

Race and Terror in Joseph Baldwin's *The Flush Times of Alabama and Mississippi* (1853)

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History . . . is a nightmare from which I am trying to awake.
—James Joyce¹

I. INTRODUCTION

In the early 1850s Joseph G. Baldwin began writing humorous vignettes, biographical portraits, and reminiscences that nostalgically described personalities and events from the author's legal practice in Mississippi and Alabama in the 1830s. Baldwin compiled these with some new material and published them as a book in 1853 under the title *The Flush Times of Alabama and Mississippi: A Series of Sketches*.²

Although largely forgotten today, *The Flush Times* was once hailed as a major antecedent of Mark Twain's fiction.³ President Lincoln, upon meeting its celebrated author, boasted that he slept with a copy of his book under his head.⁴ *The Cambridge History of American*

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¹ JAMES JOYCE, *ULYSSES* 34 (Paris, Shakespeare & Co. 1930) (1922), quoted in *THE GREAT DEBATERS* (Harpo Films 2007) (Robert Eisele screenplay).

² JOSEPH G. BALDWIN, *THE FLUSH TIMES OF ALABAMA AND MISSISSIPPI* (New York, D. Appleton & Co. 1853). The title page of the first edition is reproduced as figure 1.

³ KENNETH S. LYNN, *MARK TWAIN AND SOUTHWESTERN HUMOR* 56–57, 115–24, 140 (1959) (discussing Baldwin as major precursor of Twain). Twain listed *The Flush Times* twice in his list for a possible anthology of American humorists, 2 *MARK TWAIN'S NOTEBOOKS AND JOURNALS* 361, 363 (Frederick Anderson et al. eds., 1975), and Twain probably (re)read the work around 1883. *Id.* at 461 n.99. See also W. Craig Turner, *Baldwin, Joseph Glover*, in *THE MARK TWAIN ENCYCLOPEDIA* 61 (J.R. LeMaster & James D. Wilson eds., 1993) (discussing Twain's familiarity and affinity with Baldwin).

⁴ See Samuel Boyd Stewart, *Joseph Baldwin* 379 (Aug. 30, 1941) (unpublished Ph.D. dissertation, Vanderbilt University) (on file with author) (citing letter from Joseph G. Baldwin to John Felton (Nov. 1, 1863)).

Literature lauded it as “[p]erhaps the most significant volume of humor by a Southerner before the Civil War.”⁵

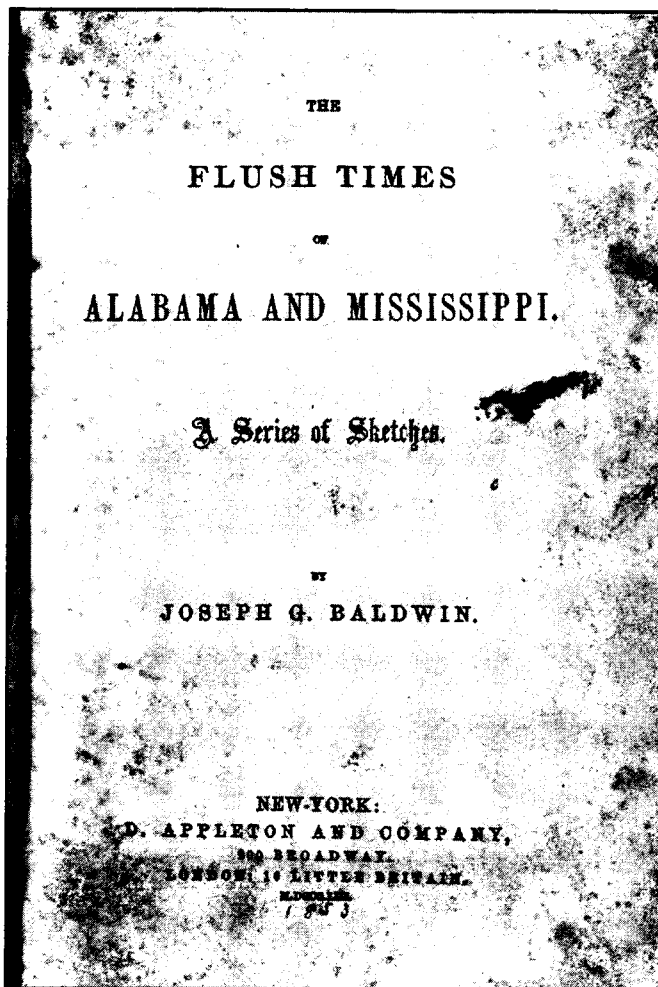


Figure 1: First edition title page.

⁵ Judgments of the book’s literary merit vary. Will D. Howe praised it in Will D. Howe, *Early Humorists*, in 2 *CAMBRIDGE HISTORY OF AMERICAN LITERATURE* 153–54 (William Peterfield Trent et al. eds., 1918). *But see* A *BIBLIOGRAPHICAL GUIDE TO THE STUDY OF SOUTHERN LITERATURE* 154 (Louis D. Rubin, Jr. ed., 1969) (“Baldwin has been rated lower [than Howe rated him] by most commentators . . .”); Richard E. Amacher & George W. Polhemus, *Introduction* to JOSEPH G. BALDWIN, *THE FLUSH TIMES OF CALIFORNIA* 10 (1966) (“As a writer, Joseph Glover Baldwin cannot be classed among the great.”). For a comprehensive bibliography of works on Baldwin, see *THE HUMOR OF THE OLD SOUTH* 277–79 (M. Thomas Inge & Edward J. Piacentino eds., 2001).

Avoiding the fate of some literary classics,⁶ *The Flush Times* has attracted new readers in every generation and has been in print continuously⁷ since the year of its publication. Though popular and critical interest has declined sharply since the 1970s, the work's status in the canon is confirmed by two University Press editions currently in print⁸ and by its on-line digitization by other reputable academic sources.⁹

The Flush Times ranks as a significant work of legal literature due both to its pervasive legal themes and to the professional prominence of its author, who later served as Associate Justice on the Supreme Court of California.¹⁰ This Article has two large goals. First, it establishes the correct publication history of *The Flush Times*. Virtually every previous account of the book's history gets important facts wrong. Some of these errors have caused faulty attributions of authorship and problematic judgments about the authenticity of various editions.¹¹ Other errors have infected interpretations of the author's meaning.¹² This Article both corrects myths about the book's publi-

⁶ Mark Twain defined a "classic" as "[a] book which people praise and don't read." MARK TWAIN, PUDD'NHEAD WILSON'S NEW CALENDAR, *quoted in* THE PORTABLE MARK TWAIN 564 (Bernard DeVoto ed., 1946).

⁷ A complaint in 1883 that the book was out of print is the first in a long history of false statements about the book's publication history. Cf. ODDITIES IN SOUTHERN LIFE AND CHARACTER 92 (Henry Watterson ed., Boston, Houghton, Mifflin & Co., 1883).

⁸ JOSEPH G. BALDWIN, THE FLUSH TIMES OF ALABAMA AND MISSISSIPPI: A SERIES OF SKETCHES (Univ. of Ala. Press 2005) (1853) [hereinafter BALDWIN, FLUSH TIMES (Ala. ed.)]; JOSEPH G. BALDWIN, THE FLUSH TIMES OF ALABAMA AND MISSISSIPPI: A SERIES OF SKETCHES (La. State Univ. Press 1987) (1853) [hereinafter BALDWIN, FLUSH TIMES (LSU ed.)].

⁹ E.g., JOSEPH G. BALDWIN, THE FLUSH TIMES OF ALABAMA AND MISSISSIPPI: A SERIES OF SKETCHES [9th thousand ed.], <http://docsouth.unc.edu/southlit/Baldwin/menu.html> (site hosted by University of North Carolina Library); JOSEPH G. BALDWIN, THE FLUSH TIMES OF ALABAMA AND MISSISSIPPI: A SERIES OF SKETCHES [7th ed.], <http://quod.lib.umich.edu/cgi/t/text-idx?c=moa;idno=ADS.9517> (digitized by University of Michigan Library).

¹⁰ See *infra* notes 75–77 and accompanying text.

¹¹ The most serious error is Professor James H. Justus's claim that the text of the first edition was most faithful to Baldwin's text and that later editions introduced many unauthorized errors. James H. Justus, *Introduction to* BALDWIN, FLUSH TIMES OF ALABAMA AND MISSISSIPPI (LSU ed.), *supra* note 8, at xl. In fact, the first edition contains minor printing errors that were corrected in later editions, and Baldwin (not an editor) made a number of minor but substantive alterations to later editions. See *infra* note 126 and accompanying text.

¹² An example of this sort of error is the significance that one scholar places on the sequence of two sketches. Justus, *Introduction, supra* note 11, at xl. This interpretation proceeds from the assumption that Baldwin himself organized the sketches to

cation¹³ and demonstrates that its commercial success has been consistently underestimated.¹⁴ This Article shows that *The Flush Times* evolved during the late nineteenth century from a modestly successful work of Southwestern regional humor into the first major work of literature marketed specifically to legal professionals.

Second, this Article argues for a fresh approach to the contents of *The Flush Times*. Though Baldwin delighted in blurring the line between fact and fantasy, this Article maintains that *The Flush Times* documents important facts about nineteenth-century legal practice¹⁵ and provides a particularly rich source of information about Southern lawyers' attitudes about race in the years before the Civil War. This Article specifically challenges the interpretation that has prevailed since the early 1960s that the book's text is a coherent whole unified by the persona of a fictive narrator. It argues, on the con-

achieve some literary effect. In fact, the sketches were printed in the book in the chronological order in which they were first published as articles. See John Francis McDermott, *Baldwin's "Flush Times of Alabama and Mississippi"*—A Bibliographical Note, 45 PAPERS OF THE BIBLIOGRAPHICAL SOC'Y OF AM. 251–56 (Earle F. Walbridge ed., 1951). The nine previously unpublished sketches are arranged at the end—a placement that calls into question McDermott's suggestion that they, too, had “probably” been previously published. *Id.* at 255–56.

¹³ See, e.g., Michael H. Hoffheimer, Kris Gilliland & Lynn Murray, *Pre-1900 Mississippi Legal Authority*, 73 MISS. L.J. 195, 252 & nn.218–20 (2003) (relying on widespread library cataloguing errors for erroneous claim that the book was published simultaneously by three different publishers in 1853). For the myth that Baldwin was Chief Justice, see *infra* note 75.

¹⁴ Justus and Wimsatt claim there were ten editions by the nineteenth century. James H. Justus, *A Note on the Text*, in BALDWIN, *FLUSH TIMES* (LSU ed.), *supra* note 8, at ix; Mary Ann Wimsatt, *Bench and Bar: Baldwin's Lawyerly Humor*, in THE HUMOR OF THE OLD SOUTH 187 (M. Thomas Inge & Edward J. Piacentino eds., 2001). This error apparently stems from the rough count of editions listed by the Library of Congress identified by McDermott, *supra* note 12, at 251 n.1. This Article establishes that there were twenty-five different editions in the nineteenth century. See *infra* Part III.

¹⁵ Baldwin's stories indicate, for example, that it was common for two lawyers to try cases for the same party, both participating in closing arguments, BALDWIN, *supra* note 2, at 112, 162; that, unlike later and contemporary practice, closing arguments in Mississippi preceded jury instruction, *id.* at 70, 312; and that some lawyers were especially revered for expertise in “statute law,” e.g., *id.* at 279, due (probably) to the scarcity of published compilations and codes. It indicates that ten percent was considered a generous contingent fee for a large award, *id.* at 309, and that collecting attorneys often served also as general agents for out-of-state clients and testified freely in cases in which they had a direct financial interest, *id.* at 266–67. It is sometimes difficult to determine whether the narrative is counterfactual for purposes of humor, as for example, when justices sit in the back room of a grocery, a place associated with alcohol consumption, *id.* at 280. Because of the fictional character of Baldwin's anecdotes and because of the narrative irony, it is dangerous to assume the literal accuracy of Baldwin's descriptions. Cf. *Cobb v. State*, 125 So. 2d 522, 523 n.1 (Ala. Ct. App. 1960) (sole reported opinion citing *The Flush Times*, relying on the accuracy of ironic observation that the return of a bill of indictment was “half a conviction”).

trary, that the work is a mixed medium, the boundary between author and narrator is porous, and sketches widely believed to be works of creative fiction drew on Baldwin's personal experiences.¹⁶

Exploring the content of Baldwin's writing is painful. His negative depiction of enslaved black people is offensive and disturbing. The extreme form of his racism no doubt explains the marked decline of interest in the book in recent decades. Yet with few exceptions, scholars have also tended to ignore Baldwin's treatment of race.

This Article challenges prevailing readings of Baldwin and insists that *The Flush Times* remains incomprehensible without attending to the author's explicit concerns with slavery and race. Drawing on work in Critical Race Theory, such as Richard Delgado's exploration of counter-narratives,¹⁷ this Article explores how Baldwin responded to representations of slavery in abolitionist literature. It shows that Baldwin constructed a narrative that eliminated blacks as objects of human sympathy by depriving them of human attributes and literary agency while celebrating Southern regional pride and ridiculing abolitionists. But Baldwin went further, presenting Northern critics of

¹⁶ This was the assumption of Baldwin's contemporaries, and it is the main line of interpretation of what remains the best study of Baldwin's life. Stewart, *supra* note 4, at 204. ("What unity there is, and it is not much, comes from the general setting in the Southwest and from the preponderance of subject matter drawn from the courtroom and bar during the flush times."). Stewart consulted and liberally quoted manuscript material now housed in the Joseph G. Baldwin papers at the New York Public Library, including Baldwin's letters to his wife and a memoir by Baldwin's brother Cornelius. See, e.g., Cornelius C. Baldwin, *Memoir of Joseph G. Baldwin* (June 16, 1875) (on file with New York Public Library and author) [hereinafter C. Baldwin, *Memoir*]; Letter from Joseph G. Baldwin to Sidney Baldwin (Dec. 19, 1854) (on file with New York Public Library and author); Letter from Joseph G. Baldwin to Sidney Baldwin (Dec. 15, 1854) (on file with New York Public Library and author); Letter from Joseph G. Baldwin to Sidney Baldwin (Dec. 10, 1854) (on file with New York Public Library and author); Letter from Joseph G. Baldwin to Sidney Baldwin (Nov. 21, 1854) (approximate date) (on file with New York Public Library and author); Letter from Joseph G. Baldwin to Sidney Baldwin (July 12, 1853) (on file with New York Public Library and author).

Stewart's account apparently provides the sole source for the most detailed published biography. Cf. Amacher & Polhemus, *supra* note 5, 65–78.

¹⁷ See generally RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* (2001); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1988). Following Delgado and to avoid confusion, this Article reserves the term "counter-narrative" for the oppositional stories created by subordinated and disenfranchised groups. Accordingly, it refers to Baldwin's narrative that expressly reacts to abolitionist critiques as a responsive narrative. The important point is not the terminology but that the Southern white cultural defenses of slavery achieved a new and more extreme form in response to outsider criticism that itself incorporated and relied on narratives by enslaved blacks.

slavery as unreliable sources of narrative truth and marginalizing Southern whites who questioned the brutality of the slave system.

The Flush Times provides valuable historical information about ideas of slavery and race among Southern lawyers during the years of intensifying sectional conflict immediately following the crisis of 1850.¹⁸ The text and its biographical and historical context reveal how Baldwin worked to posture himself within the white community. His ardent defense of slavery and gestures of Southern regional pride established his political loyalties. Equally important, Baldwin's language served to distance the author from low-class whites. While resources prevented him from joining the planter elite, his writing evinces conflicting attitudes about his class status as lawyer. He savagely ridicules most legal professionals as grasping and dishonest. He describes even the few honorable judges and lawyers—who have usually acquired an elevated status as public officials—with a deferential humor that expresses lingering ambivalence about personal status that depends on any form of productive labor. Baldwin's narrative thus reveals how the author sought to posture himself as part of the white elite through his literary personas as narrator and occasional appearance as a character, just as his biography indicates he sought to achieve social status through partisan political and literary activity.

Finally, this Article argues that the historical significance of Baldwin's narrative reaches far beyond its response to abolitionist narratives and its literary embodiment of slaveholder values in the early 1850s. On the contrary, Baldwin's extreme denial of subjective human attributes to African Americans and his celebration of sectional conflict appealed to a strong national market before, during, and after the Civil War. His book, loaded with negative depictions of lawyers and deep ambivalence about legal work, found a strong niche market among legal professionals that lasted into the early decades of the twentieth century.

The chronology of the book's reception raises disturbing historical questions. Baldwin's "humorous" depiction of the brutalization and murder of African Americans, read perhaps as grotesque hyperbole or parody by slave owners, uncannily anticipated the growing lynch violence that prevailed during the decades when the book was successfully marketed to legal professionals.

Part II provides a biographical overview of Joseph Baldwin, emphasizing the divergence of his professional and literary aspirations. Part III considers the literary goals of *The Flush Times* and questions

¹⁸ See *infra* note 158.

the trend to separate the personas of the narrator and author that prevails in recent scholarship. Part IV establishes the publication history of *The Flush Times*, documenting the strong market for the title through the first decades of the twentieth century. Part V discusses the illustrations for the book. Part VI explores Baldwin's treatment of race. It reviews the nomenclature and descriptive techniques that the text deploys regarding African Americans and relates this to Baldwin's effort to posture himself as part of the white elite. Then it focuses on the sketch of Samuel Hele, Esquire. This narrative sketch responds to Harriet Beecher Stowe's abolitionist critique of slavery in *Uncle Tom's Cabin* and her incorporation of counter-narratives by enslaved blacks. Baldwin's hostile response both replicates the counter-narrative as a source of humor and denies the veracity of the story by marginalizing its source.

II. JUSTICE BALDWIN

Joseph Glover Baldwin (1815–64) grew up in Winchester and Staunton, Virginia.¹⁹ He attended English and Latin schools, supplementing his formal education by reading widely in local private libraries, before leaving school at age fourteen to work full time as a deputy clerk in the chancery court.²⁰ For three years—from age seventeen to twenty—he studied law under his uncle and his cousin.²¹

In March 1836, Baldwin set out for the Southwestern frontier states of Alabama and Mississippi.²² He settled first in DeKalb, Mississippi,²³ but soon moved to Sumter County, Alabama in the summer of

¹⁹ Merritt Moseley, *Baldwin, Joseph Glover*, in 2 AMERICAN NATIONAL BIOGRAPHY 57, 57 (John A. Garraty & Mark C. Carnes eds., 1999).

²⁰ Stewart, *supra* note 4, at 23, 25–26 (citing C. Baldwin, *Memoir*, *supra* note 16). For short biographies and bibliographic sources, see the entries on Baldwin by Merritt Moseley, in 2 AMERICAN NATIONAL BIOGRAPHY 57 (John A. Garraty & Mark C. Carnes eds., 1999) and *J.H.N.*, in 1 DICTIONARY OF AMERICAN BIOGRAPHY 538 (Allen Johnson ed., 1927). Robert MacDonald Lester planned to write a biography. Lester's unfinished manuscript and materials he collected from the Baldwin family are held at the New York Public Library.

²¹ Baldwin both read law and attended a private law school operated by his uncle, Judge Briscoe Baldwin, at his farm. Stewart, *supra* note 4, at 29.

²² Moseley, *supra* note 19, at 57.

²³ REUBEN DAVIS, RECOLLECTIONS OF MISSISSIPPI AND MISSISSIPPIANS 59–62 (Boston, Houghton, Mifflin & Co. 1889) (recording the experience of one of Baldwin's first cases). To gain notoriety, Baldwin volunteered to present oral arguments in the prosecution of Choctaw Chief Pushmattahaw. *Id.* Baldwin secured the conviction of the Chief and a death sentence. *Id.* The Chief was later pardoned. *Id.* According to Davis, the Chief's acts were legally justified because they were committed on tribal land under his tribal authority. *Id.* According to his brother, in his first case, Bald-

1837 where he resided first in the town of Gainesville and then, after 1850, in Livingstone.²⁴ Baldwin's practice followed circuits that ranged over the contiguous counties on the Tombigbee River, straddling the center of the north-south border of Alabama and Mississippi.²⁵ Legal work in these years also took him on one occasion as far as Texas, and he worked briefly on the Gulf Coast in Mobile.²⁶

In 1839, he married Sidney White, the daughter of a prominent state judge. The couple eventually had seven children,²⁷ and their household took in Baldwin's younger sister after the death of his mother.

Baldwin's migrations testify to his economic insecurity.²⁸ Financial worries, including the support of elder family members back in Virginia, were a frequent subject of his letters.²⁹ Yet Baldwin was prospering sufficiently to begin buying slaves soon after his arrival in the Southwest.³⁰ By the late 1830s he had purchased Jacob, who would work as a house servant.³¹ In 1844, during a trip to New Orleans, Baldwin bought Malinda, a slave woman in her twenties, for whom he paid \$450.³² In 1846 he bought nineteen-year-old James for \$800.³³

Slaves were a chief source of wealth and status. They represented an investment, and Baldwin occasionally leased them out to supplement his income.³⁴ He probably sold them all in 1854 before leaving for California.³⁵

Baldwin identified with the smaller slaveholders of the Alabama hill country where he lived, not with the large plantation owners in

win won an acquittal when he was appointed by the court to defend a man charged with murder. Stewart, *supra* note 4, at 77.

²⁴ Moseley, *supra* note 19, at 57.

²⁵ *Id.*

²⁶ See *infra* notes 34 and 57.

²⁷ By 1854 they had six children, and they had lost one in infancy. Stewart, *supra* note 4, at 176 n.85, 253.

²⁸ *Id.* at 151, 155.

²⁹ *Id.* at 155

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Stewart, *supra* note 4, at 155.

³⁴ While temporarily in Mobile in 1854, Baldwin leased James out for \$20.00 per month as a dining room servant, and he hired out a second person he held in slavery to a steamboat. The rental income he realized from just two enslaved people supported Baldwin's living expenses as a lawyer staying at a hotel and dining out daily in Mobile. *Id.* at 155.

³⁵ This is Stewart's surmise. There is no evidence of the sale. Stewart, *supra* note 4, at 282.

the southern part of the state. Loyal to the Whig Party, he was elected a Whig representative to the state legislature in 1843,³⁶ and he ran unsuccessfully as the Whig candidate for Congress in 1849.³⁷ His political essays into the 1850s continued to grapple with the sources of the dissolution of the national Whig Party and the failure of its leaders.

From an early age, Baldwin displayed an interest in writing. As a teenager in Virginia he published short pieces in the *Staunton Spectator*³⁸ and tried his hand at playwriting. At age twenty, he assisted his brother for six months editing a paper in Lexington, Virginia.³⁹ In 1850,⁴⁰ then in his mid-thirties, Baldwin started to record humorous anecdotes and sketches that drew heavily on his early professional experiences in Mississippi and Alabama.⁴¹ He had for models many examples of Southwestern humor that appeared regularly in men's papers and were successfully collected into books. But unlike his predecessors, most of Baldwin's sketches involved lawyers, and many were set in the country courthouse. In 1852 these sketches began to appear anonymously in the *Southern Literary Messenger*.⁴² A few were reprinted by *The Spirit of the Times*—a New York sporting journal with a national circulation that frequently ran works of Southwestern humor.⁴³

³⁶ *Id.* at 144. Slaveholders were divided over whether enslaved people should count for purposes of apportioning the state legislature, and the Democrats had succeeded in excluding their count. This disadvantaged the Whigs, who drew support predominantly from planters in the southern part of the state where the most people were enslaved. Baldwin's speech in opposition was published. Joseph G. Baldwin, Remarks of Mr. Baldwin on Mr. Taylor's Resolutions to Rescind the White Basis in Forming Congressional Districts (December 1843). Baldwin condemned the arguments in support of the white-basis law by comparing them to the arguments for abolition of slavery. *Id.* at 147.

³⁷ *Id.* at 157.

³⁸ According to his brother's later memoir, the teenage Baldwin coauthored and published short anonymous articles that were attributed to more experienced writers. C. Baldwin, Memoir, *supra* note 16, at 8.

³⁹ *Id.* at 9–10.

⁴⁰ Baldwin's brother dates these creative efforts to the period after Baldwin moved to Livingstone. *Id.* at 17.

⁴¹ Stewart, *supra* note 4, at 147 (citing C. Baldwin, Memoir, *supra* note 16).

⁴² This was the premier literary journal in the South. Baldwin's writings were published anonymously except for the pseudo-autobiographical sketch "My First Appearance at the Bar." See BALDWIN, *supra* note 2, at 42, 46. The sketch refers to the author as "J.C.R." and it is signed at the end by "J.C.R.," both in the article and in *The Flush Times*. See *id.*

⁴³ Stewart, *supra* note 4, at 166.

In 1853, Baldwin compiled seventeen of his published writings and added nine new sketches to form a book.⁴⁴ Together with the editor of the *Southern Literary Messenger*, Baldwin traveled to New York City and sold the book idea to D. Appleton after it was rejected by Harpers.⁴⁵ The book was published in late 1853 under Baldwin's name and with the title *The Flush Times of Alabama and Mississippi: A Series of Sketches*. It garnered lavish praise from critics.⁴⁶

In late 1854 Baldwin published a second book, *Party Leaders*,⁴⁷ a collection of essays on Thomas Jefferson, Alexander Hamilton, John Randolph, Henry Clay, and Alexander Jackson. This work revealed Baldwin's ambition to be recognized as a significant public intellectual.⁴⁸ Unlike *The Flush Times*, most of the text of *Party Leaders* was written originally for the book.⁴⁹

⁴⁴ McDermott, *supra* note 12, at 251–56. Baldwin's preface (omitted from several twentieth-century editions) acknowledges that "some" of the book's material appeared in the *Southern Literary Messenger*, and in the preface Baldwin thanks the journal's editor for help with revision and correction of the text. BALDWIN, *supra* note 2, at v, vii.

⁴⁵ Stewart, *supra* note 4, at 230.

⁴⁶ For quotations from contemporary reviews, see *id.* at 204–05. The title "*Flush Times*" originated as a caption for the sketches when they were printed in *The Southern Literary Messenger*. McDermott, *supra* note 12, at 252–55.

⁴⁷ JOSEPH G. BALDWIN, PARTY LEADERS: SKETCHES OF THOMAS JEFFERSON, ALEX' R HAMILTON, ANDREW JACKSON, HENRY CLAY, JOHN RANDOLPH, OF ROANOKE, INCLUDING NOTICES OF MANY OTHER DISTINGUISHED AMERICAN STATESMAN (New York, D. Appleton & Co. 1855) [hereinafter BALDWIN, PARTY LEADERS]. Although this book bears a copyright date of 1854 and was in print late in that year, I have not found a copy bearing a publication date of 1854 on its title page, and the title page in the Baldwin papers at the New York Public Library bears a publication date of 1855. It is thus possible that the first edition was pre-dated 1855. Full text is available at: <http://books.google.com> (search for Party Leaders; then follow 1855 hyperlink for the 1855 edition) and at <http://www.worldcat.org> (search for "Party Leaders Joseph Baldwin 1856," then follow hyperlink for 1856 edition).

⁴⁸ Perhaps reflecting Baldwin's own views, his friend denounced *Party Leaders'* critics and vigorously defended it.

I am more than willing to rest the literary fame of my deceased friend upon this single production. It has already noiselessly crept into the classics of the day [T]he future statesman will garner it up as the most reliable contemporaneous biography of those great spirits who thought and acted for the rude masses of our generation He will ponder over its close analysis and amazing fertility of thought, and award that due commendation to its brilliant author, of which our people are somewhat chary.

J.G. Howard, *Joseph G. Baldwin*, in REPRESENTATIVE AND LEADING MEN OF THE PACIFIC 135, 135–41 (Oscar T. Shuck, ed., 1870), available at http://freepages.genealogy.rootsweb.ancestry.com/~nrmelton/shk_135.htm.

⁴⁹ Only the material on Jackson and Clay had been previously published, and Baldwin took pains to emphasize that he reworked this material for the book. BALDWIN, PARTY LEADERS, *supra* note 47, at 9–10. Baldwin later published an essay

In hindsight, *Party Leaders* suffered from Baldwin's imperfect attempt to achieve three disparate goals. First, Baldwin justified revisiting familiar events and personalities by styling the book as a primer aimed at young men. When he kept to this goal, as he did in the opening chapters, he wrote in short, simple sentences that avoided the flights of rhetoric and turns of phrase that embellished *The Flush Times*. Second, he attempted to write a popular life of the Virginia statesman John Randolph.⁵⁰ Third, he sought, by presenting a sympathetic account of Henry Clay's political career, to defend the partisan positions taken by the American Whigs.⁵¹

Baldwin's goal of telling a simple story for young readers and his own strong party loyalty tended to eliminate nuance and to promote broad generalizations that are of interest today chiefly for the insight they provide into Baldwin's own prejudices.⁵² For example, he cast Jefferson as a progressive and Hamilton as a conservative,⁵³ while framing the conflict between Jackson and Clay as a fight between executive prerogative and legislative privilege⁵⁴—or (though he does not use the words) tyranny and democracy. His expository goals and lack of original research produced predictable pedestrian prose that was often repetitive,⁵⁵ and his penchant for following sources led him to digress from his leading themes.⁵⁶

where he returned to Hamilton. Cf. J. G. Baldwin, *The Genius and Character of Alexander Hamilton*, in 22 SOUTHERN LITERARY MESSENGER 371, 371–80 (John R. Thompson ed., 1856). Much of the labor consolidating the text into a book (*Party Leaders*) and supervising its production fell to Baldwin's brother, who remained in New York to supervise publication, while Baldwin left for California. See C. Baldwin, *Memoir*, *supra* note 16, at 25.

⁵⁰ Randolph had been the subject of a two-volume biography published by D. Appleton that went into multiple editions. HUGH A. GARLAND, *LIFE OF JOHN RANDOLPH OF ROANOKE* (11th ed. New York, D. Appleton & Co., 1869) (1850).

⁵¹ BALDWIN, *PARTY LEADERS*, *supra* note 47, at 209–16.

⁵² Baldwin's observations in defense of slavery are also of historical interest. He argued that access to cheap slaves in Virginia's early history had an ennobling effect on the character of Virginia planters. *Id.* at 152. He marginalized and vilified the growing opposition to the expansion of slavery in the territories (which produced the Compromise of 1850), limited criticism of slavery to the North, and dismissed it as "rough fanaticism." *Id.* at 355.

⁵³ See *id.* at 39–42.

⁵⁴ *Id.* at 330–31. The book ends with a paean to Clay. *Id.* at 357–69.

⁵⁵ Cf. *id.* at 46 ("[Hamilton] had opposed the British Government, not because he disliked *it*, but because of his love of British liberties and institutions, which the king had denied *to us*"); *id.* at 73 ("[Hamilton] had opposed the British government, because *we* were denied its blessings.").

⁵⁶ Baldwin includes a longish account of Randolph's views on religion, including letters criticizing Socinianism. *Id.* at 222–30.

Baldwin published both *The Flush Times* and *Party Leaders* at a time when he was expecting to leave the South permanently. He had contemplated a migration further west as early as 1850 and was making plans to move by 1853.⁵⁷ He departed for San Francisco from New York immediately after depositing the manuscript for *Party Leaders* with the publisher.⁵⁸

The nostalgic longing for the early days—some fifteen years before the publication of *The Flush Times*—was accompanied by a sense of loss and the vision that opportunity beckoned in the West. Baldwin expressed this in the chapter on “The Bar of the South-West”⁵⁹—one of the last articles he published in 1853, an essay generally devoid of humor. There he argued that the early years of every new country and state, freed from long accumulated traditions and established authorities, experience a golden era of law, conducive to heroic works of genius.⁶⁰ “[T]here is no *prestige* of rank, or ancestry, or wealth, or past reputation . . . [and] amidst a host of competitors in an open field of rivalry, every man of the same profession enters the course with a race-horse emulation”⁶¹ This, of course, did not prevent him from acknowledging the vices and lawlessness of the frontier,⁶² but while the émigrés arriving from the East were morally challenged, legal practice was innocent, free of the sophisticated, deceptive practices of the bar in the older states because “the new dogs hadn’t learned the old tricks.”⁶³ By 1853, he viewed the Southwest as in decline, eclipsed by new frontiers to the West:

[R]emarkable preeminence has characterized the bar of every new State when, or shortly after emerging from, its territorial condition and first crude organization; the States of Tennessee, Kentucky, Alabama, Mississippi and Louisiana forcibly illustrate this truth, and we have no question but that Texas and California are affording new expositions of its correctness.⁶⁴

Baldwin’s nostalgia and glorification of success on the frontier masked anxiety about his own social status. Frustrated with his personal success, he migrated to California with one book in print and

⁵⁷ See Stewart, *supra* note 4, at 172. Baldwin’s sanguine letters from Texas seem aimed at convincing his wife to join him in migrating to Texas. *Id.*

⁵⁸ *Id.* at 282–85.

⁵⁹ BALDWIN, *supra* note 2, at 223–49.

⁶⁰ *Id.*

⁶¹ *Id.* at 228.

⁶² *Id.* at 235.

⁶³ *Id.* at 243.

⁶⁴ *Id.* at 226.

the second at the press.⁶⁵ In letters, Baldwin voiced his dream of attaining literary renown, which would allow him to escape the practice of law.⁶⁶ He monitored the critics' reception of his second book. His great ambition, he confided to his wife, was to make enough money to devote himself to literature:

I shall then be free to devote myself to literature, with a view of making a reputation which "men will not willingly let die." I think I can put myself on the roll of American writers somewhat above the names which are counted distinguished. This may not be the case, but, I think, it will.⁶⁷

Party Leaders was not a flop. It was reprinted in 1856, 1858, 1861, 1864, and 1868.⁶⁸ But the book did not launch Baldwin onto the national stage as a man of letters, and he was disappointed with its reception. He complained of its mixed reviews, predicted it would not sell as well as *Flush Times*, and yet observed, "I think the book will work more slowly but more surely than *F.T.*, and will be popular among the younger class of readers who, at last, are the larger class."⁶⁹ In the preface, he announced the plan to write a third book on Webster and Calhoun,⁷⁰ but he never did so. In fact, he did not publish another major work, though he left at his death the unfinished manuscript for an essay about his experiences in California, which was published in 1966.⁷¹

⁶⁵ See *supra* notes 57–58 and accompanying text.

⁶⁶ See Letter from Joseph G. Baldwin to Sidney Baldwin (Dec. 15, 1854), *supra* note 16.

⁶⁷ Letter from Joseph G. Baldwin to Sidney Baldwin (Dec. 19, 1854), *supra* note 16. In letters written to his wife after he arrived in California, Baldwin expressed his astonishment at the rate of compensation for private practice and counseled delay in her joining him so that he could make his fortune, unencumbered by the expense of establishing a household suitable for a person of his rank. *Id.* In the letter dated December 19, 1854, he speculated that he might be able to retire within one year. *Id.* In a letter dated December 15, 1854, he wrote that by working twelve-hour days and economizing on expenses, he hoped to make enough to be able to retire in two years—four at the most—and that he hoped either to move to Washington, D.C. to argue cases before the Supreme Court "or if not that, to devote myself to literature and make a reputation which will be worth something." Letter from Joseph G. Baldwin to Sidney Baldwin (Dec. 15, 1854), *supra* note 16.

⁶⁸ The price is listed at \$1.00 in the notice bound at the rear of the 1856 edition. JO. G. BALDWIN, PARTY LEADERS; SKETCHES OF THOMAS JEFFERSON, ALEX'R HAMILTON, ANDREW JACKSON, HENRY CLAY, JOHN RANDOLPH, OF ROANOKE, INCLUDING NOTICES OF MANY OTHER DISTINGUISHED AMERICAN STATESMEN (New York, D. Appleton & Co. 1856) (1855) [hereinafter BALDWIN, PARTY LEADERS 1856].

⁶⁹ Letter from Joseph G. Baldwin to Sidney Baldwin (Dec. 21, 1854) (approximate date) (typed transcription on file with the Joseph G. Baldwin Papers, New York Public Library). See also Stewart, *supra* note 4, at 311.

⁷⁰ BALDWIN, PARTY LEADERS 1856, *supra* note 68, at 9.

⁷¹ See Amacher & Polhemus, *supra* note 5.

After moving to California, Baldwin threw himself into law and politics. While he turned his back on his literary activities, he was proud of the fact that his literary reputation had preceded him to California, and his brother later observed, "I have no doubt that *Flush Times* was of advantage to the author even in a professional point of view."⁷² Baldwin described California in glowing terms: "[T]his is in my opinion the most desirable city for residence on the face of the globe, and . . . compared to Alabama it is well-nigh Elysian."⁷³ His celebration of the free market nature of the frontier did not deter him from making rapid advances in California, based both on his accumulated wealth and his personal connections.⁷⁴

Running as a Democrat, he was elected to the Supreme Court of California and served as an associate justice from 1858 until January 1862.⁷⁵ During his tenure on the court, Justice Baldwin was the most productive justice, personally writing about two-thirds of the opinions.⁷⁶ "On the court, he had the reputation of being second only to [future U.S. Supreme Court Justice Stephen] Field in ability."⁷⁷ He

⁷² C. Baldwin, Memoir, *supra* note 16, at 28.

⁷³ Letter from Joseph G. Baldwin to Sidney Baldwin (Nov. 21, 1854) (approximate date), *supra* note 16.

⁷⁴ Baldwin received generous assistance from Solomon Heydenfeldt. Baldwin wrote his wife, "Judge Heydenfeldt—one of the noblest fellows in the world . . . has been a greater friend to me than if I had been his brother, and is one of the most disinterested men in the world: doing kindness for its own sake and never tiring in doing it." *Id.*

⁷⁵ See MOSELEY, *supra* note 19, at 57. Though Justice Baldwin was the only member of the court during his tenure *not* to sit as chief justice, there is a persistent oral tradition that he was chief justice. For an example in print, see Timothy Huff, *Influence on Harper Lee: An Introduction to the Symposium*, 45 ALA. L. REV. 389, 396 n.45 (1994) (referring to Baldwin as Chief Justice of the California Supreme Court).

⁷⁶ Stewart, *supra* note 4, at 336. Lexis lists 615 opinions by Justice Baldwin between 1857 and 1863 and 979 total opinions written by all members of the court during this same period. Compare www.lexisnexis.com (follow "Cases – U.S." hyperlink; then follow "Combined State Court Cases" hyperlink; then follow "By Court" hyperlink; then follow "CA State Cases, Combined" hyperlink; search "written by (Baldwin) and date aft 1857 and date bef 1863") (returning 615 opinions written by Baldwin), with www.lexisnexis.com (follow "Cases – U.S." hyperlink; then follow "Combined State Court Cases" hyperlink; then follow "By Court" hyperlink; then follow "CA State Cases, Combined" hyperlink; search "judges (Baldwin) or written by (Baldwin) or opinion (before /10 Baldwin) and date aft 1857 and date bef 1863") (returning 979 opinions written by members of the court).

⁷⁷ Joseph R. Grodin, *The California Supreme Court and State Constitutional Rights: The Early Years*, 31 HASTINGS CONST. L.Q. 141, 156 n.60 (2004) (citing Arnold Roth, *The California State Supreme Court, 1860–1879: A Legal History* 18 (1973) (unpublished Ph.D. dissertation, University of Southern California)). There were three members of the court during Baldwin's tenure. See *id.* at 142.

also stood as an unsuccessful candidate for the U.S. Senate in the California Legislature.⁷⁸

In 1862, Baldwin returned to private practice and turned his attention to mining ventures in Nevada.⁷⁹ While stopping in Washington, D.C., as part of a business trip to New York, he met with the President.⁸⁰ Baldwin returned to California and died in 1864 at age forty-nine from tetanus, which he contracted during a hemorrhoid operation.⁸¹

III. THE FLUSH TIMES

A. Baldwin's Ambiguity

Despite its reputation as a literary classic, reliable scholarship on *The Flush Times of Alabama and Mississippi* is limited. Baldwin's great strengths were his characterizations and effectively paced exaggeration,⁸² delivered by a bemused, detached narrator who often displayed his learned familiarity with modern English literature, classics, and legal jargon. The narrative plot lines were far less important and tended to be simple, repetitive, and derivative.⁸³

Professor James H. Justus located Baldwin's "true originality" in the creation of a narrative persona that is sustained consistently throughout the diverse sketches.⁸⁴ Justus wrote in 1987 that Baldwin's book "is unified by the voice of an authorial narrator whose whiggish and lawyerly sensibility presides over the recreation of a

⁷⁸ See MOSELEY, *supra* note 19.

⁷⁹ *Id.* Baldwin's two sons, who lived in Nevada, were involved in gold mining. He began to join them as early as 1861. He engaged in some practice in Nevada and received shares of mining stock as a contingent fee. Stewart, *supra* note 4, at 357. In 1862 "Joseph G. Baldwin" was listed as the first lawyer admitted to practice in Nevada. Gloria Sturman, *Column: The President's Message, Celebrating our 75th Anniversary Necessitates Looking at Our History*, 10 NEV. LAWYER 8 (Aug. 2002). This was probably Judge Baldwin, as there is no reference to his son Joseph's practice of law; by contrast, his eldest, Alexander White, had a successful career and was appointed at age twenty-five to the federal court in Nevada. See George Frederick Mellen, *Joseph G. Baldwin and the "Flush Times,"* 9 SEWANEE REV. 171, 183 (1901).

⁸⁰ See *supra* note 4.

⁸¹ Stewart, *supra* note 4.

⁸² See BALDWIN, *supra* note 2, at 21 ("But, while the case was getting ready, Frank was suddenly taken dangerously drunk, a disease to which his constitution was subject.").

⁸³ For instance, in two of the sketches, hungry gormandizers are deprived of food as a practical joke. *Id.* at 142–46, 153–76. Also, two stories involve horse or mule trades. *Id.* at 273, 276.

⁸⁴ Justus, *Introduction*, *supra* note 11, at xvi–xvii.

riotous social carnival, shading it with both moral evaluation and humorous indulgence."⁸⁵

Justus corrects some common misunderstandings. He emphasizes that Baldwin paid no attention to regional geography and focused instead on the legal personalities that flocked to the Southwestern frontier states. Baldwin's lawyer-narrator looked back with humorous indulgence on a chaotic epoch where law, far from providing social order, frequently offered just another opportunity for fraud and private gain. "It is this voice," Justus insists, "that makes *Flush Times* distinctive [Baldwin's] real achievement is the creation of a literary self, a persona whose wit, ambivalence, and elegant control are themselves an effective stylistic medium of psychological realism."⁸⁶

According to Justus, Baldwin's work differed significantly from regional antecedents. He contrasts *The Flush Times* with Augustus Longstreet's collection of *Georgia Scenes*: where Longstreet compiled unrelated chapters recounted from the perspective of multiple narrators,⁸⁷ Justus argues that Baldwin's perspective was "intensely specialized, dominated by a single, well-read, semi-autobiographical narrator."⁸⁸

Though clever and appealing, Justus's theory can be questioned on a number of grounds. The general characterization of Baldwin's narrative posture as "whiggish" is problematic. Baldwin modeled his prose style on prominent eighteenth-century English writers, though they were, like Samuel Johnson,⁸⁹ Tories as well as Whigs. Baldwin evokes these writers by his labored rhetoric and tone of detached bemusement as well as by his muscular authorial voice, his frequent narrative digressions, and his desultory allusions to classical learning.

⁸⁵ *Id.* The view that Baldwin's narrative "voice" distinguishes *The Flush Times* is arguably the prevailing view among literary scholars. See also JOHN M. GRAMMER, PASTORAL AND POLITICS IN THE OLD SOUTH 145 (1996); LYNN, *supra* note 3, at 115-20; Mary Ann Wimsatt, *Bench and Bar: Baldwin's Lawyerly Humor*, in THE HUMOR OF THE OLD SOUTH 187, 187-98 (M. Thomas Inge & Edward J. Piacentino eds., 2001); Mary Ann Wimsatt, *Baldwin's Patrician Humor*, in 6 THALIA: STUDIES IN LITERARY HUMOR 43-50 (1983).

⁸⁶ Justus, *Introduction*, *supra* note 11, at xlix-l.

⁸⁷ *Id.* at xxxix. Though Justus says "Longstreet deliberately created two personae," the essays compiled into the single volume appeared originally under several different pseudonyms with distinct personae. See AUGUSTUS BALDWIN LONGSTREET, GEORGIA SCENES, CHARACTERS, INCIDENTS, &C., IN THE FIRST HALF CENTURY OF THE REPUBLIC (2d ed., Augusta, Harper & Bros. 1858) (1835).

⁸⁸ Justus, *Introduction*, *supra* note 11, at xxxix.

⁸⁹ Baldwin especially admired Johnson. See Stewart, *supra* note 4, at 301 (quoting Letter from Joseph G. Baldwin to Sidney Baldwin (Oct. 14, 1854)).

To add confusion, Baldwin himself was politically active in the American Whig party.⁹⁰ His writings expressed Whig attitudes in their elite reserve, contempt for mass ignorance, and disdain for pomposity—especially among parvenus. But what is notably absent from Baldwin is (English) Whig faith in individual virtue and the social optimism and empathy that informed the Whigs' critique of eighteenth-century social norms.

Justus's view that Baldwin's narrator is a product of literary imagination is also open to question. Justus himself concedes that the book's enduring appeal derived largely from its autobiographical quality—that is, from the transparency of the author as narrator.⁹¹ Moreover, Justus acknowledges that the narrator in two chapters is the author himself, not a fictive creation, and he suggests that the fictive narrator in the other chapters is largely indistinguishable from the author.⁹²

Indeed, the narrator's distinctive characteristics—cynical detachment, patrician bemusement, Virginian sophistication, and legally trained analysis—were not the products of creative imagination designed for literary effect. On the contrary, they were direct expressions of the author's voice, expressed for the purpose of elevating the author above the lower class characters whom he described and with whom he associated. This is not to deny the importance of distinguishing the personality of the author from his narrative voice. But it is probably truer to the text to read *The Flush Times* less as a unified whole consolidated by this voice than as a work of mixed medium, an anthology of seventeen articles previously published in the *Southern Literary Messenger* plus nine new chapters.⁹³

While Baldwin's detached irony provides sustained ambivalence, there is a further level of outright ambiguity that arises from the uncertain status of his authorial or narrative posture. The failure to appreciate this ambiguity leads to inaccurate generalizations. For example, *The Flush Times* is frequently classified as Southwestern humor, a recognized genre that emerged in the Southern frontier states featuring antics of backwoods characters and generous doses of slapstick humor. But while the characters and events in Baldwin's book are

⁹⁰ See Malcolm C. McMillan, *Joseph Glover Baldwin Reports on the Whig National Convention of 1848*, 25 J. S. HIST. 366, 367 (Aug. 1959). Baldwin was a delegate to the Whig National Convention in Philadelphia in 1848. *Id.* Lynn argues that Baldwin and all other Southwestern humorists were strong advocates of Whig policy and determined critics of Jacksonian Democracy. LYNN, *supra* note 3, at 56–57.

⁹¹ Justus, *Introduction*, *supra* note 11, at xxxvi.

⁹² *Id.*

⁹³ *Id.* at xxv.

located in the Southwest and the author makes frequent use of slapstick humor and stock jokes, the sketches also include ambitious literary productions, and the author deploys satire, irony, and verbal humor, thereby assuming a sophisticated reader—characteristics that do not conform to the conventions of earlier Southwestern humor.

The fact that the book opens with the sketch “Ovid Bolus, Esq.”⁹⁴ probably has promoted the classification of the book as regional humor. That sketch offers a fictional biography of the consummate liar, building humor by describing the subject’s lies in ever more extravagant terms, all contrasting with the narrative prose of a professional eulogy: “Bolus was a natural liar, just as some horses are natural pacers, and some dogs natural setters.”⁹⁵ Such unmistakable humor, with its allusions to the trappings of masculine recreational pursuits, appealed to a broad readership and contributed to the book’s longevity. Yet Baldwin also penned passages that were—and were once read to be—historically accurate recollections. Long sketches of two public servants, “Hon. S.S. Prentiss” and “Hon. Francis Strother”⁹⁶ were largely devoid of the comic techniques prevalent elsewhere in the book. In the former, Baldwin pays literary homage to the prominent Mississippi jurist Sargent S. Prentiss (1808–50).⁹⁷ The following passage gives the flavor:

He [S.S. Prentiss] had all those qualities which make us charitable to the character of Prince Hal, as it is painted by Shakspeare [sic],

⁹⁴ Stewart maintained that the sketch was drawn from life. Stewart, *supra* note 4, at 75, 215. Though Stewart did not identify any source, he was probably crediting the claim by Baldwin’s brother Cornelius. Cornelius claimed to have known Ovid Bolus and claimed he was a South Carolina native who migrated to Mississippi and represented Kemper County in the legislature. C. Baldwin, *Memoir*, *supra* note 16, at 12 (“I knew Bolus personally and can testify to the fidelity of the sketch.”). Justus assumes that the character—and name—was fiction. Justus, *Introduction*, *supra* note 11, at xx (suggesting Baldwin meant to play on the meaning of bolus as a medicinal pill). If fiction, the more obvious etymology would seem to be the meaning of “bolus” as a piece of chewed up food. The name is unusual, but a web search identifies a small number of Boluses currently living in Alabama and none in Mississippi.

According to Baldwin’s brother, the character of Mr. Blass in “Jonathan and the Constable” was based on Baldwin’s law partner Jonathan Bliss, and Judge Oppelt was a judge residing in DeKalb, Mississippi. C. Baldwin, *Memoir*, *supra* note 16, at 12–13. There are occasions where Baldwin seems clearly to make up names—such as Caesar (“Sar”) Kasm—i.e., “sarcasm”—for a vituperative lawyer. See BALDWIN, *supra* note 2, at 25.

⁹⁵ BALDWIN, *supra* note 2, at 3.

⁹⁶ *Id.* at 197–222, 250–63.

⁹⁷ See *id.* at 197–222. Prentiss was a lawyer and Congressman from Mississippi. WILLIAM JENNINGS BRYAN & FRANCIS WHITING HALSEY, *THE WORLD’S FAMOUS ORATIONS* 218 (Funk & Wagnalls Co. 1906). Much admired as an orator, his 1835 ode *On the Death of Lafayette* was included in older anthologies. *Id.*

even when our approval is not fully bestowed. Generous as a prince of the royal blood, brave and chivalrous as a knight templar, of a spirit that scorned every thing mean, underhanded or servile, he was prodigal to improvidence, instant in resentment, and bitter in his animosities, yet magnanimous to forgive when reparation had been made, or misconstruction explained away. There was no littleness about him. Even towards an avowed enemy he was open and manly, and bore himself with a sort of antique courtesy and knightly hostility, to which self-respect mingled with respect for his foe, except when contempt was mixed with hatred; then no words can convey any sense of the intensity of his scorn, the depth of his loathing.⁹⁸

There is a danger of misreading this passage as ridiculing the pompous prose of nineteenth-century literary eulogies. Baldwin's laconic oratory was singled out for special praise by contemporaries. One wrote, "I have encountered nothing superior in the English language to Judge Baldwin's essay on the life of S.S. Prentiss. It is a dense repertoire of salient thought enveloped in spotless Saxon robe."⁹⁹ Baldwin sought to achieve objectivity by supplementing such rhetorical flights with occasional descriptions of the subject's failings or character flaws.

In addition to the homage to S.S. Prentiss, Baldwin's sketch of Hon. Francis Strother was known to his contemporaries to be a laudatory portrait of the prominent Alabama public servant Francis Strother Lyon.¹⁰⁰ The portrait is not uniformly flattering because its subject is depicted engaging in legal errors and succeeds in restoring credit to the state by hunting down absent debtors and raising revenue by selling speculative bonds.¹⁰¹ Where Baldwin compared Prentiss to Prince Hal, he compares Strother to Falstaff who "turned diseases to commodity."¹⁰² Moreover, what begins as a serious biography devolves into stock ethnic humor when Strother asks a drunk Irishman to identify a paper, and the witness acknowledges, "Sure, yes—it's mine, Mither Strother, I lost it meself, and where is the \$5 bill I put

⁹⁸ BALDWIN, *supra* note 2, at 198.

⁹⁹ Howard, *supra* note 48, at 138.

¹⁰⁰ Justus, *Introduction*, *supra* note 11, at xxiii (observing that profile of Strother is the only lawyer in book offered as model). See also Bert Hitchcock, *Introduction to BALDWIN, FLUSH TIMES* (Ala. ed.), *supra* note 8, at x.

¹⁰¹ BALDWIN, *supra* note 2, at 263.

¹⁰² *Id.* (misquoting WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY THE FOURTH* act 1, sc. 2.).

in it?"¹⁰³ Yet none of this prevented the subject from recognizing himself and being flattered by the portrait.¹⁰⁴

If the Irish jokes in the sketch on Strother illustrate the danger of misconstruing Baldwin's humor as history, other essays illustrate the risk of reading his history as humor. It is uncertain how nineteenth-century readers construed what appears today to be humorous hyperbole. Baldwin's chapter on the character of Virginians was reproduced in two anthologies.¹⁰⁵ The essay begins as an earnest homage to the patriotism of native Virginians but quickly devolves into caricature.

There is nothing presumptuously froward in this Virginianism. The Virginian does not make broad his phylacteries and crow over the poor Carolinian and Tennesseian. He does not reproach him with his misfortune of birthplace. No, he thinks the affliction is enough without triumph.¹⁰⁶

One anthology that selected this sketch emphasized that Baldwin's "sketches have the merit of fidelity to truth as well as local color,"¹⁰⁷ and another anthology reprinted only the opening paragraphs of the sketch, preventing readers from appreciating Baldwin's sustained exaggeration.¹⁰⁸

The failure to appreciate the ambiguity of Baldwin's narrative posture has resulted in problematic readings. On the one hand, some scholars too readily assume the identity of author and narrator and similarly assume the veracity of author and narrator. Although the narrator or narrators recount experiences about themselves that are demonstrably false as applied to Baldwin,¹⁰⁹ this has not prevented readers from concluding erroneously that Baldwin had no formal education or that his study of law was limited to reading Blackstone.¹¹⁰ On the other hand, more recent critics, overreacting to these naïve

¹⁰³ BALDWIN, *supra* note 2, at 261. For other humor based on drunk Irishmen, see *id.* at 271-72, 275.

¹⁰⁴ Stewart, *supra* note 4, at 257.

¹⁰⁵ LOUISE MANLY, SOUTHERN LITERATURE FROM 1579-1895: A COMPREHENSIVE REVIEW, WITH COPIOUS EXTRACTS AND CRITICISMS 294-96 (Richmond, B.F. Johnson Publishing Co. 1895); ODDITIES IN SOUTHERN LIFE AND CHARACTER, *supra* note 7, at 92-124.

¹⁰⁶ BALDWIN, *supra* note 2, at 74-75.

¹⁰⁷ ODDITIES IN SOUTHERN LIFE AND CHARACTER, *supra* note 7, at 92.

¹⁰⁸ MANLY, *supra* note 105, at 87.

¹⁰⁹ See BALDWIN, *supra* note 2, at 20-46. The humorous essay, "My First Appearance at the Bar," is set in Alabama, while Baldwin first practiced law in Mississippi. See *supra* note 23.

¹¹⁰ E.g., William A. Owens, *Introduction* to JOSEPH G. BALDWIN, THE FLUSH TIMES OF ALABAMA AND MISSISSIPPI (Louis M. Hacker ed., Sagamore Press 1957) (1853).

readings, have attributed a level of literary sophistication to Baldwin that he did not claim, and they have failed to see features of the author's own personality in the narrator's ambivalence and dissemblance.

B. Simon Suggs, Jr. and the Case of the Vindictive Publisher

Baldwin was himself aware of the equivocating role of the professional writer. It is, indeed, a central theme of the most notoriously "fictional" sketch in *The Flush Times*—"Simon Suggs, Jr., Esq.: A Legal Biography."¹¹¹ The neglect of Baldwin's studied ambivalence has resulted in curious misunderstandings. For example, *The Cambridge History of English and American Literature* observes, "Unlike some of the books of his time, [*The Flush Times*] does not degenerate into mere horse-play or farce. We may still find interest in the character[] of Simon Suggs, Jr., Esquire . . . a good trader and the mean boy of the school."¹¹²

This critical judgment is curious, because Baldwin designed Suggs, Jr. precisely as a farce. Modeled as the son of a fictional character, well known to Baldwin's readers, Baldwin refers explicitly to the author of his literary prototype when young Suggs describes the engraved portrait of his father in "Jonce Hooper's book."¹¹³ Baldwin's account of young Suggs's antics included the invention of a device that blew the fingers off his schoolmaster¹¹⁴ and the son's cheating at cards against his own father in a scene that was depicted in one of the four original illustrations.¹¹⁵

The damning biographical sketch of Suggs, Jr. is preceded by correspondence with the editor of *The Jurist-Maker* in the City of "Got-Him."¹¹⁶ This editor writes to Suggs, Jr. and explains that the monthly periodical exists "for the purpose of supplying a desideratum in American Literature, namely, the commemoration and perpetuation

¹¹¹ See BALDWIN, *supra* note 2, at 114.

¹¹² 16 THE CAMBRIDGE HISTORY OF ENGLISH AND AMERICAN LITERATURE: AN ENCYCLOPEDIA IN EIGHTEEN VOLUMES pt. XIX, § 8 (A.W. Ward et. al. eds., 1907–1921), available at <http://www.bartleby.com/226/1008.html>.

¹¹³ BALDWIN, *supra* note 2, at 118–19. Baldwin's Suggs is the son of Captain Simon Suggs, a fictional scoundrel who was the subject of popular humorous stories by Hooper, an Alabama author whose work probably inspired Baldwin. See JOHNSON JONES HOOPER, *THE ADVENTURES OF CAPTAIN SIMON SUGGS* (Philadelphia, Carey & Hart 1845).

¹¹⁴ BALDWIN, *supra* note 2, at 126–27.

¹¹⁵ *Id.* at 128–29.

¹¹⁶ *Id.* at 114–21. Washington Irving popularized "Gotham" as a nickname for New York in the early nineteenth century. See Joseph Berger, *Tracing a Hudson Valley Legend in Spain*, N.Y. TIMES, June 10, 2007, at WC1.

of the names, characters, and personal and professional traits and histories of American lawyers and jurists."¹¹⁷ The letter solicits a biographical essay and photograph for publication.¹¹⁸ In response, Suggs, Jr. sends an illegible essay written by a friend and suggests that *The Jurist-Maker* copy the engraving of his father from Hooper's book and alter it to make the subject appear younger.¹¹⁹

The editor replies regretfully that the publisher cannot copy the engraving because it is under copyright.¹²⁰ He repeats the request for a photograph.¹²¹ Finally, he adds a postscript, requesting a mere one hundred fifty dollars for publishing the biographical entry.¹²²

Suggs, Jr. responds, "[Y]ou say I can't get in your book without paying one hundred and fifty dollars—pretty tall entrants fee! I suppose though children and [n-word] half price—I believe I will pass."¹²³

Suggs's refusal to pay the fee ends his correspondence with the publisher and immediately precedes the damning biographical entry. The whole point of the introductory exchange is to suggest that the vilification of the subject was the publisher's revenge for the subject's failure to pay the extortionate fee.

The humor thus operates on several levels. The farcical depiction of Suggs's life story provides a sequel to Hooper's stories of Captain Suggs and fits neatly into the genre of Southwestern humor. The exposure of the narrator's bias renders the entire account unreliable—and further raises questions about Hooper's stories. The implicit critique of vanity publishing raises questions about the veracity of professional eulogies that Baldwin himself authored—and included elsewhere in *The Flush Times*.

III. GRANDFATHER OF LAW AND LITERATURE

The Flush Times ranks as the first major work of legal fiction for two reasons. First, the book stood without peer in the nineteenth century in its pervasive legal focus, lawyer narrators, legal themes, and cast of over fifty legal characters. Second, the book established publishing history in the last decades of the nineteenth century when it was marketed as fiction to a distinctively legal readership.

¹¹⁷ BALDWIN, *supra* note 2, at 114.

¹¹⁸ *Id.* at 117–18.

¹¹⁹ *Id.* at 118–19.

¹²⁰ *Id.* at 119.

¹²¹ *Id.*

¹²² *Id.* at 119–20.

¹²³ BALDWIN, *supra* note 2, at 120.

The Flush Times began public life on the lists of the prominent New York publisher D. Appleton and Company. Appleton printed the first edition in 1853.¹²⁴ In 1854, Appleton published a “second edition,” a “seventh edition,” a “ninth thousand” edition, and a “tenth thousand” edition—in that order.¹²⁵ The 1854 editions corrected a few printing errors and incorporated two sets of changes submitted by Baldwin.¹²⁶ In 1856 Appleton published the “eleventh thousand” edition. This edition removed the original engraved illustrations, and its plates or copies of them were used for all subsequent editions until 1908.¹²⁷

Early sales were good but modest in comparison to some of the best sellers on Appleton’s list.¹²⁸ For example, in 1853 Appleton published its first book by a woman writer, Mary J. Holmes. Holmes’s books went on to sell in the hundreds of thousands.¹²⁹ In 1855 Appleton republished Noah Webster’s *Speller* (1783).¹³⁰ Appleton eventually devoted one entire press to this venerable title, and its total sales exceeded thirty-five million copies by 1890.¹³¹

¹²⁴ *Id.* at title page.

¹²⁵ The bibliographic confusion of the sequence of these editions has been aggravated by the erroneous claim that an error that still appears in the “ninth thousand” edition was corrected in the “seventh edition.” See *infra* note 267. The sequence can be authoritatively reconstructed from minor changes to the plates. See *infra* appendix. Appleton did not clearly designate their sequence. The “seventh edition” was possibly an erroneous designation of the seventh thousand printing or edition as no known copies of designated third, fourth, fifth or sixth editions have been found. It is possible, however, that Appleton counted multiple printings of identical copies of the second edition as “editions.” This appears consistent with other titles. For example, ads at the rear of the ninth thousand edition contain a notice for the “sixth edition (seven thousand copies sold)” of L. Gaylord Clark’s, *Knick-Knacks* and for a “now ready, the tenth thousand” edition of Maria J. McIntosh’s, *The Lofty and the Lowly*. I have found no cataloguing information for either of these titles that indicates any imprints other than the editions.

¹²⁶ See *infra* appendix. The Appleton publishing archives held at Indiana University and Columbia do not index any contract, correspondence, manuscript, or other material related to Baldwin or his titles.

¹²⁷ After 1856 Appleton—and later its successor publishers—made no changes to the plates. See *id.* Indeed, they even retained the “eleventh thousand” designation on the title page, preventing a precise calculation of the number of copies printed. See *id.*

¹²⁸ Appleton’s official histories make no reference to Baldwin. GRANT OVERTON, *PORTRAIT OF A PUBLISHER BY GRANT OVERTON AND THE FIRST HUNDRED YEARS OF THE HOUSE OF APPLETON 1825–1925* (1925); *THE HOUSE OF APPLETON-CENTURY* (1936). Nor does GERARD R. WOLFE, *THE HOUSE OF APPLETON: THE HISTORY OF A PUBLISHING HOUSE AND ITS RELATIONSHIP TO THE CULTURAL, SOCIAL, AND POLITICAL EVENTS THAT HELPED SHAPE THE DESTINY OF NEW YORK CITY* (1981).

¹²⁹ OVERTON, *supra* note 128, at 41.

¹³⁰ *Id.*

¹³¹ *Id.* at 44.

Historical accounts of the publication history of *The Flush Times* have significantly underestimated its commercial success. While scholars have counted up to ten editions of the work in the nineteenth century, there were in fact twenty-five separate editions of the book in the nineteenth century.¹³² The total number of copies printed was significant—probably more than 15,000.¹³³ The regional market for *The Flush Times* remains unknown, but its sale was not limited to the South. Like other backwoods writers, Baldwin's humor appealed to a national readership and continued throughout the nineteenth century to appeal to white audiences nostalgic first for the "flush times" of Jacksonian excess and later for the days of the antebellum South. Appleton reissued the book during the Civil War at a time when commercial markets for books in Southern states were closed,¹³⁴ proving that Baldwin's views of slavery and African Americans did not prevent the book from continuing to find buyers in the North. President Lincoln voiced his admiration for it when he met with Baldwin in 1863.¹³⁵ During the post-war years, when Appleton developed a reputation for publishing memoirs of United States military heroes, including those of Generals Grant, Sherman, and Sheridan,¹³⁶ the publishing house still kept Baldwin's title in print, issuing seventeen separate printings up to 1898.¹³⁷

Nevertheless, in the years after the Civil War, a change in publishers indicates a significant shift in the marketing of the book. While Appleton continued to distribute the work, by the 1870s, the San Francisco publisher Sumner Whitney took the lead in publishing

¹³² See *infra* appendix.

¹³³ This estimate is based on the supposition that printings after the 1866 edition were for 200 copies each, which is in turn based on the fact that there are relatively few copies catalogued of some of the later imprints.

¹³⁴ I am assuming that the 1861 imprint was released in the fall. The 1865 imprint, if released in the fall, would have appeared after the formal end of the war, but plans to reissue the title would obviously have occurred earlier.

¹³⁵ See *supra* note 4 and accompanying text.

¹³⁶ See OVERTON, *supra* note 128, at 54–55. Appleton published other Union military memoirs. See *id.* at 55. It also published JEFFERSON DAVIS, *THE RISE AND FALL OF THE CONFEDERATE GOVERNMENT* (1881), which is a defense of the Confederate rebellion, and JOSEPH E. JOHNSTON, *NARRATIVE OF MILITARY OPERATIONS DIRECTED DURING THE LATE WAR BETWEEN THE STATES* (1874), which is a military memoir by former Confederate general. *Id.*

¹³⁷ D. Appleton editions bear imprint dates for 1853, 1854 (2d ed.), 1854 (7th ed.), 1854 (9th thousand ed.), 1854 (10th thousand ed.), 1856 (11th thousand ed.), 1859, 1861, 1865, 1866, 1870, 1871, 1872, 1873, 1891, 1894, and 1898. For bibliographic details, see Michael H. Hoffheimer, *Cataloguing a Contested Classic: Joseph Baldwin's The Flush Times of Alabama and Mississippi (1853)*, LEGAL REF. SERVICES Q. (forthcoming 2009).

it.¹³⁸ Whitney specialized in legal titles, and it promoted *The Flush Times* with a short list of light or entertaining works on legal themes¹³⁹—written by and marketed to lawyers. It and its successor, Bancroft-Whitney, published separate printings up to 1906.¹⁴⁰

Publication was then assumed in 1908 by a small publisher in Americus, Georgia, that, like Whitney, specialized in legal publications.¹⁴¹ Beginning in 1957, paperback textbook editions fed a growing market for courses in history, regional studies, and American literature.¹⁴² In 1987 and 2005, the title was reissued by presses associated with two state universities in the South—Louisiana State University and the University of Alabama.¹⁴³

¹³⁸ *See id.*

¹³⁹ This is evident from ads at the back of the Whitney editions that target lawyers by promoting entertaining works by lawyers on legal themes.

¹⁴⁰ Sumner Whitney imprint years are 1876 and 1883. Sumner Whitney also co-published an undated edition (*ca.* 1878) with the Boston publisher Houghton Osgood. Bancroft-Whitney published separate printings with imprint years 1887, 1889, 1891, 1895, 1899, 1901, and 1906. For bibliographic details, see Hoffheimer, *supra* note 137.

¹⁴¹ JOSEPH G. BALDWIN, *THE FLUSH TIMES OF ALABAMA AND MISSISSIPPI: A SERIES OF SKETCHES* (Americus Book Co. [no date]). The Library of Congress cataloguer gave this a date of 1908, which is consistent with the binding. The Americus edition was printed from new plates that were line-by-line copies of the 11th thousand edition plates, correcting some printing errors in prior editions and introducing a few new ones. *See infra* appendix.

¹⁴² JOSEPH G. BALDWIN, *THE FLUSH TIMES OF ALABAMA AND MISSISSIPPI: A SERIES OF SKETCHES* (Sagamore Press, Inc. 1957). This edition was reprinted by Hill and Wang in 1964 and 1967. For bibliographic details, see Hoffheimer, *supra* note 137.

¹⁴³ *See supra* note 8 and accompanying text.

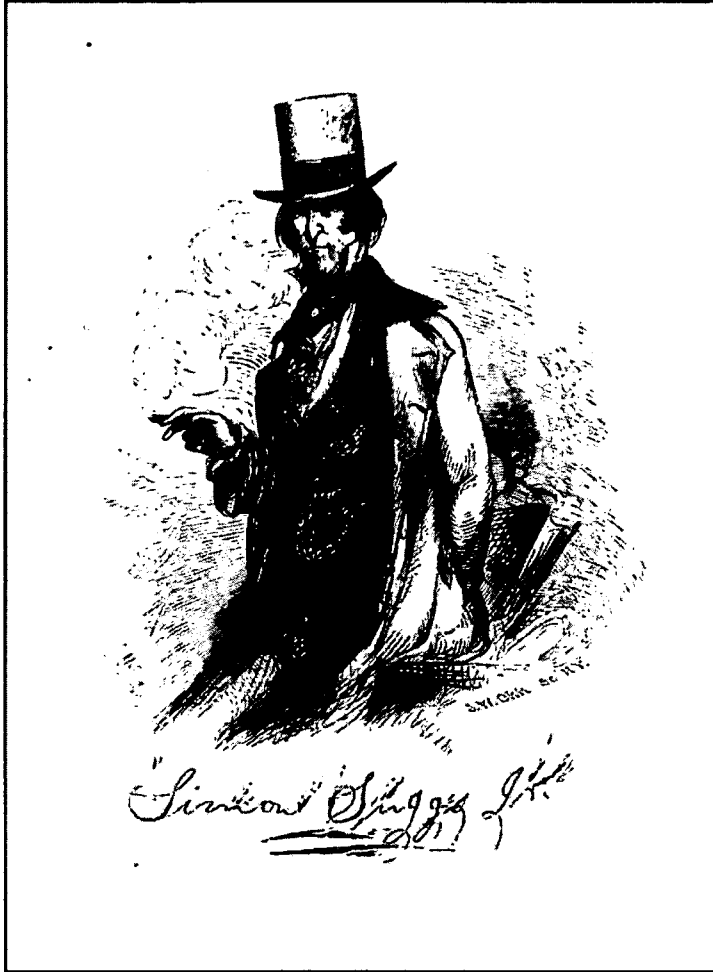


Figure 2: Frontispiece to the first edition.

IV. ILLUSTRATIONS

A. *First Series*

The early Appleton editions (1853–54) included four handsome illustrations. John McLenan prepared original designs, from which four different commercial artists cut wood engravings.¹⁴⁴ The frontispiece featured a densely worked, evocative portrait of Simon Suggs, Jr. [figure 2].¹⁴⁵ Facing page 43 [figure 3] above the caption “The Cure of Poetry” was an engraved illustration of the scene where the venerable lawyer “Sar Kasm” destroyed a young lawyer’s credibility by reading some of his published poetry in open court.¹⁴⁶ Facing page 98, an engraving captioned “The Schoolmaster Abroad” was a portrait of a pompous young man working as a schoolteacher, whip in hand, after suffering financial ruin.¹⁴⁷ Facing page 129, an engraving captioned “Turning the Jack” depicted Simon Suggs, Jr. cheating in a game of cards with his father.¹⁴⁸ The illustrations deteriorated visibly over time and were difficult to print. For this reason, or perhaps to save costs, Appleton omitted the illustrations with the 1856 edition.¹⁴⁹

B. *Second Series*

In 1883 Sumner Whitney reintroduced reproductions of three of the four illustrations.¹⁵⁰ The fine original portrait of Suggs that had proved especially difficult to print was not included. A copy of the wood engraving that originally faced page 43 served as the frontispiece [figure 4], and copies of the engravings facing pages 98 and

¹⁴⁴ The illustrations identify the original artist on all the illustrations as “J. McL.” They identify the wood engraver for the frontispiece as “J.W. Orr” of New York; the engraver of the illustration facing page 43 as Swinton and Fay; the engraver of the illustration facing page 98 as S.F. Baker of New York; the engraver of the illustration facing page 129 as N. Orr. These persons are further identified as John McLenan, John William Orr, Samuel F. Baker and Nathaniel Orr at the website accompanying the University of Michigan digitized copy. See *supra* note 9. John McLenan became a prominent book illustrator for American editions of Dickens and Wilkie Collins. F. Weitenkampf identified him as “one of the most noteworthy” of post-Civil War humorous artists. AMERICAN GRAPHIC ART 228 (2d ed., New York, The MacMillan Co. 1924).

¹⁴⁵ BALDWIN, *supra* note 2, illustration facing 129.

¹⁴⁶ *Id.* at illustration facing 43.

¹⁴⁷ *Id.* at 99.

¹⁴⁸ *Id.* at illustration facing 129.

¹⁴⁹ See *supra* note 127 and accompanying text.

¹⁵⁰ See *supra* note 140 and accompanying text.

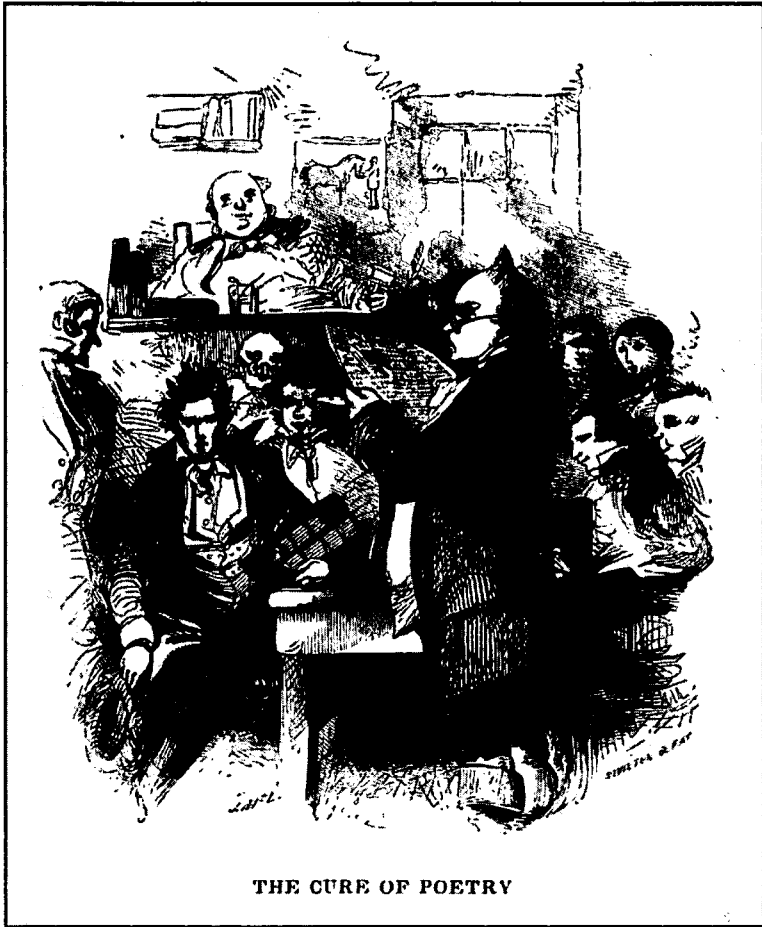


Figure 3: Illustration facing page 43 (first edition).



Figure 4: Frontispiece after 1887 (copied from original engraving facing page 43 in first edition).

129 were bound in the same location in the text as the originals.¹⁵¹ The new illustrations were included in all Bancroft-Whitney and Appleton editions (1883–1906).¹⁵² Some minor deterioration is visible in the later editions. Although the creation of new illustrations has not been previously noted in the literature, the 1883 illustrations were unsigned and differed visibly in detail from the originals. Mimicking wood engravings, the new illustrations were probably photo-mechanically reproduced copies of ink drawings.¹⁵³ The new artwork, evoking the dated technique of the originals, would have served to reinforce the nostalgic appeal of the book.

V. BALDWIN'S LITERARY DEPICTION OF AFRICAN AMERICANS

The great challenge for understanding the enduring appeal of Baldwin's writing is grappling with the way in which he both codified and celebrated an extreme racial hierarchy. This hierarchy identified the gendered male narrator and his reader with the perspective of the elite white; together the author and reader aspired as social observers to rise above the need to engage in productive labor and joined in mirthful observation of the foibles of legal practitioners. In language certain to provoke revulsion in readers today, Baldwin described enslaved blacks as existing far outside the realm of the white subjects.¹⁵⁴ He adopted narrative techniques that denied to enslaved people the features of human subjectivity and deprived them as characters of the capacity of evoking empathy.

In turning to Baldwin's treatment of race, this Article advances three arguments. First, race is a central part of Baldwin's vision that cannot be conveniently ignored. Second, Baldwin gives voice to a particularly extreme vision of race that achieved hegemony among

¹⁵¹ See *id.*

¹⁵² See *id.*

¹⁵³ For the conclusive identification of the original 1853 illustrations as wood engravings I am indebted to Dr. Paul Goldman. My best guess is that the 1883 images were electroplate copies of plates made of line etchings (on zinc or copper) from photomechanically reproduced copies of ink drawings. This guess is supported partly by observation and partly by chronology: photomechanical reproduction technology became available mid-century as did the technology for preparing electrotype copies of plates. See generally CHARLES W. HACKLEMAN, COMMERCIAL ENGRAVING AND PRINTING: A MANUAL OF PRACTICAL INSTRUCTION AND REFERENCE COVERING COMMERCIAL ILLUSTRATING AND PRINTING BY ALL PROCESSES FOR ADVERTISING MANAGERS, PRINTERS, ENGRAVERS, LITHOGRAPHERS, PAPER MEN, PHOTOGRAPHERS, COMMERCIAL ARTISTS, SALESMEN, INSTRUCTORS, STUDENTS, AND ALL OTHERS INTERESTED IN THESE AND ALLIED TRADES (1921) (discussing print technology available in nineteenth century).

¹⁵⁴ See *infra* notes 171–99 and accompanying text.

Southern slaveholders in close proximity to the constitutional crisis of 1850. Third, the fantasies associated with this extreme vision anticipated the forms of terror routinely inflicted on freed slaves during the reign of lynch violence. Finally, this Article raises disturbing questions, which it does not answer: How could such depictions become widely accepted as recreational literature consumed by legal professionals? Did the nostalgic vision of racial hierarchies facilitate a lack of sympathy and moral engagement that led white lawyers to tolerate pervasive lynch violence under the regime of enforced inequality?

A. *Flush Times*

The title of *The Flush Times of Alabama and Mississippi* announced that its contents related to the boom and bust years of the Jacksonian era.¹⁵⁵ The “flush times” denoted the boom economy up to the crash of 1837, “a period constituting an episode in the commercial history of the world—the reign of humbug, and wholesale insanity, just overthrown in time to save the whole country from ruin.”¹⁵⁶ The “flush times” also applied, ironically, to the legal woes and lawsuits resulting from the depression, “a merry time for us [legal] craftsmen.”¹⁵⁷

While describing the late 1830s and early 1840s, the book is itself a product of the early 1850s and documents the ways in which literary culture was enlisted by white slaveholders, at a slightly later period, when the conflict over slavery reached its highest intensity.¹⁵⁸ The national conflict was accompanied by increasing sectional animosity, and Baldwin repeatedly invokes such animosity as the source for humor. He presents Virginians’ hostilities towards New Englanders with

¹⁵⁵ It is uncertain whether the title originated with the author or the editor. Headings accompanying the original journal articles designated those relating to Alabama as “Flush Times of Alabama” and those relating to Mississippi as “Flush Times of Alabama and Mississippi.” McDermott, *supra* note 12, at 252–55.

¹⁵⁶ BALDWIN, *supra* note 2, at 91.

¹⁵⁷ *Id.* at 240.

¹⁵⁸ The Compromise of 1850 was preceded by the Nashville Convention and accompanied by state constitutional conventions in the South in which slaveholders openly canvassed the issue of secession and demanded a constitutional guarantee of slavery. See JOURNAL OF THE CONVENTION OF THE STATE OF MISSISSIPPI AND THE ACT CALLING THE SAME 47 (Jackson, Thomas Palmer 1851). Baldwin’s composition of the original sketches coincided closely with the calling of the Mississippi state constitutional convention of 1851. This body recommitted Mississippi to participation in the federal union and acknowledged that secession was not sanctioned by the Constitution. *Id.* But it identified seven grounds that would justify secession, all of which related to federal interference with the rights of slaveholders. *Id.*

sardonic mirth,¹⁵⁹ depicts an armed assault on a Yankee schoolmaster as slapstick¹⁶⁰ and caricatures the reforming zeal of a female school-teacher from Connecticut.¹⁶¹

Baldwin's writings leave no doubt as to the awareness of Southern whites in the 1850s of the brutal facts of slavery. Baldwin acknowledged—without regret—the genocide that occurred during the Middle Passage.¹⁶² He depicted—with amusement—the bull whip as the customary implement of the overseer.¹⁶³ This was fully compatible with Baldwin's embrace of the view ascendant among defenders of slavery that, as Mississippi Congressman L.Q.C. Lamar proclaimed, black slavery was not a political compromise but the highest form of civilization.¹⁶⁴

With its focus on events and characters in the legal community, it is not surprising that African Americans play no prominent role in *The Flush Times*. Yet almost half the sketches contain references to slaves, slavery, or Negroes.¹⁶⁵ Passing references describe the idyllic relationship of master and slave. One describes the fawning sentiments of slaves to their master as “enough to convert an abolitionist.”¹⁶⁶ Two others suggest that slaveholders suffered because they did not force their slaves to work hard enough.¹⁶⁷ Although Baldwin repeatedly described seasonal shortages of certain foods experienced by whites, he referred neither to the continuous low-level starvation

¹⁵⁹ BALDWIN, *supra* note 2, at 75 (“The Virginian is a magnanimous man. He never throws up to a Yankee the fact of his birthplace.”).

¹⁶⁰ *Id.* at 64–66.

¹⁶¹ *Id.* at 290–91.

¹⁶² BALDWIN, PARTY LEADERS, *supra* note 47, at 152 (“[T]hose engaged in the traffic could well afford to sell them at low prices, as they cost nothing but the trouble of stealing and transporting . . . and, allowing for a loss of one half by death on the middle passage [sic], the remainder would bear a handsome profit at one hundred and fifty pounds of tobacco apiece.”).

¹⁶³ BALDWIN, *supra* note 2, at 83.

¹⁶⁴ Lucius Q.C. Lamar, Speech in House of Representatives (Jan. 13, 1858), in EDWARD MAYES, LUCIUS Q.C. LAMAR: HIS LIFE, TIMES, AND SPEECHES 1825–1893, at 609 (Pub. House of the Methodist Episcopal Church, South 1896) (“I would plant American liberty, with Southern institutions, upon every inch of American soil. I believe that they give to us the highest type of civilization known to modern times . . .”).

¹⁶⁵ See BALDWIN, *supra* note 2, at 8, 57, 82–83, 86, 92, 93,,101, 103, 104, 105, 120, 140, 143, 172, 174, 175, 237, 242, 292, 298, 299–303, 307, 312, 319–20, 323.

¹⁶⁶ *Id.* at 103.

¹⁶⁷ *Id.* at 105, 319–20.

suffered by many slaves,¹⁶⁸ nor to the regular practice of slaves absconding with food.¹⁶⁹

Slavery never provides the focal point of narrative interest even when the cause of action in a lawsuit is a disputed title to a slave.¹⁷⁰ But Baldwin's recurring references to slaves—including the existence of property in slaves, the purchase of slaves, the sale of slaves, the conversion of slaves in fraud of creditors, the attachment of slaves to secure a debt, the theft of slaves, the transfer of slaves by gift, and the breaches of warranties in slave sales—all serve to normalize the idea that humans can be property.

B. *The N-Word, Names, and Denial*

Baldwin's sketches document the ways that the n-word was deployed in Southern discourse in the early 1850s—as projected back into the 1830s. Neither Baldwin nor his characters distinguish between African Americans and slaves. No person with the status of free Negro makes an appearance in the book. But Baldwin carefully differentiates the nomenclature that is applied to enslaved blacks. Baldwin himself, both as narrator and as the occasional named character in his own stories, refers consistently to enslaved people as either "slaves" or "negroes."¹⁷¹ He studiously avoids using the n-word himself as narrator, but he does not hesitate to put the n-word in the mouths of his characters on multiple occasions. When he does so, he usually is attempting to achieve comical effect while signifying the lower class status of characters using the n-word.¹⁷² One character, an outsider sympathetic to victims of slavery, cannot bring herself to refer to enslaved blacks as either slaves or Negroes.¹⁷³ Baldwin ridicules her reluctance when she asks obliquely, "[H]ow do they treat *them*?"¹⁷⁴

¹⁶⁸ See, e.g., FREDERICK DOUGLASS, *MY BONDAGE AND MY FREEDOM* 126, 132, 144, 147, 149, 188–89 (Dover Publications, Inc. 1969) (1855).

¹⁶⁹ See, e.g., *CULTIVATION AND CULTURE: LABOR AND THE SHAPING OF SLAVE LIFE IN THE AMERICAS* 291 (Ira Berlin & Philip D. Morgan eds., 1993), LOWELL H. HARRISON & JAMES C. KLOTTER, *A NEW HISTORY OF KENTUCKY* 170–71 (1997) (quoting slaveholders' complaints about enslaved individuals stealing food).

¹⁷⁰ BALDWIN, *supra* note 2, at 312.

¹⁷¹ See, e.g., *id.* at 143 (depicting a scene with a "negro waiter").

¹⁷² See, e.g., BALDWIN, *supra* note 2, at 307 (quoting one character, "The way things are goin' on now, murdering a man will be no better than stealin' a n[word], after a while."); see also *id.* at 120, 323.

¹⁷³ *Id.* at 298.

¹⁷⁴ *Id.*

Baldwin's avoidance of the n-word serves to establish his "patrician" voice. It reinforces the distance that exists between the narrator and the rabble that he describes with amused detachment. The word usage signifies class status among whites—establishing a practice that continues to the present.¹⁷⁵ But Baldwin's word usage does not appear to establish any distance between his own attitude towards African Americans and those lower class whites who use the n-word.¹⁷⁶ On no occasion does Baldwin present a slave character sympathetically. On the contrary, Baldwin derives humor from his narrative lack of sympathy. In one story in which Baldwin identifies himself by name as a character,¹⁷⁷ he is approached for legal advice.¹⁷⁸ Baldwin's client is a low-class white slaveholder; Baldwin suggests the man was overly fond of his slaves and did not work them efficiently.¹⁷⁹ The client asks Baldwin for legal assistance in a claim against another white man who whipped one of the client's slaves.¹⁸⁰ Baldwin refuses absolutely—in a rejoinder that provides the humorous climax of the story.¹⁸¹ In another sketch describing legal practice in the late 1830s, Baldwin sardonically offers the inability to execute an old African American who successfully appealed his capital sentence three times as the most extreme example of the failure of the criminal justice system.¹⁸²

¹⁷⁵ Although the n-word has a long history in political discourse, white politicians aspiring to upper class status avoided it. Professor Kennedy observes that several of the most notoriously racist Southern senators never used the n-word publicly. RANDALL KENNEDY, N[-WORD]: THE STRANGE CAREER OF A TROUBLESOME WORD 9 (2002). While "negro" appears over 1000 times in high court opinions from Alabama and Mississippi from before the Civil War, a Lexis search shows no reported pre-war opinion employing the n-word. In the handful of opinions later in the nineteenth century that use the word, it is always in quotations of evidence at trial. The language adopted in reported decisions of state appellate courts contrasted with trial court practice. It was later documented how trial judges in Georgia and Mississippi routinely asked African American defendants, "Whose n[word] are you?" *Id.*

¹⁷⁶ According to Baldwin's brother, Baldwin used the n-word orally in a joke he related to Daniel Appleton. The word occurred in the punch-line of a joke about a Yankee who moved South and married. When his wife gave birth to a mulatto soon after the marriage, the Yankee consulted a lawyer who opined that there were grounds for divorce. The client protested that he didn't want a divorce but wanted to know if he could "sell the n[word]." C. Baldwin, *Memoir*, *supra* note 16, at 47; Stewart, *supra* note 4, at 283.

¹⁷⁷ BALDWIN, *supra* note 2, at 318.

¹⁷⁸ *Id.* at 321.

¹⁷⁹ *Id.* at 319–20.

¹⁸⁰ *Id.* at 321–23.

¹⁸¹ *Id.* at 323.

¹⁸² *Id.* at 57.

Lack of empathy is communicated through Baldwin's descriptions. The author-narrator provides lavish descriptions of white characters whom he admires.¹⁸³ He even provides a physical description of a white criminal.¹⁸⁴ Such descriptions make no reference to the subjects' race, invariably give them names, and focus on distinguishing features of their faces. In contrast, Baldwin reduces peripheral African American characters to race and never describes their faces. In a variety of contexts, sketches refer in passing to African Americans in ways that emphasize their status as chattel property, financial investments, or objects of lawsuits.¹⁸⁵ *The Flush Times* presents no enslaved person engaged in useful or admirable activity. When it describes a powerful man forcing open a door during a fire and saving the occupants, it makes this man's strength the unwitting cause of death and describes him as "a big buck [N]egro," thus reducing his characteristics to animal traits.¹⁸⁶

Baldwin rarely refers to African American characters by name. The denial of agency to the African American characters, the lack of identifying features, and the failure to name them all contribute to the literary world in which African Americans exist as objects, not as subjects.¹⁸⁷ While denial of subjectivity is inherent in slavery, the vision of *The Flush Times* appears to document a particularly extreme set of racial attitudes that became more widespread in the decades before the Civil War.

The role of enslaved characters in Baldwin's work differs in important ways from their role in earlier Southern literary depictions. *The Flush Times* is often compared to Augustus Baldwin Longstreet's *Georgia Scenes*,¹⁸⁸ the book that established the genre of Southwestern humor and served as a model for Baldwin. Longstreet gently satirized the characters he encountered in rural and small-town Georgia.

¹⁸³ BALDWIN, *supra* note 2, at 201, 215, 251.

¹⁸⁴ *Id.* at 306.

¹⁸⁵ *Id.* at 24, 104, 237, 312.

¹⁸⁶ *Id.* at 174. In Harper Lee's *To Kill a Mockingbird*, the upper-class prosecutor appeals to the racism of white jurors, calling Tom Robinson, the African American defendant, a "big buck." HARPER LEE, *TO KILL A MOCKINGBIRD* 141-48 (1960). Ronald Reagan was reported using the term "young buck" to describe a welfare recipient in a speech to a Southern audience during the 1976 campaign. LOU CANNON, *PRESIDENT REAGAN: THE ROLE OF A LIFETIME* 457 (2000).

¹⁸⁷ Professor Klein notes a similar failure to name enslaved individuals in reported decisions in which they figure as property rather than litigants. Diane J. Klein, *Naming and Framing the "Subject" of Anetbellum Slave Contracts: Introducing Julia, "A Certain Negro Slave," "A Man," Joseph, Eliza, and Albert*, 9 *RUTGERS RACE & L. REV.* 243, 243-44 (2008).

¹⁸⁸ LONGSTREET, *supra* note 87.

A slave owner and a defender of slavery and secession,¹⁸⁹ he did not portray slave society as unjust. Like Baldwin, he inserted the n-word into the mouth of his white characters, though he avoided it as a narrator.¹⁹⁰ Yet unlike Baldwin, Longstreet describes at least two African American characters with real admiration.¹⁹¹ Also unlike Baldwin, the African American characters in Longstreet's work are often named.¹⁹² Abuse by vindictive masters is presented as unfair and ignorant.¹⁹³ Named African Americans can be intelligent—on one occasion even wiser than the narrator.¹⁹⁴ In one passage, a dignified African American even insults Longstreet's narrator, refusing to answer his question about the ownership of a celebrated horse, and asking in turn, "Pray, sir, where were *you* born and brought up?"¹⁹⁵

Longstreet was hardly free of negative views of African Americans. On the contrary, he confines positive attributes of African Americans to a narrow range of expertise regarding domestic matters and horses, and his description of dignified African Americans is probably commingled with irony. But comparing Baldwin and Longstreet demonstrates that pro-slavery Southern writers adopted a range of strategies in depicting African Americans. *The Flush Times* is extreme in its denial of agency, personality, and admirable features to slaves. This is, perhaps, not surprising given that the work coincides chronologically with the rise of the most extreme ideological justifications for slavery, grounded in the negative visions of African Americans' humanity. What is historically interesting is that Baldwin's literary expression of this vision appealed to a broad national audience. *The Flush Times* was published by a prominent New York firm and reprinted repeatedly, on both coasts, throughout the nineteenth century.¹⁹⁶ Baldwin himself commented upon arrival in California that

¹⁸⁹ See JOHN DONALD WADE, *AUGUSTUS BALDWIN LONGSTREET: A STUDY OF THE DEVELOPMENT OF CULTURE IN THE SOUTH* 117 (1924).

¹⁹⁰ LONGSTREET, *supra* note 87, at 47.

¹⁹¹ Longstreet offers a sentimental eulogy, what he himself calls "a short tribute of respect" for the African American fiddler Billy Porter. *Id.* at 13. He also describes the respect accorded by the community to an unnamed African American horse trainer. *Id.* at 153–54.

¹⁹² See, e.g., *id.* at 13 (Billy Porter), 101–05 (Flora, Clary, Billy), 130 (Rose), 169 (Issac).

¹⁹³ *Id.* at 130–33. The white mother is presented unsympathetically when she wrongly blames the enslaved black caregiver for the child's distress and when she repeatedly strikes the caregiver. *Id.* The ignorant mother then dopes the child with narcotics before the cause of the distress is discovered by the father. *Id.*

¹⁹⁴ Isaac knows that the narrator's horse is unqualified to participate in a foxhunt. *Id.* at 169.

¹⁹⁵ *Id.* at 154 (emphasis added).

¹⁹⁶ See *supra* notes 124–43 and accompanying text.

the book “was as popular here as it was in Alabama; [there is] hardly an intelligent man here that has not read it—i.e., of the South and many from the North.”¹⁹⁷

The published reviews and other discussions of *The Flush Times* provide limited evidence of readers’ responses to the work. However, they leave little doubt that Baldwin’s literary representations, denying human attributes to African Americans, were sufficiently normal and acceptable to (white) readers that readers were largely blind to their presence—or accepted them as funny. Thus one reader in 1901 singled Baldwin out for praise for his empathy towards all his characters: “A broad and genuine sympathy is manifest throughout.”¹⁹⁸ This reader did not hesitate to include the sketch of Hele among “characters and caricatures that commend themselves with overflowing fun and merriment.”¹⁹⁹

C. *Samuel Hele and Baldwin’s Critique of Uncle Tom’s Cabin*

To readers in the twenty-first century, the most troubling sketch in *The Flush Times* is “Samuel Hele, Esq.: A Yankee Schoolmistress and an Alabama Lawyer.” The story culminates in the torture-murder of a slave, an episode that Baldwin meant to be humorous. Most historians and critics have passed over the sketch in polite silence,²⁰⁰ while a few passing references to it reveal that critics have in some cases fundamentally misunderstood the narrated events—and their significance.²⁰¹ Published without a word of explanation by both the University of Alabama (2005) and Louisiana State University

¹⁹⁷ Letter from Joseph G. Baldwin to Sidney Baldwin (Nov. 21, 1854), *supra* note 16.

¹⁹⁸ Mellen, *supra* note 79, at 179.

¹⁹⁹ *Id.* at 180–81.

²⁰⁰ Two editors omit the chapter from their revised edition without explanation. See e.g., JOSEPH G. BALDWIN, *FLUSH TIMES* (Jack B. Hood & Benjamin A. Hardy, Jr. eds., Creekside Seven Enter., 1997) (1853). Important discussions of the chapter are Jonathan Arac, *Narrative Forms*, in 2 *THE CAMBRIDGE HISTORY OF AMERICAN LITERATURE* 607, 637–38 (Sacvan Bercovitch ed., 1995); Scott Romine, *Darkness Visible: Race and Pollution in Southwestern Humor*, in *THE HUMOR OF THE OLD SOUTH* 76–77 (M. Thomas Inge & Edward J. Piacentino eds., 2001) (discussing perceptively how Baldwin’s sketch of Hele correlates “deviant femininity” to the critique of slavery).

²⁰¹ Mellen suggests that Hele actively drove the schoolteacher from the South by describing actual criminal events. Mellen, *supra* note 79, at 181. Others assume that Hele lied about events as part of his participation in the scheme to drive the schoolteacher from the South. See, e.g., text *infra* at note 249. Both miss the ambiguity about the events that stems from uncertainty about Hele’s credibility.

(1987),²⁰² the sketch is all the more horrific for the humor it was intended to produce.

Despite the scholarly neglect, the sketch of Hele was of particular importance to Baldwin. It is by far the longest of the new material that Baldwin added to the book,²⁰³ and the narrator's hyperbolic opening words to the sketch allude to the felt need to include the sketch in the book: "I cannot omit Sam from my gallery of daubs. I should feel a sense of incompleteness, grieving the conscience with a feeling of duty undischarged."²⁰⁴

The lawyer Samuel Hele provides both the subject of the portrait and the source of narrated events in the box story. Hele describes the murder of a slave in a frame story that is presented in a manner that suggests the events are so outrageous that no reasonable person would believe them.²⁰⁵ Although narrative ambivalence was intended to provide additional humor, it must be acknowledged that Baldwin intended for the description of the framed incident itself to be humorous as well. In other words, even though Baldwin suggests the murder may not have occurred, his depiction of the episode was meant to be funny. This is clear by the outlandish exaggeration with which the incident is recounted by Hele, a crusty, carping lawyer, to "Miss Charity Woodey," a gullible Northern schoolmistress.²⁰⁶

Although Woodey's gullibility is the trait that is essential for the plot's denouement, Baldwin cannot restrain himself from describing her more broadly in negative terms. The author-narrator inserts his personal authority at this point. He has seen the woman and can attest that she was "the ugliest woman I ever saw."²⁰⁷ Her flaws included her age, "almost too old a plant to be safely transplanted."²⁰⁸

Worse still, Woodey violated gender norms by her intelligence and independence of mind:

Miss Charity was one of those "strong-minded women of New England," who exchange all the tenderness of the feminine for an impotent attempt to attain the efficiency of the masculine nature; one of that fussy, obtrusive, meddling class, who, in trying to

²⁰² See BALDWIN, *FLUSH TIMES* (Ala. ed.), *supra* note 8; BALDWIN, *FLUSH TIMES* (LSU ed.), *supra* note 8.

²⁰³ It is over twice as long as the eight other new sketches that were published for the first time in the book. See McDermott, *supra* note 12, at 255–56.

²⁰⁴ BALDWIN, *supra* note 2, at 284.

²⁰⁵ See *infra* notes 221–24 and accompanying text.

²⁰⁶ See BALDWIN, *supra* note 2, at 291–303.

²⁰⁷ *Id.* at 290.

²⁰⁸ *Id.*

double-sex themselves, *unsex* themselves, losing all that is lovable in woman, and getting most of what is odious in man.²⁰⁹

Moralistic and judgmental, “[s]he was a bundle of prejudices—stiff, literal, positive, inquisitive, inquisitorial, and biliously pious. *Dooty*, as she called it, was a great word with her. Conscience was another.”²¹⁰

Baldwin’s caricature of this judgmental outsider provided the perfect foil for the hypercritical, gouty lawyer Hele, who delighted in repeating scandals. Yet the narrator’s characterization of Hele renders uncertain the accuracy of Hele’s own story. This uncertainty is important for evaluating the way readers were expected to react to the humor evoked by Hele’s description of the murder of the slave. Baldwin does not describe Hele either as a liar or a practical joker—traits associated with other characters in *The Flush Times*. Rather, he presents Hele as a humorless, iconoclastic misanthrope, a man who respects neither people nor institutions and who has no use for the emotional bonds of family or community. “He had no respect for old things, and not much for old persons. Established institutions he looked into as familiarly as into a horse’s mouth, and with about as much respect for their age.”²¹¹ Hele had particular contempt for legal traditions: “He would, if he could, have wiped out the Chancery system, or the whole body of the common law, ‘the perfection of human reason’”²¹² Hele expressed his greatest contempt for Blackstone—the man who was Baldwin’s icon for the common law.²¹³ Because Hele was bitter, cynical, and willing to believe the worst of everyone, he may himself have credited inaccurate information that he passed along to Charity Woodey. But he was not a liar or practical joker.

Hele is introduced to Woodey at a party where a group of drunk men enlisted his aid in scaring off Miss Woodey. Acknowledging his tendency to condemn the local community, they ask Hele to “[j]ust go up to her, and let her have it strong.”²¹⁴ Hele agrees to do his best.²¹⁵ But it is ambiguous whether Hele is asked to lie or whether he agrees to do so. His words to Woodey form a strange mix of truth and falsehood.

²⁰⁹ *Id.* at 291.

²¹⁰ *Id.*

²¹¹ *Id.* at 285.

²¹² BALDWIN, *supra* note 2, at 285.

²¹³ *Id.* at 287.

²¹⁴ *Id.* at 293.

²¹⁵ *Id.*

When Hele is introduced to Woodey, she specifically asks whether Negroes are treated badly. He responds, "Upon this subject there is a secrecy—a chilling mystery of silence—cast, as over the horrors and dungeons of the inquisition. The way [N]egroes are treated in this country would chill the soul of a New Holland cannibal."²¹⁶

He then relates the story that occurred "but the other day" on Colonel Luke Gyves's plantation.²¹⁷ Gyves was herding and branding a "drove" of slaves like cattle.²¹⁸ When a dog bit a slave's leg, the slave inadvertently blinded the dog, a favorite of the owner's.²¹⁹ In response, they murdered the slave:

They took the [N]egro down to the rack in the plantation dungeon-house, and, sending for the neighbors to come into the entertainment, made a Christmas frolic of the matter. They rammed a powder-horn down his throat, and lighting a slow match, went off to wait the result. When gone, Col. Gyves bet Gen. Sam Potter one hundred and fifty dollars that the blast would blow the top of the [N]egro's head off; which it did.²²⁰

In deploying the sadistic treatment of African Americans as humor, Baldwin followed an established convention in Southern literature, now largely forgotten, that was still considered suitable entertainment in the late 1800s.²²¹ But Baldwin meant for readers to assume either that the events described by Hele could not possibly occur—or perhaps that some events had been misunderstood and grossly exaggerated.

Baldwin also meant for the image of the slave's head being blown off to be funny. He worked to compound the humor by de-

²¹⁶ *Id.* at 298. The capitalization of "Negro" is imposed anachronistically on Baldwin's text, but is in keeping with conventions that evolved during the 1920s as the result of a sustained, successful political campaign. See GINEVA SMITHERMAN, TALKIN AND TESTIFYIN: THE LANGUAGE OF BLACK AMERICA 39–40 (1985) (describing push by African American leader for capitalization, culminating in an editorial change by *The New York Times*).

²¹⁷ BALDWIN, *supra* note 2, at 298.

²¹⁸ *Id.*

²¹⁹ *Id.* at 299.

²²⁰ *Id.*

²²¹ In another sketch, the whipping of a slave (against the owner's wishes) was closely linked to the intended humorous climax. See *supra* note 181 and accompanying text. Such scenes were apparently not uncommon in Southwestern humor, but I know of none as brutal as the murder of the slave in *The Flush Times*. Johnson Hooper depicts as humorous the striking of Bill, an African American, who is subsequently tied up, stripped, and whipped with a hickory sapling; these incidents were included in material reprinted in a popular anthology in 1883. *ODDITIES IN SOUTHERN LIFE*, *supra* note 7, at 43–46.

scribing a resulting lawsuit that occurred when the loser of the wager refused to pay:

Gen. Sam Potter refused to pay, and the case was brought into the Circuit Court. Our judge, who had read a good deal more of Hoyle than Coke, decided that the bet could not be recovered, because Luke bet on a certainty; but fined Sam a treat for the crowd for making such a foolish wager, and adjourned court over to the grocery to enjoy it.²²²

In addition to the detailed description of the unnamed slave, Hele relates other events that are still more clearly implausible, notably the supposed drowning of slave children “like blind puppies, in the creek”²²³ and the monthly random killing of slaves to discourage slave rebellions.²²⁴

The chief source of the chapter’s humor is derived not from the individual framed scandals that Hele recounted, but rather from the impact of these stories on the credulous Charity Woodey. After Hele suggests that Woodey herself runs the risk of being tarred and feathered for her abolitionist beliefs, she leaves on the next north-bound stage coach.²²⁵

The chapter concludes by identifying Woodey as the source for Northern misinformation about slavery. The reliable voice of the author-narrator reappears:

[I]n the hurry of departure, a letter, addressed to Mrs. Harriet S____, was found, containing some interesting memoranda and statistics on the subject of slavery and its practical workings, which I should never [have] thought of again had I not seen something like them in a very popular fiction, or rather book of fictions, in which the slaveholders are handled with something less than feminine delicacy and something more than masculine unfairness.²²⁶

²²² BALDWIN, *supra* note 2, at 299.

²²³ *Id.* at 300. The idea of drowning infant slaves like puppies was also probably supposed to be funny, and it would immediately have been recognized as false, because the value of slave offspring increased greatly during the period described in the book. Baldwin presents drowning slave children in response to a query about the sale of slave children. *Id.* The juxtaposition of the image supports the pro-slavery inference that selling children and separating families was not so inhumane as other alternatives.

²²⁴ *Id.* at 300–01. Further humor was evidently added when Hele observes that slaveholders, to avoid financial loss, have substituted free Negroes or Indians disguised as enslaved black people.

²²⁵ *Id.* at 302–03.

²²⁶ *Id.* at 303.

Baldwin thus deploys the sketch to ridicule and discredit Harriet Beecher Stowe's depictions of slavery in *Uncle Tom's Cabin*.²²⁷ Stowe's novel had appeared the year before *The Flush Times*, making publishing history with sales topping 300,000 copies in America and possibly over one million copies in England during its first year.²²⁸ Stowe's exposure of the brutal treatment of slaves in the wake of the Fugitive Slave Act relied on counter-narratives by enslaved blacks and provoked intense reactions from pro-slavery writers who systematically accused her of ignorance and willful deception.²²⁹

Baldwin's sketch of Hele reveals the author's animosity towards abolitionist literature.²³⁰ The sketch is especially illuminating in its identification of abolitionists with women in the persons of both Woodey and Stowe and in its express claim that both women violate gender norms by supporting the elimination of slavery.²³¹ His negative treatment of these women is all the more striking because almost all the other characters in his book are male.²³²

²²⁷ HARRIET BEECHER STOWE, *UNCLE TOM'S CABIN* (Boston, John P. Jewett & Co. 1852). Jonathan Arac, one of the few scholars to even mention the chapter on Hele, observes that Baldwin's reference to Stowe is anachronistic in reminiscences of events from the 1830s. Arac, *supra* note 200, at 638. Except for the book's title, however, there is nothing that specifically dates the sketch on Hele to the late 1830s, and there is also nothing in it that situates it specifically in Alabama (or Mississippi).

²²⁸ For the printing history, see Michael Winship, *Uncle Tom's Cabin: History of the Book of 19th Century History of the United States*, <http://www.iath.virginia.edu/utc/interpret/exhibits/winship/winship.html> (last visited June 3, 2009).

²²⁹ Stowe responded to such critics with a detailed discussion of her reliable sources about slavery. See generally HARRIET BEECHER STOWE, *A KEY TO UNCLE TOM'S CABIN* (Boston, John P. Jewett & Co. 1853).

²³⁰ Nothing in Baldwin's sketch demonstrates any familiarity with the contents of *Uncle Tom's Cabin*.

²³¹ BALDWIN, *supra* note 2, at 291.

²³² A third female character also arouses gender anxiety for other reasons. Like Charity Woodey, Miss Julia Pritcher is a peripheral character. Pritcher's caricature serves to emphasize the cupidity of her suitor, Girard Mosely, who "pretended to practice law . . . but [whose] real business was marrying for money." *Id.* at 171. Baldwin's narrator describes the woman as "a girl of about thirty-five." *Id.* Her attempts to make herself attractive are presented as grotesque and repulsive: "[S]he was painted up like a doll: her withered old face streaked like a June apple. She needn't have put herself to the trouble for Girard; he would have married her in her winding-sheet, if she had been as ugly as original sin." *Id.* at 172. The elaborate description is a set-up for the comic pratfall. Miss Pritcher is caught in the stream of water from a fire hose, which "drove a bunch of [her false hair] curls through the window opposite, and which washed all the complexion off that cheek, and the paint ran down the gullies and seams like blood." *Id.* at 173.

Baldwin's demeaning treatment of women characters contrasts with the more equivocating treatment that some authors have found in other examples of Southwestern humor. See William E. Lenz, *The Function of Women in Old Southwestern Humor: Re-Reading Porter's Big Bear and Quarter Race Collections*, 46 *MISS. Q.* 590, 598-99

D. Policing the Homeland

The focus of Baldwin's sketch of Hele is the lawyer Hele himself, as announced by the title. The sketch explicitly joins the debate over slavery and abolition. Laughing at implausible stories of mistreatment, it works to reassure readers that slaves were not mistreated and depicts those who suggest otherwise as unreliable. It goes further, of course, depicting Northern women who voice abolitionist views as ugly sexless people who are the suitable victims of violent threats. But, above all, the sketch marginalizes Hele as the malicious misanthrope whose pretended puritanicalism lacks any loyalty to religion, family, or legal tradition.

There is strong evidence that Baldwin modeled the character of Samuel Hele on the real-life Alabama lawyer Samuel Hale (born 1809).²³³ Hale was a close contemporary of Baldwin and certainly one of his professional acquaintances in the small town of Livingston, Alabama. Baldwin's satirical portrait indicates that by 1853 Hale's standing in his community had become a matter of public discussion.

Hale had been tainted by association with abolitionism. Born and raised in New Hampshire, he arrived in Alabama as a young man about the time that Baldwin arrived.²³⁴ But Hale's brother had remained in New Hampshire and achieved national attention in 1844 when he disobeyed instructions from the New Hampshire legislature and opposed the admission of Texas on anti-slavery grounds.²³⁵ Hale's brother subsequently secured a majority of abolition votes in New Hampshire and became a prominent abolitionist Republican Senator.²³⁶

Such family connections were probably enough to raise doubts about Samuel Hale's loyalties. His own political career added further grounds for resentment. In Tuscaloosa, Hale had edited a Democratic paper.²³⁷ Though a slaveholder, he had opposed the secessionist

(1993) (arguing men and women are satirized equally in some examples of Southwestern regional humor).

²³³ The facts about Hale in this Article are taken from Hunter Dickinson Farish, *An Overlooked Personality in Southern Life*, 12 N.C. HIST. REV. 341 (1935). Farish relied in part on continuing oral traditions about Baldwin in Alabama. He concluded there can be no doubt that Hele was modeled on Hale. *Id.* at 341. While styled as a parody of Hale, it is certainly not the case that the sketch is a historical portrait of a real Southerner, as Lynn asserts. LYNN, *supra* note 3, at 121.

²³⁴ The sketch alludes to Hele as "a New England man." BALDWIN, *supra* note 2, at 293.

²³⁵ Farish, *supra* note 233, at 342-43.

²³⁶ *Id.* at 342.

²³⁷ *Id.* at 343.

and extremist states' rights views that increasingly dominated in Alabama in the years leading up to the Compromise of 1850.²³⁸ As a result, in 1846 Hale lost the support of the local Democratic leadership and his position as editor.²³⁹ At this point Hale moved to Livingston, where he developed an active private practice of law.²⁴⁰ Baldwin would have known Hale and, given his own literary and political ambitions, could not have failed to note how Hale's literary career floundered due to his lack of unquestioning support for slavery and for the politics of the planter elite.

The biographical model for the fictional Hele is important for understanding the political goals of the sketch.²⁴¹ The character's connection with Northern abolitionists contributed to Baldwin's goal of ridiculing the abolitionists. Equally important, Hele's consorting with such outsiders, and the national dissemination of falsehoods injurious to the community, served to marginalize and isolate Hele—and by extension Hale.

E. *Comedy and Nightmare*

It is hard to read Baldwin's supposedly humorous description of the torture-murder by the mob without being reminded of the light-hearted way in which the white press would later routinely report events of lynch violence.²⁴² It is also hard to read his description of murder as a public spectacle without being reminded of the many recorded incidents of huge crowds that attended lynchings. Perhaps most notorious was the torture-murder of Henry Smith in 1893—a widely reported event of unspeakable sadism that drew a crowd of 10,000 spectators in Paris, Texas.²⁴³

²³⁸ *Id.* at 343–44.

²³⁹ *Id.* at 344.

²⁴⁰ *Id.* at 341–45. Hale remained in Alabama but denounced secession as “criminal folly.” *Id.* at 345. Hale's break with the Democrats also renders doubtful Lynn's reading of the sketch as a Whig parody of an extreme Jacksonian Democrat. *Id.* at 124.

²⁴¹ Justus rationalized the decision not to attempt to identify Baldwin's sources by claiming that “little literary relevance would result from such discovery.” Justus, *On the Notes*, in BALDWIN, FLUSH TIMES (LSU ed.), *supra* note 8, at xii.

²⁴² See, e.g., *A Lynching Boomerang*, 10 PUB. POL. 89 (1904) (describing editorial in *Chicago Tribune* making fun of lynching in Virginia).

²⁴³ See generally IDA B. WELLS, *A Red Record*, in SOUTHERN HORRORS AND OTHER WRITINGS: THE ANTI-LYNCHING CAMPAIGN OF IDA B. WELLS, 1892-1900 at 91–98 (Jacqueline Jones Royster ed., Bedford Books 1997) (1895) (describing that women and children attended in large numbers); Kate Herndon Trawick, *The Exposure of Womanhood Through Lynching*, in LAWLESSNESS OR CIVILIZATION: WHICH? 55, 62–63 (W.D. Weatherford ed., 1918) (quoting addresses and discussions at the Law and Order Conference at Blue Ridge, North Carolina, August 1917).

It is understandable that later readers, accustomed to the reality of lynch violence, might assume that Baldwin meant for Hele's descriptions of violence to be factually accurate.²⁴⁴ And it is significant that Baldwin chose to represent in some form the truth of slavery that was emerging from counter-narratives by enslaved people. This Article suggests, however, that the mechanics of Baldwin's humor in the Hele sketch indicate that the author's main goal was to propose that stories of such outrages were inherently implausible and that their reports were not credible. Humor worked on two levels. In depicting the torture-murder itself as humor, Baldwin detached the reader from the fictional subjects of violence. By depicting the story as the contrived result of a practical joke, Baldwin sought to reassure readers that no such brutalities actually occurred. The importance of responding to the abolitionist counter-narrative in turn displayed the slaveholders' acknowledgment of the importance of contesting public opinion, even in the South. Public opinion was also important from the perspective of enslaved blacks, for Douglass identified it as providing "an unflinching restraint upon the cruelty and barbarity of masters, overseers, and slave-drivers, whenever and wherever it can reach them."²⁴⁵

Baldwin's textual clues that the story of violence against slaves was to be understood as counterfactual are less obvious for today's readers, who are more fully aware that slaves were routinely treated like animals in important ways—and mutilated horribly as punishment. Baldwin's language describing the treatment of enslaved individuals as herd animals and their branding as a mark of ownership would probably have been understood as hyperbolic by all his Southern readers. Similarly, his description of the torture facility on the plantation as a "plantation dungeon-house"²⁴⁶ would have engendered mirth among (white Southern) readers who would have simultaneously denied the existence of such a place—and to the extent that they acknowledged its existence—would have employed other terminology for it.

²⁴⁴ For example, Mellen wrote in 1901, "Sam Hele . . . ran the Yankee school 'marm' out of Livingston by his harrowing descriptions of the gross, inherited wickedness of the population, incorrigibly steeped in the science of criminology and perfectly practiced in the whole catalogue of crimes." Mellen, *supra* note 79, at 181. Farish wrote in 1935, "'Samuel Hele' was induced to entertain her with such an account of themselves and of their wickednesses that [she fled]." Farish, *supra* note 233, at 341.

²⁴⁵ DOUGLASS, *supra* note 168, at 61.

²⁴⁶ BALDWIN, *supra* note 2, at 299.

Particular difficulty arises in attempting to understand the intended impact of Baldwin's description of the public and brutal murder of enslaved people. Such killings were hardly counterfactual given the brutalities associated with slavery, the known instances of public murders of slaves that went unpunished, and the sadistic methods and large public crowds later associated with lynching. Yet Baldwin's assumption appears to have been that such events were implausible and incredible in the 1850s. This assumption, while demonstrably false,²⁴⁷ serves as a reminder that, as Walter White later observed, the most brutal forms of lynching were seldom practiced before the twentieth century.²⁴⁸ Accordingly, while Baldwin depicted racially motivated public murders that accurately anticipated all the familiar details of lynch law, it appears that Baldwin himself thought he was describing the impossible. "What [Hele] does is give voice in grotesque hyperbole to all the worst fantasies that anyone might ever have entertained about the system of slavery and the degradation of life and character in the South."²⁴⁹

What is remarkable is how faithfully Baldwin's violent fantasy converges with reality. This is evident even in the outrageous details he provided for the pretext for the murder—the slave's accidental injury of the master's favored dog.²⁵⁰ Baldwin evidently thought that the master's emotional overreaction was humorous because it was inherently implausible. Yet Baldwin's fantasy corresponds closely with the master's sadism that Frederick Douglass witnessed at the Lloyd plantation.²⁵¹ Baldwin situated his events in an isolated community "over the river" on the Gyves Plantation.²⁵² Douglass explained how the relative isolation of the Lloyd Plantation on the Eastern shore of Maryland effectively removed it from public attention.²⁵³ Without even the restraint of public attention, these isolated places became the sites of especially sadistic violence.²⁵⁴ Douglass described how Lloyd, the master, doted on his horses.²⁵⁵ Lloyd en-

²⁴⁷ See JAMES ELBERT CUTLER, *LYNCH-LAW: AN INVESTIGATION INTO THE HISTORY OF LYNCHING IN THE UNITED STATES* 127 (Negro Univ. Press 1969) (1905) (observing that eight of twenty-four African Americans who were killed without a trial from 1850–60 were burned at the stake).

²⁴⁸ WALTER WHITE, *ROPE AND FAGGOT* 20 (Univ. of Notre Dame Press 2001) (1929).

²⁴⁹ Arac, *supra* note 200, at 638.

²⁵⁰ BALDWIN, *supra* note 2, at 299.

²⁵¹ See DOUGLASS, *supra* note 168, at 107–18.

²⁵² BALDWIN, *supra* note 2, at 298.

²⁵³ DOUGLASS, *supra* note 168, at 65.

²⁵⁴ *Id.*

²⁵⁵ *Id.* at 112.

trusted the horses to an old slave, Barney, an experienced trainer and veterinarian.²⁵⁶ Lloyd showered favors on Barney for his expert services, but Lloyd also made Barney's life miserable, routinely humiliating him and inflicting pain on the slightest pretext.²⁵⁷ By mistreating Barney, the master demonstrated that even the most valuable slave ranked lower than the master's companion animals:

[I]n nothing was Col. Lloyd more unreasonable and exacting, than in respect to the management of his pleasure horses. Any supposed inattention to these animals was sure to be visited with degrading punishment. His horses and dogs fared better than his men.²⁵⁸ Their beds must be softer and cleaner than those of his human cattle. No excuse could shield Old Barney, if the colonel only suspected something wrong about his horses; and, consequently, he was often punished when faultless.²⁵⁹

On one occasion, Douglass witnessed Barney being forced to kneel and endure thirty lashes from a riding crop, inflicted personally by Lloyd.²⁶⁰

Douglass's description of Barney's encounter with his master exposes what is most troubling about Baldwin's supposedly humorous depictions of slavery—how closely they approached the true state of affairs while adopting the posture of adumbrating the implausible. In articulating the slaveholder's most extreme fantasies about the worst possible ways human beings could be treated, Baldwin unintentionally mimicked instances of the brutal, private mistreatment of slaves. So, too, he prophetically described the brutal, public treatment of African Americans that would occur after slavery when the criminal community was no longer restrained even by the market value of its victims.²⁶¹ Baldwin's comic fantasy thus emerges in hindsight as nightmare reality—predicting the actual course of horrific events that would occur in a world unrestrained by law and morality.²⁶²

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 112–13.

²⁵⁸ Captors taunted prisoners at Guantánamo by showing them banana rats and telling them that rats enjoyed more freedom. JOSEPH MARGULIES, *GUANTÁNAMO AND THE ABUSE OF PRESIDENTIAL POWER* 86–87 (2006) (quoting Transcript of Secret Orcon Interrogation Log Detainee 063, at 30 (2002), available at <http://www.time.com/time/2006/log/log.pdf> (interrogation of Mohammed al Qahtani)).

²⁵⁹ DOUGLASS, *supra* note 168, at 112–13.

²⁶⁰ *Id.* at 114.

²⁶¹ Lloyd whipped Barney with a riding crop, careful not to disable such a valued slave. *Id.* No similar consideration restrained the perpetrators of lynch violence.

²⁶² See generally Charles H. Brower, II, *The Lives of Animals, the Lives of Prisoners, and the Revelations of Abu Ghraib*, 37 *VAND. J. TRANSNAT'L L.* 1353 (2004) (arguing violence

VI. CONCLUSION

This Article documents the publication history of Joseph Baldwin's *The Flush Times of Alabama and Mississippi: A Series of Sketches* and examines how the work, conceived as a literary response to the growing criticism of slavery in the early 1850s, reached a wide national audience and became the first American work of imaginative literature specifically marketed to legal professionals.

Constructing a narrative that responded to outsiders' critiques of slavery, Baldwin deployed literature to normalize the extreme denial of legal rights and personal traits to enslaved people while adopting humor as part of an effort to isolate and marginalize abolitionist critiques of slavery. In one particularly horrific sketch, Baldwin presents the torture and murder of an enslaved black man as "funny."

Baldwin's book raises questions about whether all literature is worth reading—whether all stories humanize.²⁶³ Yet its contents provide unique insights into the anxiety among educated Southern whites provoked by counter-narrative critiques of slavery in the early 1850s. *The Flush Times* evidences how one white lawyer sought through literary activity to advance his social standing in the white elite. Its commercial success proves Baldwin's vision appealed to readers outside the South and continued to appeal to readers long after the abolition of slavery.

Perhaps most troubling, the book achieved a strong niche market among legal professionals beginning in the late 1800s—years when lynch violence daily enacted Baldwin's literary phantasmagoria. The popularity of the book among legal professionals raises disturbing questions about the history of race, law, and literature. The title's recent republication with no discussion of its treatment of enslaved black people by two academic publishers provides a sober reminder that our common legal heritage remains a nightmare from which we are still trying to awake.

against humans replicates sadistic treatment of animals where human victims are deprived of protection of rule of law).

²⁶³ Delgado, *supra* note 17, at 2440 ("Stories humanize us.").

APPENDIX: TEXTUAL VARIANTS

In the only published discussion of variant editions of the text, Professor Justus rationalizes his decision to republish the text of the first edition by claiming that subsequent editions had more typographical errors.²⁶⁴ He observes that later editions “incorporate[d] a few substantive changes,”²⁶⁵ but he does not identify any of them and claims that “there is no evidence that Baldwin had any hand in them.”²⁶⁶

A page-by-page comparison of different editions demonstrates that later editions removed a few typographical errors without adding new ones. (The increasing “errors” visible in later printings are plainly the result of deteriorating plates.)

More importantly, comparing textual changes in early editions leaves no room for doubt that Baldwin was personally responsible for making modest emendations to the text—mostly for stylistic or rhetorical purposes. The textual changes are almost exclusively of the sort only an author would have made. They did not correct errors of type, spelling, or grammar, yet they occasionally required resetting multiple lines of type.

Baldwin’s corrections were either communicated or implemented in two batches. His changes to pages 1–39 appear in the “second edition,” while his changes to pages 70–251 appear in the “ninth thousand” edition [title page reproduced as figure 5]. (An editor probably corrected a remaining error in the tenth thousand edition.) These changes demonstrate the author’s keen attention to the form of his prose style and his desire to avoid non-standard usage. Evidence of Baldwin’s continuing control over the content of the text through the ninth thousand edition is incompatible with claims made to justify the supposed authenticity or textual superiority of the first edition.

²⁶⁴ Justus, *A Note on the Text*, *supra* note 14, at ix.

²⁶⁵ *Id.*

²⁶⁶ In one change introduced between the second edition and the ninth thousand edition, “the shape of the head oval” was emended to “the head oval” (page 251). This required resetting of several lines of type.

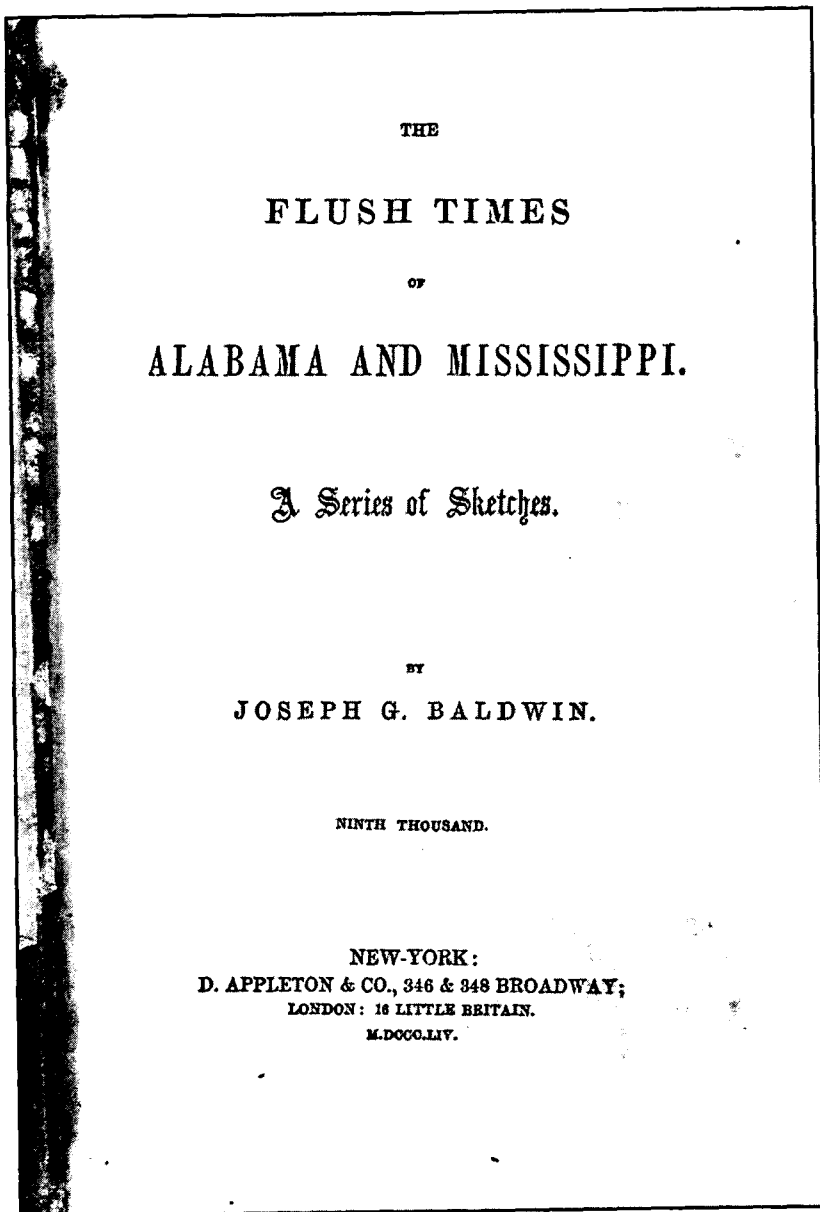


Figure 5: Title page to the ninth thousand edition; the fourth state of the plates and the first to contain all the author's corrections.

Changes to text

p. v “phases of society” becomes “the phases of the society” (ninth thousand ed.)

p. 3 “the beguilements of pleasure” becomes “the allurements of pleasure” (second ed.)

p. 6 “It was employed often on, and in behalf of, objects and occasions of this sort, but no more and more zealously on these than on others of no profit to himself.” becomes, “It was often employed on occasions of this sort” (second ed.) and revised to “It was often employed on occasions of thrift . . .” (ninth thousand ed.)

p. 7 “to loan” becomes “to lend” (second ed.)

p. 16 “manners of the nation” becomes “manners of the natives” (second ed.)

p. 39 “mimicking” is put in brackets “[mimicking]” (second ed.)

p. 70 “bearing various, and some of them no relation to the facts (the legislature . . .” becomes “bearing various significations, and some of them having no relation to the facts, (the legislature . . .” (ninth thousand ed.)

p. 85 “I knew of a Judge” becomes “I knew a Judge” (ninth thousand ed.)

p. 85 “always found to be committed” becomes “always found to have been committed” (ninth thousand ed.)

p. 107 “said said the clerk” becomes “said the clerk” (tenth thousand ed.)²⁶⁷

p. 142 “unless when the Tombigbee river was up” becomes “unless the Tombigbee river was up” (ninth thousand ed.)

p. 147 “and is not fonder than other humorists of exposing a full front to the batteries of others than turning them on his friends” becomes “and like other humorists is much fonder of turning on his friends their own batteries than of exposing a full front to them himself” (ninth thousand ed.)

²⁶⁷ This is the only textual emendation discussed in the bibliophile literature. Paradoxically, it is the only one in which Baldwin probably had no hand, and it is wrongly attributed to the seventh edition. According to the *Bibliography of American Literature* (BAL), “said said” is present in the Harvard copy of the seventh edition but corrected in the Huntington copy, from which BAL concluded that the correction was made while the seventh edition was on the press. 1 BIBLIOGRAPHY OF AM. LITERATURE 116 (Jacob Blanck ed., 1955). The error is present in the Michigan copy of the seventh edition posted online. Despite the claim in this source, the error is also present in the seventh edition held by Huntington Library (photocopy on file with the author). The error is also present in the ninth thousand edition and was first corrected in the tenth thousand edition.

p. 147 “years has passed” becomes “years have passed” (ninth thousand ed.)

p. 157 “If Cave had a hundred” becomes “If Cave had had a hundred” (ninth thousand ed.)

p. 196 “business after than time, and” becomes “business; and” (ninth thousand ed.)

p. 218 “made them more dangerous than if they had not existed at all” becomes “those fascinating graces rendered doubly dangerous” (ninth thousand ed.)

p. 218 “intellect and the bright army of glittering faculties and strong powers of his mind” becomes “bright array of strong powers and glittering faculties” (ninth thousand ed.)

p. 218 “host of passions” becomes “hosts of passion” (ninth thousand ed.)

p. 221 “when he was a raw Yankee” becomes “when a raw Yankee” (ninth thousand ed.)

p. 237 “chancery law, admiralty” becomes “chancery law, and admiralty” (ninth thousand ed.)

p. 249 “Formand” becomes “Form and” (ninth thousand ed.)

p. 249 “to say something” becomes “to have said something” (ninth thousand ed.)

p. 251 “the shape of the head oval” becomes “the head oval” (ninth thousand ed.)

Uncorrected printing errors (1853–1906)

A number of errors appear in the plates to all editions²⁶⁸

p. 68, line 5 “nd” for “and”

p. 122, line 11 “mo al” for “moral”

p. 231, lines 24–25 “*auto da fe*” for “*auto da fe*”

p. 263, no final period at end of chapter

Errors resulting from deteriorating plates

p. 2, line 25 “than” becomes “han” between the seventh ed. and the ninth thousand ed.

p. 11, line 7 “sides” becomes “ides” between the seventh ed. and the ninth thousand ed.

p. 45, last word “skin-” becomes “skin” (hyphen disappears) between 1866 and 1873

²⁶⁸ These were corrected when the plates were reset in the Americus (ca. 1908) edition.

p. 62, last word “par-” loses hyphen between the ninth thousand ed. and the tenth thousand ed.

p. 68, last line “Run” become “Run” (single quotation mark disappears) by 1854 (second ed.)

p. 74, final period on page disappears between 1866 and 1873 eds.

p. 88, line 13 “mor-” becomes “mor” (hyphen disappears) between the ninth thousand ed. and the tenth thousand ed. (1854)

p. 129, “Dame Fortune” becomes “Dame For une” by 1873

p. 139, last word “mis-” become “mis” (hyphen disappears) between 1861 and 1873 eds.

p. 178, last line capital-C in “Cousins” defective between the tenth thousand ed. and 1861

p. 204, final period on page disappears between the tenth thousand and 1861 eds.

p. 247, line 14 “Whick-” becomes “Whick” (loses hyphen) between 1887 and 1894

p. 299, line 7 Christ- (hyphen at end of line) disappears between the ninth thousand ed. and the tenth thousand ed.

New errors in Americus (ca. 1908) edition

p. 78, lines 14–15 “*par parenthèse*” for “*par parenthèse*” (first ed.)²⁶⁹

p. 89, line 26 “*uses and trusts*” for “*uses and trusts*”

p. 263, last line “hell carnival” for “hell-carnival”

p. 272, line 12 “Mither” for “Misther”

p. 314, line 25 “Innumberable” for “Innumerable”

p. 330, last line omits “THE END.”

New errors or deviations in Sagamore Press (1957) edition

p. 14, line 11 “The *greenest* spot In memory’s waste.” [lines run on]²⁷⁰

²⁶⁹ The text of the first edition photocopied in the LSU edition reads “*par parenthese*” (no accent). BALDWIN, *FLUSH TIMES* (LSU ed.), *supra* note 8, at 78. It also prints “twenty” on p. 143 as “wenty.” *Id.* at 143. An inspection of the original pages of the first edition volume at Western Illinois Library, from which the LSU edition was prepared, demonstrates that these errors were introduced in the LSU edition and were not variant early printings.

²⁷⁰ Misquoting a Thomas Moore poem from *Irish Melodies*. THOMAS MOORE, *Love’s Young Dream*, in *IRISH MELODIES* 176, 177 (London, Longman, Brown, Green & Longmans 1856) (“Still it lingering haunts the greenest spot [/] On memory’s waste.”).

p. 49, line 2 “in part by W.B.T. You didn’t” [omitting new paragraph break]

p. 51, lines 33 and 38 “Whigs” and “Whig” [adding capitalization]

p. 244, last line omits “THE END”