spread that Georgia seceded, Wayne's son, Major Henry Wayne, resigned from the U.S. Army. Though he turned down an offer to be a brigadier general, he accepted Georgia Governor Joseph E. Brown's offer to be Adjutant and Inspector General of Georgia. Wayne was heralded as the "first Georgian to respond to the call of his state." Henry Wayne returned to Georgia to defend his state, but before returning home, he visited his father and mother one last time in the nation's capital. During their meeting, Henry Wayne, a West Point graduate, decorated veteran of the Mexican War, and twenty-five-year career officer of the United States Army, bid

²⁰ Ibid., 70-80; Daniel W. Hamilton, *The Limits of Sovereignty: Property Confiscation in the Union and the Confederacy During the Civil War* (Chicago: University of Chicago Press, 2007), 20-35, and 84; National Archives and Records Administration, Confederate Orders of Sequestration, *Confederate States of America v. James M. Wayne*.

farewell to his parents, surely a sad and awkward moment, and then asked his father for money for the return trip to Georgia.²¹

James Wayne agreed to his son's request and lent him the funds he desired, but in return he asked his son to look after his property and extensive business interests in Georgia. He reminded his son that one day the property would be his, so rather than disown his son for betraying his country, he placed great faith in his son not only to protect a lifetime of accumulated assets but also to secure the Wayne legacy, one that dated back to the previous century. Not only was James Wayne concerned about the confiscation of his property but also he was concerned about wanton destruction of his property and damage inflicted by energized secessionists upon his considerable holdings in the state. Before secession Wayne encountered many of the "fire eaters" while riding his assigned circuit, which included Georgia, South Carolina and North Carolina. In addition, he was in Charleston and Savannah shortly after Lincoln's election in November 1860 and witnessed the victory of the fire-eaters. He likely was concerned that secessionists would seek revenge against Wayne and his family's extensive holdings in and around Savannah.²²

²¹ Jacqueline Jones, *Saving Savannah*, 121-125; Elizabeth Varon, *Disunion!: The Coming of the American Civil War, 1789-1859* (Chapel Hill: University of North Carolina Press, 2008), 305-339; *The Charleston Courier*, November 12, 1860; *Daily National Intelligencer*, (Washington, DC), January 03, 1861; *The New York Herald*, (New York, NY) January 01, 1861.

²² Jacqueline Jones, *Saving Savannah*, 121-125; Elizabeth Varon, *Disunion!: The Coming of the American Civil War, 1789-1859* (Chapel Hill: University of North Carolina Press, 2008), 305-339; *The Charleston Courier*, November 12, 1860; *Daily*

The last meeting between father and son had to be an emotional one, with neither man knowing their fate or the fate of their respective nations in the months and years ahead. In Savannah during the summer of 1861, the home guard behaved as James Wayne predicted. His former home on the corner of Oglethorpe Avenue and Bull Street in Savannah, though occupied by the family of William Washington Gordon, a railroad entrepreneur, was repeatedly vandalized and decorated with a harsh concoction of human excrement, animal waste and other wretched refuse that was thrown on the doors, windows and front porches of the homes of known Unionists, sympathizers, and relatives of Unionists. Early in the war, wives of Unionists were harassed and ostracized as revenge for being married to Unionists. Many were called “Torries” and some Unionists were lynched as a “reign of terror began,” for it became “suicidal to oppose secession after the war began.”²³

Upon his return to Savannah, Henry Wayne, Georgia’s new Adjutant General, honored the compact he made with his father and fought hard to protect his family’s assets. As James Wayne predicted, the Confederate government confiscated Wayne property in Savannah and throughout Georgia and prepared to

National Intelligencer, (Washington, DC), January 03, 1861; *The New York Herald*, (New York, NY) January 01, 1861.

²³ *Daily Morning News* (Savannah, GA), August 14, 1861; Carolyn J. Stefanco, in *Enemies of the Country: New Perspectives on Unionists in the Civil War South*, John C. Inscoe and Robert C. Kenzer, eds. (University of Georgia Press: Athens, 2004), 149-158; Victoria Bynum, *The Free State of Jones: Mississippi’s Longest Civil War* (Chapel Hill: University of North Carolina Press, 2001), 122, 78, and 79.

liquidate the assets. As promised, Henry Wayne stepped in with a barrage of letters to Governor Joseph E. Brown of Georgia, but to no avail. He wrote Alexander Stephens, Vice President of the Confederacy and friend of the Wayne family, and asked Stephens to step in on behalf of him and his father and prevent the confiscation of Wayne property. Again, his efforts bore no fruit.²⁴

Finally, Wayne wrote directly to President Jefferson Davis, with whom he had a cordial relationship dating back to their years at West Point together. In addition, he and Davis had served together in Mexico during the war and later on the Canadian border. When Davis had been Secretary of War, he sent Henry Wayne to Egypt and the Levant on three occasions, in 1855, 1856 and 1857, to obtain camels for service in Texas and the western territories. Davis obsessed about camel service in the American deserts and believed camels were a “military necessity.” Because camels required little water, Davis believed that using them would expedite construction of a transcontinental railroad extending across the southern portion of the nation from Texas to California. He was able to convince Congress to appropriate nearly \$100,000 for the project, and Wayne, who served in the U.S. Army Quartermaster Corps, became Davis’s camel agent at home and abroad, so they had a strong relationship.²⁵

²⁴ Lawrence, *Southern Unionist*, 188.

²⁵ Leonard Richards, *The California Gold Rush and the Coming of the Civil War* (New York: Knopf, 2008), 155; *Congressional Globe* 34th Congress, 3rd Session (1857),

Additionally, the Davis and Wayne families lived next to each other in Washington, so Wayne took advantage of his relationship with the Confederate President on behalf of his Unionist father. Annoyed by Wayne's relentless requests, Jefferson Davis told his Secretary of State, Judah P. Benjamin, to "find the letter of Wayne to end his stupid vaporizing." Wayne's efforts were successful. Wayne property was released to Henry Wayne by order of President Jefferson Davis. Though James Wayne's assets no longer faced liquidation, they were essentially frozen for the duration of the War while under his son's protection. Henry Wayne held his father's assets as they were in January 1861, with no sales, liquidations or transfers, thus preserving as a snapshot in time the personal balance sheet of one of Georgia's elite on the eve of the Civil War. Though his net worth assuredly suffered from market fluctuation during and after the war, Wayne emerged from the wreckage of war intact and in a position to resume his place as public servant to the people of his home state.²⁶

In spite of the damage to his legacy and the lingering stigma associated with his loyalty to the Union, James Wayne was a lucky man at the end of the Civil War. With his assets secure throughout the war he opposed, Wayne and his family were able to recover from the South's economic collapse rather quickly, which made him

February 28, 1857, "The Reports upon the purchase, implementation and use of camels and dromedaries to be employed for military purposes."

²⁶Jefferson Davis to Judah P. Benjamin, January 18, 1862 in *The Papers of Jefferson Davis*, VIII, p. 20; Letters of Henry C. Wayne in Lawrence, *Southern Unionist*, 188.

somewhat atypical in the South. His contemporaries were not so lucky. Alexander Stephens, for example, died in 1883 nearly penniless, in spite of a triumphal return to politics after the Civil War and through Reconstruction. Stephens died while serving as governor of Georgia, but were it not for a \$10,000 life insurance policy, his heirs would have received nothing at the time of his death. Similarly, Chief Justice Roger Taney, who died in 1864, left his heirs nothing because there was nothing to leave. His heirs relied up on the charity of friends and family after his death, so meager was the estate of the esteemed Marylander.²⁷

James Wayne wrote his will less than thirty-six hours after news reached Washington that Robert E. Lee surrendered to Ulysses S. Grant at Appomattox Court House in northern Virginia in April 1865. Wayne was seventy-five years old by April 9, 1865 and was frail in body, but still fiery in mind. He was eager to return home, but he knew that at his age and with his deteriorating health, he might not survive the return trip to Savannah. In addition, he had no idea who or what awaited him when he would get off the steamer that would take him back to Georgia. When he

²⁷ William C. Davis, *The Union that Shaped the Confederacy: Robert Toombs and Alexander H. Stephens* (Lawrence: University Press of Kansas, 2002); Thomas Schott, *Alexander H. Stephens of Georgia: A Biography* (Baton Rouge: Louisiana State University Press, 1988); James F. Simon, *Lincoln and Taney: Slavery, Secession and the President's War Powers* (New York: Simon and Schuster, 2006).

heard of Lee's surrender on that Palm Sunday in April, the next day, he scheduled a meeting with an attorney to prepare and witness his will.²⁸

Wayne's will, dated April 12, 1865, the day of the formal surrender of the Army of northern Virginia, shows an uncharacteristic economy of words, yet a characteristic level of precision and attention to detail in the instructions to be followed by his son. Within days, Wayne scheduled a trip to Savannah for the following week, something he had not done in over four years. James Wayne was in a hurry because he was going home.²⁹ But he would have to wait one more month. On April 14, 1865, Abraham Lincoln was assassinated and died early the next morning. With the nation in mourning, and his presence required at the numerous memorials and the emotional state funeral, Wayne delayed his eagerly anticipated trip home by nearly a month.³⁰

In May 1865, Wayne returned to Savannah anxious about what he would find remaining of his beloved city. The previous fall and winter, General William T. Sherman ordered his force of 60,000 to "forage liberally on the country during the march" through Georgia and "destroy mills, houses, cotton-gins" as deemed

²⁸ James M. Wayne, "Last Will and Testament;" *Daily National Intelligencer* (Washington DC), October 11, 1865 announced Wayne's return to Washington after a long absence because he was "tending to his property in Georgia."

²⁹ Ibid.; *The Daily Cleveland Herald* (Cleveland, OH) Tuesday, April 11, 1865.

³⁰ Peter N. Stearns, *American Behavioral History: An Introduction* (New York: New York University, 2005), 143-155.

necessary by commanders in the field. Sherman further ordered “a devastation more or less relentless according to the measure of such hostility” encountered. Though his massive army left in its wake a devastating path of destruction, Savannah escaped Sherman’s torch. Though Savannah fell in December 1864, Sherman’s subsequent occupation left intact most property throughout the city, including Wayne property. Sherman issued orders that his army “commit no depredations” in the city of Savannah. This enabled him to give President Lincoln the relatively unmolested city as a Christmas gift in December 1864, but the greatest beneficiaries of Sherman’s gift were the city’s citizens.³¹

As indicated by his will, James Wayne owned the following assets at the time of his death, most of which were obtained prior to January 1861: substantial stock ownership of three Georgia-based railroads, two plantations in Georgia, thousands of acres of pine land, several lots in the city of Savannah, rental property, cash, thousands of dollars worth of personal property. Just as his father before him, James Wayne accumulated significant assets relative to those of his contemporaries, but a closer comparison of the two wills reveals much about the nature of Georgia’s economy and the changes encountered during intervening six decades.³²

³¹ Jones, *Saving Savannah*, 207-219; Fraser, *Savannah in the Old South*, 338-340; *Daily Morning News*, (Savannah, GA) May 22, 1864; *North American and United States Gazette* (Philadelphia, PA), August 12, 1865; William Tecumseh Sherman, *Memoirs of General William T. Sherman*, vol. 2 (New York: Knopf, 1875), 651-653.

³² James M. Wayne, “Last Will and Testament.”

Whereas Richard Wayne's will, written on the eve of the War of 1812, shows a man who engaged in agrarian business concerns, James Wayne's will, written at the end of the Civil War, shows a man who engaged in a diversified array of business interests related to the panoply of opportunities available to Georgia entrepreneurs. These options were not available to Georgians of Richard Wayne's generation. Though these economic possibilities presented themselves to opportunists in all southern states, many entrepreneurial Georgians like Wayne, this study argues, seem to have achieved greater success in taking advantage of the opportunities presented to them if measured by policy, comments by contemporary observers, and empirical comparative data.³³

American industry stirred into life during the War of 1812. Fought on American soil, the war curtailed imports of manufactured goods. Wartime disruptions impeded trade patterns long-established, especially since America was at war with England, its primary trading partner. Though at war, Americans still craved English manufactured goods, and the war did little to suppress the American consumer's insatiable demand for finished goods. With demand strong, opportunistic entrepreneurs throughout the nation responded. The War of 1812, a

³³ James M. Wayne, "Last Will and Testament;" Charles Sellers, *The Market Revolution: Jacksonian America, 1815-1846* (New York: Oxford University Press, 1994); John L. Larson, *The Market Revolution in America: Liberty, Ambition, and the Eclipse of Common Good* (New York: Cambridge University Press, 2009), 46 and 76; Steven Deyle, *Carry Me Back: The Domestic Slave Trade in American Life* (New York: Oxford, 2005), 298.

challenge to American sovereignty resulting in a political stalemate, sparked American nationalism and marked a turning point in the direction of the American economy. Aggregate industrial capacity expanded throughout the nation. Economic growth during and after the war transformed the nation, and national growth transformed regional and state economies. The enormous growth after the War of 1812, and “resultant structural changes, accelerated existing productive factors.” The war “illustrated the capacity and destiny of the United States to be a flourishing and powerful nation.”³⁴

After the war, most southern states remained stubbornly bound to their agrarian roots, but they eagerly expanded agricultural output to meet the demand of a growing national population. In addition, as northern industry grew, so too did the demand for southern raw materials, especially cotton. Some Georgians recognized not only the need for businessmen to diversify their endeavors but also the necessity for the state to create enabling policy conducive to economic diversification and that enabled and encouraged risk-taking. Meaningful economic development would be impossible without a financial infrastructure to provide adequate capital for projects, large and small, public and private. State or national funding of internal improvements such as canals, roads and bridges was not new, but Georgia had a unique history of state incentives that enticed its entrepreneurs

³⁴ Douglas C. North, *The Economic Growth of the United States, 1790-1860* (Englewood Cliffs, New Jersey: Prentice-Hall, 1961), 66; James Bornman, *1812: The War that Forged a Nation* (New York: Harper-Collins, 2004), 301.

with juicy financial rewards. As early as 1777, the state of Georgia offered 2000 acres of land to anyone who manufactured bar iron for state projects and the war effort. Promises of land, Georgia's most bountiful asset in the Revolutionary War era, demonstrated the state's willingness to subsidize business ventures beyond those of the public good such as bridges and roads and promote endeavors other than those of the agrarian elite.³⁵

The foundations of Georgia's public support of industrial endeavors can be traced to 1777, but this has escaped notice or at least appropriate attention in broad examinations of the South's industrial development in the antebellum era. Before examining Georgia's transition from an agrarian economy to a broadly diversified economy unique among its southern neighbors, it is worth identifying some broad and lingering assumptions about the southern economy and attempt to argue how Georgia's industrial foundations deserves further attention. To understand Georgia's uniquely diversified economy is to help understand perhaps Georgia's strong and enduring opposition to secession.³⁶

Assumptions and Realities: Georgia's Antebellum Economy

³⁵ George White, *Statistics of the State of Georgia* (Savannah, Georgia: Williams Press, 1849), 624.

³⁶ Ibid.; Huston, *Calculating the Value of the Union*, 3-63; Donald R. Hickey, *The War of 1812: A Forgotten Conflict* (Urbana: University of Illinois Press, 1989).

Historians have long examined the antebellum southern economy in an effort, in part, to understand in economic terms why the South lost the Civil War. Questions of whether the South, as compared with the North, ever stood a chance have long stood beside counterfactual “What If?” questions ever since the last shots were fired in April 1865. Ulrich Bonnell Phillips, the first major southern historian, suggested over a century ago that it was the inefficiency of slave labor and the overall unprofitability of the institution of slavery that hobbled the economy of the southern states and contributed to the region’s industrial retardation. Slavery prevented the growth of towns. Slavery perpetuated the centrality of the plantation economy. Slavery checked diversification into other economic possibilities, particularly manufacturing and the transportation infrastructure to support a manufacturing economy, such as the one held as a model in the North. Slavery bound blacks and whites to a social structure that, according to Phillips, created a steadfast solidarity in the South, a solidarity based on race and the domination of white elites over blacks.³⁷

This was the dominant narrative among historians for decades because, according to John Blassingame, “the ghost of U. B. Phillips haunts us all.” For Phillips, the plantation economy was doomed by inefficiency and destined to remain counterproductive, particularly when compared to the industrialized North, which,

³⁷ John C. Inscoe and John D. Smith, eds., *Ulrich Bonnell Phillips: A Southern Historian and his Critics* (Athens: University of Georgia Press, 1995), 29.

during the Progressive Era in which Phillips wrote, appeared to be the ideal to which the South should have aspired had it wished to win the war and its independence.³⁸ Born in Washington, Georgia shortly after Reconstruction, Phillips graduated from the University of Georgia before he went on to study under Frederick Jackson Turner at Columbia and then the University of Wisconsin. Phillips did not hide his “admiration for great Georgians,” for he wrote often of Georgia’s revered Confederate triumvirate of Alexander Stephens, Howell Cobb, and Robert Toombs. Phillips likely did not encounter James Wayne in his research, and if he did, it is doubtful he would have written favorably about such a staunch Unionist. The myth of the Lost Cause and the manufactured memory of the collective South likely contributed to Phillips’s exclusion of Wayne, but the methodology Phillips created also conspired to hide Wayne and other Unionists. Though Phillips was “about as objective as the rest of us, which is not very much,” he “remains an important influence for much of the scholarly debate over slaves and the South.”³⁹

³⁸ Ibid., xvii; Phillips, *American Negro Slavery; The Course of the South to Secession; Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb; Life and Labor in the Old South; Georgia and States Rights: A Study in the History of Georgia from the Revolution to the Civil War, with Particular Regard to Federal Relations* (Washington: Government Printing Office, 1902).

³⁹ John Inscoe, ed., *Ulrich Bonnell Phillips and His Critics* (Athens: University of Georgia Press, 1995); John Blassingame, “Redefining the Slave Community: A Response to Critics,” in *Ulrich Bonnell Phillips: A Southern Historian*, xvii; and Kenneth Stampp, in *Ulrich Bonnell Phillips: A Southern Historian*, 10.

Though both panned and praised over the last century, Phillips inaugurated a comparative approach to history, an approach, though innovative during its time, which requires an analytical binary. The binary analytic is necessary for the efficacy of the comparative project. While comparative binaries further exploration into the analysis at hand, they simultaneously overlook the many exceptions that fall between either end of the binary. For example, Phillips created an analytical tool that positioned a monolithic, agrarian South in direct opposition to an equally monolithic, industrialized North. Further, Phillips created binaries within the overarching binary by forcing a discussion about the nature of the industrial capacity in the South and the profitability of slavery. The analytical tool Phillips created resulted in a discernable and not-so-subtle bifurcation of the analysis, which has stubbornly influenced the historiography of the American South for most of the twentieth century.⁴⁰

Though historians have challenged Phillips's conclusions regarding the economics and political economy of the South since he first posited his views, one of the most notable and highly controversial challenges to Phillips came in 1974 with the publication of *Time on the Cross*. The authors, Robert Fogel and Stanley Engerman, suggested in stark contrast to Phillips, but with an equal lack of emotion,

⁴⁰ Ibid.; Theda Skocpol and Margaret Somers, "The Use of Comparative History in Macrosocial Inquiry," *Comparative Studies in Society and History* 22 (April 1980): 174-197; Frederick Cooper, "Race, Ideology and the Perils of Comparative History," *The American Historical Review* 101 (October 1996): 1122-1138.

that slavery was profitable, the plantation economy was efficient, and the planters were rational, agrarian capitalists. Many historians challenged the methods, conclusions and tone of *Time on the Cross*, aptly named since it is what Fogel and Engerman seem to have endured since publication. In spite of the controversies and contentiousness created over *Time on the Cross*, the study shifted focus to culture and society and away from the economy of the South and the economies of the southern states.⁴¹

Eugene Genovese, who agreed with Phillips about the inefficiency of slavery and the strangle-hold the master class maintained over all aspects of southern life, disagreed with Phillips's "solidarity based on race" theory. Genovese denied that a potent southern solidarity based on race extended throughout the region. Genovese argued that what approximated unity in the South was the class solidarity of the planters, the "master class." Using value-laden terms such as "master," "class," "planter," "slave owner," and "master class" merely reinforces binaries and limits the inquiry into the varied motivations of the elites. Binary language and the use of loaded labels pigeon hole Georgia elites and assumes behavior in the aggregate that might not accurately describe behavior of the individual.⁴²

⁴¹ See Inscoe, *Phillips and His Critics*; Fogel and Engerman, *Time on the Cross*; and Mark Smith, in *A Companion to the American South*, John Boles, ed. (New York: Wiley-Blackwell, 2004), 247-252.

⁴² Genovese, *Mind of the Master Class*, 2-27.

For example, Genovese argues that the master class desired to maintain its position of dominance over both the slaves and yeomanry. An overriding desire to maintain dominance over slaves as a class, and for some historians, for planters to maintain control over slaveless whites, led to irrational economic decisions by the planters. Further, according to Genovese, industrial retardation in the South was the result of deliberate actions by the master class to prevent expansion of manufacturing and industrial growth. So strong was the planters' desire to prevent its section from replicating the industrial growth of the North, suggests Genovese, that the master class intentionally sabotaged manufacturing efforts by restricting capital for internal improvements supportive of industrial growth. Further, land and slaves provided collateral for most projects requiring capital, so planters, at the apex of their power, were able to tighten credit markets and exert substantial political will when it suited them. The planters were so wrapped up in the status afforded by the prodigious bulk of their human possessions that they accepted as a loss the sunk cost of the maintenance of the peculiar institution. So integral to master class identity was the possession of slaves that planters shunned the invisible hand of efficiency. In other words, the master class was irrational and was bound to their slaves in a way not much different than the slaves were bound to them.⁴³

⁴³ Ibid.; Schoen, *The Fragile Fabric of the Union*; Chad Morgan, *Planters' Progress: Modernizing Confederate Georgia* (Gainesville: University Press of Florida, 2005); Harold S. Wilson, *Confederate Industry: Manufacturers and Quartermasters in the Civil War* (Jackson: University Press of Mississippi, 2002); J. Mills Thornton, *Politics*

In a similar vein, Genovese rejected the cliometric analysis of Fogel and Engerman because they, in Genovese's view, did not account for the class relationship between master and slave. Fogel and Engerman focused on the financial relationship between entrepreneur and asset, a notion repulsive to many historians writing about the slave South in the 1960s and 1970s, often dubbed the "neo-abolitionist era." Just as Progressive Era assumptions and sensibilities influenced Ulrich Phillips, so too did Civil Rights Era presumptions and sensitivities influence critics of Fogel and Engerman. Time has tempered the controversy surrounding *Time on the Cross* and has made it safe to reexamine southern economies, especially local ones. This trend helps break binaries, but also challenges broad, sweeping generalizations about a South that is hardly monolithic, especially those claiming planters acted irrationally. Recently, some scholars have challenged the long-held industrial retardation and irrational actors theories and offer healthy examinations of the antebellum industrial prowess of the South.

and Power in a Slave Society: Alabama, 1800-1860 (Baton Rouge: Louisiana State University, 1981), xi; John Ashworth, *Slavery, Capitalism, and Politics in the antebellum Republic, Volume I: Commerce and Compromise, 1820-1850* and *Volume II: The Coming of the Civil War, 1851-1860* (New York: Cambridge University Press, 1995, 2002); Larry Schweikart, *Banking in the American South from the Age of Jackson to Reconstruction* (Baton Rouge: Louisiana State University Press, 1987), and "Banking in the American South," 1838-1865 (Ph.D. Dissertation, University of California, Santa Barbara, 1983).

Studies include those by Michele Gillespie, Susanna Delfino, and recent work by Stanley Engerman.⁴⁴

Pockets of actors, often in the minority, who exhibit occasional episodes of irrational exuberance in relation to values of commodities they own cannot define behavior of an entire region or collection of states. In addition, periods of irrational exuberance cannot define an era. If some groups, such as planters, for example, periodically acted irrationally in their financial decisions, it is likely they did not do so just to maintain their political or social position over other groups such as slaves or the yeomanry. It is likely they wished, rather, to maintain the value of the asset that was experiencing an increase in value at that time.

To keep the debate alive well into its third century, and in trying to explain the relationship of the southern economy to the North and to the larger world systems, some historians have again questioned the industrial prowess in the South as if to re-affirm the South's utter dependency on cotton as evidenced by its many linkages to global networks. While efforts to place the southern economy within a global context is important, problems emerge. For one, in this view, the South remains a monolithic, cotton-based agrarian economy. To bolster the "southern

⁴⁴ Susanna Delfino and Michele Gillespie, eds., *Technology, Innovation and Southern Industrialization: From the antebellum Era to the Computer Age* (Columbia: University of Missouri Press, 2008), and *Global Perspectives on Industrial Transformation of the American South* (Columbia: University of Missouri Press, 2005); Genovese, *Fruits of Merchant Capital*, 124-135; Fogel and Engerman, *Time on the Cross*.

monolith” argument, some historians suggest that a southern nationalism emerged decades before the war, and that just brewing under the surface of national political debate was the constant threat of disunion centered on and emanating from a growing southern national identity.⁴⁵

Whether exploration centers around Phillips’s racial solidarity, Genovese’s class solidarity, Fogel and Engerman’s economic solidarity, or recent suggestions of King Cotton solidarity, the solidarity argument becomes considerably weaker when each southern state is examined individually. Further, Genovese claims that the South was a “unique slave society with unique class relationships . . . with a substantial economy only weakly integrated into the global market.” This was not necessarily the case for Georgia. As evidence, England suffered a “cotton famine” during the American Civil War because the federal blockade proved instrumental in crushing the southern economy and access to export markets. If the southern economy “was weakly integrated to the global” then logic would dictate that England would not have felt such a dramatic impact of the blockade. Even contemporaries recognized Georgia’s powerful relationship to the global marketplace. For example, Alexander Stephens noted that the South, if measured

⁴⁵ Schoen, *The Fragile Fabric of the Union*; for an understanding of global systems and the complex network of economic exchange relationships see Immanuel Wallerstein, *The Modern World-System* (New York: Academic Press, 1974) and *Race, Nation, Class: Ambiguous Identities* (London: Verso, 1991).

against other industrialized nations at the time, would rank among the wealthiest in both industrial capacity and industrial potential.⁴⁶

The debate lingers, but so does the long-standing agrarian-industrial analytical binary. This analysis diverts attention from the missing middle. In the missing middle are the southern states that do not neatly fit into the agrarian-industrial analytical binary that has persisted for so long. State and local studies refute long held assumptions about the common threads that bound the South together and foreshadowed its inevitable collapse. Local studies conducted over the last decade suggest that there was no neatly unified southern economy, so broadly diverse were local, state and regional economies. In the aggregate, the North was wealthier than the South, but Georgia stood out, as will be seen. Granted, southern states shared many commonalities, but many prominent Georgians frequently and often adamantly rejected what has been called “southern nationalism” in an effort to maintain the integrity of the Union. For example, in 1847 James Wayne said, “the people of Georgia are quite pleased with the Constitution of the United States,” intimating that Georgians had no desire to be part of a southern confederacy.⁴⁷

⁴⁶ Genovese, *Mind of the Master Class*, 318; Mark Smith, “The Plantation Economy,” in John B. Boles, *A Companion to the American South*, 103-125; Huston, *Calculating the Value of the Union*; Schoen, *The Fragile Fabric of the Union*; Morgan, *Planter's Progress*; Alexander Stephens, *Alexander Stephens in Public and Private*, 258, 454, and 537

⁴⁷ Nicholas Onuf and Peter Onuf, *Nations, Markets and War: Modern History and the American Civil War* (Charlottesville: University of Virginia Press, 2006), 308-340;

Georgians repeatedly affirmed their patriotism and demonstrated their loyalty to the Union in economic terms and showed that many in the state were willing and able to promote a broad variety of economic possibilities. Rather than intentionally retard industrial production as has been suggested of the southern master class, Georgia political and economic leaders desired not only an expansion of manufacturing and a supportive transportation infrastructure but also a highly diversified and nationally-connected economy. When southern business leaders met in Knoxville, Tennessee in an 1836 convention, some urged the representatives there to continue building a vast network of railroads that connected the southern states, but not necessarily connecting those networks to others north and west. James Wayne balked; he believed that the southern railway networks should connect with the West and the North, and not just link the southern states to each other. Concerned for Georgia's railroad interests, Wayne called a state railroad convention "comprised of individuals of the best talents the state can boast," this time to meet in Macon, Georgia, to discuss expanding southern railroads, particularly those in Georgia, west to Texas, South to the Gulf of Mexico, and north to the Great Lakes.⁴⁸

Schoen, *The Fragile Fabric of the Union*; James Wayne quoted in *Daily National Intelligencer* (Washington DC), June 4, 1847.

⁴⁸ *Daily National Intelligencer* (Washington DC), November 23, 1836; *Boston Courier*, July 28, 1836.

Rather than seeing manufacturing as a threat to their position of economic power, many Georgia elites, such as James Wayne, saw manufacturing and plantation-based farming as integral parts of a broadly diversified whole. While it has been convenient for historians to bifurcate the North and South, which seems logical because such an analysis replicates the two nations that fought the Civil War, micro-histories, local studies and interpretive biographies suggest the American South to be more balkanized than unified in its counterpoised position with the North. The question as to whether the strength or weakness of the South's industrial capacity is different than has been believed previously, or whether slavery retarded the South's manufacturing capabilities, diverts attention from the individual economic behavior of each state.⁴⁹

Recent scholarship points to the significant role of the state in funding and creating an industrial economy in the South during the Civil War. According to this view, the New South's industrial foundations began in earnest not during Reconstruction, but, rather, during the Civil War. State support was required to maintain an economy dedicated to the Confederate war effort, so to adequately mobilize the economy, private capital, state treasuries, and direct Confederate financial support funded manufacturing efforts.⁵⁰ Georgia's constellation of state-

⁴⁹ Morgan, *Planters' Progress*, 1-15; Delfino and Gillespie, *Global Perspectives on Industrial Transformation of the American South*; and *Technology, Innovation and Southern Industrialization*.

⁵⁰ Schoen, *The Fragile Fabric of the Union*; Morgan, *Planters' Progress*, 1-15.

owned factories in Atlanta, Augusta, Columbus, and Macon made up a sizeable munitions and supply complex that kept Confederate armies in the fields for four years against the preeminent industrial power of the North. This resulted in the profoundly transformative industrialization of Georgia during the Civil War. More than any other Confederate state, Georgia thrust itself headlong into modernity, and its industrialization, underwritten by the Confederate government and state treasury, fundamentally altered Georgia's economy. Some historians suggest that Georgia's remarkable industrial metamorphosis had been a long-sought goal of the state's planter elite.⁵¹

While recent scholarship illustrates that the state cooperated with capitalists and entrepreneurs in unprecedented ways during the Civil War, Georgia's relationship with state and federal support of industry and other economically diverse possibilities, including extensive internal improvements and incentives to private manufacturers, began well before the Civil War. Many Georgia entrepreneurs, including planters, manufacturers and financiers, desired a level of modernization consistent with their desire for diversification. The relationship between Georgia entrepreneurs and the state, and between the state and the national government, created a set of expectations that allowed Georgia's entrepreneurs to rely on government protection in tough economic times and expect favorable governmental policies to enable continued growth. The

⁵¹ Morgan, *Planters' Progress*, 7.

contractual relationship between the people of the state and the state government, and between the state and the national government, coupled with the attendant expectations of the contractual relationships, were reinforced in Georgia at all levels of political involvement, from the court of public opinion all the way to the Supreme Court.⁵²

Wayne elaborated on his understanding of the compact between the state and the national government in the *Passenger Cases* (1849). In refusing to allow states to tax immigrants upon their arrival to American shores, Wayne and the rest of the majority held that Congress controlled commerce, which included certain taxation. In *Prigg v. Pennsylvania*, Wayne said that the states must acknowledge “the surrender which they have made to a common government . . . for the benefit of all . . . as they meant to be when “we, the people of the United States,” came into existence with the ratification of the Constitution for the United States of America.”⁵³

⁵² Onuf and Onuf, *Nations, Markets and War*; Schoen, *The Fragile Fabric of the Union*; Morgan, *Planters’ Progress*, iv.

⁵³ *Passenger Cases*, 48 U.S. 283 (1849); *Prigg v. Pennsylvania*, 41 U.S. 539 (1842).

Jeremiahs and Judges: Georgia's Political Economy and Economic Development

Early in Georgia's economic transformation, which occurred around the War of 1812, some in the state identified the importance of industrial development in terms of competition with other states, southern and northern. In the 1820s, economic Jeremiahs throughout the state warned of the irrational and utter dependence on agriculture. At the same time, they lauded the vast natural resources, availability of raw material, the ideal location and geographic characteristics, and Georgia businessmen's pluck and penchant for seeking profit. One editorial writer in Augusta said, "The proposition that Georgia must become a manufacturing state, is every day making itself more evident to reflecting individuals, in every section of the country." The writer continued: "We have every means, and every inducement, for becoming a manufacturing people Labor is cheap; we have the raw material at our own doors; water power in the greatest abundance; enterprise and capital are not lacking. Nothing, indeed, is wanting, but an effort on the part of distinguished individuals to direct their capital and enterprise to the most profitable pursuits." Prophetically he continued to say that "enlightened individuals believe that the planter who employs a large force in the cultivation of cotton must be sinking his capital. Let a planter employ his force exclusively in agriculture, and he will shortly become bankrupt."⁵⁴

⁵⁴ *Augusta Chronicle* (Augusta, Georgia), June 18, 1828.

A generation later, as if to show heed to the dooms-day warning above, Georgia was hailed to be the “Keystone State of the South” because of the many miles of railroad and blossoming industrial capacity. Described as a land “filled with the music of machinery,” Georgia textile manufacturers were compared to those of the North, particularly those of Lowell, Massachusetts, always an industrial benchmark against which to compare. Georgia had become “a large exporter of all cotton fabrics.” Because of the reduced cost of transporting cotton to the location of manufacture, Georgia factories would realize a “profit largely increased over those of any of the northern states.”⁵⁵

Its landscape poetically described as “gorges made luminous by forges,” Georgia attracted many northern businessmen. And they came. Northerners such as Henry Merrell, who often lamented the fickle nature of Georgia’s neophyte capitalists, met with alternating success and failure in Georgia. Merrell, who still managed to operate three successful textile mills throughout Georgia for over twenty years, complained that Georgians did not know how to network and cooperate with each other so they could mutually benefit from sharing production strategies, developing creative marketing efforts, and lobbying lawmakers.⁵⁶

⁵⁵ “Georgia and Her Resources,” *De Bow’s Review: The Industrial Resources of the Southern and Western States*, (New York: 1852), 352.

⁵⁶ Henry Merrell, *The Autobiography of Henry Merrell: Industrial Missionary to the South*, James L. Skinner, ed. (Athens: University of Georgia Press, 1991); Frederick Law Olmstead, *A Journey in the Seaboard Slave States: With Remarks on their Economy* (New York: Putnam, 1856, 1902), 377, 530-550.

Southern businessmen were a suspicious lot and were especially tentative in dealing with northerners, even before the Civil War, so perhaps it was Merrell who did not know how to integrate into the tightly-bound network of Georgia capitalists.⁵⁷

Georgia lawmakers, such as James Wayne, recognized the importance of broad legal protections of business. While Wayne was in the Georgia legislature in 1816, he helped rewrite state debtor laws that had previously exposed Georgia businesses to losses from bad debts. Though most Georgia politicians in the 1820s scoffed at the thought of protective tariffs favoring one section of the country over another, by as early as 1832, many of those same lawmakers were singing a dramatically different tune. The Georgia General Assembly called for a “southern convention” to apply “to Congress . . . to amend the Constitution, as to the principle of direct protection of domestic industry, and a system of Federal taxation” for such purposes.⁵⁸ Proto-populistic measures such as these were not the norm in southern states, especially not in neighboring South Carolina. In Georgia, lawmakers readily directed state funds toward internal improvements, but they also sought to improve Georgia’s connection to national and global markets as a provider of both raw materials and finished goods. In addition to advancing the interests of planters and manufacturers, many Georgia lawmakers sought to grow a transportation infrastructure with the help of state supported banks, and a lot of them. Georgia

⁵⁷ Merrell, *Autobiography*, 115-140.

⁵⁸ *A Digest of the Laws of the State of Georgia* (1837), 244-249, 914.

chartered over one hundred and fifty banks from 1820 to 1860, and the state invested heavily in many of them. Georgia was one of the few states with two branches of the Bank of the United States, one in Savannah and one in Augusta. When the Bank of the United States collapsed in the 1830s, specie scattered to Georgia pet banks. Newly mobilized capital unleashed an unprecedented level of liquidity.⁵⁹

Rather than allowing either industrial interests to dominate the state's economy, as in the North, or agrarian interests to dominate, such as was the case in most states of the South, evidence suggests that Georgia leaders encouraged the somewhat unrestricted activities of financiers and bankers so that at all entrepreneurial enterprises would have the opportunity to grow, compete and succeed. In other words, Georgia business leaders were sensitive to the fluctuations inherent in all business endeavors, agrarian or industrial. With liquidity and capital available, Georgia businessmen could weather inevitable storms by remaining diversified enough to protect themselves in a downturn. Further, they could remain financially nimble enough to take advantage of opportunities as they arose, regardless of economic sector.⁶⁰

⁵⁹ Schweikart, *Banking in the American South*; Jerry Markham, *A Financial History of the United States* (Armonk, New York: M. E. Sharpe, 2002), 145

⁶⁰ Ibid, 75-79; Frank Otto Gatell, "Spoils of the Bank War: Political Bias in the Selection of Pet Banks," *The American Historical Review* 70 (Oct., 1964): 35-58; Jerry W. Markham, *A Financial History of the United States* (New York: Sharpe, 2002); Robert V. Remini, *Andrew Jackson and the Bank War: A Study in the Growth of*

An interesting characteristic among Georgia lawmakers seems to be that those who ultimately served on the national level, whether in either house of Congress, in various presidential cabinets, or, as in James Wayne's case, on the Supreme Court, recognized the benefit of a symbiotic financial relationship between the state and national governments. It is as if exposure to national issues tempered the sometimes typical insularity and parochialism exhibited by state and local lawmakers. In other words, experience at the national level often reduced sectional bias and frequently made nationalists, and sometimes Unionists, out of Georgia politicians who had once been inclined to resist federal intrusion. For example, Howell Cobb, a staunch state rights ideologue, anti-tariff agitator, and free trade proselytizer, served multiple terms in the House of Representatives, for two terms as its speaker, and as governor of Georgia. Always pounding the table over tariffs that protected industrial interests of the North at the expense of the planter interests of the South, Cobb received a hard dose of reality as secretary of the treasury in the Buchanan administration when he realized that both the national treasury and domestic industries of all sections were utterly dependent upon tariffs. Though

Presidential Power (New York: Something, 1995), p xx; Remini, *Andrew Jackson*, 163-170; Michael Beschloss, *Presidential Courage: Brave Leaders and How They Changes America* (New York: Simon and Schuster, 2007), 65-70.

loathe to raise tariffs, Cobb had no choice but to do so on several occasions from 1857 to 1859 in response to the Panic of 1857.⁶¹

Georgia representatives serving in Washington in all branches of government could influence the political culture of the state, and could, in turn, direct the constituency toward creating a culture of discontent with the national government, as was the case in South Carolina. On the other hand, Georgia's congressional delegation and Wayne, as the lone circuit-riding Supreme Court justice for the state, upon returning home to their constituency during recess, could help foster a culture of cooperation with the federal government. However, Alexander Stephens recognized the limits of this power, especially when state political leaders stirred the pot of discontent. It often fell to Georgia's national leaders to temper feelings of fear or insecurity in relation to the national government, but this was not always easy.⁶²

For example, throughout the 1840s and 1850s, Stephens lamented the disconnect in Georgia between radical state-righters and the rightfully elected Congressional delegation. Stephens said that the dangerous agitation about the tariff and, later, secession and disunion, came not from Georgia congressmen or

⁶¹James L. Huston, *The Panic of 1857 and the Coming of the Civil War* (Baton Rouge: Louisiana State University, 1987), 127-130; George White, *Historical Collection of Georgia* (Charlottesville: University of Virginia, 1855), 252-254; *The National Intelligencer* (Washington, DC), May 18, 1857.

⁶²Alexander Stephens, *Alexander Stephens in Public and Private*, 737, 820; Lawrence, *Southern Unionist*, 54.

senators, but, rather, from local radicals and state lawmakers. James Wayne was in a powerful position because half of the year he was in Washington on the Supreme Court, and the other half of the year he fulfilled his requirement as circuit rider throughout Georgia, South Carolina and North Carolina. He had his ear to the ground in his circuit states. Riding the circuit gave him opportunity to measure *and* influence public opinion on various issues ranging from banking, the tariff, slavery, and even secession.⁶³

Though the economic interests of the cotton planters often dominated the political trajectory of the state, the virility of their power was in direct proportion to the power of cotton in the national and global marketplace. Cotton supply and demand fluctuated, and so did the power of Georgia's cotton planters. If Georgia suffered a drought, so suffered the cotton planters. If England suffered a war, so suffered the cotton planters. If the nation suffered a panic, so suffered the cotton planters. Cotton planter power was not constant; so many cotton planters wore their master hat only when it was economically rational and profitable. Many planters throughout the South, particularly those in Georgia, invested heavily and broadly in other business interests beyond those related to their plantations. Most entrepreneurial planters recognized the wisdom of diversification, and this imperative is demonstrated by active participation in various business-related and internal improvement conventions held in Georgia and throughout many southern

⁶³ Ibid.

states in the three decades before the Civil War. Ulrich Phillips began his career examining the South by “talking about the weather,” and he was not far off the mark because the unpredictability of the weather could determine boom or bust for cotton planters.⁶⁴

During the 1830s, state conventions in Savannah, Macon and Milledgeville set forth ambitious agendas proposing vast state railroad lines to connect with regional and national lines. During the same decade and beyond regional conventions of railroad men and prominent business leaders, many of whom were politicians and planters, revealed aspirations that included connecting Georgia with California, India, and China. James Wayne presided over several of the state conventions, even while he was on the Supreme Court, and he was an active participant in the regional internal improvement conventions, especially one held in Knoxville, Tennessee in 1836. Wayne and other Savannah businessmen had invested over \$5,000,000 in railroad securities from 1835-1850, an investment that ballooned to well over \$20,000,00 in 1850, so active involvement in activities related to the success of the railroad and other businesses was motivated by both profit and preservation. The largest railroad companies in Georgia included the Central Railroad and Banking Company of Georgia, which ran from Savannah to Macon, and

⁶⁴ *Niles Weekly Register*, July 30, 1830, June 18, 1831, September 13, 1848; Inscoe, *Phillips and His Critics*, 114.

the Western and Atlantic Railroad that connected Macon to Terminus (Atlanta), and Wayne was a director and substantial investor in both.⁶⁵

Wayne's desire to see Georgia develop a diverse economy did not stop at personal investment and public boosterism. While Georgia undertook a scheme of internal improvements from the seaboard to the interior by railroad, underwritten by the full faith and credit of the state and as a great state work, businesses needed protection. Many of his decisions on the Supreme Court related to interpretation of contracts and the rights of corporations in defending contracts. Through his position on the Supreme Court, Wayne was able to help create a favorable business environment for entrepreneurs and help foster economic development in his home state. (He was not alone in his boosterism from the bench; John Marshall, with whom Wayne served briefly in 1835, advanced a nationalist agenda and promoted economic growth from the bench, particularly when attributing to corporations the same rights afforded individual citizens.)⁶⁶

Wayne carried on this judicial tradition through his entire tenure on the Supreme Court. While Wayne concurred with Chief Justice Taney, Marshall's

⁶⁵ *Report on the Internal Commerce of the United States* (Government Printing Office, 1886), 335-336; Lawrence, *Southern Unionist*, 97; *The Savannah Evening Journal*, June 4, 1853; *The Daily Georgian*, October 17, 1836.

⁶⁶ Carter Goodrich, *Government Promotion of American Canals and Railroads* (New York: Columbia University, 1960), 117; Kent Newmyer, *John Marshall and the Heroic Age of the Supreme Court* (Baton Rouge: Louisiana State University Press, 2007), 236; See *Dartmouth College v. Woodward*, U.S. 17 (4 Wheat) 518 (1819); and *Louisville, Cincinnati and Charleston Railroad Company v. Letson*, 43 U.S. 497 (1844)

successor, in over 80% of his decisions, notable exceptions occurred over contracts and the status of corporations in negotiating and defending contracts. As a corporate and business advocate, Wayne believed strongly in the progress of his state, region and nation, and he expressed his understanding of the relationship between the law and the economy through his interpretation of the Constitution and his legal philosophy. His views were influenced perhaps by the fact that he and many of his fellow Georgians would benefit personally from an environment legally conducive to economic growth and one that rewarded risk-taking. In the landmark case, *Charles River Bridge v. Warren Bridge* (1837), Taney's decision, with which Wayne wholeheartedly concurred, prohibited state-backed corporate monopolies. Exclusive state contracts for corporations that built bridges, canals, roads, and railroads were deemed unconstitutional. Entrepreneurs interpreted this decision as a green light for all ventures, particularly those related to the railroad.⁶⁷

In the case of *Piqua Branch Bank of Ohio v. Knoop* (1853), Wayne disagreed with most southern justices, including Taney, regarding a state's right to tax banks at a separate, higher rate than other businesses. Further, Wayne believed that corporations should be protected and afforded the utmost protection by the state courts and the Supreme Court. Wayne routinely invalidated state taxation of corporations, particularly what he viewed to be undue taxation of bank stocks. The

⁶⁷ Kent Newmyer, *John Marshall and the Heroic Age of the Supreme Court* (Baton Rouge: Louisiana State University Press, 2001); *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 (1837).

states, he believed, should limit interference with corporations, and avoid inhibitive taxation, restrictive covenants or disruptive contracts. To Wayne, regulation of this nature was regulation of commerce, which was strictly the role of Congress, not the states. The states should create an unrestricted environment so corporations and businesses could thrive, and Congress regulated interstate, intrastate and international commerce.⁶⁸

On this he concurred with John Marshall, who, in *Gibbons v. Ogden*, greatly influenced judicial interpretation of the Commerce Clause of the Constitution. In 1844, Wayne concurred with the majority of the Court in *Louisville, Cincinnati, and Charleston Railroad v. Letson* that for “jurisdictional purposes the corporation was a citizen of the state in which it was incorporated.”⁶⁹ Numerous cases came before Wayne in Washington and in his circuit, and he repeatedly held that the rights of corporations were similar to those of citizens, and were, therefore, afforded similar protections.⁷⁰

In the case of *Gordon v. The Appeal Tax Court* (1845), Wayne wrote the opinion that invalidated the state of Maryland’s tax on shares of bank stock. Showing even closer contact with his home state, in 1846, Wayne dismissed a case

⁶⁸ *Piqua Branch of the State Bank of Ohio v. Knoop*, 57 U.S. 369 (1853).

⁶⁹ Newmyer, *John Marshall and the Heroic Age of the Supreme Court*, 231, 312, 304, and 500.

⁷⁰ *Louisville v. Letson*, 43 U.S. (2 How) 497 (1844).

against the Bank of the State of Georgia because the contract between the plaintiff, Shultz, and the bank left no room for “vague” contracts that could be easily misunderstood or misinterpreted by either party. During the era in which Wayne served on the Supreme Court, “corporate enterprise was fast becoming a major factor in the economic life of the expanding nation.” Wayne routinely held that contracts between businesses and between businesses and individuals must be letter-specific so that juries would not be influenced by emotional appeals of individuals and their attorneys during trial.⁷¹

Throughout his tenure on the court, Wayne always attempted to restrict states in regulating, taxing, licensing, or otherwise burdening private commercial endeavors. And throughout his tenure on the Court he was at odds with other southern justices in this regard, particularly Justice Campbell of Alabama and Chief Justice Taney. Wayne split time between the Supreme Court in Washington and the Sixth Circuit Court in Georgia and South Carolina. His circuit court opinions reflected his belief, as evidenced by his high court opinions, in the protection of corporations.⁷²

⁷¹ *Gordon v. Appeal Tax Court*, 44 U. S. 133 (1845); *The Boston Daily Atlas*, (Boston, MA), August 03, 1846; Lawrence, *Southern Unionist*, 102-105.

⁷² *Gordon v. Appeal Tax Court*, 44 U.S. 3133 (1845), *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 (1837); see also *Bank of Augusta v. Earle*, 38 U.S. 519 (1839) which also demonstrates Wayne’s corporate favoritism.

Not all Georgia judges thought that using their position to promote business was good business. Judge Robert M. Charlton of Georgia's eastern circuit in 1838 said: "Industry and economy are, doubtless cardinal virtues in a democratic government, but they may, like all other good things, be carried too far. We would smile at the idea of letting out our Judicial stations, per contract, to the lowest bidder, or placing our Judges upon an inclined plane, vulgarly called a tread mill, and making them grind the corn of the State, whilst they administered her justice. Perhaps we had better keep our gravity."⁷³

In contrast, many local Georgia judges were business boosters from the bench, just like Wayne. Most notable was Georgia Supreme Court Chief Justice John Henry Lumpkin, who, in 1850, described Georgia's economic development as "one of the most remarkable transformations ever experienced by any people." He warned that if Georgians and other southerners remained wedded to their agrarian ways, the state and region would never achieve its full potential and "would be denied its destiny."⁷⁴

Lumpkin, with whom Wayne served on the University of Georgia Board of Trustees for several decades, was chief of Georgia's highest court from 1846-1867.

⁷³ *Reports of the decisions made in the Superior Courts of the eastern district of Georgia* (Cambridge: Harvard University, 1838), iv.

⁷⁴ Timothy J. Huebner, "Encouraging Economic Development: Joseph Henry Lumpkin and the Law of Contract, 1846-1860," *Journal of Southern Legal History* (Fall/Winter 1991): 357-377.

Lumpkin's tenure defined judicial activism on the state level, which dovetailed powerfully with the same type of judicial activism practiced by James Wayne on the national level. In one case, *Miller v. Cotton*, Lumpkin held that contracts, held sacrosanct in business negotiations, must be strictly interpreted, especially when money is owed to a business. This view coincided with James Wayne's legal ideology; Lumpkin said in articulating his desire to advance progress for his state, "Let then, the cotton mill and the cotton field, and the most formidable of all trios, and most holy of all alliances, the plough, the loom and the anvil, be brought together." The double-barrel boosterism from two high courts, one state and one national, yielded undeniable results in both profits for businessmen and progress for the state. The next section will show the dramatic impact of decades of favorable economic policy and illustrate the results of the entrepreneurs who capitalized on the state's many advantages, for on the eve of the Civil War, many hailed Georgia to be the "Empire State of the South."⁷⁵

⁷⁵ Timothy J. Huebner, "Encouraging Economic Development: Joseph Henry Lumpkin and the Law of Contract, 1846-1860," *Journal of Southern Legal History* (Fall/Winter 1991): 357-377; *Grimes v. Reese*, 30 Ga. 330, 333, (1860); *Miller v. Cotton*, 5 Ga. 341 (1848); Richard Griffin, "The Origin of the Industrial Revolution in Georgia: Cotton Textiles, 1810-1865," *Georgia Historical Quarterly*, 42 (1958): 366; Coleman, *A History of Georgia*, 170; *Niles Weekly Register*, February 8, 1840.

Tipping Point and Take-Off: Georgia on the Eve of the Civil War

Before Georgia became what one observer called the “Southern Yankeeland,” it embarked on an aggressive and almost uninterrupted trajectory of economic growth beginning during the American Revolution and ending with the Civil War. Granted, Georgia’s economy felt the impact of various boom and bust cycles the nation experienced before, during and after the antebellum era, but evidence suggests that Georgia’s strong economy, the result of decades of favorable policy and practice, might have given its leaders enough confidence to reject secession in 1861. On the eve of the Civil War, many Georgia entrepreneurs and politicians could compare their state to other states in the North and the South and reasonably conclude, as did James Wayne, that they had too much to lose and little to gain from secession. The state’s prodigious economic strength by 1860 came from many forces over several decades.⁷⁶

Georgia lawmakers subsidized private industrial projects as early as 1777. The state encouraged industrial development by promising to give willing entrepreneurs two-thousand acres of land in exchange for producing bar iron, a much-needed commodity that cost a bundle to purchase and transport. As Georgia

⁷⁶ Eugene Alvarez, *Travel on the Antebellum Southern Railroads, 1828-1860* (Tuscaloosa: University of Alabama Press, 1984), 11-12, 17, 155; Morgan, *Planters’ Progress*; Schoen, *Fragile Fabric of the Union*; *Boston Courier* (Boston, MA), January 23, 1850; *Washington Republic* (Washington DC), January 11, 1850; *Philadelphia North American* (Philadelphia, PA), December 25, 1850; Richard Shyrock, *Georgia and the Union in 1850* (Durham: Duke University Press, 1926), 1, 12 and 28.

integrated more and more into the federal Union, individual Georgians played a greater role in national governance. For example, William Crawford, while he was secretary of the treasury under James Monroe managed to secure two locations in the state for branches of the Bank of the United States, which was unprecedented and more than any other state in the South. Before the institution became a symbol of corruption, the Bank of the United States branches symbolized stability, but they also symbolized and manifested a growing connectedness between the state of Georgia and the federal government.⁷⁷

The discovery of gold by whites in Dahlonega, Georgia in 1828 proved to be a tipping point for Georgia's antebellum economic development. The Georgia Gold Rush, instrumental in drawing people into the state from other states and in luring those who lived in the coastal and piedmont areas of the state into the northern frontier regions, set in motion political, economic and social transformations. The repercussions of Georgia's gold mining boom lasted throughout the nineteenth century, but its impact on Georgia's economic, political and social structures was immediate and dramatic. Mining operations, large and small, changed the landscape of North Georgia, as settlers and miners quickly opened mines and closed the state's frontier.⁷⁸

⁷⁷ White, *Statistics of the State of Georgia*, 624.

⁷⁸ David Williams, *Dahlonega Gold*; and David Williams, *The Georgia Gold Rush: Twenty-Niners, Cherokees and Gold Fever* (Columbia: University of South Carolina Press, 1993).

Gold benefitted local and state economies. In 1835, within just seven years of the discovery of gold, the U.S. Treasury Department established a national mint in Dahlonega, Georgia, one of only six in the country before 1850. The establishment of the federal mint and the dependence of both the mint and private mining operations on North Georgia's surprising new industry changed the relationship between the state of Georgia and the federal government. The discovery of gold North Georgia accelerated Indian removal. As a result, the federal government through legislation and enforcement proved itself a vital partner in Georgia's geographic expansion and economic growth.⁷⁹

Just as the establishment of a federal mint in Dahlonega and the use of federal legislative and enforcement power in removing the Cherokee from Georgia demonstrated a new relationship between the state and national governments, so, too, did Andrew Jackson's success in crushing the Bank of the United States. Georgia entrepreneurs cheered the collapse of the Bank of the United States, and Georgia politicians in the state and in Washington contributed the anti-bank frenzy. Wayne was instrumental in helping reorganize the U.S. Treasury Department while he was in Congress, and his recommendation to Andrew Jackson was to give Treasury control of federal deposits, and, therefore, power over the Bank of the United States. This move would give more power to the Treasury Department, and

⁷⁹ Williams, *Dahlonega Gold*; and Williams, *The Georgia Gold Rush: Twenty-Niners, Cherokees and Gold Fever*; Schweikart, *Banking in the American South*, 14-20 and 24-50; Gatell, "Spoils of the Bank War," 35-47.

Wayne supported Roger Taney, who was at the time Attorney General, to be the new Secretary of Treasury.⁸⁰

Georgia chartered banks in cities and towns all over the state, and these state banks were recipients of federal deposits withdrawn from the collapsing Bank of the United States, two branches of which were in Georgia. With Georgia pet bank coffers full of government money and profits from its depositors' and directors' entrepreneurial endeavors, the banks flooded the state with liquidity by financing more of the very endeavors that brought depositors to banks over and over. Growth begat growth, as state and federal support of banking, industry, and planting buttressed Georgia's dramatic rise relative to its neighbors. Whereas Peter Colcanis has argued that "the South lacked the capital mobilization required" to support and industrialized economy, Georgia's pattern runs contrary to this view.⁸¹

Liquidity and mobilized capital contributed significantly to Georgia's industrial expansion. According to one contemporary observer, Georgia exhibited greater "industry . . . than any of the old slave commonwealths." Georgia became what another observer called the New England of the South. The nature of

⁸⁰ Ibid.; James Simon, *Taney and Lincoln*.

⁸¹ Frank Otto Gatell, "Spoils of the Bank War: Political Bias in the Selection of Pet Banks," *The American Historical Review*, Vol. 70, No. 1 (Oct., 1964), pp. 35-58; Jerry W. Markham, *A financial history of the United States* (New York: Sharpe, 2002); Robert V. Remini, *Andrew Jackson and the Bank War: A Study in the Growth of Presidential Power* (New York: Something, 1995), p xx; Remini, *Andrew Jackson*, 163-170; Peter Colcanis, *The South, The Nation and the World* (Charlottesville: University of Virginia Press, 2003), 103.

Georgia's economy was one that promoted and rewarded calculated risk-taking, speculation, investment, and entrepreneurship. Though entrepreneurial boldness was encouraged, it came with an expectation on the part of businessmen of a powerful safety net: protection provided by the state or federal government. In this view, the state or national government would not only protect businesses through favorable legislation but also provide liquidity to encourage diversified endeavors. Though it was becoming a stable, growing and reliably diversified economy by 1860, Georgia was still a subject of King Cotton, whose realm expanded in Georgia and the South in the 1830s.⁸²

Cotton planters dominated many of the political, economic and social possibilities in the South, and there is no disputing the power of the profitable fiber. Even at the end of Richard Wayne's life, he could not resist the profits of cotton, for one of his four rice plantations shifted to the cultivation of cotton. But cotton's power was not constant. Dominant throughout the South, and clearly distinct in Georgia, cotton's power was not constant, for cotton prices fluctuated dramatically from 1820 to 1860; however, by the end of the 1850s, cotton's rise seemed to have no limit, for the price of cotton skyrocketed, earning profits for planters that had no parallel. Even with its undeniable, though inconsistent, profitability, in the best of times, cotton's reign was uncontested in the South's agrarian world. With the

⁸²Ibid.; Frederick Law Olmstead, *a Journey in the Seaboard Slave States: With Remarks on their Economy Vol. 1* (New York: Dix and Edwards, 1856) 441, 530, 535.

abundance of cotton, Georgia businessmen recognized early the benefit of turning their own cotton into cloth for sale in all markets, state, region, nation and world. Throughout the South, cotton might have been king of the agrarian world the planters built, but if cotton was king in the South, then cotton cloth was queen of the industrial world Georgia manufacturers built.⁸³

On the eve of the Civil War, Georgia textile mills boasted annual output comparable to that of individual (not aggregate) northern mills, and with increased output came increased profits. With transportation costs slashed because of the favorable proximity between plantation and mill, Georgia mill owners reaped both profits and stability as businesses solidified relationships along the web of transportation routes throughout the state.⁸⁴ Historians have pointed to the manufacturing establishment in Georgia and have called it the "Little New South,"

⁸³ Huebner, "Encouraging Economic Development," 360-362; Schweikart, *Banking*, 274; Robert S. Davis Jr., "The First Golden Age of Georgia Industry, 1828-1860," *Georgia Historical Quarterly* 72 (winter 1988): 699-711; Michele Gillespie, *Free Labor in an Unfree World: White Artisans in Slaveholding Georgia, 1789-1860* (Athens: University of Georgia Press, 2000); Richard W. Griffin, "The Augusta (Georgia) Manufacturing Company in Peace, War, and Reconstruction, 1847-1877," *Business History Review* 32 (Spring 1958): 60-73; Richard W. Griffin, "The Origins of the Industrial Revolution in Georgia: Cotton Textiles, 1810-1865," *Georgia Historical Quarterly* 42 (December 1958): 355-75; Richard W. Griffin, "The Textile Industry in Greene County, Georgia, before 1860," *Georgia Historical Quarterly* 48 (March 1964): 81-84; J. G. Johnson, "Notes on Manufacturing in Ante-Bellum Georgia," *Georgia Historical Quarterly* 16 (September 1932): 214-31; R. H. Shryock, "The Early Industrial Revolution in the Empire State," *Georgia Historical Quarterly* 11 (June 1927): 109-28; James L. Skinner III, ed., *The Autobiography of Henry Merrell: Industrial Missionary to the South* (Athens: University of Georgia Press, 1991).

⁸⁴ *De Bow's Review*, January 1855 and March 1857.

for it appears that Georgia industrialists recognized the necessity of diversification well before Henry Grady implored all states in the former Confederacy to create and embrace a New South.⁸⁵

While the cotton-textile relationship proved powerful and profitable in Georgia, the state's prodigious natural wealth and abundance of forests naturally allowed businessmen to establish lumber mills. Mill towns popped up along the waterways and, later, railroads. The mills collected trees from around the state and churned out lumber that kept pace of the explosive construction demand in the state and throughout the nation. Georgia's lumber production ranked among the highest in the nation, and this contributed to Georgia's diversified economy. In a few short years, Savannah eclipsed Charleston as the larger of the two ports, and this was in part due to Georgia's lumber export industry. After the Civil War, Henry Wayne operated lumber mills and related businesses once he converted his father's inheritance to cash and felled trees on Wayne property throughout the state.⁸⁶

As Georgia's economy grew during the 1830s, the state entered what Walter Rostow has called the "take-off period," which is defined as a two or three decade when policy, promotion and practice launch an economy to new and unprecedented levels. Georgia's railroad industry entered the take-off period in the early 1830s

⁸⁵ John R. DeTreville, *The Little New South: Origins of Industry in Georgia's Fall-Line Cities, 1840-1865* (Chapel Hill: University of North Carolina Press, 1987).

⁸⁶ Lawrence, *Southern Unionist*, 194.

when political will and manufacturing skill combined to enable an environment conducive to explosive growth. Georgia's transportation infrastructure, recognized by planters, industrialists and financiers alike as the literal and figurative link to the rest of the nation and to the world, received state support and significant private capital investment in the 1830s. This allowed Georgia to construct nearly 1300 miles of rail, worth an estimated \$55,000,000 by 1860, connecting Georgia's upcountry to the coastal regions and linking towns across the state. By 1860, Georgia boasted the most miles of rail of any other southern state except Virginia, and if the region that later became the state of West Virginia is excluded, Georgia's rail ruled in the South. Georgia and its entrepreneurs leveraged plantations, businesses, slaves, land and other assets to fund the expansion of the railroad. The state incurred so much debt for the railroad, that Alexander Stephens, supportive of railroad growth, commented that the magnitude of state's "monstrous debt" would be unfathomable to lawmakers of the previous generation.⁸⁷

While geographic size matters and implies many benefits, James Wayne recognized Georgia's expanse as a burden because of the difficulty in riding the circuit. As the miles of railroad that crisscrossed the state increased, his complaints about the difficulty in traveling to the outer reaches of the state decreased. Further,

⁸⁷ Huston, *Calculating the Value of the Union*, 270; Alexander Stephens, "Railroad Letter Number Two," in Henry Cleveland, *Alexander H. Stephens in Public and Private* (New York: National Publishing Company, 1866), 605-620; Lawrence, *Southern Unionist*, 27; Albert Fishlow, *American Railroads and the Transformation of the antebellum Economy* (Cambridge: Harvard University Press, 1966), 102.

the mere suggestion of building of a railroad in the areas of the state influenced total capital expenditures in those areas where rail was to pass, and this was true even before the railroad construction was completed. Railroad fever swept through Georgia, and Georgia railroad companies routinely yielded double-digit annual returns to investors.⁸⁸

Georgia's railroaders were well financed by public and private funds, which undoubtedly contributed to the near constant growth of the railroad, but Georgia geography contributed to the relative ease of laying track. The Appalachian Mountains begin in Georgia, but the state's relatively flat northwest corridor, while not void of foothills, allowed Georgia railroaders to plan, finance and construct with relative ease a road from Macon, through Terminus (later named Atlanta) and Rome, to Chattanooga, Tennessee. Georgia railroaders were able to avoid more mountainous regions of the northeast part of the state by making an end-run around the southern end of the mountains. Southern states along the eastern seaboard, such as South Carolina, North Carolina and Virginia had a greater degree of difficulty laying track through the mountains, which dramatically increased the cost and time of production, so Georgia's more southern and flatter geography aided

⁸⁸ Huston, *Calculating the Value of the Union*, 270; Alexander Stephens, "Railroad Letter Number Two," in Henry Cleveland, *Alexander H. Stephens in Public and Private* (New York: National Publishing Company, 1866), 605-620; Lawrence, *Southern Unionist*, 27; Albert Fishlow, *American Railroads and the Transformation of the antebellum Economy* (Cambridge: Harvard University Press, 1966), 102.

in attracting railroaders from across the nation and from across the Atlantic. In addition, the average cost to build one mile of railroad in Georgia was about one half the national average. At \$13 per mile to build, and because of the ease to build, railroading in Georgia was highly profitable.⁸⁹

During the 1840s, Irish immigrants crossed the Atlantic by the millions and settled in coastal towns along the eastern seaboard of the United States. While Boston and New York were the destinations for most Irish immigrants, significant numbers settled in Savannah and, later, Dublin, Georgia. Many were laborers, but some were businessmen, and the railroad was their business of choice in Georgia. One of James Wayne's daughters married an Irish railroad man, and the dramatic influx of free laborers created new economic and social possibilities as Georgia economic elite departed from the uniform use of slave labor. Many slave owners refused to allow their slaves to work on the railroad or in the gold mines of Dahlonega because such work was too dangerous. In addition, the working side-by-side with free workers might provoke slaves to bolt or incite rebellion back on the plantation.⁹⁰

⁸⁹ Schweikart, *Banking in the American South*, 15, 286, and 350; Henry S. Tanner, *A Description of the Canals and Rail Roads of the United States* (Tanner and Schenk, 1840), 173-200; *Niles Weekly Register*, February 18, 1840; Allan Vance, *The North American Railroad* (Baltimore: Johns Hopkins University Press, 1995), 97-105; Richard Tanner, *A Description of the Canals and Rail Roads of the United States* (New York: Tanner, 1840).

⁹⁰ *Ibid*; Williams, *The Georgia Gold Rush*, 75.

Not all Georgia railroaders were new arrivals, as men associated with the state's planter class of one generation became the men who led Georgia railroad interests in the next generation. For example, James Wayne, whose family name was associated with the planter generation prior to 1830, sold one of his Savannah homes in 1831 to William Washington Gordon, who was to become one of Georgia's leading railroaders. Like Wayne, Gordon's family had long been planters in the Georgia low country, but also like Wayne and other Georgians, he recognized the power of diversification.⁹¹

While some, like Gordon, ran railroad corporations, many more, like Wayne, served as corporate board members, directors, and investors. Georgia entrepreneurs also recognized that even the railroad, a symbol of Georgia's self-reliance and independence from northern industrial interests, could reinforce their dependence on the North if they continued to rely on northern producers of railroad-related raw material and finished good. As such, Georgia began manufacturing its own rail, rail cars, and associated items of manufacture.⁹²

⁹¹ *The Georgian* (Savannah, Georgia), September 8, 1835; *The Daily Georgian* (Savannah, Georgia), March 29, 1836; "William Washington Gordon of Georgia," biography with no author in possession of the Washington Memorial Library, Macon, Georgia.

⁹² James S. Eubanks and Steve Storey, *Georgia Railroad Paper, Stock Certificates, Bonds, and Currency Issued by Railroads Operating in Georgia 1833-1932* (Marietta, GA: Wharton Management, Inc., 2008); Ulrich Bonnell Phillips, *A History of Transportation in the Eastern Cotton Belt to 1860*; Allan Vance, *The North American Railroad; Its Origin, Evolution, and Geography* (Baltimore: The Johns Hopkins University Press, 1995); Lawrence, *Southern Unionist*, 30-50.

With Georgia's financial, industrial and agricultural prowess indebted, in part, to federal support, and with the suggestion that Georgia's relationship to the federal government was unique as compared to its southern neighbors and, thus, contributed to its strong Unionism, the question remains: Why did Georgia secede? Further, would have Georgia leaders chosen to secede if their state had developed a stronger and even more diversified economic model?

While it is tempting to speculate as to why Georgia joined the Confederacy when all the stars seemed to have aligned in favor of the state remaining in the Union, a discussion about the factors that inhibited Georgia's economic strength sheds light on the limited nature of the state's Unionism. Several factors contributed to what could be described as a degree of economic myopia on the part of many of Georgia's economic elite during the secession debates throughout the fall of 1860. Lincoln's election triggered the state secession debates, but Georgia, like all states in the South during the late 1850s suffered from what is now called the "Dutch Disease" by modern economists.⁹³

The Dutch Disease is an explanation given for the consequences experienced by the Dutch after the 1960s due to the presence of natural gas, a valuable, tradable commodity. So high was the demand for natural gas, and so profitable its production, that other exports and industries suffered. Speculation in natural gas

⁹³ Stanley Engerman, "Southern Industrialization: Myths and Realities," in Susan Delfino and Michele Gillespie, eds., *Global Perspectives on Industrial Transformation in the American South* (Columbia: University of Missouri Press, 2005), 14-21.

created what economists call a “bubble,” which is defined as “a self-generating surge that pumps asset prices and misallocates investments and resources to such a great extent that crash and major financial and economic distress follow.”

Speculative bubbles, whether in stocks, real estate, natural gas, other commodities, or tulips always pop, leaving in their wake waves of financial ruin. A multitude of factors could cause a speculative bubble to pop, with war being one of them, which was the case for the American South. According to Stanley Engerman, “it was the great profitability of cotton prices that served to limit the size of other sectors of the economy,” agricultural or industrial. In this, Engerman describes a cotton bubble.⁹⁴

Cotton’s profitability through the antebellum period was not constant, and could be described as both erratic and unpredictable, but during the 1850s, cotton prices experienced a bubble as prices skyrocketed at the end of the decade, likely bolstering feelings of constancy, confidence and independence that often accompany financial bubbles. For the South, no year was more profitable than 1860, which was after “an upward movement in the price” of cotton “over an extended range” at which time the “price imploded.” The late 1850s cotton bubble could be described as “a euphoric episode protected and sustained by the will of those involved in order to justify the circumstances that made them rich.”⁹⁵

⁹⁴ Ibid.

⁹⁵ Jerry Markham, *A Financial History of the United States*(Armonk, New York: Sharpe, 2002), 207; John Kenneth Galbraith, *A Short History of Financial Euphoria, 1908-2006* (Knoxville, Tennessee: Whittle, 1990), 9; Peter M. Garber, *Famous First*

Efficient, profitable cotton production was impossible without slave labor; therefore, as a commodity, slave prices experienced a bubble coinciding with the cotton bubble. As cold and harsh as these measurements sound, a slave fetched an average price of \$200 in 1820, \$300 in 1850, and as high as a whopping \$1500 in 1860. In addition, the number of slaves increased dramatically in the 1850s. By 1860, Georgia masters owned over 460,000 human beings, so coupled with the dramatic rise in cotton prices, Georgia's master class experienced a costly episode of irrational exuberance, a factor likely contributing to their irrational decision to secede. According to Horace Greeley, "the enhanced and constantly increasing value of slaves obstructed and diminished manumission." While it is certain that both bubbles, cotton and slave, popped with devastating and dramatic results, it is not clear if the bubbles would have popped without the war, which is a strong possibility. It is tempting to ponder the possibilities.⁹⁶

In addition to the short-term, end-of-run economic calamities described above, long-term trends helped lessen Georgia's relative economic strength. Throughout the state's history, economically induced exoduses pushed Georgians

Bubbles: Fundamentals of Early Manias (Cambridge: Massachusetts Institute of Technology Press, 2000), 4; Robert Fogel and Stanley Engerman, *Time on the Cross*, 73, 97-104.

⁹⁶ Ibid.; Robert J. Shiller, *Irrational Exuberance* (Princeton: Princeton University Press, 2005), 1-12; Alan Greenspan, *The Age of Turbulence: Adventures in a New World* (New York: Penguin, 2008), 176; Horace Greeley, *The American Conflict: A History of the Great Rebellion in the United States* (Hartford, Conn: O.D. Case and Company, 1867), 73.

westward toward other states and territories. Many Georgia emigrants, lured by opportunity elsewhere, hoped to recover from economic failure endured in Georgia. Others sought adventure and profit. A series of national economic panics in 1819, 1837, 1847 and throughout the 1850s devastated Georgia's economy, as was the case throughout the nation, so many Georgians sought opportunities elsewhere, particularly in Texas during the 1830s and 1840s, and in California after the 1849 gold rush. Mobility, heroically labeled Manifest Destiny, would more aptly be described as manifest demise for Georgia. Historian Michael Morrison has called episodes of exodus by those on the eastern seaboard states who longed for a greater opportunity in the West, the "economic second middle passage." The economic second middle passage uprooted economic saplings as well as old growth as entire families and businesses sought more verdant opportunities elsewhere. Promises of better opportunity in the West would "drain older states of capital" and reduce the number of producers and consumers.⁹⁷

Many factors contributed to Georgia leaders' decision to secede, but a strong diversified economy linked to the nation and the world was a compelling reason to resist secession and remain in the Union. The state boasted a strong, relatively broadly diversified economy on the eve of the Civil War thanks to a long history of

⁹⁷ Anthony Gene Carey, *Parties, Slavery and the Union in Antebellum Georgia* (Athens: University of Georgia Press, 1999), 71-74; Michael A. Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997), 1-10.

federal and state policy that created an environment conducive to robust economic growth, evidence of the benefit of a strong, symbiotic relationship between the state and the federal government. Just as Georgia's economy was comparatively diverse, so too were the many voices for and against disunion. Economic strength was an important dimension of Georgia's fragmented voice of Unionism and strong opposition to secession, but social factors contributed to the state's strong feelings regarding union and disunion, as well.

Just as Georgia diversified its economy in the antebellum era, so too did James Wayne diversify his personal financial holdings. By 1860, Wayne owned only one 200-acre plantation in Chatham County, Georgia, but he owned over 4400 acres of timberland in two counties, city lots in Savannah, interests in factories, and stock ownership in railroads. His dependence on planting diminished, as did his dependence on slave labor. At one point in his life Wayne owned over 100 slaves, most of them field hands. By 1860, however, he owned ten slaves, most of them elderly women and young children. The next chapter explores Wayne's relationship with the peculiar institution and attempts to connect his racial views with his Unionist ideology.⁹⁸

⁹⁸ Chatham County, Georgia Tax Digests for the years 1806, 1821-1827, 1831 1837, 1841, 1847 1852, 1855, Georgia Archives, Morrow, Georgia, Microfilm Collection, Drawer 308, Box 67; Drawer 196, Box 61; Drawer 69, Box 48.

CHAPTER FOUR

JAMES WAYNE AND THE SOCIAL DIMENSION OF GEORGIA UNIONISM

“Civil war breaks the bands of society and produces in the nation two independent parties, who acknowledge no common judge. Those two parties must necessarily be considered as two distinct societies.”¹

Emmerich de Vattel, 1808

“Whether right or wrong I need not discuss;
it is the case that our people suffer by your presence.”²

Abraham Lincoln, 1862

James Wayne’s complex and often conflicting racial views are hard to nail down, but what evidence is available suggests he believed like many of his contemporaries that the United States, as conceived by the founders, was to be a white nation. Wayne and other prominent Georgians and national leaders indicated that the preservation of the Union depended on a separation of the races, but defining separation and considering the many solutions to the nation’s race problems divided the nation on the grandest of scales. For Wayne, preservation of

¹ Emmerich de Vattel, *The Law of Nations* (Philadelphia: J. & W. Johnson, 1883), 424.

² Abraham Lincoln to black leaders visiting the Executive Mansion, August 14, 1862 in Roy Basler, ed., *The Collected Works of Abraham Lincoln, 1848-1865*, Vol. V (New Brunswick, New Jersey: Rutgers University Press, 1900), 317-319.

the Union depended not only on separation of the races but also on the removal of free blacks and their colonization outside of the United States. The social dimension of his Unionism evolved over time, and he integrated his views of colonization and the separation of the races into his political ideology, as he gradually came to view later in his life that slavery was “evil.”³

As with his understanding of the political and economic relationship between the states and the federal government, fundamental dimensions to his Unionist ideology, Wayne routinely expressed trust in the symbiotic and contractual relationship between state and nation in solving the most complex social issues of his time. As a lawmaker and judge in Georgia, as well as when he served in Congress and on the Supreme Court, Wayne endlessly grappled with slavery, its threat to the Union, and the fact that most people in his state “could not stand a Black Republic,” a condition feared by many Americans, particularly those in the South. Wayne’s generation was not the first to ponder the problems of the peculiar institution, nor was it the first to confront the glaring contradiction of human bondage in a nation premised on the notion that all men are created equal. Recognizing the problems created by the American paradox, Alexis de Tocqueville observed that “the most formidable of all ills which threaten the Union is the presence of the black population in its territory.” As George Rawick has pointed out,

³ James Wayne, “Address to the American Colonization Society,” in *National Daily Intelligencer* (Washington, DC), April 27, 1854.

“almost from the beginning, Indians and blacks were excluded from the social contract.”⁴

From the Age of Revolution, through the Jeffersonian Republic, beyond the Age of Jackson and until the Civil War, slavery vexed the people and the leaders of the nation. Carl Degler claimed that slavery was “first of all a relation between whites and blacks,” and all the founders had some sort of relationship with slaves and slavery, and for some the relationship was more intimate than that of others. Thomas Jefferson, himself a slave owner, called the slave trade an “execrable commerce” and labeled it a “cruel war against human nature.” Jefferson, in his first draft of the Declaration of Independence, blamed King George III for the slave trade in the American colonies, but Congress thought better of it and excluded references to slavery, slaves or black people in the Declaration of Independence. Like many of the founding generation, and likewise in James Wayne’s generation, Jefferson exhibited considerable cognitive dissonance about slavery, slaves, race and the many problems and limited possibilities that confronted the nation regarding blacks, slave or free. Though Jefferson owned over two hundred slaves on two plantations

⁴ Henry C. Wayne to Henry Simmons, *Records of the Adjutant and Inspector General of the State of Georgia*, Georgia Department of Archives and History, found in Alexander A. Lawrence, *A Present for Mr. Lincoln: The Story of Savannah from Secession to Sherman* (Chapel Hill: University of North Carolina Press, 1963), 8; Mrs. Mary Jones to Charles C. Jones, Jr., November 15, 1860 in Myers, *Children of Pride* (Yale, 1984), 29; Alexis de Tocqueville, *Democracy in America*, Volume 1 (Lansing: University of Michigan Press, 1863), 457; George Rawick, *The American Slave: A Composite Autobiography* (Westport, Connecticut: Greenwood Press, 1972), 150-153.

when he died, he called slavery an “abominable crime,” a “moral depravity,” a “hideous blot,” and a “fatal stain” that deformed “what nature had bestowed on us of her fairest gifts.” Though slavery in Jefferson’s view was a “moral depravity,” he still believed that the slave, “when he is freed, is to be removed beyond the reach of mixture.”⁵

Through his writings Jefferson externalized his internal conflict regarding race and presaged the seemingly perpetual series of conflicts provoked by race that dogged the nation until 1865 and beyond. Jefferson said, “Nothing is more certainly written in the book of fate than that these people are to be free. Nor is it less certain that the two races, equally free, cannot live in the same government. Nature, habit, opinion has drawn indelible lines of distinction between them.” In revealing the views of his time, Jefferson said: “I advance it therefore as a suspicion only, that the blacks . . . are inferior to the whites in the endowments both of body and mind.” Jefferson pierced the heart of the matter by revealing that the political dimensions of slavery and race trumped the moral, social and economic dimensions of slavery and race when he said famously: “We have the wolf by the ears, and we

⁵ Leon Festinger, *A Theory of Cognitive Dissonance* (Stanford: Stanford University Press, 1957, reprint 1985), 18; Thomas Jefferson, *Notes on the State of Virginia*, William Peden, ed. (Chapel Hill: University of North Carolina Press, 1958); Ari Helo and Peter Onuf, “Jefferson, Morality, and the Problem of Slavery,” *The William and Mary Quarterly*, 60 (July 2003): 583-614; Carl Degler, *Perspectives and Irony in American Slavery: Essays* (Jackson, Mississippi: University Press of Mississippi, 1976), 24; Thomas Jefferson, *Notes on the State of Virginia: Edited with an Introduction by William Peden* (Chapel Hill: University of North Carolina Press, 1954), 143.

can neither hold him, nor safely let him go. Justice is in one scale, and self-preservation in the other.” Issues of justice and self-preservation notwithstanding, as Ira Berlin has said, “amalgamation was repugnant to most whites,” but some, like Thomas Jefferson, were of two minds in regard to blacks, slave or free. It is quite possible to describe James Wayne’s seemingly contradictory views about slaves and blacks as two-mindedness as well.⁶

John Adams, one of the members of the Committee of Five who helped Jefferson write the Declaration of Independence, was utterly opposed to slavery.⁷ In his letters written to Jefferson later in life, Adams described many of the Virginian’s comments on slavery to be “worth diamonds.”⁸ Likewise, Benjamin Franklin, Jefferson’s primary editor of the Declaration of Independence, “adamantly opposed slavery,” though he owned slaves most of his life. Shortly before his death in 1790, Franklin, who was, by then, the president of the Pennsylvania Abolition Society,

⁶ Julian P. Boyd, et al., *The Papers of Thomas Jefferson* (Princeton, 1950; Paul L. Ford, ed., *The Works of Thomas Jefferson*, Volume I (New York: Putnam, 1904), 34 and Volume IX, 147; *Thomas Jefferson: Writings* (New York: Library of America, 1984); Joyce O. Appleby and Arthur M. Schlesinger, *Thomas Jefferson* (New York: MacMillan, 2003), 136-137; Fawn K. Brodie, *Thomas Jefferson: An Intimate History* (New York: Norton, 1998), 160-165; Ron Chernow, *Alexander Hamilton* (New York: Penguin, 2005), 310; Joseph J. Ellis, *American Sphinx: The Character of Thomas Jefferson* (New York: Vintage, 1998) and *Founding Brothers: The Revolutionary Generation* (New York: Vintage, 2002), 100-110; Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (New York: Pantheon, 1974), 104.

⁷ David McCullough, *John Adams* (New York: Simon and Schuster, 2008), 133.

⁸ McCullough, *John Adams*, 330.

petitioned Congress to free the slaves and “promote mercy and justice towards this distressed race, so that you will discourage every species of traffic in the persons of our fellowmen.” Franklin urged Congress to take up the debate of slavery, which was the first openly and fully recorded debate over slavery in the history of the United States. James Madison, arguing successfully against Franklin by rejecting emancipation, said with relief, “the wave . . . passed safely under the ship.”⁹

The remaining members of the Committee of Five, Roger Sherman of Connecticut and Robert Livingston of New York, likewise opposed slavery, but were silenced in their objections to slavery by a Congress destined to establish a tradition of compromise that persisted from 1776 through 1861.¹⁰ In regard to the possible ending of slavery, historian Richard Ellis points to this moment as one of the colossal failures of the Revolutionary Generation. It was, as Bernard Bailyn so poignantly designated, a “turning point at which no one turned.” Writing to a friend about the Missouri Compromise in 1820, Thomas Jefferson said that slavery sounded a “fire bell in the night,” a peal that sounded often from 1776 to 1861.¹¹

⁹ Ibid., 132; John Miller, *Wolf by the Ears*, 2; Franklin’s petition found in Jesse Macy, *The Anti-Slavery Crusade: A Chronicle of the Gathering Storm* (New Haven: Yale, 1919), 11-12; Joseph Ellis, *American Creation: Triumphs and Tragedies at the Founding of the Republic* (New York: Knopf, 2007), 175.

¹⁰ David Brion Davis, *The Problem of Slavery in Western Culture* (New York: Oxford University Press, 1988), 426; Richard B. Morris, “Class Struggle and the American Revolution,” *The William and Mary Quarterly*, 19 (January 1962): 4-29.

¹¹ Ellis, *American Sphinx*; and Ellis, *Founding Brothers: The Revolutionary Generation*; Bailyn, *The Ideological Origins of the American Revolution*; Bernard Bailyn, *To Begin*

Historian William Lee Miller has said that even though slavery confounded the Founders, they knew that one day the slaves would be free and that America would be free of slavery. But they did not know how to get to that point in the future. It was, Miller concludes, as if the Founders were looking at the nation through bifocals. As they peered down at their then present, they could see with precise clarity, through the lower half of the bifocals, that slavery existed and that it was problematic for the new republic and its future. Then the Founders, continues Miller, could look out into the future and see with equal clarity and precision, as if viewing through the top half of their imaginary bifocals, that slavery would be gone. They just could not figure out how to get rid of the bifocals. They could not see clearly enough to know how to move from point A to point B, how to end slavery, without shattering the nation they had formed through muscled compromise, nimble negotiations, and delicate acts of ideological balance. Wayne, through his unique variety of Unionism, saw clearly how to end slavery, alleviate the resulting race problem, and preserve the Union, but he assumed that it would be difficult and gradual. After all, generations of captivity had created a slave society, and Wayne

the World Anew: The Genius and Ambiguities of the American Founders (New York: Knopf, 2003).

believed it would take generations to break the chains of dependence upon slavery.¹²

From 1790 to 1830, according to Orlando Patterson, the South “emerged as a full-fledged slave system, a total commitment to the institution as an essential feature of the region’s socio-economic order.” By the 1830s, abolitionists such as William Lloyd Garrison, resisting the inordinate growth of slavery in the South, proposed an immediate end to slavery, come what may. Garrison called the slave society the Union had become a “sinful nation” and believed that if the North acquiesced to the will and wishes of the South, then the free states should separate themselves from the South and secede from the Union. At a July 4th gathering in Farmington, Massachusetts in 1854, Garrison called the U.S. Constitution “the parent of all other atrocities” and “a covenant with death and an agreement with hell” and then set it on fire.¹³

Fellow abolitionist Wendell Phillips, equally as vocal and nearly as radical as Garrison, differed in regard to secession, but believed that the federal government,

¹² William Lee Miller, *Lincoln’s Virtues: An Ethical Biography* (New York: Simon and Schuster, 2004), iv-xx; Ira Berlin, *Generations of Captivity: A History of African American Slaves* (Cambridge: Harvard University Press, 2003), 1-25, 14.

¹³ Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard, 1982), 100, 341; William Lloyd Garrison, *William Lloyd Garrison and His Times: Sketches of the Anti-slavery movement*, Oliver Johnson, John G. Whittier, eds. (Lansing: University of Michigan Press, 1882), 312-314; Eric Foner, *Who Owns History? Rethinking the Past and Changing the World*, (New York: Hill and Wang, 2002), 169.

in particular through the judiciary, should intervene on behalf of the slaves.

Speaking during Reconstruction, Phillips said: “It is the role of the government to protect the rights and interests of minorities.” Well before the Civil War, Phillips said: “the power of the government can sweep this institution into the Gulf” because, asked Phillips regarding the slave owners of the South, “what can a few thousand do against the weight of government?” Phillips’s words seemed to validate the fears of many in the South because he described the arbitrary and overwhelming force most southerners anticipated and believed to be inevitable.¹⁴

Others acknowledged the necessary end of slavery, but preferred a more gradual approach, even one, perhaps, that would grasp the invisible hand of free markets, which, in turn, would ferret out the inherent inefficiencies of slavery. Some looked for an invisible hand of another kind. Some trusted the invisible hand of Providence, which they presumed would take slavery to its fated conclusion. For example, Robert E. Lee, who loathed slavery . . . but still owned slaves . . . believed the institution would come to an end over time, in God’s time. In 1857, Lee said: “There are few, I believe, in this enlightened age, who will not acknowledge that slavery as an institution is a moral and political evil. How long their servitude may be necessary is known and ordered by a merciful Providence. Their emancipation will sooner result from the mild and melting influences of Christianity

¹⁴ Wendell Phillips, *Speeches, Lectures and Letters* (Lansing: University of Michigan Press, 1872), 36, 88, 121, and 442.

than from the storm and tempest of fiery controversy. This influence, though slow, is sure." Lee's wife and mother-in-law both were heavily involved in the American Colonization Society, an influence that might have contributed to Lee's decision to free his slaves during the Civil War.¹⁵

Lee's contemporary, William T. Sherman, not as deferential to the invisible hand of God as was Lee, nor as eloquent, called the emancipation of slaves and the presence of free blacks in the nation "the perfect bugaboo."¹⁶ Sherman observed the difficulty in race relations between free people of color and their former masters when his army occupied Savannah. Sherman did not trust black men and believed they "should not be brigaded with white men" because the conflict was "a white man's war." Slavery and emancipation, with their attendant moral, social and economic dimensions, created the perfect political problem. Historian David Brion Davis termed this quandary of emancipation, the presence of free blacks in a white nation, and their quest for citizenship, as the "Great American Problem." James Wayne, of course, recognized this problem, and perhaps his evolving legal opinions

¹⁵ Adam Smith, *The Wealth of Nations*, (Petersfield, England: Harriman House, 2007), 32; Robert E. Lee to Franklin Pierce, letter dated December 27, 1856, this letter was written by Lee in response to a speech given by then President Pierce in Michael Fellman, *The Making of Robert E. Lee* (Baltimore: Johns Hopkins University Press, 2003), 79; Michael Fellman, *The Making of Robert E. Lee* (New York: Random House, 2002), 22, 64-65.

¹⁶ William T. Sherman, Letter to Abraham Lincoln, March 1865, a copy in the possession of the Georgia Historical Society, The Alexander A. Lawrence Collection, Savannah, Georgia.

regarding the rights of the enslaved and emancipated suggest evolving personal opinions regarding the rights of the same. For Wayne, it was not the invisible hand of free markets or the guiding hand of providence; it was the firm hand of the federal government that would help states solve their growing race problem, but the states would maintain their constitutional rights and expect the contractual obligations implied by the Constitution to continue slavery on their terms, or end it, if that became the will of the people, in their time.¹⁷

James Wayne inherited several slave families from his father in 1808 and ultimately owned over one hundred slaves. Though Richard Wayne indicated in his will that “Negro families . . . must be kept together,” his son had other plans and gradually divested himself of most of his human property over the course of his lifetime. According to 1860 census data and tax records from Chatham County, Georgia, by then he owned ten slaves in Savannah and one in Washington. Just before the Civil War, it appears that he did not own any male field hands. Alexander Lawrence claims that during this time when he owned few slaves, Wayne either leased slaves to work his property or leased out his own slaves, even though most were older women and children.¹⁸ Lawrence believed that Wayne did not own

¹⁷ William T. Sherman to Ellen Sherman in John David Smith, *Black Soldiers in Blue: African American Troops in the Civil War Era* (Chapel Hill: University of North Carolina Press, 2002), 229; David Brion Davis, *Challenging the Boundaries of Slavery* (Cambridge: Harvard University Press, 2006), 62-72.

¹⁸ Chatham County, Georgia Tax Digests for the years 1806, 1821-1827, 1831 1837, 1841, 1847 1852, 1855, Georgia Archives, Morrow, Georgia, Microfilm Collection,

slaves in his Washington DC home after he became a Supreme Court justice, preferring workers of “Irish extraction.” Prior to 1860 Wayne either sold the vast majority of his slaves, traded them, freed them, gave them to family members, or otherwise divested himself of most of his human property. Does this suggest a subtle connection between Wayne’s Unionist ideology and his evolving attitudes toward slavery and race? Further exploration might add to our understanding. It is safe to conclude that Wayne never would have made a grand and public gesture of manumitting his slaves *en masse* or individually, regardless of how evil he came to believe the institution was. Further, public knowledge of any manumission efforts Wayne’s part would have run contrary to his view that slavery should end gradually, and at an almost glacially slow pace. Finally, emancipatory endeavors would have alienated Wayne from his vast political, economic and social networks. Wayne was, after all, a man of Georgia, and bold gestures that would have drawn attention to himself were simply not his style.¹⁹

Wayne was, however, quite stylish when it came to making money. Not only was he a man of Georgia, he was also an astute businessman and speculator. In the decade leading up to the Civil War, slave property skyrocketed in value. As morally

Drawer 308, Box 67; Drawer 196, Box 61; Drawer 69, Box 48; Fraser, *Savannah in the Old South*, 270-313; Malcolm Bell, *Major Butler’s Legacy: Five Generations of a Slaveholding Family* (Athens: University of Georgia Press, 2005), 548; Sally Swartz, “Pauline Stoney’s Story,” *Savannah Magazine*, June 1977; Lawrence, *Southern Unionist*, 144.

¹⁹ Ibid.

repugnant as it sounds, a healthy, young, male field hand would fetch around \$500 at auction in 1849. By 1859, human property with the same attributes would fetch in some cases three times that amount. Perhaps he still owned slaves because they were collateral on loans. Perhaps Wayne held on to some of his slave property for reasons of profit or for personal reasons. Historian Charles Fraser along with Malcolm Bell conclude that Wayne fathered children by one of his slaves. Could some of the slaves he owned in 1860 been his kin? Possibly. We do know that one of the slaves he owned in 1860 was a 75 year-old woman, but it is unclear which of the slaves he owned were or could have been his children or were otherwise beholden to him for reasons beyond what the bonds of servitude could explain, though it is impossible to know for sure. It would not be illogical to consider that the slaves he owned were his children, kin or somehow held for protection. Wayne was of the generation of southern slave owners that in their own way loved many of their slaves and expressed familial responsibility for the families they held in captivity, whether they were of their own blood or not.²⁰

Wayne's statistical relationship with the peculiar institution is revealing. According to Chatham County, Georgia tax records, James Wayne owned over 90 slaves in 1821. Wayne's enslaved human property worked on two plantations on Argyle Island, and in two homes in Savannah listed as being owned by Wayne. With

²⁰ Ibid.; see Fogel and Engerman, *Time on the Cross*, 40-45, 60-70, 97 and 100-120 for the escalating value of slave prices; Fraser, *Savannah in the Old South*, 288, 313.

nearly 700 acres of land, Wayne was a large landowner and a well-entrenched member of Georgia's master class. By 1826, after expanding his business and agrarian operations Wayne owned 100 slaves. By 1833, Wayne still owned close to 100 slaves, but had expanded his land holdings by another 1000 acres as he sought to diversify his holdings and obtain land thick with trees, trees that would ultimately become lumber to satisfy Georgia's growing construction demand and to meet the parallel demand for lumber from throughout the region and the nation.²¹

In 1837, at the height of his power and wealth, Wayne's vast Georgia land holdings exploded; he owned nearly 5000 acres of Georgia land in Chatham County, Effingham County, Henry County and Washington County. He had by then sold one of his plantations on Argyle Island and reduced the number of slaves he owned to 80. A decade later in 1847, Wayne still owned several thousand acres of land, including one of his plantations on Argyle, as well as three lots in Savannah, but he owned only sixteen slaves, eight of whom lived at his home in Savannah, the other eight presumably worked other Wayne lands or were leased out by Wayne.²²

²¹ Chatham County, Georgia Tax Records, 1821-1827, 1831, 1837, 1841-1847, 1855, Georgia Archives, Morrow Georgia; Chatham County Census, 1845, Georgia Archives, Morrow Georgia, Drawer 32, Box 53. Since the federal census is mandated for every ten years, periodically Georgia lawmakers called for a census of their own. Six counties conducted odd year census tabulation, and Chatham was one required to do so in 1845.

²² Ibid.; Lawrence, *Southern Unionist*, 65-66, 97-99, 144.

By 1856, Wayne owned only nine slaves assessed at a value of \$4500. One of his slaves was a woman of 70, another was a woman of age 45 and the rest all children under the age of 17. There was not one male of working age living on Wayne's Georgia property after 1855, yet Wayne still owned a plantation and several thousand acres of land. According to Alexander Lawrence, Wayne did not utilize slave labor in his Washington D.C. home because he "yielded to northern prejudices" and preferred "servants of Irish extraction" over black slaves.²³ This is in conflict with some evidence. According to the 1860 census, Wayne owned one slave in Washington, a 21 year-old black male, but it is unclear why Lawrence would claim Wayne owned no slaves in DC, even though he cited the census. Perhaps the slave in question was Wayne's personal valet. In addition, Lawrence also claimed Wayne had long "disposed of his planting interests" by 1856, but tax records show that he still owned a 200-acre plantation and several thousand acres of "pine and hardwood" land.²⁴

Wayne clearly and dramatically decreased the number of slaves he owned from nearly 100 to ten during the years 1840 until 1855, and the slaves he did own by 1860 clearly were not field hands. During the same period of time, Wayne increased his interest in the African colonization movement, though he had been involved in the movement since 1817. Whether his sentiment regarding

²³ Ibid.

²⁴ Lawrence, *Southern Unionist*, 144.

colonization is correlated to his decreased dependence on slave labor is unclear from any available surviving documentary evidence, but it is not illogical to assume that Wayne's public gestures and comments about colonization might have influenced his decision to free, sell or otherwise divest himself of slaves. His legislation and legal opinions offer some insight into his changing attitudes about race. In addition, examining the discourse in Georgia regarding slavery; exploring the possibilities envisioned by Georgians, including Wayne, regarding colonization; and comparing the views Wayne and several U.S. presidents shared regarding federal support of colonization sheds light on the complex social dimension of Georgia's Unionism.²⁵

The Peculiar Institution in Georgia: From a Society with Slaves to a Slave Society and Back

Race is central to Georgia's history. From its founding as a British colony to the present, racial separation and the resulting social friction underpin Georgia's social and demographic foundations. Racial separation was an integral part of Georgia's collective identity. Of all the French, British, Spanish, and Portuguese

²⁵ *National Intelligencer*, Washington, D.C., May 16, 1845; "The Last Will and Testament of Richard C Wayne"; "The Last Will and Testament of James M. Wayne"; Census data from 1810, 1830, 1840, 1850, 1860; Erik Calonius, *The Wanderer* (New York: St. Martins, 2006), 180-190, 218.

colonies of the New World, claims David Brion Davis, “only Georgia attempted to avoid the stain of Negro slavery.”²⁶

Written in 1732, Georgia’s charter was the only colonial charter that not only expressly banned slavery, but also separated free blacks and whites and required free blacks to be removed from the colony. Though the ban was lifted in 1752, Georgia’s colonial trustees fought hard to maintain the ban because slaves “had obstructed the increase of English and Christian Inhabitants.” Not only did they believe the presence of slaves and free blacks discouraged immigration to the colony, the colonial trustees also feared “slave rebellions might occasion the utter ruin and loss” of all colonies, not just Georgia. Whites always “lived with the shadowy dread of slave insurrection,” so Georgia’s charter also banned all “Black, Blacks Negroe, or Negroes that shall be found within the Province of Georgia.” The trustees decreed that all free blacks “shall be seized, declared sole property of the Trustees, and disposed of in such a manner” as determined by the trustees. Racial separation was woven into the fibers of Georgia’s foundation.²⁷

²⁶ Georgia’s Colonial Charter found in Kai Wright, *The African American Experience: Black History and Culture* (New York: Black Dog Publishers, 2009), 44-46; Christopher Myers, *The Empire State of the South: Georgia History in Documents* (Macon: Mercer University press, 2008), 144-145; *The Eighth Census of the United States, Slave Schedules*; Eric Foner, *Who Owns History?*, 178; David Brion Davis, *The Slave Power Conspiracy and the Paranoid Style* (Baton Rouge: LSU Press, 1970), 32; and David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca, New York: Cornell University Press, 1966), 144-145.

²⁷ Ibid.

Though hardly enlightened or egalitarian, Georgia's colonial charter addressed slavery and race directly and by name rather than "being mentioned by circumlocution" as was the case for the U.S. Constitution. Altering the foundational elements of Georgia society, as was the case confronting James Wayne's generation, would force a dramatic shift in the state's worldview and, in the view of historian Lacy Ford, require a massive "demographic reconfiguration." While the North and the South ultimately developed different societies, they did not have different worldviews regarding race. Interestingly enough, even Alexis de Tocqueville commented during the 1830s that "prejudice of race appears to be stronger where slavery is abolished than where slavery still exists." Though states in both sections of the nation might have held similar racial views, how those views were expressed in political terms, by economic possibilities and through the social order determined the strength of the Union. For example, if North and South disagreed on the future of slavery, then disunion loomed large for the nation. According to political philosopher John Rawls, "in democratic societies, citizens are not only shaped and bound by the social order they create, they are collectively responsible for it." Georgia, as did all states, attempted either to preserve its traditional social order or transform it on its own terms. If a certain social order is to be maintained, then political and economic forces most assuredly will conspire to reach that end.

Likewise, if a social order is to change, political and economic forces must underpin the transformative endeavor, regardless of the duration.²⁸

By 1776, roughly 16,000 slaves labored on Georgia's increasing number of plantations. By 1860, with over 462,000 enslaved humans, Georgia had the second largest number of slaves of all states. (Virginia had the largest number of slaves of all states, with roughly 485,000 slaves. If the western, mountainous region of Virginia that became West Virginia in 1863 is excluded from Virginia's 1860 Census calculation, Georgia would have had the largest number of slaves of all the states.) To accompany its massive slave population, Georgia had the third largest population of free blacks in the nation. According to the 1860 census, roughly 25% of all whites in Georgia owned slaves, and of that, only 20% owned a whopping 50% of all slaves in the state. In other words, 1/50th of whites owned 50% of the slaves. The number of slaves increased at a much greater rate than the number of slave owners, which, in turn, increased slave owners' economic prowess, allowed them to maintain their social control, and created a "fixed and direct tie between slave ownership and political power." Whites of all classes in the South "accepted slavery and the values that surrounded it because that kind of society served all interests well," not just those of the slaveholders. Slavery stabilized and perpetuated the accepted racial order, albeit an imbalanced one in favor of whites. Should the

²⁸ Ibid.; Lacy K. Ford, *Deliver Us From Evil: The Slavery Question in the Old South* (New York: Oxford University Press, 2009), 299; John Rawls, *A Theory of Justice* (New York: Oxford, 1971), 1 and 60.

scales be balanced, the racial stability would be altered, and this was the greatest social fear of all white Georgians.²⁹

Whereas Georgia began the nineteenth century as an agrarian slave society, over the subsequent sixty years, evidence suggests that some influential Georgians like Wayne considered a future, albeit a distant one, that did not include slaves. Even though Eugene Genovese claimed that the “Old South came closest of all New World slaveholding regimes to producing a genuine slave society,” it is not illogical to question whether each slave state embraced the peculiar institution with the same degree of intensity. Perhaps for some Georgians the question was not if slavery would end, but how, when and what would be left in its wake. During the nineteenth century, was Georgia becoming, or, rather, *becoming again* a society with slaves, and embarking on a long and uncertain trajectory toward becoming a free society? Though it was by any measure a firmly entrenched slave society

²⁹ Stephen Frank Miller, *The Bench and Bar of Georgia: Memoirs and Sketches*, Volume I (Oxford, 1858), 399; Horace Greeley, *The American Conflict: A History of the Great Rebellion in the United States of America, 1860-64: Its Causes, Incidents, and Results: Intended to Exhibit Especially Its Moral and Political Phases, with the Drift and Progress of American Opinion Respecting Human Slavery from 1776 to the Close of the War for the Union*, Volume I (Hartford: O. D. Case Publishers, 1864), 36-40; Georgia’s Colonial Charter found in Kai Wright, *The African American Experience: Black History and Culture* (New York: Black Dog Publishers, 2009), 44-46; Christopher Myers, *The Empire State of the South: Georgia History in Documents* (Macon: Mercer University press, 2008), 144-145; *The Eighth Census of the United States, Slave Schedules*; Erik Caloniuss, *The Wanderer*, 183; and *Hanging Captain Gordon; The Eighth Census of the United States: Slave Schedules*; and Frederick Law Olmstead, *A Journey in the Seaboard Slave States: With Remarks on their Economy*, 530-560; Carl Degler, *Place over Time: The Continuity of Southern Distinctiveness* (Baton Rouge: Louisiana State University, 1977), 81.

throughout the antebellum period and until the Civil War, Georgia's economic behavior suggests that some in the state were willing to consider options other than slaves as a labor force, and ponder a possibility other than slavery as its mode of production. Just as industrialists in Ohio hired slaves from slave owners in neighboring Kentucky. Perhaps some Georgia industrialists, who often attempted to find ways to replicate the success of their entrepreneurial counterparts in the North, likewise occupied a murky and ambiguous moral space in a nation founded on freedom, but that was not yet entirely free.³⁰

Over the course of his life James Wayne seems to have replaced slave labor with paid labor to a greater or lesser degree, but he was not the only Georgian who did this. Frederick Law Olmstead noticed in 1854 that some Georgia plantation owners recruited Irish workers from the North, paid their transport to the South, and hired them to work on their plantations for \$10 per month. Slaves, one plantation owner told Olmstead, cost \$15 per month to maintain. In witnessing this, Olmstead said in disbelief, "I saw this for myself." Some slave owners refused to allow their slaves to work in factories, mills, mines or on the railroad because the work was dangerous. South Carolina's John C. Calhoun, who owned the largest number of gold mines in North Georgia, did not allow slaves to work in his gold mines for this reason. Calhoun was one of the largest land owners in Lumpkin

³⁰ Ibid.; Orlando Patterson, *Slavery and Social Death* (Cambridge: Harvard University Press, 1982), 94.

County, Georgia, and the owner of over 1500 acres of land loaded with gold. Calhoun's many mines were the most productive of all of those in North Georgia. Calhoun was instrumental in passing legislation to locate a federal mint in Dahlonega in 1836. Calhoun's son-in-law, Thomas Clemson, managed Calhoun's vast operations in Georgia and founded Clemson University in South Carolina with the profits from his Georgia gold ventures.³¹ With an increasing number of industrialists moving operations to Georgia, and with slave owners reluctant to hire out their slaves to factory owners, business owners hired free workers to meet the growing labor demand throughout the state.³²

While powerful forces maintained Georgia's slave society, perhaps some in Georgia considered the possibility of a world without slavery, and a society *without* slaves. Ira Berlin elaborated on Moses Finley's description of a slave society and suggested that seventeenth-century Virginia transformed from a society with slaves, one in which the institution of slavery was important but not firmly entrenched, to a slave society, one in which the institution of slavery influenced all political institutions, social relations and economic possibilities. But Berlin did not offer a transformative completion of the cycle he introduced. Berlin suggests that a given society's "original position" is one without slaves and that the transformative impact

³¹ David Williams, *Georgia's Gold Rush*, 36.

³² Frederick Law Olmstead, *A Journey of the Seaboard Slave States: With Remarks on their Economy* (New York: Dix and Edwards, 1856), 530-531, 540, and 543; Williams, *The Georgia Gold Rush*, 160-180.

of introducing slaves to the slave-less society creates a society with slaves, a condition in which slaves are present, but their presence is not politicized and slavery is not the most dominant and polarizing institution.³³

Over time, once its plantation economy develops a dependence on a specific export crop, and once it then reifies a corresponding dependence on slavery a society with slaves becomes a slave society. Berlin implies societies embracing involuntary servitude go through a two-phase process: from a society with slaves to a slave society. The suggestion that a given society transforms from being a society with slaves to being a slave society creates an extremely useful analytical tool. Though enormously useful, Berlin's binary model denies the natural ebb and flow of historic, social, economic, and political cycles, such as been the case of slavery over the course of human history. A more complete analytical tool might be one that views the experience of servitude in a given society as a cycle, or at least one that adds temporal phases to Berlin's two-phase cycle. Perhaps a closer examination and analysis of Georgia's experience with slavery offers the possibility of an example.³⁴

³³ Moses Finley, *Ancient Slavery and Modern Ideology*, (New York: Wiener, 1998), 135; Ira Berlin, *Many Thousands Gone*, 95-150, and Berlin, *Generations of Captivity*; For "original position" and social contract theory see John Rawls, *A Theory of Justice* (New York: Oxford, 1999), 15.

³⁴ Ibid.; Ira Berlin, *Many Thousands Gone*, 95-150.

This analysis assumes a multi-phasal nature of Georgia's relationship with slavery. The analysis would suggest further that at some point between 1732 and 1865, the beginning and ending points, respectively, of Georgia's relationship with slavery, Georgia would emerge and achieve a peak of intensity as a slave society at some point of the cycle, but not before going through a "quickenings," so to speak, while it cycled through its society with slaves phase. To be a slave society means that a given society, in this case Georgia, would be in one phase of a cycle, specifically, at the peak phase of the cycle. For the slave states, the Civil War and emancipation brought to an abrupt end their slave societies. This analysis provokes a tempting speculation: Had the slave states recognized the inevitability of slavery's decline, as is asserted of the members of the founding generation, or at least accepted the inevitability of slavery's collapse at some point in the future, all slave societies in the United States, after reaching their peak of dependency, could have transitioned back gradually to societies with slaves. In addition, had the slave states in the aggregate recognized the federal government's willingness to assist with the social and economic transition from slave society, to a society with slaves, and, ultimately, to a free society without slaves, perhaps the Civil War could have been avoided. Though he was never one to express what he thought the moral, social and political trajectory of the nation should be in letters to the press or through

flamboyant and fiery oration, Wayne's views are clear as expressed in his judicial opinions.³⁵

Counterfactuals and conjecture aside, evidence indicates states like South Carolina and Alabama neither expected nor wanted federal involvement in their social, economic and political affairs. Nor did they trust federal incursions into internal state affairs; however, many in Georgia welcomed it. Georgia's relationship with the federal government developed differently in the antebellum period than did those of other states of the South, thanks in part to Indian Removal, the positive repercussions of the collapse of the state's two branches of Bank of the United States, and the presence of a federal mint in north Georgia, all of which created a legacy of state-federal symbiosis.³⁶

To contrast with Georgia, South Carolina reached the peak of its slave society in April 1861 when it captured and occupied Fort Sumter. At this point, the state risked all to defend the slave society it created. Nearly 250 years of transition from a society with slaves to a slave society came to a violent and abrupt end for South Carolina in defense of its slave society. The Confederate nation that South Carolina helped form and so strongly advocated was born, in part, to perpetuate its slave society. South Carolina, and by logical extension, the other southern states of the

³⁵ Ibid.; John C. Calhoun, *The Works of John C. Calhoun*, Volume 2 (New York: Appleton, 1888), 312-322, 606.

³⁶ Ibid.

Confederacy, saw no alternative to their slave society and were unwilling to give it up, but they were willing to sacrifice the highest measure to maintain their utter dependence on slavery. It is not unreasonable to consider that Georgia, in contrast, perhaps reached the peak of its slave society sometime before 1861 because its economy was more industrialized, its risks more diversified and its practices more sound than were the economies of its neighbors. Again, Georgia's relationship with the federal government, one rooted in the long tradition of republican-style compromise and one that demonstrated political, economic and social issues could be resolved peacefully, contributed to its strong resistance to disunion.³⁷

Federal involvement in Indian Removal demonstrated to some Georgia leaders that a relationship with the federal government, one that would ultimately help alleviate social problems to the satisfaction of both parties, state and federal, need not be adversarial. In fact, it was more advantageous than adversarial. From the 1830s through the 1850s, the Georgia General Assembly recognized "the many advantages of being in the federal Union" and warned its citizens "against adopting mischievous policy" that would utilize "rash and revolutionary measures" that were "neither peaceful or constitutional," affirming its position in the Union. Indian Removal, through policy and enforcement, created a bond between the state of Georgia and the federal government, and it was one that influenced lawmakers, laws and the enforcement of laws related to slaves and free blacks. This bond

³⁷ Calhoun, *Works*, 472-475, 518, 632.

reinforced Georgia's Unionism, and for James Wayne, the bond between the state and the federal government was grounded in the Constitution. Echoing Wayne's faith in the federal government, the Georgia General Assembly in 1833 called for "a tribunal of last resort must be established by constitutional Amendment to settle disputes between the General Government and the States." Further, "the federal government must establish a method of settling disputes that threaten the dissolution of our happy union." To Wayne, the give-and-take between the state and federal government was part and parcel of the contractual relationship established by the Constitution in 1787.³⁸

Prior to 1830, Georgia enacted harsh laws regarding free blacks and slaves, but evidence indicates a gradual softening of Georgia's social restrictions on slaves and free blacks over the course of three decades. Georgia developed a reputation for better treatment of free blacks. For example, as late as 1854, journalist, wanderer and commentator on American life, Frederick Law Olmstead said that "Georgia is the Yankeeland of the South, leading the way in the race of southern empire." Olmstead also observed that Georgia "was more democratic towards its negroes and less inhumane to the negro in regard to the other slave states." His first-person account recalled from his journey declared that Georgia laws "were less restrictive against Negroes and less frequently enforced than in any other southern

³⁸ Paul Finkelman, *Dred Scott v. Sandford: A Brief History With Documents* (Boston: Bedford: 1997), 30-32; *Acts Passed by the Georgia General Assembly, 1854*; *Niles Weekly Register*, December 22, 1832 and June 15, 1833.

states.” Several years earlier, a writer in Macon, Georgia, hardly a hotbed of abolitionism, wrote in support of the Virginia legislature’s stillborn effort to debate and consider the possibility of “manumitting the slaves and the removal of free people of color” in the state and by saying: “We wish them success . . . in this undertaking, but fear that day has hardly arrived, in which the plan can succeed.”³⁹

Control of Georgia’s slave population, as well as control over the slowly growing free black population, were two sides of the same coin, and the contentious two-headed dilemma vexed Georgia from its time as a colony until the Civil War and beyond. James Wayne grappled with the difficulty in controlling Savannah’s growing free black population while he was mayor. In 1818, he introduced legislation prohibiting the education of free blacks and slaves. His legislation, which passed unanimously, included harsh punishment for those blacks caught learning and for those whites or blacks caught teaching.⁴⁰

Wayne’s attitude toward slaves and free blacks is hard to nail down and is intriguingly ambiguous. On the one hand he stood foursquare for the rights of slaveholders, planters and yeoman farmers alike. Yet in the 1833 and 1839 Georgia constitutional conventions, Wayne, as president of both conventions, fought to

³⁹ Frederick Law Olmstead, *A Journey of the Seaboard Slave States: With Remarks on their Economy* (New York: Dix and Edwards, 1856), 530-531, 540, and 543; *The Macon Telegraph* (Macon, Georgia) February 04, 1832.

⁴⁰ *Minutes of the Savannah City Council*, 1818, Archives of the City of Savannah, Georgia.

reduce the size of the Georgia General Assembly so as to prevent the “increase of representation to counties of slaves.” Much like Thomas Jefferson, Wayne exhibited conflicting views, in public and in private, for he reportedly fathered children by one of his slaves, Anna, over the years 1819 through 1836. While it is tempting to speculate if having racially mixed children influenced his decisions regarding the rights of free blacks while he served Georgia in various political capacities, it is logical to conclude that the presence of his own black children complicated his familial relationships and added layers of complexity to his own family dynamics. It is alleged by oral history and recounted by Wayne’s black family’s received tradition that James Wayne taught his own black children to read and write, and developed a relationship with his slave, Anna, and their children that was not unlike the relationship Thomas Jefferson had with Sally Hemings and their four children. While Wayne was no Jefferson, and Red Knoll was no Monticello, Wayne having two families, one white and one black, suggests the intersection between Wayne’s public and private lives was a lot more interesting than surviving documents and sources will reveal.⁴¹

Before he served as mayor, James Wayne was a lawmaker and judge in Georgia at a time when the possibility of slave rebellion and growing slave agency

⁴¹ Lawrence, *Southern Unionist*, 64-67; Interviews with Catherine Keene, Girl Scouts, USA, Savannah, Georgia, January-April 2005; Interviews with James Jordan, Savannah historian, October 2004, March 2005; Fraser, *Savannah*, 288, 312-313; Catherine Shwartz, “Pauline’s Story,” *Savannah Magazine*, Summer 1977.

threatened Georgia's plantation elite. While he was in the Georgia General Assembly, Wayne shared the views of his fellow legislators who imposed a series of laws that prohibited the education of slaves and free blacks. While limiting access to knowledge and controlling the minds of the slaves and free blacks was vitally important to Georgia lawmakers, they, like lawmakers throughout the South, also controlled the ability of slaves and free blacks to produce anything beyond that which was for their own sustenance. Blacks, slave or free, could not freely consume products in the marketplace and were unable to participate in the places of exchange. Thus, at the beginning of the Market Revolution, slaves were unable to engage the growing markets of the South on their own accord or for their own benefit. Laws in Georgia insured that slaves would produce only for the benefit of the plantation system.⁴²

Not only were slaves prevented from being producers or consumers, blacks were prohibited even from being present in stores or markets, experiencing what Orlando Patterson has called "social death." Shopkeepers, white or black, were prohibited from buying goods from slaves, or selling goods to slaves. After Denmark Vesey's slave revolt in nearby South Carolina in 1820, Georgia lawmakers responded by tightening restrictions on free blacks and their access to the marketplace. After

⁴² *Acts Passed by the Georgia General Assembly, 1824, 1828, 1850, 1852 and 1854*; Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982), 149; *State Papers of Nullification* (Boston: Dutton, 1834), 238-239, 274.

the 1840, however, these attitudes appear to have changed. An 1852 Georgia law appeared to have relaxed fears over the presence of slaves or free blacks in the marketplace because, though limited, slaves could sell goods they produced and buy products they needed. Though Georgia was a slave society, very few laws specific to slavery or free blacks are on the books. Significant race- or slavery-related events of national importance, such as Denmark Vesey's conspiracy in 1820; David Walker's pamphlets distributed in the state in 1830; or periodic fugitive slave cases prompted Georgia legislators into action, but actual laws on the books are few.⁴³

While he was in the U.S. Congress, Wayne was present when John Quincy Adams resolved, through petitions given him by his constituency and "sundry inhabitants of Pennsylvania," that slavery be abolished. As a member of Congress, former President Adams repeatedly raised the issue of abolition of slavery and the cessation of the slave trade within the United States, particularly regarding slavery within the nation's capital. Wayne left Congress to serve on the Supreme Court before the House passed the Pinckney Resolutions of 1835-1836, which became known collectively as the "gag rule." Pinckney's resolutions, which represented the interests of all the slave states, tabled debate of the issue of slavery and abolition.⁴⁴

⁴³ *Acts Passed by the Georgia General Assembly, 1824, 1828, 1850, 1852 and 1854*; Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982), 149; *State Papers of Nullification* (Boston: Dutton, 1834), 238-239, 274.

⁴⁴ *Register of Debates in Congress, "Colonizing Free Negroes,"* January 12, 1832; *Register of Debates, 1828-1835*; William Lee Miller, *Arguing about Slavery: John*

Adams of Massachusetts, and Representative Pinckney of South Carolina, and in many cases, Wayne, debated slavery and the status of free blacks before the gag rule was imposed, but the most effective tactic to avoid the slavery debate in Congress, was to send the issue of slavery or abolition to committee. Often, when a slavery or related resolution came before the House of Representatives, the full House would send the resolution to committee. John Q. Adams, for example, would often couple an abolition resolution with a D.C. slave trade resolution. This allowed lawmakers to send the issue to committee, particularly to the Committee on the Affairs of the District of Columbia. When issues were referred to committee, it was, essentially, gagging the debate and tabling the issue.⁴⁵

Though congressional debate on abolition and slavery consumed a considerable amount of legislative energy, meaningful discussion of slavery was tabled or gagged during most of Wayne's tenure in Congress; however, a related issue of race and rights was not. The heated debate over Indian Removal served as proxy for the debate over slavery and abolition. Though tabling tactics and the "gag rule" cooled debate about slavery, many of the same anti-slavery voices in Congress, procedurally silenced, still generated plenty of heat about Indian Removal. For example, John Q. Adams said that the United States Indian policy was the "among

Quincy Adams and the Great Battle in the United States Congress (New York: Vintage, 1995).

⁴⁵ Ibid.

the heinous sins of the nation, for which I believe God will one day punish.” He believed that laws removing the Cherokee from Georgia were “crying sins for which we are answerable to a higher jurisdiction.”⁴⁶

In contrast, James Wayne strongly supported Indian Removal because of the direct implications a stern removal policy had on his home state. Wayne helped convince his congressional colleagues of the efficacy of removal. But John Quincy Adams was not buying it from Wayne or any of those who insisted that the Cherokee or any other “uncivilized tribe” could not coexist peacefully within the borders of a sovereign state. Wayne and Adams frequently locked horns over many issues while they were in Congress together, and Indian Removal was the main issue for the sectional rivals. In his diary, Adams confided that Wayne was always too long winded and implied that he was a bit of a feeble mind.⁴⁷

Wayne and others successfully persuaded his fellow legislators ultimately to see the merits of removal, but he, like other Georgia legislators, also looked to Andrew Jackson and the executive branch for enforcement. Later, Wayne would use

⁴⁶ Charles F. Adams, ed., *Memoirs of John Q. Adams, Comprising Portions of His Diary from 1795-1848* Volume 8 (Philadelphia: Lippincott, 1969), 439; Lynn Hudson Parsons, “A Perpetual Harrow upon My Feelings”: John Quincy Adams and the American Indian,” *The New England Quarterly*, 46 (September 1973): 339-379; Mary Young, “The Exercise of Sovereignty in Cherokee Georgia,” *Journal of the Early Republic*, 10 (Spring 1990): 43-63; Mary Hershberger, “Mobilizing Women, Anticipating Abolition: The Struggle Against Indian Removal in the 1830s,” *The Journal of American History*, 86 (June 1999): 15-40; JQA quoted in Robert V. Remini, *John Quincy Adams* (New York: Holt, 2002), 100.

⁴⁷ Ibid.

Indian Removal, in particular its success in Georgia, as a model for colonization of free blacks legitimized by all three branches of government. Though the gag rule restricted petition and stifled debate in the legislature, the judiciary was not so silenced. Courts across the nation heard cases about the rights of freed people, slaves, and those trapped in the murky space between bondage and freedom. Many of the cases concerned the status of slaves freed by the will of their dead master. Some litigants who came before the courts made claims on the human property of dead masters, who, in many cases, freed their slaves in their wills.⁴⁸

For example, in *Fenwick v. Chapman* (1835), the first Supreme Court case upon which James Wayne wrote an opinion, concerned the rights of former slaves who had been manumitted by the directives of their deceased master through a will. Cases involving slaves manumitted by wills appeared quite often before courts of all jurisdictions. If litigants could prove that particular humans were their property, and prove such by producing legitimate, specific, and sound contracts or documents that refuted or somehow invalidated a will or contract, then they would have a chance to assume ownership of the humans. In *Fenwick*, Wayne asked the following questions and considered: What is manumission? Can a manumitted slave

⁴⁸ Lynn Hudson Parsons, "A Perpetual Harrow upon My Feelings": John Quincy Adams and the American Indian," *The New England Quarterly* 46 (September 1973): 339-379; Mary Young, "The Exercise of Sovereignty in Cherokee Georgia," *Journal of the Early Republic* 10 (Spring 1990): 43-63; Mary Hershberger, "Mobilizing Women, Anticipating Abolition: The Struggle Against Indian Removal in the 1830s," *The Journal of American History* 86 (June 1999): 15-40.

lose his freedom once an executor/testator frees a slave? Do free people of color have access to the courts? And what is liberty to a freeman? For Wayne, the answers to all of the questions were simple: the obligations of a contract are not impaired by the death of those who made the contract. Contracts were precious, as was liberty, even for a black man. Further, even for former slaves, liberty implied access to justice; therefore, the courts were open for free people of color. Wayne made a point, of course, to differentiate between a freeman, who was a person, and a fugitive slave, which was property, a distinction vital to understanding his Unionist ideology as it related to the race issue.⁴⁹

Wayne held contracts and wills sacrosanct, if properly executed. If manumitted slaves could prove that a will or contract, properly executed, gave specific instructions or conditions for their freedom, then Wayne always sided with the manumitted. On the surface, it looked as though Wayne was defending the rights of the former slaves, but a closer look at Wayne's legal philosophy indicates that Wayne interpreted contracts to the letter and to the benefit of the parties of the contract. In other words, Wayne, in situations when he was interpreting the intentions of a decedent's will, upheld the will and wishes of the deceased.⁵⁰

⁴⁹ *Fenwick v. Chapman*, 34 U.S. 461 (1835); *The Boston Investigator* (Boston, MA), March 9, 1853.

⁵⁰ *Fenwick v. Chapman*, 34 U.S. 461 (1835).

More often than not, Wayne was not necessarily defending the rights of manumitted slaves, rights he believed the states, nonetheless, should uphold. He was defending the rights of dead white men and their contracts. If the wills of dead masters declared their human property to be free, even if white litigants had claims to the contrary, then so be it. That right, the right of the deceased master or party of a legitimate and specific contract, was protected by the Constitution. In *Fenwick v. Chapman*, Wayne held that “when an executor permits manumitted slaves to go at large and free under a manumission to take effect at the death of the testator, he cannot recall such assent by his own act, nor can it be revoked.” Wayne’s indirect protection of manumitted slaves was not necessarily his recognition of their rights, but at a minimum, Wayne’s justice regarding free blacks was not arbitrary; it was purely legally motivated. Wayne extended his unwavering belief in the importance of contracts between private parties, businesses and individuals, to the relationship between the government and the governed. He held a firm belief in the near sacred status of the contractual relationship between the federal government and the people it served. The Constitution, to Wayne, was a valid contract that could only be altered by parties in the ways described by the framers.⁵¹

Wayne was an expert in contract, commerce and admiralty law, and many of the cases before him on the Supreme Court and while he rode the circuit in Georgia, South Carolina and North Carolina included an interesting intersection of those

⁵¹ Ibid.

areas of his expertise. Many commerce, contract, and admiralty cases either directly or obliquely concerned the status of slaves who often found themselves and their owners caught in the middle of transactions or transport. For example, in the 1841 *Amistad* case, four parties claimed ownership of over forty Africans who, while captive and destined for slave markets, commandeered their ship, the *Amistad*, which was later captured off the coast of Long Island. To the justices on the Taney court, none of the four parties who claimed ownership of the alleged slaves could prove that those who commandeered the ship were, indeed, human property. Wayne, concurring with the majority in *Amistad*, said: "Where property on board of a vessel is brought into a foreign port, the documentary evidence, whether it be a judicial decree or the ship's papers, accompanied by possession, is the best evidence of ownership, and that to which courts of justice invariably look." In the view of the court, no documentary evidence, contract or decree existed.⁵²

The Taney court took the opportunity in *Amistad* to interject a bit of constitutional interpretation and said that "the American people have never imposed it as a duty on the Government of the United States to become actors in an attempt to reduce to slavery men found in a state of freedom. Such a duty would not only be repugnant to the feelings of a large portion of the citizens of the United States, but it would be wholly inconsistent with the fundamental principles of our

⁵² *United States v. The Amistad*, 40 U.S. 518 (1841).

government, and the purposes for which it was established, as well as with its policy in prohibiting the slave trade and giving freedom to its victims.” Taney continued:

The recovery of slaves for their owners is a matter with which the executive of the United States has no concern. The Constitution confers upon the government no power to establish or legalize the institution of slavery. It recognizes it as existing in regard to persons held to service by the laws of the States which tolerate it, and contains a compact between the States obliging them to respect the rights acquired under the slave laws of other States. But it imposes no duty, and confers no power, on the Government of the United States to act in regard to it. So far as the compact extends, the Courts of the United States, whether sitting in a free State or a slave State, will give effect to it. Beyond that, all persons within the limits of a State are entitled to the protection of its laws.

Wayne was one of the eight justices who concurred with the majority opinion in *Amistad*, which declared that the particular Africans in question were not property and, therefore, were free. The Taney court, and in particular, Wayne, needed documentary evidence of the servile status of the Africans in the case. None was given, and the Africans were released.⁵³

Wayne held strong to his “policy in prohibiting the slave trade and giving freedom to its victims,” in particular while he rode his circuit. But this was not the norm among many of his judicial colleagues, for before 1860, many slave traders were captured and accused, but very few were convicted and rarely, if ever, served

⁵³ *United States v. The Amistad*, 40 U.S. 518 (1841); William M. Wiecek, “Slavery and Abolition Before the United States Supreme Court, 1820-1860,” *The Journal of American History*, Volume 65, No. 1 (June 1978): 34-59; Abraham Davis and Barbara Graham, *The Supreme Court, Race and Civil Rights* (London: Sage, 1995), 4-5.

jail time. Cases before Wayne were a notable exception. Wayne routinely convicted and sentenced slavers to harsh punishment, and he was the only judge in the southern circuits to levy fines and significant jail time. Several cases came before him concerning the status of victims of the slave trade and the punishment of convicted slave traders. Wayne believed the South, exercising morally enlightened ideals, led the abolition of the Atlantic slave trade. His actions while riding circuit reinforced this view. The South possessed moral authority in regard to slavery, believed Wayne, because it exercised sound moral judgment in restricting and ultimately ending the slave trade. For example, in South Carolina in 1846, Wayne heard a case with circumstances very similar to those of *Amistad*. A slave trading vessel was captured on the coast of South Carolina and its captain and crew apprehended and accused of slave trading. Wayne, after hearing arguments and after the jury found the defendants guilty of their crimes, sentenced the two men to three years prison and ordered each of them to pay a \$1000 fine, a clear signal to would be slave traders.⁵⁴

As early as 1824, while he was a judge in Georgia, Wayne found a white man guilty of murdering a “negro fellow, the property of a white man.” Wayne sentenced the man to death. One southern paper said that the “conviction will put

⁵⁴ Ibid., *Greenville Mountaineer*, (Greenville, SC) April 3, 1846.

to rest the idle story so often related in some of the northern papers, that a man may kill a negro in Georgia with impunity.”⁵⁵

The most important of Wayne’s cases before the Civil War was *Dred Scott* (1857), a case that resulted in overturning the Missouri Compromise and sent shock waves through the nation. James Wayne concurred with Chief Justice Roger Taney’s decision in *Dred Scott* which said that “there are two clauses in the Constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the Government then formed.”⁵⁶ The Chief Justice continued:

Now the following are truths which a knowledge of the history of the world, and particularly of that of our own country, compels us to know . . . that the African negro race never have been acknowledged as belonging to the family of nations; that, as amongst them, there never has been known or recognized by the inhabitants of other countries anything partaking of the character of nationality, or civil or political polity; that this race has been by all the nations of Europe regarded as subjects of capture or purchase, as subjects of commerce or traffic; and that the introduction of that race into every section of this country was not as members of civil or political society, but as slaves, as property in the strictest sense of the term.”⁵⁷

Taney’s conclusions about slavery, race and the social and political status of blacks is best summarized by this jewel, one reflective of the times in which Taney

⁵⁵ *Pensacola Gazette and West Florida Advertiser* (Tallahassee, FL), March 20, 1824.

⁵⁶ *Dred Scott v. Sandford* 60 U.S. 393 (1857).

⁵⁷ *Ibid.*

lived and one that revealed his interpretation of the intentions of the framers of the Constitution: “the Negro has no rights which the white man was bound to respect.” Wayne agreed with the majority in *Dred Scott* and helped Taney craft his opinion. He said in a separate but concurring opinion of his own: “The opinion of the court has my unqualified assent.” Wayne based his opinion in *Dred Scott* on strictly constitutional grounds. He said: “It was brought to us in the course of that administration of the laws which Congress has enacted, for the review of cases from the Circuit Courts by the Supreme Court.” Wayne discouraged Taney from making his comments about the rights and status of “the Negro.”⁵⁸

Wayne appears to have had differing opinions with Taney in regard to rights of free blacks. *Dred Scott* was the only case in Supreme Court history in which all justices wrote separate, lengthy opinions either in dissent or concurrence. While Wayne concurred with Taney in *Dred Scott* on constitutional and jurisdictional grounds, and Taney’s views on race are rather clear, evidence leaves only shadows of Wayne’s views on race and the rights of blacks, slave or free. Moral issues aside, the jury is still out on the constitutional merits of *Dred Scott*, but Eric Foner claimed that “*Dred* was good constitutional law in that it reenacted the principles and prejudices of the founding fathers,” a view Taney and Wayne emphasized in their opinions. Moreover, Wayne’s primary goal in siding with Taney in *Dred Scott* was not to perpetuate slavery, advance popular sovereignty, or support state rights.

⁵⁸ Ibid.; Eric Foner, *Who Owns History?*, 177.

Wayne believed that if the court did not weigh in firmly in *Dred Scott*, then the circuit courts would usurp power from the Supreme Court, a possibility Wayne wanted to eliminate.⁵⁹

During the 1830s and 1840s, juries in the South, or at least those within Wayne's circuit, seldom operated in direct defiance of Judge Wayne's instructions regarding the legal issues at stake or the interpretation of the laws broken by alleged offenders. This was to change after 1850 as juries in Wayne's circuit reflected the more parochial views of the general white population in the South, a population that was perceiving itself to be increasingly threatened by the presence of free blacks and alarmed by the possibility that an increase in the population of free people of color would significantly alter the entrenched social order, especially if slavery were to be abolished. *Dred Scott* was the most famous of Wayne's cases of the 1850s related to slavery, but the litigants in the case that ultimately upset the balance struck by the Missouri Compromise began their legal journey through state and circuit courts for over a decade prior to the decision. Jurisdictional issues kept the case in lower courts for years, but the immediate repercussions of the decision, which heightened sectional tensions and sparked intense divisiveness between the sections, directly influenced juries in lower court cases. In the wake of *Dred* were cases in the South whose juries, influenced by fear of an upturned social order,

⁵⁹ Ibid.

rendered verdicts based not on the law, but on their view of the legitimacy of the law itself.⁶⁰

For example, in the case of the *Wanderer*, which was another slave ship captured, this time off the coast of South Carolina, that was engaging in the illegal trans-Atlantic slave trade, Judge Wayne, presiding over the case in Charleston, South Carolina in 1859, gave lengthy and stern instructions to what he believed was a prejudiced jury determined to acquit the accused South Carolinians of slave trading in international waters. Commenting on the overwhelming evidence showing the guilt of the slavers, Wayne said to the jury: "Should you have good cause for thinking that any persons are introducing negroes or mulattoes into the United States in violation of the acts of Congress, then laws and the courts give you official and moral support in the execution of the laws." The northern press lauded Judge Wayne's efforts in upholding the laws regarding the slave trade and its victims and accused independent southern juries of "filibustering" and stymieing judicial decisions.⁶¹

⁶⁰ *Dred Scott v. Sandford*; Allen, *Dred Scott*, 25-75.

⁶¹ Judge James M. Wayne, "Charge to Jury in the *Wanderer* Case," Reprinted in *The Charleston Mercury*, (Charleston, South Carolina), November 17, 1859; Tom Henderson Wells, *The Slave Ship Wanderer* (Athens: University Press of Georgia, 2009), 3, 45-55; Erik Calonijs, *The Wanderer: The Last American Slave Ship and the Conspiracy that Set its Sails* (New York: St. Martins, 2006), 189-198; Malcolm Bell, Jr., *Major Butler's Legacy: Five Generations of a Slaveholding Family* (Athens: University of Georgia Press, 1989), 324; Charles C. Jones, Sr. quoted in *Children of Pride: A True Story of Georgia and the Civil War*, Robert M. Myers, ed. (New Haven: Yale University Press, 1972), 541; *The Vermont Watchman and State Journal* (Montpelier, VT), April 29, 1859; Jim Jordan, "Charles Augustus Lafayette Lamar and

Wayne's good friend, Charles Colcock Jones, Sr., with whom he vacationed regularly, observed that Wayne's charge to the jury in the *Wanderer* case "was a noble one" and "does the judge honor." Jones, from Liberty County, Georgia, shared Wayne's fears about the spread of racial radicalism for he believed if the "miscreants escape justice; they would harm the reputation of the state." Aligning with the views of John C. Calhoun, Jones believed slavery to be a "positive good," a view held by many in the South who considered the alternative, a world of free blacks running amuck, beyond repugnant. It is doubtful Wayne held the same view of the "positive good" of slavery later in his life. Sitting as Judge in the South Carolina circuit, Wayne had implored the jury to ignore the sectional issues that so divided the nation and pay heed to the law and whether or not the accused men broke the law as it was written. Never mind, continued Wayne, if they disagreed with the law or if they thought the slave trade should be re-opened. Because of a recent spike in the value of slaves, some states, namely South Carolina, wanted to reopen the Atlantic slave trade. Anticipating this potential boon, some adventurous ship captains took to the seas in search of profitable human cargoes, unwinding, in Wayne's view, nearly a century of moral progress and hobbling the possibility that slavery itself would follow the same fate. For Wayne, the rule of law must be applied to the facts of the case. Wayne's suspicions that the jury was biased in the

the Movement to Reopen the African Slave Trade," *The Georgia Historical Quarterly* 93 (Fall 2009): 247-290.

Wanderer case were correct; in spite of his impassioned charge to the jury and stern reminder of its duty to the law and to the Constitution, the jury acquitted the slavers. Reluctantly, but obediently, Wayne freed them. Wayne and his friend Jones hoped that “justice would not fall in the streets.”⁶²

Wayne, sensitive to the racial fears of the people of his state, believed events such as John Brown’s raid only fanned the flames of sectional distrust, national fear and regional division even more. As a slave owner who had gradually divested himself of most of his own slaves over the previous four decades, he realized that the growing free black population frightened white Georgians, rich and poor. Just as he was a staunch advocate of Indian Removal, a position that earned him respect from the people of the state, Wayne likewise advocated removal of free blacks from Georgia. Though he believed ardently that the Constitution left to the states their own particular remedy to the peculiar institution, he believed with equal firmness that the Constitution allowed the federal government to help the states remedy the problem of free blacks in their society. Slaves were property. Free blacks were not;

⁶² Judge James M. Wayne, “Charge to Jury in the *Wanderer* Case,” Reprinted in *The Charleston Mercury*, (Charleston, South Carolina), November 17, 1859; Tom Henderson Wells, *The Slave Ship Wanderer* (Athens: University Press of Georgia, 2009), 3, 45-55; Erik Calonius, *The Wanderer: The Last American Slave Ship and the Conspiracy that Set its Sails* (New York: St. Martins, 2006), 189-198; Malcolm Bell, Jr., *Major Butler’s Legacy: Five Generations of a Slaveholding Family* (Athens: University of Georgia Press, 1989), 324; Charles C. Jones quoted in *Children of Pride: A True Story of Georgia and the Civil War*, Robert M. Myers, ed. (New Haven: Yale University Press, 1972), 541. In the 1840s and 1850s, Wayne and Jones summered together frequently at Hot Sulphur Springs, Virginia.

therefore, they occupied the same murky space as Indians: not white, not black, not slave, not free. Wayne likely would have agreed with historians Robert Goldwin and Art Kaufman who said: “Though the Constitution may be called proslavery, anti slavery or neutral, it seems beyond dispute that the document was carefully crafted and phrased to treat slavery as an entity owing its legal existence to state law.”⁶³

However, Wayne “refused to ground federal policy in an uncompromising defense of slavery.” Slavery’s fate was to be decided by the states. Wayne said in *Groves v. Slaughter* (1842) that the “power of slavery remained exclusively with the states.” In regard to free blacks, their fate was fair game for the federal government. It was a somewhat muddled view Wayne had intended to offer as a means of striking a balance between the power of the state and the power of the federal government. It was not one that was very satisfying to the slave states; Wayne admitted that the states are “bound to protect free blacks and persons of color residing in them from being carried into slavery by any summary process.” Because of this view, one paper called Wayne the “most high-toned federalist on the court.”⁶⁴

⁶³ Robert A. Goldwin and Art Kaufman, eds., *Slavery and its Consequences: The Constitution, Equality, and Race* (Washington, DC: American Enterprise Institute, 1988), 16.

⁶⁴ Allen, *Origins of the Dred Scott Case: Jacksonian Jurisprudence and the Supreme Court, 1837-1857* (Athens: University of Georgia Press, 2006), 87-92, and 94-95; Marvin L. Winitsky, *The Jurisprudence of Roger B. Taney* (Los Angeles: University of California Press, 1973), 189; For Wayne’s decisions demonstrating the intersection of commerce, contracts and slavery see *Prigg v. Pennsylvania* 41 U.S. 539 (1842);

The federal government, in Wayne's view, could not meddle with the slave states' peculiar institution; however, in regard to free blacks, the federal government could and should help administer, enforce and fund a peculiar solution, which was the removal of free blacks through emigration, deportation or colonization. As early as 1817, Wayne became a state and national leader in the efforts to colonize free blacks and resettle them in Africa or anywhere outside the borders of the United States. For him, if ever a day came when the slaves were freed, preservation of the Union in a radically "reconfigured demographic" hinged, in part, on the removal of a major constituent of that demographic.⁶⁵

and *Groves v. Slaughter* 40 U.S. 449 (1841); *Vermont Watchman and State Journal* (Montpelier, VT), October 30, 1851.

⁶⁵ Lacy K. Ford, *Deliver Us From Evil*, 299.

The Peculiar Solution in Georgia: The Lure and Limits of Colonization

The colonization movement embodied the hopes and plans of “many men with many motives, who hoped to rid the country of an unwanted race.”⁶⁶ Historian Eric Burin called colonization a “peculiar solution” to the peculiar institution. Some advocates of colonization believed that God had “assigned peculiarly to American Christians” land in Africa for their mission in Liberia. Most of the founders assumed that the races were destined to be separated, either legally or literally. The legal separation between whites and people of color, which included both blacks and Native Americans after Indian Removal, came with Constitutionally-sanctioned slavery and antecedent state-level slave codes and black codes. The literal or physical separation of the races meant colonization, viewed as a panacea for many in both sections of the nation. Colonization shaped the discourse on slavery and

⁶⁶ P. J. Staudenhaus, *The African Colonization Movement, 1816-1865* (New York: Columbia University Press, 1961), viii; Anna M. Scott, *Day Dawn in Africa; or Progress of the Protestant Episcopal Mission at Cape Palmas, West Africa* (New York: Protestant Episcopal Society for the Promotion of Evangelical Knowledge, 1858), 22-29, 29; Erik Burin, *Slavery and the Peculiar Solution: A History of the American Colonization Society* (Gainesville: University Press of Florida, 2005), 1-9; Robert V. Remini, *Henry Clay: Statesman for the Union* (New York: Norton, 1993), 179-181, 507, 696; *African Repository and Colonial Journal (1825-1849)*; James M. Gifford, *The African Colonization Movement in Georgia, 1817-1860* (Athens: University of Georgia Press, 1977), 168 and 222. For first-hand accounts, see Wilson Jeremiah Moses, ed., *Liberian Dreams: Back-to-Africa Narratives from the 1850s* (College Park: Penn State University Press, 1998), xiv-xvii; and William Nesbit and Samuel Williams, *Two Black Views of Liberia: Four Months in Liberia: or, African Colonization Exposed by William Nesbit. Four Years in Liberia: A Sketch in the Life of Rev. Samuel Williams by Samuel Williams* (New York: Arno Press, 1970).

race because some “southern modernizers envisioned a remade, free labor South,” a society without slaves, “and suggested that the benefits of colonization were all encompassing.” Colonization became the key to preventing what Alexander Stephens feared as the “subjugation of whites to the African race.” In spite of this fear, Stephens was ambivalent about colonization and seldom made public comments about it or the ACS, yielding to political expediency and avoiding controversy. Regardless, few in the South could countenance a society of black over white, and for those who sought an alternative to enslavement, removal was long considered the answer.⁶⁷

Thomas Jefferson, despite his “celebrated doctrine of small government, advocated a massive governmental mechanism to carry out the work of deporting blacks.”⁶⁸ In advocating “emancipation and expatriation,” Jefferson hoped to give the slaves “some retribution for the long course of injuries we have committed on their population.”⁶⁹ Like Jefferson, Bushrod Washington, George Washington’s nephew and one of the first Supreme Court justices, supported the cause of

⁶⁷ Burin, *Slavery and the Peculiar Solution*, 25; Alexander Stephens, “Appearance before the Reconstruction Commission,” April 1866; Henry C. Wayne to Jefferson Davis, December 1861 in Alexander A. Lawrence, *A Present For Mr. Lincoln* (Chapel Hill: University of North Carolina Press, 1961), 7-8.

⁶⁸ Wilson J. Moses, ed., *Liberian Dreams: Back-to-Africa Narratives from the 1850s* (University Park, PA: Pennsylvania State University, 1998), xv.

⁶⁹ Thomas Jefferson to Jarred Sparks, 1824 in Thomas Foley, *The Jeffersonian Cyclopedia*, Volume 6 (New York: Russell, 1900), 154 and 290-291.

colonization. Bushrod Washington became the first president of the American Colonization Society, founded in 1816, which became the institution most identified with colonization. James Madison believed strongly in the merits and necessity of colonization, as did his protégé, Henry Clay. Both served for years as ACS presidents. It was Clay, present at the first meeting of the American Colonization Society in 1816, who said that “the total and absolute separation by an extensive space of water, or land at least, of the white portion of our population from that which is free of the coloured.” In later years, James Wayne served among the organization’s leadership and remained active in the ACS for nearly half a century. Colonization was as contentious as the institution it tried to remedy. Like slavery, colonization bitterly divided the country.⁷⁰

The Society for the Colonization of Free People of Color of America, known as the American Colonization Society, immediately attracted some of the nation’s most influential and powerful leaders. Henry Clay, Bushrod Washington, Francis Scott Key, Daniel Webster, Lyman Beecher, Harriet Beecher Stowe, John Marshall, Roger Taney, John Breckenridge, and University of Georgia President Robert Finley all advocated colonization and supported the ACS in its founding, funding and

⁷⁰ Allen E. Yarema, *American Colonization Society: An Avenue to Freedom?* (Lanham, MD: University Press of America, 2006), 30; President Millard Fillmore wanted to free and transport 100,000 slaves yearly to Liberia, thus ending slavery in roughly forty years, by 1900. Wayne and Frederick Douglass were together at ACS meetings prior to 1840; Henry Clay, “Address of the Hon. H. Clay to the Colonization Society of Kentucky,” in William Tremble, *The Liberian Crusade*, Volume 83, Issue 9 (New York: J & J Jackson, 1833), 3-4.

missionary-like promotion of the cause. With its prodigious economic and political support, in just over four years, the ACS helped found the West African colony of Liberia in 1820, and named its capital Monrovia, after the president who gave the colony his unqualified support. Later, New Georgia, named after the state that sent the second highest number of black colonists after Virginia, became one of Monrovia's sister cities. From 1816 until 1865, over 16,000 emancipated and free black Americans relocated to Liberia, a fraction of the number originally anticipated and over a much longer period of time than had been envisioned by the founders and leaders of the organization.⁷¹

Supreme Court Justice John Marshall, an early and enthusiastic supporter of colonization, believed in the "colonization, Christianization and commercialization of Africa." Marshall thought the "great moral and legal revolution going on in the world" ultimately would result in the freedom of the nation's millions of slaves, but he, like many in the nation, could not fathom living side-by-side with a multitude of free blacks. Slavery brought the "sacred rights of liberty and property . . . in conflict with each other," but the moralist, as opposed to the jurist, "must search for answers in another place" than the Constitution. Marshall envisioned as a remedy for slavery a communitarian scheme and suggested to "free them, segregate them, put them to work, and the profits of their labor would purchase the freedom of other slaves." For many throughout the nation, colonization became, according to

⁷¹ Burin, *The Peculiar Solution*; Yarema, *The American Colonization Society*.

James McPherson, a “magic solution” and the only possible way of solving the nation’s “vexing slavery and racial problems.”⁷²

Though its history was a mix of success and failure, at least in how the organization measured such things, in the ACS’s first fifteen years of existence, success matched the promise of the organization as more free blacks migrated to Liberia every year. Throughout the nation came praise for the efforts of the ACS. In Ohio, some viewed colonization as “repayment of debt to slaves.” In New Jersey, one observer believed that federal financial support of colonization created “a sinking fund” to remedy a “national evil.”⁷³ With purported success came continued support from Congress, so much so that by the end of the 1820s, the ACS was viewed by many as an agency of the federal government, but this perception was to end when Andrew Jackson became president.⁷⁴

The ACS, organized by prominent humanitarians and supported by sympathetic politicians, attracted many prominent critics and detractors as well. Following the War of 1812, scores of ameliorative or “benevolent societies were spilling over the country,” and the ACS was one of them. Abolitionists like William

⁷² Newmyer, *John Marshall*, 420; James M. McPherson, *The Negro’s Civil War: How American Blacks felt and Acted During the War for the Union* (New York: Vintage, 2003), 79.

⁷³ P. J. Staudenraus, *The African Colonization Movement, 1816-1865* (Charlottesville: University of Virginia Press, 1980), 31, 86, 170.

⁷⁴ Burin, *The Peculiar Solution*, 20-50.

Lloyd Garrison, who first supported colonization, later rejected “the scheme” because he, and many abolitionists like him, believed the underlying basis for the projected was deeply rooted in racism. Frederick Douglass, though a frequent speaker at ACS meetings, likewise later rejected colonization as a solution to the nation’s “race problem.”⁷⁵

Andrew Jackson criticized the efforts of the ACS, but it seems he would have supported an effort at preserving the undeniably dominant position of whites in society. Though Jackson supported Indian Removal through legislation, funding and enforcement, he was lukewarm in his support of the ACS and the colonization of free blacks in general. While it seems inconsistent with Jackson’s racial views, it is not inconsistent with his political views. Many southerners rejected colonization because they perceived it to be a threat to slavery, but Jackson, though he was a southern slave owner, did not believe this to be the case. Jackson rejected colonization because his political adversaries supported it. Jackson rejected Henry Clay’s vision of an activist government, and Jackson believed federal support of colonization and the ACS was part of Clay’s vision.⁷⁶ While Jackson was not a supporter of the ACS or the Liberian colonization experiment, evidence indicates that he held out hope that Texas would be the ultimate destination for free blacks.

⁷⁵ Staudenraus, *African Colonization Movement*, 12.

⁷⁶ Frederick Douglass, *Frederick Douglass Autobiographies: Narrative of the Life, My Bondage and My Freedom*, Henry Louis Gates, ed. (Washington: Library of America, 1994), 464, 938-940, 1076.

Without Jackson's support, ACS funding and, therefore, emigrations to Liberia, dropped precipitously until 1850, when a new set of bargains made the ACS appealing yet again.⁷⁷

With slashed funding of the ACS came slashed funding for Liberia, and with it, the dashed hopes of colonists and colonizers alike. During the 1830s and 1850s, the ACS was "long on disputes, and short on money." While emancipated slaves hoped for a better life in Africa, what they experienced in Liberia was a far cry from what they anticipated and mere slivers of what they had been promised. In short, life in Liberia was hell, and many emigrants returned to the United States within months after arrival. In addition, few in the ACS recognized the power of the strong familial bonds and the deep kinship ties of the slaves, as families refused to be broken up and have some sent to Liberia as others remained as slaves in the United States. For some freed slaves, scratching out a life of freedom in Liberia was tougher than scratching out a life in bondage in the United States. Slave owners who hoped to manumit their slaves and send them to Liberia became less inclined to do so when they heard that the conditions were deplorable and even life-threatening in Africa. Additionally, lawmakers who originally supported

⁷⁷ Gerard N. Magliocca, *Andrew Jackson and the Constitution: The Rise and Fall of Generation Regimes* (Lawrence: University Press of Kansas, 2007), 88; George M. Fredrickson, *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny* (Middletown: Wesleyan University Press, 1987), 25-36; Bobby Wilson, *America's Johannesburg: Industrialization and Racial Transformation in Birmingham* (New York: Rowan and Littlefield, 2000), 16-20;

colonization began withholding support because of the deplorable conditions in Liberia. As word reached the U.S., on the plantations and in power centers, colonization lost its appeal. Liberia was becoming a liability to the ACS and to colonization in general, but prominent Georgians held out hope for the ultimate success of colonization, if not in Liberia, at least elsewhere.⁷⁸

A Georgia leader played a pivotal role in influencing the founding of the ACS. While he was secretary of the treasury, William Crawford, a staunch advocate of colonization, convinced President Monroe in 1818 to support the ACS and its project in Liberia. Monroe's Secretary of State, John Quincy Adams, tried to convince the president that the United States had no moral or constitutional grounds for acquiring through financial or forceful means a colony on the west coast of Africa or anywhere for the purpose of resettling free people of color. Crawford convinced the president otherwise. Monroe was not the only person Crawford convinced of the benefits of colonization; his political apostles in Georgia, Savannah mayor James Wayne and Georgia governor John M. Berrien, agreed with Crawford and supported colonization and the specific efforts of the ACS as early as 1816. James Wayne founded the Savannah chapter of the American Colonization Society in 1818 and served often as its president and always as an officer. Every year, he attended ACS meetings in Washington and in Georgia, where he regularly mingled with powerful

⁷⁸ Burin, *The Peculiar Solution*; Yarema, *The American Colonization Society*; Kent Newmyer, *John Marshall and the Heroic Age of the Supreme Court* (Baton Rouge: Louisiana State University Press, 2001), 420.

and influential leaders who shared his racist vision of a black-free nation. But what was needed first was a free-black nation, like Liberia or Haiti, for which congressional funding was often hard in coming. During the 1850s when the prospects for further colonization in Liberia were on the rise, Wayne spoke with “resolution, energy and animation” when discussing the “increasing spirit of emigration” in Georgia.⁷⁹

The years between 1847 and 1860 marked the greatest exodus of free blacks out of Georgia to Liberia. Many free blacks in Georgia were comforted by the myth that “one day we will fly like a bird to Africa.” Some Georgia slave owners often bargained with their slaves and offered manumission if and only if they emigrated to Liberia and promised not to return to the state. Though large numbers of white Georgians did not outwardly support the ACS, perceived as a clandestine arm of radical abolitionists in the North, many in Georgia supported colonization in theory. In addition, Georgia’s involvement in colonization was very individualistic and often conducted anonymously. Frustratingly, no records of Wayne manumissions, if any, survive. Eric Burin noticed that most manumissions came at the hands of older Georgians, suggesting that time tempered rigid views of slavery. While ACS records

⁷⁹ *Daily National Intelligencer* (Washington, DC), June 7, 1853; Burin, *The Peculiar Solution*, 161; William H. Freehling, *The Road To Disunion: Secessionists at Bay, 1776-1854* (New York: Oxford, 1990), 421-422, 485; Elizabeth Varon, *Disunion!*, 48-50, 52, 92, 101, 374; Jacqueline Jones, *Saving Savannah: The City and the Civil War* (New York: Knopf, 2008), 44-49, 64; Lawrence, *Southern Unionist*, 127; *Daily National Intelligencer* (Washington, DC), June 15, 1853.

do not show James Wayne sent any of his former slaves to Liberia, ACS records do show several manumission-colonization couplets from anonymous manumittors. It is logically consistent to theorize, perhaps, that Wayne was one of the anonymous manumittors, since it would have been politically and socially expedient for him to distance himself from such a controversial action, an action much more controversial than merely supporting the ACS through speeches and activism.⁸⁰

During the 1850s, colonization again appeared to become palatable to American leaders. Presidents Pierce, Fillmore and Buchanan all supported colonization, and Congress responded with renewed funding for the ACS as well as increased interest in colonization in other lands besides Africa. During the 1850s, James Wayne, as president of the ACS, redoubled his efforts to convince anyone who would listen of the merits of the project. In 1854, for example, in his speech at the ACS annual meeting in Washington, Wayne for the first time publically referred to slavery as an “evil.” Wayne said that when colonization was in its “infancy, in 1810, it was merely philanthropy; now it is a political necessity; not affecting party, but the happiness of the human race.”⁸¹

For Wayne, in spite of the sectional consensus these powerful documents achieved, the Declaration of Independence and the Constitution were *southern*

⁸⁰ James M. Gifford, “The African Colonization Movement in Georgia, 1817-1860” (Ph.D. Dissertation, University of Georgia, 1977), 1-22; Burin, *Slavery and the Peculiar Solution*, 128.

⁸¹ *The Weekly Raleigh Register* (Raleigh, NC), January 25, 1854.

documents. In other words, Jefferson, a southerner, and Madison, likewise a southerner, were the fathers of the Declaration of Independence and the Constitution, respectively. In Wayne's view, southern men led the moral charge against slavery, the slave trade, and the gradual abolition of both. In his speeches and in his court decisions, he reminded listeners that it was the South that led the successful abolition of the Atlantic slave trade, and it would be the South that would lead the gradual end of slavery, but in due time and with the help of the federal government. This best illustrates the social dimension of Wayne's Unionism, and he found precedent in Indian Removal and used it to construct a highly evolved, albeit racist, brand of Unionism. The key to ending the slave problem, no matter how long it would take, was to have a ready-made remedy for the resulting race problem. Colonization was a panacea for Wayne. At an ACS meeting in 1854, one speaker addressing Judge Wayne said: "You, sir, are from the South, where the thing relating is the most sensitively felt. In Liberia, there is no Mason-Dixon Line, there is no Wilmot Proviso, and there is no Nebraska bill to mingle elements of strife and disunion with this question." Wayne did not disagree and said that the "United States had the constitutional power, as much to help the free negro in the United States to emigrate, as to elevate and civilize our Indians."⁸²

⁸² *Daily National Intelligencer* (Washington, DC), January 21, 1852; *Vermont Chronicle* (Bellows Falls, Vermont), January 20, 1852; *Daily National Intelligencer* (Washington, DC), April 27, 1854; *New York Times* (New York), January 20, 1854; Burin, *The Peculiar Solution*, 174.

Wayne was not the only colonizer on the United States Supreme Court. Chief Justice Taney believed in the merits of colonization and, like Wayne, was an early supporter of the ACS. In fact, Taney found slavery distasteful; he freed all of his slaves in 1819. Whether it was his religion or his repulsion for the institution that made him manumit his slaves is unclear, but the man whose opinions about blacks in *Dred Scott* painted him to be a racist, pro-slavery zealot did not own one slave at the time he said blacks have no rights the white man need respect. Taney and Wayne became close friends over their decades on the Court together, this in spite of their occasional differences of opinion in regard to the rights of freed slaves. Historian James Simon argues that Wayne was a moderating voice to Taney's loud cries about the social status of blacks and the racial superiority of whites. Wayne based his seemingly pro-slavery arguments on strictly constitutional grounds, whereas Taney often fanned the flames of sectional division by giving legitimacy to the racist views of southern fire eaters.⁸³

It is worth noting that many prominent members of the War of 1812 generation strongly supported colonization. These men, all staunch nationalists, offered federal support for an international endeavor that would alleviate what was perceived to be a social malady. Was there something about the War of 1812 that influenced these men to devote so much energy toward such a blatantly imperialistic venture, one that required unprecedented federal power to remedy

⁸³ Simon, *Lincoln and Chief Justice Taney*, 147.

such a politically divisive issue like slavery? Wayne was of this generation, as were Crawford, Clay, Webster, Monroe, Marshall, Taney, and Madison, and none flinched at using extraordinary federal power as well as federal coffers for colonization.

By the 1830s and 1840s, colonization was one of the most contentious issues debated in the Georgia General Assembly and appearing before the state's courts because many of the state's manumitted slaves who emigrated to Liberia through the efforts of the ACS came back to Georgia after only a few short months. Manumission was the key to colonization, so Georgia tightened manumission laws to avoid problems created by colonization and removal of free blacks. Manumission was restricted because freed slaves either would not leave the state, or if they left, they would come back and add to Georgia's free black population, and add to Georgia's racial fears. Georgia's judges faced the same issues and grappled with the problem of colonization and its failure. Georgia Supreme Court Chief Justice Wilson Lumpkin and his colleagues routinely sparred over manumissions and the fact that manumitted slaves sent to Liberia would come back to the state. Lumpkin also noted that if the state allowed manumissions, but required freed slaves to leave the state, then Georgia would unduly burden neighboring states with black immigrants. In turn, neighboring states, in Lumpkin's view, would encourage their freed slaves to

move to Georgia, creating a contentious cycle that would be hard to break. In response, the legislature restricted manumissions.⁸⁴

Fear of free blacks motivated many of Georgia's local law makers, as well. In Savannah, for example, it was not the end of slavery that struck fear in the hearts of the people; it was the threatening presence of crowds of blacks. The Savannah City Council in the 1840s and 1850s, fearing black crowds, black agency, and a large free black population, tried to prohibit Liberian-bound ships from leaving port. Savannah, which sent over 1000 free blacks to Liberia, prohibited ships leaving port to Liberia because the ships attracted crowds of slaves and free blacks. Even with periodic resistance from state and local lawmakers, one Georgia paper as late as 1860 believed colonization was a "safety valve of the slave states, and as such, must be cherished." With periodic and alternating fits of resistance and support in the state, James Wayne and other leading Georgia colonizers knew that if colonization was to succeed, it would need powerful support from all branches of the federal government, especially from the executive branch. In 1860, it looked as though it might happen.⁸⁵

⁸⁴ Timothy Huebner, *The Southern Judicial Tradition* (Athens: University of Georgia Press, 1999), 92; *American Colonization Society v. Gartrell* (1857), 23 GA 448, 451; *The Augusta Chronicle* (Augusta, Georgia), January 1860.

⁸⁵ Varon, *Disunion!*, 49-50; Freehling, *The Road to Disunion*, Volume 1, 160; Burin, *The Peculiar Solution*; Jones, *Saving Savannah*, 41-46; Degler, *The Other South*, 15, 22-25; Allen, *Dred Scott*, 78-82; Simon, *Savannah in the Old South*, 301; *Savannah Republican* (Savannah, Georgia), May 18, 1849; *Augusta Chronicle* (Augusta, GA), January 15, 1860.

The Presidential Solution: Emancipation, Colonization and the Coming of the Civil War

Though James Wayne and Abraham Lincoln interacted very little prior to 1860, the two shared a remarkably similar vision of future of the nation. They were on opposite sides of the *Dred Scott* debate, and Lincoln's Clay-influenced ways likely rankled Wayne, with his firmly embedded Jacksonian ideals. They were often in close physical proximity, however, for Wayne is seen sitting but a few feet away from Lincoln during his second inaugural address in March 1864. Though often on opposite sides of many political issues of the day, both Wayne and Lincoln believed steadfastly that free blacks should be deported "to congenial climes, and with people of their own blood and race."⁸⁶ Both men believed that the preservation of the Union depended on colonization of free blacks. Lincoln long supported colonization, but he was not the first president to support what many believed was a "cornucopia of national blessings." Though Lincoln "wished to send the negroes out of the country," many presidents shared his views.⁸⁷

⁸⁶ Roy P. Basler, *Abraham Lincoln's Collected Works*, Vol. 5 (New Brunswick, NJ: Rutgers University Press, 1955), 518-537.

⁸⁷ Craig Symonds, *Lincoln and His Admirals: Abraham Lincoln, the U.S. Navy and the Civil War* (New York: Oxford University Press, 2008), 168; Gideon Welles, *The Diary of Gideon Welles*, Vol. 1 (Boston: Houghton-Mifflin, 1911), 145; Image found at Douglas L. Wilson, "William H. Herndon and Mary Todd Lincoln," *Journal of the Abraham Lincoln Association* Summer 2001 <<http://www.historycooperative.org/journals/jala/22.2/wilson.html>> (10 Mar. 2010).

Thomas Jefferson spoke of removing free blacks as early as 1776. He believed that “slaves should be colonized” and that “all black youths should be educated to tillage, arts and sciences until the age of 21 for men and 18 for women, and then removed at public expense.” Following the lead of England’s Sierra Leone Company, which Thomas Jefferson believed would be a legitimate and effective model to replicate, slaves should be removed from American soil “beyond the reach of mixture.” For Jefferson, the most urgent question raised by emancipation was the removal of freed slaves from America. Though Jefferson expressed a sense of racial injustice in his views of the slaves and how the nation should somehow right the scales, he believed the races must be separated.⁸⁸

Fellow Virginians and presidents James Madison and James Monroe likewise supported various colonization and deportation schemes during their administrations. John Adams and his son John Q. Adams opposed colonization, and both viewed it as a “chimerical scheme.” As president, John Q. Adams attempted to withdraw financial support from the ACS, which he opposed as secretary of state, but he deemed support of colonization was a more politically astute decision, despite the moral dilemma it posed for him; he believed, like his father, that in the

⁸⁸ Fawn M. Brody, *Thomas Jefferson: An Intimate History* (New York: Norton, 1974), 50; Chester Miller, *Wolf by the Ears: Thomas Jefferson and Slavery* (New York: Free Press, 1977), 264-265, 270.

Declaration of Independence, “all meant all.”⁸⁹ Andrew Jackson, the father of Indian Removal, and, ironically, the father of two adopted Indian children, seldom minced words regarding Indians and their perceived uselessness while within white society, or blacks and their usefulness as slaves while within white society. While Jackson advocated Indian Removal, he did not support colonization, in part because he viewed it as part of his adversaries’ efforts, such as those of arch-colonizationist, Henry Clay, at instituting the so-called “American system” of positive government. Jackson regarded colonization a project off limits to the federal government.⁹⁰

Like Jackson, President John Tyler, at first a supporter, turned lukewarm to colonization. Initially, Tyler believed in the cause and claimed that “Monrovia will be to Africa what Jamestown and Plymouth have been to America.” Tyler acknowledged that the colony of Liberia was a “starting point” for colonization. Later, Tyler later altered his stance and believed deportation and colonization was “a

⁸⁹ Pierre L. Van Den Berghe, *Race and Racism: A Comparative Perspective* (New York: Wiley, 1978), 77-85.

⁹⁰ George M. Fredrickson, *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817-1914* (Middletown, Connecticut: Wesleyan University Press, 1971), 26-28, 44; Robert Remini, *The Life of Andrew Jackson* (New York: HarperCollins, 1984, 2001), 138-140; Maurice G. Baxter, *Henry Clay and the American System* (Lexington: University Press of Kentucky, 2004), 16-27; Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848* (New York: Oxford University Press, 2007), 270-285; H. W. Brands, *Andrew Jackson: His Life and Times* (Boston: Anchor Books, 2006), 490-491; Michael P. Rogin, *Fathers and Children: Andrew Jackson and the Subjugation of the American Indian* (New York: Knopf, 1975), 174, 217.

utopian scheme” and a “dream of philanthropy visiting men’s pillows in their sleep, only to cheat them on their awakening.”⁹¹

Lincoln’s election in 1860 sounded an alarm for many previously ambivalent Georgians and compelled many in the South toward disunion, and in Georgia the loudest voices tended to receive the most attention. To save the nation and preserve the Union, Lincoln used colonization as a bargaining chip. But to Lincoln, colonization was more than a scheme or fantasy; it was an integral part of political and social ideology, one crafted over his entire political career. Lincoln rarely spoke of emancipation without coupling his idea of freedom for blacks with the twin caveats of compensation and colonization. Lincoln knew the South valued equally its property and its proper social order. Lincoln, long a disciple of Henry Clay and always a Whig, appropriated many of Clay’s views, in particular colonization and the separation of the races. For both Clay and Lincoln, blacks may have been born morally equal to whites, but they could not “enjoy the blessings of liberty of liberty and civil, political and social equality” in America. These they would have to enjoy not in America, but in Africa, their ancestral home, or elsewhere.⁹² According to

⁹¹ Lyon G. Tyler, *The Letters and Times of the Tylers* Vol. 1 (Williamsburg, Virginia: William and Mary, 1896), 567-570; Oliver P. Chitwood, *John Tyler: Champion of the Old South* (New York: Appleton, 1939), 154.

⁹² Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York: Oxford University Press, 1970); John Hay, *Inside Lincoln’s White House: The Complete Civil War Diary of John Hay* (Carbondale, Ill: Southern Illinois University, 1997), 355-356; George M. Fredrickson, *The Arrogance*

George Fredrickson, Lincoln was a “pragmatic white supremacist” with a “rationalized racist ideology.” In the 1850s, Lincoln served as the state manager of the Illinois Colonization Society, which does not necessarily make him a racist or white supremacist, but it does demonstrate his gesture toward pragmatism and political expediency by accepting the predominant view of most Americans who believed that blacks were inferior to whites. In his debates with archrival Stephen Douglas, Lincoln reaffirmed his belief that slaves, if freed, should be colonized. Regarding blacks, Lincoln told Douglas, “we cannot, then, make them our equals.”⁹³

Many historians, such as Allan Guelzo claim that Lincoln only tepidly considered colonization, but evidence to the contrary is overwhelming that Lincoln periodically “lent an ear to colonization.”⁹⁴ It appears, however, that Lincoln fixated on colonization and searched the world for a place to deport emancipated slaves. He assumed white and black could not live together and believed “it is morally right . . . to transfer the African to his native clime, and we shall find a way to do it, however great the task may be.” In December 1864, in his last annual address to

of Race: Historical Perspectives on Slavery, Racism and Social Inequality (Middleton, Connecticut: Wesleyan University Press, 1988), 57, 65-67.

⁹³ Miller, *Lincoln's Virtues*, 25-50; Brian R. Dirck, ed. *Lincoln Emancipated: The President and the Politics of Race* (DeKalb: northern Illinois University Press, 2007), xiv; Basler, *Collected Works of Abraham Lincoln*, Vol. III, 15.

⁹⁴ Allen C. Guelzo *Lincoln's Emancipation Proclamation: The End of Slavery in America* (New York: Simon and Schuster, 2007), 54, 69, 89; Abraham Lincoln, Message to Congress, December 11, 1862; *The Daily Register* (Raleigh, North Carolina), December 14, 1861; Gabor Boritt, *The Lincoln Enigma: The Changing Faces of an American Icon* (New York: Oxford, 2002), 118-119, 120, 124.

Congress, Lincoln claimed that “many free Americans of African descent favor their emigration to Liberia or Haiti.” This coincides with the belief that Lincoln thought colonization should be voluntary, not compulsory. He believed, like one of his closest advisors Francis P. Blair that the federal government should incentivize colonization, not compel it. Still not giving up hope for his favorite plot, four months before he was assassinated, Lincoln asked Congress “to supply Liberia with a gunboat to protect freed blacks there.”⁹⁵

James Wayne believed that colonization could become a reality with presidential support, a willing Congress, and a Supreme Court able to quell legal challenges. With all three branches of the federal government in concert, a mandate was possible with the fullest sanction to buttress the plan. For Wayne and for Lincoln, saving colonization meant saving the Union. But with the all-consuming nature of the war, the lack of a suitable colony or willing nation to accept free blacks, the unwillingness of border states to serve as a prototype, and waning support of his advisors or cabinet, Lincoln reluctantly gave up on colonization. It appears to be the case for Wayne because there is no evidence of his involvement in

⁹⁵ Henry Louis Gates, ed., *Lincoln on Race and Slavery* (Princeton: Princeton University Press, 2009); Lerone Bennett, *Forced into Glory* (Chicago: Johnston, 2000); David H. Donald, *Lincoln* (New York: Simon and Schuster, 1995), 88; Don E. Fehrenbacher, ed., *Lincoln Speeches and Writings* (New York: Viking, 1989); James Oakes, *The Radical and the Republican: Frederick Douglass, Abraham Lincoln, and the Triumph of Antislavery Politics* (New York: Norton, 2007); Francis P. Blair in *The New York Times*, October 18, 1862; Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party* (New York: Oxford University Press, 1970, 1995), 272, 276-277.

the colonization movement after 1860. In late 1864, presidential secretary John Hay wrote in his diary: "I am happy that the President has sloughed off that idea of colonization." Even in January 1865, Lincoln proposed offering the South between \$200,000,000 and \$400,000,000 to end the war, to compensate Confederate slave owners for their slaves, to aid the South in reconstruction, and to pay for the resettlement of former slaves. For Lincoln, distance and diffusion would promote racial and social harmony in a post-emancipation America.⁹⁶

The social dimension of Wayne's Unionist ideology appears to have aligned with Lincoln's vision of a post-emancipation America: the races would have to be separated by distance or would be diffused so that high concentrations of former slaves would be out of reach from their former masters. But this was not to be. Lincoln and Wayne tried to sell colonization, but no one was buying. Both feared that without it, civil war might become a race war. While it is hard to measure such an arbitrary and value-laden term as racism, in both individuals and collectives, both Lincoln and Wayne, while not necessarily racists, accepted the racist realities of the societies in which they lived, realities that induced conflict of the highest order. By

⁹⁶ David W. Blight, *Frederick Douglass's Civil War: Keeping the Faith in Jubilee* (Baton Rouge: Louisiana State University Press, 1991), 122, 137, 413-427; Stephen B. Oates, *With Malice Toward None: A Life of Abraham Lincoln* (Lansing: University Press of Michigan, 1977), 312-313, 330; Paul J. Scheips, "Lincoln and the Chiriqui Colonization Project," *The Journal of Negro History*, Vol. 37, No. 4, (October 1952): 418-453; Michael Burlingame and John R. T. Ettlinger, eds., *Inside Lincoln's White House: The Complete Civil War Diary of John Hay* (Carbondale: Southern Illinois University Press, 1997), 65, 217.

advocating a separation of the races, both men anticipated the hate and fear that segregated the nation for nearly a century after the Civil War. Through his support of colonization and desire to separate the races, Wayne predicted the apartheid characteristic of the Jim Crow South. Wayne knew that many in Georgia feared subjugation by former slaves if their peculiar institution ended immediately. For Wayne, the preservation of the union depended on the perpetuation of slavery, which he believed would not be possible, or by the removal of emancipated blacks.⁹⁷

⁹⁷ *Boston Daily Advertiser* (Boston, MA), January 10, 1865; John D. Smith, *Black Soldiers in Blue: African-American Troops in the Civil War Era* (Chapel Hill: University of North Carolina Press, 2003), 20-25.

CHAPTER FIVE

CONCLUSION: A HOUSE DIVIDED

“Over the country were single, double, triple and multiple hates,
and the sum of them made the war.”¹

Carl Sandberg

Multiple hates may have made the Civil War, but many in Georgia expressed doleful sadness and utter heartbreak at the thought of Georgia leaving the Union. Though many celebrated Georgia’s secession, many also lamented the collapse of their beloved nation.² On January 2, 1861, Wayne’s good friend, Charles C. Jones, wrote his son and told of an “indescribable sadness that weighs down my soul as I think our once glorious but now dissolving Union.” His son, Charles C. Jones, Jr., who was by then mayor of Savannah, replied with a similar sentiment, “It is sad to see our Union dissolved, our national flag lowered.”³ Amidst such fatalistic views, James Wayne held out hope, for it was reported that he said confidently, “Georgia

¹ Carl Sandburg, *Abraham Lincoln: The Prairie Years and the War Years* (New York: Houghton Mifflin, 1954, reprint 2002), 312-313.

² Charles C. Jones, Sr. to Charles C. Jones, Jr., January 3, 1861 in Myers, *Children of Pride*, 42.

³ Ibid.

will not secede. Four-fifths there oppose secession.” He held this view because as a circuit rider he often heard the routine rumblings about secession and frequently engaged in the debates over disunion. Wayne had his finger on the pulse of the attitudes and opinions of his constituency, the people of the state of Georgia, but at age seventy, he was not a table-pounding firebrand like Howell Cobb, Linton Stephens, Alexander H. Stephens’s brother, Robert Toombs, or Governor Joseph E. Brown. Wayne relied on reason, not passionate oratory, to convince his state to remain in the Union, but passions ran high in the fall of 1860, and the most passionate and loudest voices in Georgia were the ones that held sway. Charismatic appeals to honor and manhood dominated cautious pleas for reasoned debate.⁴

Once Georgia yielded to the powerful forces of secession, it was clear that the bitterly divided nation would tumble into war. Americans throughout the divided nation chose their own “path of duty and honor.” James and Henry Wayne, though father and son, expressed different notions of duty and honor by choosing radically different paths when Georgia seceded from the Union. In the end, regardless of how aggressively Wayne tried to convince his state to remain in the Union, he did not succeed. It appears that Wayne could not even convince his own son to remain loyal to the Union, but the reasons the Wayne family divided along the same lines as the nation are far more complex than a mere political binary

⁴ *New York Times* (New York), December 20, 1860.

suggests. Though Henry Wayne was disloyal to his nation, he remained loyal to his father and protected his family's assets while defending his state.⁵

In January 1861, James Wayne told his son that he decided to remain on the Supreme Court because "to disrupt the court at this point would be a mistake. There is just too much money at stake for me to leave now." Wayne was referring to the many contract and commerce cases before the court, and his duty to the law compelled him, so he claimed, to remain in Washington. It is not illogical to presume that more than just a full docket of cases compelled Wayne to remain loyal to the nation he fought so long and so steadfastly to keep together. Further, Wayne's Unionist ideology was more than a political expression. To Wayne, the nation was more than a mere political community. Wayne's Unionist ideology was firmly rooted in his political beliefs, there is no doubt, but economic and social dimensions completed an ideology he spent a lifetime developing, an ideology he hoped his state and his nation would share in order to preserve the Union.⁶

Savannah historian Walter Fraser described Wayne as "somewhat anomalous" in Georgia because he was such a staunch Unionist, but labels fail to clearly describe Wayne, and Unionists were hardly an anomaly in his state. Silent

⁵ Charles C. Jones, Jr. to Charles C. Jones, Sr., January 28, 1861 in Myers, *Children of Pride*, 43.

⁶ James M. Wayne to Henry C. Wayne, December 30, 1860 in Lawrence, *Southern Unionist*, 168.

though they may have been once Georgia reached the secessionist tipping point in January 1861, the numbers of those who opposed secession were strong, but their voices were fragmented. Political fragmentation was the norm in most of Georgia's political history; therefore, it calls to reason that those who opposed secession were unable to create a cohesive voice of Unionism that accounted for the strong but fragmented anti-secessionist sentiment. Over the course of his long life, James Wayne displayed a peculiar combination of traits and amassed a peculiar set of characterizations. He built vast and powerful political, economic, and social networks, all of which served him well throughout his life; yet, he remains a somewhat overlooked figure in Georgia history, just as Georgia Unionism remains largely unexamined.⁷

The political dimension of Wayne's Unionist ideology was firmly rooted in his understanding of the minds of the founders and his perception of the intentions of the framers of the Constitution, particularly in regard to the contractual relationship between the state and the federal government. However, his views during the early years of his political career became much more sophisticated when he began serving at the national level. As a young local and state politician, much like the majority in his state he resisted federal power, as exemplified by his early opposition to tariffs,

⁷ Fraser, *Savannah in the Old South*, 270-271, 313; Carey, *Slavery*, 27; Shyrock, *Georgia and the Union*, 93.

but he changed his earlier views once he realized how he personally and how his state collectively could benefit politically, economically and socially from such an exercise of federal power. Wayne and Georgia benefited from an unprecedented exercise of federal power with Indian Removal. In return, he supported Andrew Jackson's use of force against South Carolina during the polarizing and nationally destabilizing Nullification Crisis of the 1830s, thereby demonstrating that he was developing a view that national-state give-and-take was vital to preserving the contract instituted by the founding generation.

Wayne and Georgia also reaped the rewards of an unprecedented exercise of federal beneficence with the collapse and dismantling of the Bank of the United States, two branches of which were in Georgia. Wayne aggressively supported the dismantling of the Bank of the United States, and in return, Georgia received a massive infusion of liquidity, which in turn fueled a wide variety of entrepreneurial endeavors. Finally, the introduction of a federal mint near the gold mines of Dahlonega in 1836 capped a six year period that transformed forever Georgia's relationship with the federal government. If Wayne was not the architect of this new relationship, he certainly played a vital role in its construction. Wayne was at the peak of his political power from 1830-1836, and Georgia benefitted handsomely from his influence. Wayne transformed from a myopic state politician to a leader whose vision was nationalistic in scope. For Wayne, resistance to the federal

government morphed into relationship with the federal government, and he expressed this change in sentiment in several of his judicial decisions.⁸

Wayne best expressed his view of the relationship between the state and the federal government in *Prigg v. Pennsylvania* (1842), a case that tested fugitive slave laws, helped upend congressional “gag rules,” and foreshadowed the judicial showdown that would come over a decade later in *Dred Scott*. In *Prigg*, Wayne revealed his interpretation of the relationship between the state and the federal government by saying, “Let it be remembered that the conventioners who formed the Constitution were the representatives of equal sovereignties, assembled to form a more perfect union . . . between the States. The Constitution was presented to the States for adoption with the understanding that the provisions in it were and guarantee, a great national engagement in which the States surrendered a sovereign right, making it a part of that instrument which was intended to make them one nation.” Wayne went on to say, “The framers of the Constitution did not act upon narrow grounds; they were engaged in forming a government for all of the States, by concessions of sovereign rights from all, without impairing the actual sovereignty of any one.”⁹

⁸ John Niven, *John C. Calhoun and the Price of Union* (Baton Rouge: Louisiana State University Press, 1993), 181, 199, 307.

⁹ *Prigg v. Pennsylvania*, 41 U.S. 539 (1842).

He further elaborated on his understanding of the compact between the state and the national government in the *Passenger Cases* (1849). In refusing to allow states to tax immigrants upon their arrival to American shores, Wayne and the rest of the majority held that Congress controlled commerce, which included certain taxation. In *Prigg*, Wayne said that the states must acknowledge “the surrender which they have made to a common government . . . for the benefit of all . . . as they meant to be when “we, the people of the United States,” came into existence with the ratification of the Constitution for the United States of America.”¹⁰

However, Wayne yielded to the states by saying, “The Constitution was formed by states in which slavery existed, and was not likely to be relinquished. The undisturbed continuance of that . . . was the recognized condition in the Constitution for the national union. It has that, and can have no other, foundation.”¹¹ Wayne reminded states that “the Constitution is to be interpreted by what was the condition of the parties to it when it was formed, by their object and purpose in forming it, and by the actual recognition in it of the dissimilar institutions of the states. The exercise of constitutional power by the United States, or the consequences of its exercise, are not to be concluded by the summary logic of *ifs* and syllogisms.” Wayne trusted the counterweights built into the system, but hoped

¹⁰ *Passenger Cases*, 48 U.S. 283 (1849); *Prigg v. Pennsylvania*, 41 U.S. 539 (1842).

¹¹ *Ibid.*

that his actions reflected the intentions of the founders when he said: “There were giants in those days, and I hope . . . the Constitution has not been weakened by their successors.”¹²

Wayne’s most significant expression of the political dimension of his Unionist ideology was a case that appeared before the Supreme Court during the Civil War, a case in which he was silent, save for his vote. It was a case that held Abraham Lincoln’s war strategy in the balance, and could have turned the tide of the war in favor of the Confederacy. Most of the cases before the Supreme Court during the Civil War and in the early years of Reconstruction involved blockade runners and the resulting claims of the property confiscated from merchant ships running the blockade. Since Wayne’s expertise was in both admiralty law and commerce cases, the *Prize Cases* (1862), as they were called collectively, were in his area of expertise. Wayne’s vote in the *Prize Cases* proved key to the preservation of the blockade and, quite possibly, instrumental to Lincoln’s war strategy. Losing the blockade might have been a game changer, and its continuation and its new constitutional legitimacy would strike at the economic heart of Confederacy.¹³

At the outbreak of the Civil War, Abraham Lincoln’s first actions as Commander-in-Chief included seizing Confederate ports and blockading the entire

¹² Ibid.

¹³ *Prize Cases*, 67 U.S. 635 (1862).

South. Naturally Charleston, South Carolina became the first target of the Navy, but the “Anaconda Plan” ultimately included the entire Confederate coastline and its ports. These actions are often considered as one, but blocking the egress of a port and blockading the entire coastline of several states were construed as two or more legal questions regarding presidential war powers. The first: can the President of the United States seize a single port? The second: can the President of the U.S. blockade the waters of a state? The third: can the President blockade the coast of several states? And finally: were the states in rebellion to be considered collectively as a belligerent nation? Lincoln knew that the answers to these questions would determine the constitutionality of his actions as commander-in-chief. All ships caught by Anaconda were seized and their cargo, known as “prize,” confiscated. Ship owners sued for the return of ship and cargo, and these many cases snaked their way through the lower courts and ultimately found their way to the Supreme Court.¹⁴

Lincoln and his advisors knew the administration had trodden on murky constitutional turf with the blockade, for war powers during a civil war had never been established, and they realized it would be only a matter of time before the Supreme Court heard cases testing the constitutionality of the measure. By 1862,

¹⁴ Ibid.; Craig L. Symonds and William J. Clipson, *The Naval Institute Historical Atlas of the U.S. Navy* (Annapolis, MD: Naval Institute Press, 1995), 78-79; Simon, *Lincoln and Taney*, 275-330.

Lincoln feared that the court's southern and southern-leaning justices would render the blockade unconstitutional, which, in the view of many, would make it difficult if not impossible for the Union to win the war. With access to the seas and the markets they reached, the South could resupply, remain in the field, extend the war, and ultimately sue for peace . . . and preservation.¹⁵

The Supreme Court, with seven justices, had two vacancies due to resignations by southern justices. Wayne and Taney formed a formidable southern duo whom Lincoln thought would deem the blockade unconstitutional. In order to pack the court and to do so in a hurry, Lincoln requested that Congress add two new western circuits because "the southern states are mired in rebellion;" that way he could nominate two new justices to fill the vacancies. Congress approved. In addition, two justices had died just before the war, which meant that Lincoln had a total of three justices on the Taney court. The three Lincoln appointees were likely to find the blockade constitutional, but if both Wayne and Taney and two others voted against it, Lincoln's blockade was history. The question was whether the President had the power to seize ports and blockade states in rebellion. The court weighed whether the states in rebellion constituted a "belligerent nation." The

¹⁵ Ibid.; Craig L. Symonds and William J. Clipson, *The Naval Institute Historical Atlas of the U.S. Navy* (Annapolis, MD: Naval Institute Press, 1995), 78-79; Simon; *Lincoln and Taney*, 275-330.

court further pondered if the Constitution allowed the President to enact the blockade without Congressional approval and further seize the ships as prize.¹⁶

As expected, Lincoln's three appointees deemed the blockade constitutional. Taney and two others did not. As unlikely as it would seem, Georgian James Wayne cast the deciding vote, a decision that preserved Lincoln's unprecedented use of power. James Wayne's vote made the majority and disagreed with his good friend Taney and sided with those who upheld the constitutionality of Lincoln's broad exercise of power during the early stages of the war and in particular in regard to the blockade. Though he voted with the Lincoln appointees without comment, Wayne believed the Constitution granted "dormant powers" to the Federal Government and "may at any time be awakened into efficient action . . . and from that time will displace the powers of the States." For Wayne, this was part of the compact and guarantee between the states and the federal government: in order to preserve the integrity of the many, rights of the few would be suspended.¹⁷

Wayne realized the blockade did not merely pose a constitutional question about a military strategy. He realized that the blockade struck at the heart of the Confederacy, which was its economy. Without its economic lifeline to the global

¹⁶ Ibid.; Simon, *Lincoln and Chief Justice Taney*, 207-207, 225-232; *Prigg v. Pennsylvania*.

¹⁷ Ibid.; *Daily National Intelligencer* (Washington, DC), September 21, 1863; *Daily Evening Bulletin* (San Francisco, CA), April 7, 1863.

marketplace intact, the Confederacy was doomed. Wayne was more than familiar with the importance of a robust and diverse economy linked to regional, national and global networks; his fortune, that inherited and that which he earned, was made possible by unencumbered links to vast trade networks. Through policy he helped create and from his frequent leadership in state financial and economic matters, Wayne helped Georgia create a relatively diversified economy. As evidenced by his personal economic behavior, he practiced what he preached, and he profited from what he practiced.

Just as Wayne trusted the symbiotic relationship between state and federal governments in political and economic affairs, so too did he trust in the “guarantee offered by the Constitution” in preserving the Union and helping to solve the complex social, racial and moral issues he and his generation confronted. Wayne championed federally mandated and publically funded Indian Removal and sought to use it as a template for the colonization of free blacks. Wayne reasoned that if Indian Removal was constitutional, then so too was colonization. For Wayne, Indian Removal demonstrated the appropriate use of federal power in its relationship with the states, and using the precedent for removing free blacks, once emancipated, was as pragmatic as it was despicable.

Underpinning the political, economic and social foundations of Wayne’s Unionism were the formative experiences of his youth. The Tory past of Wayne’s

father, and the humiliation he and his family experienced because Richard Wayne did not believe the American colonists would defeat the British or succeed as an independent nation, as evidenced by his decision to resist American independence. This profoundly influenced James Wayne's decision to stand for the Union at every turn. Though the lesson for Richard Wayne was a painful one, it was one he viewed, perhaps, worth the price, for he instilled in his son the importance of loyalty, which was a trait of the archetype of traditional southern manhood and a core value of southern culture. Paradoxically and rather obliquely, Wayne learned another lesson from his father: Do not betray the United States. Had James Wayne left the Supreme Court in 1861, just as his son had resigned from the U.S. Army, three generations of Waynes would have betrayed the United States, which was a legacy James Wayne wanted to avoid.¹⁸

In 1860, a writer in New York called Wayne the "smartest man on the Supreme Court" because he "rejected the mania of secession," unlike others in his state. Even as late as September 1861, some in the North hoped Wayne would be able to help convince Georgia to withdraw from the Confederacy, citing news that the state was slow in adopting the Confederate Constitution. Wayne's voice was

¹⁸ Jennifer Green, "'Stout Chaps Who Can Bear Distress': Young Men and Antebellum Military Academies," in *Southern Manhood: Perspectives on Masculinity in the Old South*, Craig Thompson and Lori Glover, eds. (Athens: University of Georgia Press, 2004), 174-195.

neither loud enough nor strong enough. Perhaps his physical strength weakened along with his political strength. 1860, Wayne was seventy years old and had suffered for decades from some recurring malady. From the 1820s until his death, southern newspapers periodically reported that Wayne had suffered from seizures of some sort and displayed symptoms of an unknown illness. Wayne, it was reported, was often on his death bed, at times while riding his circuit in Georgia, South Carolina and North Carolina. It is hard to say for certain, but the descriptions of Wayne's periodic seizures sounds like he suffered from epilepsy, at least that is what the pattern suggests.¹⁹

While Wayne's multi-dimensional Unionism is complex, it is somewhat easy to describe; however, Georgia Unionism is not so easy to define. Defining Georgia Unionism is about as easy as writing about it, but one thing is clear, with the vote for secession in January 1861, Georgia's enduring Unionism collapsed. With Wayne weakened, the strongest advocate for a cohesive voice opposing secession was nearly silent²⁰

Carl Degler said that one generation's Unionism might not be the same in subsequent generations, which would mean Georgia Unionism is more accurately labeled "Georgia unionisms." Georgia's collection of fragmented voices in

¹⁹ *New York Times* (New York), August 14, 1861 and December 20, 1860.

²⁰ *Ibid.*

opposition to secession could hardly constitute a cohesive vision of Unionism. While it is challenging to label definitively Georgia's near constant rejection of disunion until January 1861, it is clear that its allegiance to an imperfect union was time and time again more appealing than allegiance to an impractical one. Every generation of Georgians until the Civil War expressed its contractual commitment to the Union in the most poignant way possible, which, according to Benedict Anderson, was by demonstrating a willingness to die defending its imagined political community. Georgia demonstrated this willingness and expressed pride in being one of the "first thirteen" of 1776; in ratifying the Constitution of 1787; in rejecting the secessionist threats of the Hartford Convention and supporting the War of 1812; in rejecting Nullification and supporting Jackson's Force Bill against neighboring South Carolina in 1830; in restating its allegiance to nation in the Georgia Platform in 1850; and in nearly voting against secession in 1860. This hardly reflects a tradition of disunion and does not suggest a lingering threat. In fact, it suggests exactly the opposite.²¹

²¹ *Daily Morning News* (Savannah, GA), December 17, 1850; The popular vote for delegates for and against secession was "razor thin" according to Carl Degler, by a difference of almost one half of one percent of all votes cast in Degler, *The Other South*, 165; Anderson, *Imagined Communities*, 141; Varon, *Disunion!*; Samuel Boykin, *Memorial of the Honorable Howell Cobb* (Philadelphia: Lippincott, 1870), 34-35. Cobb contemporary Boykin states that in "1850 Cobb was an unyielding Union man, but by 1860 he was an uncompromising secessionist, Boykin, *Memorial*, 34; Ralph Wooster, *Secession Conventions of the South* (Princeton: 1962), 80-100. Many Georgia delegates who voted for secession were convinced by more radical secessionists in the state that secession would be "peaceful and temporary." This argument convinced many Georgia delegates who opposed secession and those who

Just as Georgia politics in the antebellum era exhibited a high degree of fragmentation, it would call to reason that an expression of political ideology, such as unionism, would be likewise fragmented. Political fragmentation in Georgia often served the state well by allowing the state's leadership frequently to distance themselves from national political machinations. But political fragmentation was imbued with both benefits and burdens. The benefit, as identified by James Wayne, was "independence of national parties." The burden was the possibility of the fragments being "cowed into silence" by a "powerful tide of southern nationalism," as is believed by James McPherson. Because Georgia unionisms lacked a cohesive voice during the antebellum era and a barely audible one in 1860, it was susceptible to following the most persuasive voice from among its leaders. Fear forced Georgia leaders to choose disunion, and this fear was best articulated by Alexander Stephens, former vice president of the Confederacy, while being interrogated by the Reconstruction Committee in 1866.²²

Though all Americans were "caught in the crossfire of loyalties" in the fall of 1860, Alexander H. Stephens described his state's secessionist tipping point when

were strong Unionists to vote for secession; they did not want other slave-holding states to control the fate of their human property, in Wooster, *Secession Conventions*, 95-100.

²² McPherson, *Battle Cry of Freedom: The Civil War Era*, 278; Richard M. Johnston, *Life of Alexander H. Stephens* (Philadelphia: Lippincott, 1878), 593-605.

asked about the strength of Georgia's unionist sentiment before the Civil War.²³

Stephens replied, "I believe before the election unionist sentiment was strong."

Immediately after the election, Stephens claimed, union and disunion sentiment was about evenly divided, with no geographic preference shown. In other words, unionist sentiment was spread evenly throughout the state, as was secessionist sentiment. He was elusive when asked about the overall strength of the secessionist sentiment. In January 1861, said Stephens, the secessionist mood was strong, but not before. The Commission asked why the shift in sentiment. Stephens said because the states surrounding Georgia seceded, intimating that Georgia was surrounded by states in rebellion. Georgia found itself in a most untenable predicament, according to Stephens, by being surrounded by the newly-minted Confederate states of South Carolina, Alabama and Florida. Granted, Georgia leaders such as Howell Cobb and Stephens himself emerged to lead the Confederacy. In spite of this, it appears fear motivated Georgia to secede because the "prudent and conservative men of the South were not able to stem the wild torrent of passion which is carrying everything before it."²⁴

In addition, the Reconstruction Committee asked Alexander Stephens about other fears that led to his state's decision to secede. Stephens responded that it was

²³ McPherson, *Battle Cry of Freedom*, 237; Johnston, *Life of Alexander Stephens*, 595.

²⁴ Ibid.; Daniel W. Howe, *The Political Culture of the American Whigs*, 244.

Lincoln's election that triggered such an inordinate fear because a Republican administration, in the consensus view of the South, would lead to whites being "subjugated by the African race." Stephens noted that "it would be an unusual thing, as well as a difficult matter, for a whole people to change their convictions upon abstract truths or principles." Repentant and regretful for his and his state's role in the Civil War, Stephens said that in order to preserve principles, his people have "come to the conclusion that it is better to appeal to the forums of reason and justice . . . rather than to the arena of arms." It appears that Stephens was not alone in wishing to appeal to avoid the "arena of arms." Most Georgia voters in 1860, an election that found Lincoln missing on the ballots of most southern states, voted overwhelmingly for pro-union candidates John Bell, the constitutional Unionist, and Stephen A. Douglas, the Democrat, over pro-slavery candidate John Breckenridge. Though Breckenridge garnered all ten of Georgia's electoral votes and over 52,000 in the popular vote, the other two pro-union candidates gained almost 65,000 votes.²⁵

Though the "arena of arms" yielded to "appeals to reason and justice," the nation still endures the legacy of division that followed in the wake of the Civil War.²⁶ Before emancipation, even the most ardent Georgia Unionists could not

²⁵ Johnston, *Stephens*, 595; "The Election of 1860," *The American Presidency Project*, The University of California, Santa Barbara, Internet: www.presidency.ucsb.edu, retrieved February 11, 2010.

²⁶ *Ibid.*; Gates, *Lincoln on Race and Slavery*, 2-10; Jones, *Saving Savannah*, 680-700.

countenance a permanently racially mixed society of the magnitude created by emancipation. After the war, for many in the South, their worst fears were realized, for what many in the South fought to prevent came to be: political subordination; economic dependency; and social aggregation. From the rubble of war and in the immediate aftermath of defeat came not the New South, but the Next South, a South that grappled for the meaning of its past, plotted the trajectory of its future, and wrote its own story.²⁷

The enduring strength of the Myth of the Lost Cause, the malleability and selectiveness of historical memory, the stubbornness of received historical wisdom, and methodological rigidity all conspired to divert attention from James Moore Wayne and Georgia Unionism. As historian Garry Wills has accomplished in several works, this project attempts to peel away the layers of myth about the southern past and in some small way add to our understanding of the political, economic and social dimensions of Unionism through a biographical lens. It is also an attempt to enrich our understanding of the meaning of union and disunion in antebellum America. Recent scholarship, such as that of Elizabeth Varon, claims that the threat of disunion loomed large in the nation from the founding until the Civil War, as if brewing just beneath a thin surface of stability was the seething storm of secession awaiting a catalyst. In this view, disunion was almost inevitable. Generalizations

²⁷ Ibid.; Goldfield, *Still Fighting the Civil War*, 41, 103.

such as these obscure the depth of loyalty, the longevity of the resistance to secession, and the steadfast love of the “happy union” expressed by Georgians until the Civil War.²⁸

Exasperated about the “insatiable public demand for the beards and bullets side of the America Iliad” and wondering if “every single aspect of this struggle has already been thoroughly chronicled,” one historian recently asked: “Do we need another case study about the Civil War?”²⁹ As we approach the 150th anniversary of a war fought to keep 4,000,000 black Americans in chains, it is not without irony that a black man is President of the United States. It is doubtful that James Wayne or the people of his generation, white or black, could fathom such a possibility, regardless of the lessons learned from the Civil War. As Aldous Huxley so aptly warned, “That men do not learn from the lessons of history is the greatest lesson history can teach.”³⁰ With that in mind, if one questions whether we need more written about the Civil War, a war that killed nearly 650,000 Americans, then the answer is simple. Yes.

²⁸ Garry Wills, *A Necessary Evil: A History of American Distrust of Government* (New York: Simon and Schuster, 2002), 231; and Garry Wills, *Negro President*, 121.

²⁹ Sean Adams, “Review of Chad Morgan, *Planters’ Progress: Modernizing Confederate Georgia*,” EH.Net Economic History Services, July 22, 2006 <http://eh.net/bookreviews/library/1095> accessed December 1, 2009.

³⁰ Philip J. Regal, *The Anatomy of Judgment* (Minneapolis, MN: University of Minnesota Press, 1990), 306.

EPILOGUE

JAMES WAYNE IN BLACK AND WHITE

“He was a sincere and honest patriot. Let us constantly follow his example.”

Salmon P. Chase¹

“The history of the Court abounds with long tenures,” wrote Jeffery Toobin in his recent best seller about the Supreme Court, “but even three decades does not guarantee that a justice will leave much of a legacy. Forgotten justices like James M. Wayne . . . illustrate that longevity and obscurity can coexist.” While he has been obscured by time, Wayne was not obscure in his time. Often politically contradictory, certainly personally complex, and possessing a paradoxical nature, in public Wayne was popular, highly respected, and almost famous, but hardly obscure. However, what remain obscure are the dark corners of his private life, only fragments of which are known.²

We know that James Wayne survived two of the worst fires in Savannah history. The first, which happened 1796 when he was a child of six, destroyed his

¹ Salmon P. Chase, “Memorial to Honorable James M. Wayne,” 73 U.S. ix (1867).

² Jeffery Toobin, *The Nine: Inside the Secret World of the Supreme Court* (New York: Knopff, 2008), 24.

family's Savannah home and appears to have taken the life of one of his siblings. The second fire he survived was when he was thirty and had only months before he completed two terms as Savannah's mayor. One of his last acts as mayor, ironically, was to pass legislation creating more stringent fire safety standards for the city filled with predominantly wood frame structures. Newspapers throughout the nation reported on Savannah's "great conflagration," and every state and even the U.S. senate responded with outpourings of sympathy and, more importantly, money, clothing and food to help aid the victims of the fire. One donation from Boston stipulated that the money would be used to help displaced slaves. The mayor of Savannah rejected the donation.³

Most of the city's wood structures burned: homes, businesses, warehouses, churches, banks. The city suffered millions of dollars of damage, and over half of the city's residence homeless and without resources. The city's tree-lined boulevards lay bare, as Savannah's famous squares became relief distribution points as bewildered citizens tried to take stock of the damage. The Independent Presbyterian Church escaped damage, as did Wayne's stone home, which was right across the street from the church.⁴ The Wayne-Gordon House is a unique stone and

⁴ *Daily National Intelligencer* (Washington, DC), January 20, 1820; *The Supporter* (Chillicothe, Ohio), February 2, 1820; *Raleigh Register, and North-Carolina Gazette* (Raleigh, NC), March 03, 1820.

brick “double house,” one twice the size of the then typical Savannah townhomes and one occupying two lots. Most Savannah townhomes were typical, almost identical rectangular wooden structures, but Wayne’s home was stone and brick, something of an oddity, and was twice as wide as other town homes.

Wayne’s former home at the corner of Oglethorpe Avenue and Bull Street still stands today, surviving the “great conflagration” of 1820, but one would have to look very closely to see that it was once the home of James Moore Wayne. Granted, a green-bronze historical marker in a nearby garden gives a blurb about Wayne, but what is one historical marker among the many in such a historically preoccupied and city as Savannah? The city’s storied squares are literally crowded with historical markers.

Wayne House, as it was once called, is one of the most visited historical sites in Savannah, but not because of James Wayne, at least not directly. In 1830, Wayne sold his home to his former legal apprentice, William Washington Gordon, who was along with Wayne one of the founders of the Central of Georgia Railroad Company. The company later became the Central of Georgia Railroad *and* Banking Company, reflecting the merger between the many industrialists and financiers who found their way to Savannah in the 1830s and 1840s. Before 1830, Savannah citizens referred to the home on the corner of Oglethorpe and Bull as “Wayne House” After

1830 and until the turn of the twentieth century, it was called the “Wayne-Gordon House.”

While James Wayne and William W. Gordon were historically significant in their own right, the Wayne-Gordon House, the city’s first National Historic Landmark, lures more visitors each year than almost any other Savannah location for another reason, and it has nothing to do with two of Savannah’s white elites.

William Washington Gordon died young and left his home to his son, William, Jr. In 1860, William’s wife, Nellie Kinzie Gordon, gave birth to a daughter, Juliette, who later married James Low, an entrepreneur and railroad speculator. Juliette Gordon Low later became the founder of the Girl Scouts, and started the organization in the home she inherited from her father, the Wayne-Gordon House. Though some long-time Savannahians still stubbornly call it the Wayne-Gordon House, James Wayne’s marvelous construction on the corner of Oglethorpe and Bull is now called “The Juliette Gordon Low House,” birthplace of the founder of the Girl Scouts.

The home is now a museum and program center and is visited each year by thousands upon thousands of Girl Scouts from all over the country and all over the world, all coming to pay homage to “Daisy,” as Juliette Gordon Low was known. According to the Girl Scouts website: “Girl Scout troops travel from across the United States year-round to take part in programs and learn more about the organization's remarkable founder. Fun programs and hands-on activities bridge the

gap between Daisy's day and the present and introduce visitors to the early years of Girl Scouting.” The story of Juliette Gordon Low and the Girl Scouts inadvertently obscures the memory of James Wayne and the many other stories the structure, now a museum, could tell. It is as if by using the refreshingly progressive story of a feminist like Juliette Gordon Low, Savannah could look away from the ambiguities of its past, a past that would have a hard time meshing the meaning of Unionists like James Wayne with what would become the dominant narrative of the Myth of the Lost Cause, and look toward a future that appreciated, but not quite apprehended, the richness of its history.⁵

According to the oral tradition from those who claim to be Wayne's black descendants, James Wayne fathered at least two children by one of his slaves and treated the children as if they were his own, teaching them to read and write in the cellar of the home in Savannah, now the Juliette Gordon Low House. This would of course add a level of drama and contradiction to the Wayne story since one of his first acts as mayor of Savannah was to prohibit the education of blacks, free or slave. Wayne family tradition tells us that in addition to freeing most of the many slaves he inherited and obtained while living in Georgia, he also freed his black children, a boy and a girl, both of whom allegedly played important roles in Savannah's large free

⁵ Juliette Gordon Low Historic District, National Park Service Website, www.nps.gov/nhl/designations/samples , retrieved April 13, 2010.

black population before the Civil War and during Reconstruction.⁶ James Wayne's daughter, Elizabeth Isabel Clifford, was born in 1834 to Anna, James Wayne's slave. Eliza, as she was called, allegedly married a white man, an Irish-Catholic white man, at that, and provoked the ire of her father, James Moore Wayne. Family legend says that Wayne despised Catholics more than he despised blacks and regretted the large influx of Ireland's displaced during the 1840s.⁷

Since this dissertation is a story of Unionism, it would make sense to come full circle and end where it began. James Wayne was a staunch Unionist, that is clear, but while his political ideology, labeled Unionism, developed over his long life, one would need only to return to where Wayne was born, Red Knoll Plantation on Argyle Island in the Savannah River, to see that the earliest influences of Wayne's steadfast loyalty to nation began when he was a child. Red Knoll, Wayne's massive plantation on the northern end of Argyle Island, is one of the closest geographic point in Georgia to Charleston, South Carolina. This closeness was not replicated in the political arena; later, Wayne and many of his business associates in Savannah

⁶ Interviews with James Jordan, Savannah Historian, October 2004; Catherine Keene, Girl Scouts of America, October 2003, May 2004, and September 2004.

⁷ Malcolm Bell, Jr. *Major Butler's Legacy: Five Generations of a Slaveholding Family* (Athens: University of Georgia Press, 1989), 548; see also Robert M. Myers, ed., *The Children of Pride: A True Story of Georgia and the Civil War* (New Haven: Yale University Press, 1972); Interviews with James Jordan, Catherine Keene, Savannah, Georgia, Fall and Winter 2004.

were as far apart politically as could be imagined to their counterparts in Charleston. Dripping with irony is that Red Knoll Plantation sat across the Savannah River from South Carolina, just opposite the mouth of Union Creek, which was named such in colonial times and well before the notions of union and disunion had been conceived. Further, when James Wayne rode the circuit and traveled to Charleston to hear cases, he often forded the Savannah River at Red Knoll, reached the South Carolina side of the river just a couple of miles south of Union Creek and headed to Charleston, fittingly enough, on Union Road.⁸

⁸ William McKinnon, "Map of the Savannah River, 1825," Copy in possession of the Georgia Historical Society, Savannah, Georgia.

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