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THE NEW MONUMENTAL ERA: DANIEL WEBSTER AND THE
COMMEMORATION OF COMPROMISE IN THE AGE OF DISUNION, 1853-1865

By

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Professional Paper

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Commemorating Compromise – Abstract:

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This professional paper is an in-depth analysis of a statue of Daniel Webster erected in Boston, Massachusetts, in 1859. Daniel Webster was a congressman for Massachusetts who became a controversial figure after he spoke in support of the Fugitive Slave Law as part of the Compromise of 1850. This paper analyzes the Daniel Webster statue and argues that the fractured politics of Union politicized public commemoration in the late antebellum period after the Compromise of 1850. This paper furthermore analyzes one of the first debates surrounding the public commemoration of a controversial historical actor with close ties to the perpetuation of American slavery. The Daniel Webster statue was part of a mass movement to commemorate and celebrate America's past heroes from the revolutionary generation and the recent past. The monied aristocracy in Boston viewed the statue as an emblem of nationalist pride and unity in the months leading up to the war. Meanwhile, Garrisonian abolitionists contested the politics of commemoration and moral physical boundaries in antebellum American cities such as Boston. Southern politicians also debated the significance of the Webster state and engaged in rituals of the public commemoration.

This professional paper is an important contribution to the historical scholarship on statues, memorials, and the politicization of memory. Furthermore, it encourages historians to analyze how memorials fit into the politics of union and democratic practices of the late antebellum period. Monuments and other forms of public commemoration are deeply connected to moral about the political economy of slavery.

“The Union – It must and shall be preserved.” So toasted a group of drunken serenaders before sunrise on a snowy Christmas morning in 1860. After a night of revelry, this “party of enthusiastic Union lovers” held an impromptu Union meeting on the grounds of the Massachusetts State House. Americans held similar and more sober meetings after Lincoln’s election prompted white southerners to contemplate leaving the Union. This meeting was unique, however, because it took place at the statue of former Massachusetts senator Daniel Webster. According to the *Boston Herald*, the “commanding form of the great Expounder and Defender of the Constitution” had inspired these citizens’ “patriotic feelings.” With several bumper glasses of champagne in hand, the men celebrated Webster and his hallowed commitments to Union and the U.S. Constitution. Subsequent toasts prophesized the “distressing results of secession” that would befall the North and South should the Union fall. “Webster still lives,” they toasted believing that the senator had given later generations the wisdom to navigate the crisis. The final tribute condemned treason and anyone who betrayed the Union. Before they could make another toast — “United we stand – divided we fall”— the wine had run dry, driving these enthusiastic Union lovers from the statue perhaps feeling warm from drink and a renewed sense of patriotism.¹

This Daniel Webster statue was conceptualized, built, and fought over during one of the most turbulent decades in American history which immediately preceded the Civil War. Bostonian elites hoped to elicit public devotion to the Constitution and national unity when they erected the Webster statue in 1859. After Webster’s death in 1852, many influential Bostonians dedicated the statue to his political philosophy of compromise for the maintenance of the

¹ “A Grand Union Meeting in Boston,” *Boston Herald* (Boston, Mass) Dec. 27, 1860.

Constitution and the Union. It took nearly six years for this statue to come to fruition due to constant delays, but when it arrived in 1859. The Bostonian monied elite erected the monument to celebrate American patriotism right when the nation was approaching its breaking point. Edward Everett, a Massachusetts politician who had supported the statue, emphasized Webster's "reverence for the constitution as the covenant of union" and his ability to navigate between extremes through the constitution.² Just as with the drunken serenaders, the Boston elite portrayed Webster as the heroic defender of the Union and Constitution.

Many prominent Bostonians, however, did not share Everett's enthusiasm for having a statue dedicated to Webster or the Union located in the epicenter of the abolitionist movement. Wendell Phillips, William Lloyd Garrison, and other abolitionists had labeled the Constitution a "compromise with evil."³ They had not forgiven Webster for his infamous Seventh of March Speech, when he supported the Fugitive Slave Law as part of the Compromise of 1850.⁴ Phillips called the memorial a "clumsy statue of a mock great man, for hypocrites to kneel down and worship in a state-house yard."⁵ He lamented, "It is only for me to look up at the great slave-catcher idolized and a monument erected for him by the Commonwealth of Massachusetts... it is enough to show me the character of the Constitution."⁶ For some abolitionists the Webster statue symbolized the pro-slavery Constitution they despised. White northern abolitionists demanded that the Massachusetts legislature remove the statue for its moral repugnance to the community.

² *Inauguration of the Statue of Daniel Webster, September 17, 1859* (Boston, Mass: G. C. Rand and Avery, 1859), 85-86.

³ Wendell Phillips, "Can Abolitionists Vote or Take Office Under the United States Constitution?" in the *Abolitionists: A Collection of Their Writings*, ed. Louis Ruchames (New York, NY: G. P. Putnam's Sons, 1963). 196

⁴ For recent biographies of Daniel Webster see Robert V. Remini, *Daniel Webster: The Man and His Time* (New York, NY: W.W. Norton & Co., 1997) and Merrill D. Peterson, *The Great Triumvirate: Webster, Clay, and Calhoun* (New York, NY: Oxford University Press, 1987).

⁵ Wendell Phillips, "The Lesson of the Hour," in *Echoes of Harper's Ferry* ed. James Redpath (Boston, Mass: Thayer and Eldridge, 1860), 49.

⁶ "Speech of Wendell Phillips, Esq.," *Liberator* (Boston, Mass) Feb. 17, 1860.

The public commemoration of Webster's career embodied the political conflict over the threat of disunion as the country was on the verge of civil war. The statue became a focal point for different ideological and regional factions to reaffirm their own political values and visions of the nation.

This essay analyzes the Daniel Webster statue and argues that the fractured politics of Union politicized public commemoration in the late antebellum period after the Compromise of 1850. The Boston elite's desire to commemorate Webster became entangled with debates on political compromise, Union, and the Constitution. Southern politicians also defended the statue and memorialized Webster because they viewed him as one of the few Northern statesmen who was willing to enforce the South's constitutional rights. Garrisonian abolitionists who perceived the Constitution as a compact with evil interpreted Webster's statue as commemoration of slavery itself. Webster's statue and memorialization elicited discussions from different economic, regional, and idealistic interest groups on the existing American political order. The Webster statue controversy occurred in a forceful and divisive decade when memory and public commemoration became more integral to the politics of nationalism. Boston and other cities were commemorating American statesmen and revolutionary heroes to support patriotic and nationalist ideals and bind the country together. Northern Cotton Whigs celebrated Webster as one such man who supposedly contributed to the rise of national greatness. Southern politicians offered a similar but alternative commemoration of Webster as a faithful statesman who lawfully upheld constitutional obligations to the South. Ironically, the attempts to inspire national unity through public commemoration resulted in sharper political divisions. The Webster statue became a lightning rod in local and national politics of union and disunion in the 1850s.

The Webster statue also displays Americans' contestation of public space in the antebellum period. As American cities rapidly expanded throughout the nineteenth century, municipal space and social interaction became more intrinsic to everyday political activity and behavior. Starting in the late antebellum period, statues and memorials in public spaces became sites of public engagement and political contestation. How a community interacts with a controversial monument underscores that society's values regardless of public consensus.⁷

Webster's supporters orchestrated public ceremonies and commemorations on the Massachusetts State House grounds to support strong nationalist sentiments about the Union. Through the press, petition campaigns, and protests, Garrisonian abolitionists contested the meaning and placement of the statue. Southern politicians also reacted to the Webster statue by engaging in their own rituals and shaping their own landscapes to memorialize the Massachusetts senator. Northern Cotton Whigs, Northern abolitionists, and Southern politicians all debated the political implications of commemorating Webster and having his statue and memory engraved into their physical, social, and political landscapes.

This essay chronologically follows the history of the political debates surrounding Daniel Webster's statue and memory. Each section focuses on a different political group and examines how they engaged politically with the statue in Boston. Part one analyzes the motives of the Bostonian elite and the statue's journey to the state house grounds from 1853 to 1859. Part two explores the abolitionists' protests and their concerns about the moral and political implications of having the statue represent their community. Part three investigates how Virginians and Southerners understood the protests as a sign of disunion and offered alternative

⁷ Karen Cox, *No Common Ground: Confederate Monuments and the Ongoing Fight for Racial Justice* (Chapel Hill, NC: University of North Carolina Press, 2021), 4.

commemorations for Webster on their own regional terms. The conclusion explores how statues of Webster and the commemoration of other Northern compromisers remains a controversial issue in American politics today.

By analyzing the controversy surrounding the Daniel Webster statue, this essay contributes to the scholarship of statues and memory in American history. Most scholars, such as David Blight and Kirk Savage, have focused their attention on the commemoration of white supremacy and lost cause mythology in later nineteenth century and beyond when the legacies of the Civil War and American slavery demanded public debate and resolution. While such narratives are compelling, their temporal frameworks fail to give significant attention to the conflicts and politics of memory in the late antebellum period.⁸ Furthermore, a study on the commemoration of compromise opens new possibilities for historians to analyze the politics of memory besides controversial confederate and emancipation memorials. Investigating public recognitions of Daniel Webster and other Northern “doughface” compromisers is also a worthwhile endeavor which can enable scholars to determine how Americans outside the South understood constitutional union and slavery. Additionally, this essay compliments new

⁸ For scholarship on memory and memorialization after the Civil War see David Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge, Mass: Belkna Press of Harvard University Press, 2001); Kirk Savage, *Standing Soldiers, Kneeling Slaves: Race, War, and Monument in Nineteenth-Century America* (Princeton, NJ: Princeton University Press, 1997), 5; Michael Kammen, *The Mystic Chords of Memory: The Transformation of Tradition in American Culture* (New York, NY: Alfred A. Knopf, 1991), 50, 71; Note: Historians have struggled to analyze commemoration and memory during the antebellum period and have instead focused on the postbellum period. Historians such as David Blight and Kirk Savage have focused on monuments after the Civil War when the issue of slavery was thrust into the public domain where it was romanticized, suppressed, and integrated into collective memory. Such scholarship focuses on how lost cause mythology and the desire for national reconciliation overshadowed racial reconciliation and transformed many statues, especially of confederate soldiers, into symbols of white supremacy. Scholars have given less attention to statues and memory during the early nineteenth century. They contend that statues before the Civil War reflect the “cult of leadership” while memorials after the war were meant to represent the “public will.” This essay respectfully disagrees with this assessment and argues that the public did debate statues’ representation of the public will, albeit in the closing years of the antebellum period. Historian Michael Kammen contended that there was a lack of a unified memory of the past during the early nineteenth century due to republican patience, human indifference to the past, and social pluralism.

scholarship on historical resistance to controversial public statues.⁹ The Daniel Webster statue sparked one of the first statue controversies where the American public fought over a memorial of a historical figure with a controversial connection to the history of American slavery. This essay joins with other scholars that study the politics of memory and commemoration, but it examines an earlier time period and a different historical subject. Memory played a significant role in the manners in which political adversaries communicated with one another in the antebellum period.

Historians have taken a renewed interest in analyzing how runaway slaves and the Fugitive Slave Law in 1850 intensified animosity between the North and the South.¹⁰ Historian Andrew Delbanco asked how scholars should judge compromise and political compromisers who contributed to this development.¹¹ Here I ask a more targeted question; how did Americans commemorate compromise with slavery and what were the political implications and repercussions of such memorialization? This question allows this essay to examine how commemoration became embedded with into the politics of disunion and compromise. Historian Elizabeth Varon's emphasis on the rhetoric of disunion in the antebellum period further offers insights into how opposing groups may have integrated the statue into their rhetoric on slavery, the dissolution of compromise, and the growing fears and accusations of disunion.¹²

The Webster statue controversy contributes to historians' understanding of contested public space and American democracy in the early nineteenth-century. As historian Mary P.

⁹ See Karen Cox, *No Common Ground*.

¹⁰ See R.J.M. Blackett, *The Captive's Quest for Freedom: Fugitive Slaves, the 1850 Fugitive Slave Law, and the Politics of Slavery* (New York, NY: Cambridge University Press, 2018).

¹¹ Andrew Delbanco, *The War Before the War: Fugitive Slaves and the Struggle for America's Soul from the Revolution to the Civil War* (New York, NY: Penguin Press, 2018), 7-10.

¹² See Elizabeth Varon, *Disunion! The Coming of the American Civil War, 1789-1859* (Chapel Hill, NC: University of North Carolina Press, 2008).

Ryan argued, Americans in cities during the antebellum period participated in public ceremonies and rituals where people came together to perform their civic identities and democratic values.¹³ With the public commemoration of the Webster statue, multiple factions contested the symbols of morality, compromise, and slavery that defined their communities and civic identities within public spaces. Americans who debated the statue contested the moral boundaries of public sphere and shaped their own democratic values.

This essay relies on a variety of primary resources including petitions, newspapers, speeches, and broadsides to understand how different interest groups contested the Webster statue and the politics of union and commemoration. Newspapers such as the *Liberator* and the *National Anti-Slavery Standard* acted as the voices of the abolitionist protest against the statue. These sources prioritize white bourgeois abolitionists' perspectives on the statue issue.¹⁴ The *Boston Daily Advertiser* was the conservative mouthpiece for Bostonian elites which maintained a less critical view of Webster and printed information on the Webster Statue Committee. Newspapers from Virginia such as the *Daily Dispatch* from Richmond, Virginia, reveal how the Southern historical actors participated in the statue controversy and the politics of compromise and Union. Printed sources such as commemorations programs, petitions, broadsides, and political cartoons provide the means to understand how the debate over Webster's statue and

¹³ See Mary P. Ryan, *Civic Wars: Democracy and Public Life and the American City During the Nineteenth Century* (Berkeley, CA: University of California Press, 1998).

¹⁴ Manisha Sinha, *The Slave's Clause: A History of Abolition* (New Haven, CT: Yale University Press, 2016), 1-2. One limitation with this source base is the lack of black voices and perspectives. Scholars such as Manisha Sinha have emphasized that historians ought to place slave resistance was at the heart of the abolitionist movement rather than bourgeois liberalism. Black historical actors including runaways, rebels, writers, and community leaders were at the epicenter of shaping and defining the movement. The sources in this essay force it to rely on the voices of white bourgeois abolitionists such as William Lloyd Garrison, Wendell Phillips, and Theodore Parker. While much voices in the source material comes from these white bourgeois abolitionists, historians must recognize that enslaved peoples themselves made the Fugitive Slave Law and the Webster statue such contentious issues through their actions and resistance.

memory pervaded into public space and political debate. These sources encompass a variety of perspectives and opinions on the Webster statue and the politics of commemoration from different perspectives along lines of class, politics, and geography.

Manuscript collections such as the Hiram Powers papers provide this essay with valuable information on the Webster statue controversy. The papers of Hiram Powers, the sculptor who made the Webster statue, give valuable insights into the sculptor's intentions of portraying Webster as the symbol of the Union. They also explore Powers's relationship with the Bostonian elite and his reactions to the abolitionist protests. The abolitionists' petitions for the removal of the statue are also available online in Harvard University's Anti-Slavery Petitions Massachusetts Database. These collections further provide this essay with distant and unique perspectives on the Webster statue controversy.¹⁵

With contemporary public debates on controversial statues, this analysis of the Daniel Webster statue controversy offers historians an opportunity to better understand the divisive politics of commemoration and the politics of the late antebellum period. This essay asserts that Americans politicized public commemoration after the Compromise of 1850. Statues and public commemoration became connected with the turbulent American politics of compromise and disunion. Although overshadowed by the Civil War, the Webster statue controversy is a unique episode that emphasizes how statues and memorialization became embroiled with American politics, democratic practices, the power of compromise, and the rhetoric of disunion.

Creating the Defender of the Constitution

¹⁵ It should be noted that there are other valuable manuscript sources that were not available at the time of research due to the Coronavirus pandemic. One source to consider is the record book for the Webster Memorial Committee in the Massachusetts Historical Society.

Daniel Webster remained popular in New England, but his reputation suffered during his final years after he supported the Fugitive Slave Law in 1850. Webster was not a pro-slavery politician, but he recognized the utility of compromise to maintain stability in the Union. As a young congressman in 1820, he condemned participants in the Atlantic slave trade as “pirates and felons beyond the human depth of human guilt.”¹⁶ Even in 1850 Webster acknowledged that “wherever there is a substantive good to be done” he was ready to “assert the principle of the exclusion of slavery” in the West.¹⁷ However, his fundamental adherence to the Constitution convinced him that the North had to fulfill its obligations and return fugitive slaves to the South “with alacrity.”¹⁸ Webster encouraged Northern states with anti-slavery laws and sentiments, such as Massachusetts, to “conquer her local prejudices.”¹⁹ The Compromise of 1850 succeeded in adding California as a free state and banning the slave trade in Washington D.C. However, Northern factions such as Northern Cotton Whigs and Garrisonian abolitionists developed conflicting interpretations of Webster’s legacy.

The monied men of Boston wanted to honor Webster’s memory and legacy. In 1853, one year after Webster’ death, one hundred of the wealthiest and most influential men in Boston formed the Webster Memorial Committee to raise a statue in the Massachusetts state capitol. The committee comprised of merchants, manufacturers, bankers, ship builders, politicians, lawyers, academics, newspaper editors, and gentlemen who idolized Webster and benefitted from his economic policies. The Executive Committee of Three, which led the statue movement,

¹⁶ Daniel Webster, “Plymouth Oration” in *The Speeches of Daniel Webster and His Master-Pieces*, ed. B. F. Tefft (Philadelphia, PA: Henry T. Coates & Co., 1854) 106.

¹⁷ Daniel Webster, “The Constitution and the Union,” in *The Works of Daniel Webster*, Vol. 5, (Boston, Mass: Little, Brown & Co. 1869) 353.

¹⁸ Daniel Webster, “The Constitution and the Union,” 353-355.

¹⁹ Quote taken from George Ticknor Curtis, *Life of Daniel Webster*, Vol. 2, 5th Edition (New York, NY: D. Appleton & Co., 1889) 438; Daniel Webster, “The Constitution and the Union,” 354.

represented the different power bases that supported Webster. It consisted of Edward Everett, former Governor of Massachusetts and Webster's successor as Secretary of State; William Amory, the treasurer and director of textile mills in Manchester, New Hampshire; and finally, George Ticknor, a professor at Harvard University. As represented in this small subcommittee, Webster had the backing of Boston's political, economic, and academic elites.²⁰

The Boston merchant elite, which constituted a sizable portion of the statue committee, were determined to commemorate Webster for his dedication to the Union and national commerce. Many of these merchants were indebted to Webster for his economic policies that enabled them to accumulate wealth. The statue was not the first time they commemorated Webster. Back in 1850, Webster attended the launch of a packet ship christened the *Daniel Webster* in Boston. The owner, Enoch Train, who later became a member of the statue committee, used his ships to transport southern cotton to Liverpool before returning with passengers in Boston.²¹ English businessmen and cotton merchants were likely pleased with the news of the launch when they read about it in the *Liverpool Mercury*. Their interest is not a surprise considering that Liverpool is one of many English port cities built from the profits of slave trading and slave-made commodities from the Americas. The *Daniel Webster* would be another welcome addition to the ships from the United States providing Britain with nearly four fifths of its cotton imports.²² At the launch of another ship named the *Defender* in 1855, Everett spoke of Webster's reputation as the "Defender of the Constitution" and his belief that commerce

²⁰ A list of all members of the Webster Memorial Committee can be found in *Inauguration of the Statue of Daniel Webster* (Boston, Mass: George C. Rand and Avery, 1859), 5-6.

²¹ John D. Whidden, *Ocean Life in the Old Sailing Ship Days* (Boston, Mass: Little, Brown, and Co., 1908), 95-96. Captain Widden's account from 1850-51 suggests that ships on Enoch Train's White Diamond Line loaded cotton on the voyage to Liverpool and then returned with emigrants in steerage. It is likely that the Daniel Webster engaged in similar practices.

²² Eric Williams, *Capitalism & Slavery* (Chapel Hill, NC: University of North Carolina Press, 1996), 60-64, 128; Sven Beckert, *Empire of Cotton: A Global History* (New York, NY: Alfred A. Knopf Press, 2014), 121.

unified the country's interests. Everett even commented on the wooden figurehead of Webster fixed to the ship's bow that commanded the waves just as Webster "commanded the hearts of his fellow men when living."²³ Even before the statue committee formed, the Boston elite built these ships to serve as generators of wealth and mobile monuments to Webster's memory. These merchants were among the most influential men in New England and commemorated Webster as the defender of the constitution and American commerce. However, their commemoration could not hide the association between Webster and his controversial policies on slavery.

Edward Everett and the committee selected sculptor Hiram Powers to build the statue and depict Webster as the strength of the Union itself. At first glance, Powers may have seemed like an unusual choice. He was an American artist working abroad in Florence. Furthermore, his statue, *The Greek Slave*, in the 1840s already stirred debate in the United States over slavery. Upon closer inspection, however, it becomes clear that Powers was an ideal choice for the commission. He already had experience making busts of Webster and he supported the senator's work in "defense of the Union and her laws."²⁴ Powers enthusiastically wrote to Everett detailing his plans for the statue to have Webster "stand as the defender of the Union" holding onto bound fasces representing unity and "frowning indignantly" down on any effort to alienate any part of the Union. Powers was not content making Webster a servant of the Constitution and instead made him a pillar of the Union itself. "I would so represent him, not indeed supported by the

²³ "Launch of New Liverpool Packet Ship," *Boston Atlas* Quoted in *Liverpool Mercury* (Liverpool, UK) Nov. 5, 1850; "Launch of the Defender," *New York Daily Times* (New York, NY) Jul. 31, 1855; The quote is a paraphrase from the *New York Dailey Times*.

²⁴ Letter from Hiram Powers to Daniel Webster, June 28, 1851, Hiram Powers Papers, AAA.poweaira, Box 10, Folder 9, Archives of American Art, Smithsonian, Washington D.C., United States.

Union but supporting it, for the country never rewarded his services,” wrote Powers.²⁵ The statue committee had found the ideal artist to transform Webster into a symbol of national unity.

Everett and the statue committee decided to build a monument for Webster during a specific political moment which some Americans hoped would mark the beginning of a new era of memorialization and political stability in the United States. In 1853 the *New York Herald* declared the opening of a new “monumental era” and encouraged Americans to fill their parks and squares with statues to show off the greatness of their commercial cities, match the monumental splendor of Europe, and “honor the individuals of greatness from the Anglo-American name and race.”²⁶ Everett had predicted that if the Compromise of 1850 passed, it would create an “era of good feeling” in the country that would be ideal for memorialization.²⁷ He informed Powers that if the compromise succeeded, “a political millennium will follow, auspicious to the fine arts & all other public spirited objects, & of this we must take advantage.”²⁸ The erection of the Webster statue transpired during a brief political moment when Americans in the antebellum period looked back to the far and recent past to celebrate national heroes and inspire nationalist feelings among the public.

There is a popular misconception that America’s monumental era began in the postbellum era. This has prevented historians from recognizing that the origins of memorialization lie not in war and emancipation, but in compromise. American citizens were prepared to dedicate their public spaces to honor the compromisers they believed had heroically

²⁵ Letter from Hiram Powers to Edward Everett, July 23, 1853, Hiram Powers Papers, AAA.powehira, Box 4, Folder 3, Archives of American Art, Smithsonian, Washington D.C., United States.

²⁶ “Commencement of Our Monumental Era,” *New York Herald* (New York, NY) Jan. 24, 1853.

²⁷ Letter from Edward Everett to Hiram Powers, March 4, 1850, Hiram Powers Papers, AAA.powehira, Box 3, Folder 55, Archives of American Art, Smithsonian, Washington D.C., United States.

²⁸ Letter from Edward Everett to Hiram Powers, April 29, 1850, Hiram Powers Papers, AAA.powehira, Box 3, Folder 55, Archives of American Art, Smithsonian, Washington D.C., United States.

given them lasting peace. It was after the Civil War had proved them wrong that the American public instead dedicated their urban spaces and landscapes to the statesman and the soldier who encapsulated bravery and sacrifice rather than compromise. By recognizing that the new monumental era began in the 1850s, it becomes clearer that before Americans were memorializing compromise and inscribing it into their physical and political environment.



Statue of Henry Clay, at New Orleans, Inaugurated April 12, 1860²⁹

Commemorative movements took place throughout the country. They most often honored American statesmen from the revolutionary generation and the recently departed members of the Great Triumvirate: Daniel Webster, Henry Clay, and John C. Calhoun. In April 1860, Richmond and New Orleans both erected statues of Henry Clay just a few months after Webster's statue inauguration in Boston. Although there was no national coordination for such statues, the speaker in Richmond, Virginian planter and Unionist Johnson B. Barbour, saw the events as deeply connected and representing a sentiment of unity:

²⁹ J. H. Clark, "The Clay Statue at New Orleans," *Harper's Weekly* (New York, NY) Apr. 28, 1860, 267-278.

There is a deep significance in the general but unconcerted movement throughout the country to revive the memories of our departed statesman. The Republic seems to appeal from the living sons to the dead fathers. Massachusetts rears the statues of Warren and Franklin, and more recently of Webster; and Virginia is grouping in monumental harmony and grandeur the sages who declared and the heroes who defended her rights and her independence.³⁰

These statue inaugurations were also prominent civic events that attracted massive public participation. The Clay statue inauguration in New Orleans took place in the commercial heart of the city and attracted approximately 50,000 people. According to one newspaper it was “one of the greatest public spectacle[s] ever witnessed in this city.”³¹ Completing this antebellum triumvirate of memorials, Powers also built a statue of Calhoun for the citizens of Charleston, South Carolina, but its fate is unknown.³² Congress also commissioned colossal equestrian statues of presidential leaders such as Andrew Jackson and George Washington to adorn the capitol. After the Compromise of 1850, many Americans around the country looked to commemoration to construct a shared nationalistic past. They celebrated statesmen and heroes that were most associated with patriotism, Union, and even compromise. Rather than invite celebration and unity, however, the Compromise of 1850 and the statue movement in Boston instigated abolitionist attacks on Webster’s past and the Union with slavery.

From the beginning the statue committee faced strong opposition from Bostonian abolitionists. When the Webster Statue Committee requested 10,000 dollars from the legislature, abolitionists discouraged any state funding. William Lloyd Garrison complained that the state

³⁰ “Inauguration of the Statue of Henry Clay,” *Richmond Whig* (Richmond, VA) Apr. 13, 1860; It is important to note that some of these statues were commissioned before the Compromise of 1850, however, they were still seen as part of a larger movement throughout the country.

³¹ “The Clay Statue Inauguration,” *New Orleans Daily Crescent* (New Orleans, LA) Apr. 13, 1860.

³² David Brinkman and Tom Elmore, “‘Where is the Truth and Justice?’ A Search for Charleston’s John C. Calhoun Statue,” *HistorySoft*. Accessed Apr. 8, 2021. <http://historysoft.com/calhoun/calhoun4.pdf>; The City of Charleston commissioned Hiram Powers to build a marble statue of Calhoun in 1844. The statue sank off the coast in 1850 but was recovered shortly before the Civil War. The statue was never properly inaugurated, and it is highly likely that General Sherman destroyed it during his march through the South.

should not tax the people to dedicate a statue for a man who had disgraced Massachusetts. Rather, the “monied men” of Boston should carry the financial burden.³³ Even though Whigs controlled the state legislature during the early 1850s, they failed multiple times to pass any public funding for the statue. The *Liberator* warned of an “earthquake of public indignation” should the legislature provide any support.³⁴ The free black community in New Bedford, Massachusetts, claimed that should the legislature approve the statue, they would petition to “remove it from the Capitol, & place it either in front of the Court House & surround it with chains as a memento of the ‘[?] of sins,’ or some other appropriate place.”³⁵ During one vote in 1854, a state representative warned that providing funding for the statue meant publicly endorsing the “Father of the Fugitive Slave Law.” The Whig majority in the Massachusetts legislature backed down in the face of such moral suasion.³⁶ Since the beginning, the Webster Statue Committee faced stiff opposition both inside and outside of the state legislature.

Webster’s memory did not dissipate after his death which sparked heightened conflicts around the state. Abolitionists blamed Webster for subsequent compromises with the South such as the Kansas-Nebraska Act of 1854, which opened western territories to slavery based on popular sovereignty. While the Kansas-Nebraska Act was the work of other compromisers such as Illinois Democratic senator Stephen A. Douglas, some abolitionists blamed Webster for laying the foundation for compromise and the expansion of the slave power. According to one abolitionist newspaper, “A Thousand Douglasses in a thousand years, could not accomplish one tithe of the

³³ “Statue of Webster and Jerry Sneak in the State House,” *Liberator* (Boston, Mass) Apr. 29, 1853.

³⁴ *Liberator* (Boston, Mass) May 27, 1853.

³⁵ Petition from the Citizens of New Bedford against the Statue of Daniel Webster, 1854, Harvard University, Antislavery Petitions Massachusetts Dataverse. (Accessed Apr. 28, 2021) <https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/GVQ1Z>; “The Memory of Daniel Webster in Massachusetts,” *Daily Courier* (Louisville, KY) Jun. 1, 1853.

³⁶ “The Webster Monument Defeated,” *Charleston Mercury* (Charleston, SC) May 3, 1854; “The Webster Monument,” *Liberator* (Boston, Mass) May 5, 1854.

amount Daniel Webster did in two whole years.” It continued, “The recording pen above will hold Daniel Webster responsible... but for all the escalating consequences that shall result to humanity the passage of the Nebraska Act.”³⁷ Webster’s memory did not subside after his death. It remained contentious as the South gained more concessions from the Union.

Three weeks after the state legislature refused to fund the Webster Statue, the trial and rendition of Anthony Burns to slavery altered the political landscape in Massachusetts. Upon hearing the news in Florence, Powers confined in Everett his disapproval. He understood compromise as the lesser of two evils, but detested “The idea of assisting officers of a Republican Gov’t. in securing and handling back to bondage a slave.”³⁸ In the four years that Powers worked on the statue, it is probable that he at least once thought about Webster’s Seventh of March speech in connection to Burns’s trial. If Powers did have his doubts, he did not convey them to Everett. Powers was indebted to Webster for helping get his son admitted into West Point. As an American living abroad, he also admired Webster’s work as a foreign diplomat.³⁹ Powers’s conflict of interests as a skeptic of slavery, Webster’s supporter, and a commissioned artist emphasizes the moral ambiguity of slavery and compromise during the antebellum period. Powers’s reservations against the Fugitive Slave Law and his lack of criticism against Webster while building his statue raises the important question of whether the public could commemorate controversial figures and memorialize their positive contributions to society.

After nearly four years of delays, the Webster statue campaign suffered a major blow when the first statue was lost at sea. The statue sailed from Europe for Boston aboard the

³⁷ “Statue to Daniel Webster,” *Greylock Sentinel* quoted in the *Liberator* (Boston, Mass) May 5, 1854.

³⁸ Letter from Hiram Powers to Edward Everett, Jun. 22, 1854, Hiram Powers Papers, AAA.poweaira, Box 4, Folder 44, Archives of American Art, Smithsonian, Washington D.C., United States.

³⁹ Letter Hiram Powers to Daniel Webster, Jun. 28, 1851, Hiram Powers Papers, AAA.poweaira, Box 10, Folder 9, Archives of American Art, Smithsonian, Washington D.C., United States.

American ship *Oxford* on September 4, 1857. Powers eagerly awaited news of the statue's reception, however, in December he learned that the *Oxford* never arrived in Boston and was missing after 106 days at sea.⁴⁰ Caught in a large storm, the crew abandoned ship and were saved by another American vessel, the *Mary and Martha*. The Webster statue sank along with a shipload of marble and formed an underwater memorial somewhere near the Atlantic telegraph cable. The *Boston [German] Pioneer*, one of the largest German-language abolitionist newspapers in New England, reveled in the statue's disappearance. The paper crafted a imagine for its readers of the Webster statue at the bottom of the ocean for the sole "admiration of the sharks below... the slaveholders and slave-hunters of the sea."⁴¹ While the committee insured the statue and Powers could make duplicates, the loss of the first statue was an ominous sign for elitist ambitions to memorialize Webster.

A duplicate statue arrived in Boston in January 1859; however, the committee was troubled with the final product. Expectedly, abolitionists wished that the duplicate had followed the original to the bottom of the ocean.⁴² The Webster Statue Committee, however, was struck by the negative public criticism. Powers emphasized the importance of first impressions and warned that "an oversight on their part might not be easily remedied."⁴³ The committee, however, placed the statue in the poorly lit Boston Athenaeum which caused the press to label it a failure. One critic commented, "it is a terrible-looking thing, having the appearance of a coloured gentleman

⁴⁰ Letter from Hiram Powers to Edward Everett, Oct. 2, 1857; Letters from Edward Everett to Hiram Powers, Nov. 3, 1857 and Dec. 15, 1857, Hiram Powers Papers, AAA.powehira, Box 4, Folder 8, Archives of American Art, Smithsonian, Washington D.C., United States.

⁴¹ "Loss of Ship Oxford," *Boston Herald* (Boston, Mass) Jan. 29, 1858; Nathaniel Hawthorne, *Passages From the French and Italian Notebooks, Volume 2*; "The Webster Statue," *Boston [German] Pioneer* (Boston, Mass) translated in *Liberator* (Boston, Mass) Sept. 30, 1859.

⁴² "From Our Boston Correspondence," *National Anti-Slavery Standard* (New York, NY) Feb. 19, 1859.

⁴³ Letter from Hiram Powers to Edward Everett, Oct. 30, 1859, Hiram Powers Papers, AAA.powehira, Box 4, Folder 12, Archives of American Art, Smithsonian, Washington D.C., United States.

who has run away from his disconsolate master, and in stolen clothes.” The British humor magazine *Punch* added, “Let Dan’l Webster’s Statue be a caution to sinners.”⁴⁴ Everett was able to contain the damage and convinced the committee that Power’s statue was a faithful representation of Webster at the height of his power around the time of his reply to Haynes in 1830.⁴⁵ After reluctantly accepting Everett’s defense, the committee debated the statue’s final location. They originally planned to set up the statue at the head of State Street, a conspicuous and honorable spot in Boston, however, the committee no longer felt it warranted such placement. Everett proposed that the committee work with Republican governor Nathaniel P. Banks to place the statue on the state house grounds, the public space which served as the governmental epicenter of Massachusetts.⁴⁶

After settling on the State House grounds, the committee finally inaugurated the Webster statue. They planned to publicly commemorate the statue during the annual celebration of Boston’s founding on September 17, 1859. The committee placed the statue inauguration at the geographic and sentimental heart of Boston and built a large wooden platform for 6,000 guests on the State House grounds.⁴⁷ Escorted by the Second Massachusetts Battalion, a civic procession of city officials, judges, military officers, local historical, literary, and charitable societies, and Harvard students assembled. Honored guests such as Democratic ex-president Franklin Pierce, along with moderate and conservative Republican congressmen and governors also attended.⁴⁸ Such processions and community rituals were important mechanisms of

⁴⁴ “The Doom of Daniel Webster,” *Punch* (London, UK) May 7, 1859.

⁴⁵ “A Defense of Power’s Statue of Webster,” *Boston Daily Advertiser* (Boston, Mass) Jun. 13, 1859.

⁴⁶ “A Defense of Power’s Statue of Webster,” *Boston Daily Advertiser* (Boston, Mass) Jun. 13, 1859.

⁴⁷ “Inauguration of the Webster Statue – Oration by Edward Everett,” *Boston Dailey Advertiser* (Boston, Mass) Sept. 19, 1859.

⁴⁸ For a fuller description of the procession see *Ibid* and *Inauguration of the Statue of Daniel Webster, September 17, 1859*, 10.

ceremonial citizenship in antebellum America.⁴⁹ The civic body for the statue ceremony reflected the conservative, pro-business, and male authority that supported Webster's policies and memory.



Daniel Webster Statue Inauguration in Front of Massachusetts State House.⁵⁰

The committee selected a time and space that merged Webster's statue and political ideology with the Boston's identity. The city agreed to host the ceremony in front of the state capitol building, a centralizing space for public assembly and a symbol of civic attachment.⁵¹ Holding the inauguration during the 229th ceremony of Boston's founding also granted the statue some amount of official sanction and public endorsement.⁵² While celebrating Webster as a national hero, the committee did not miss the opportunity to try and make him the figurehead of

⁴⁹ Mary P. Ryan, *Civic Wars*, 59-60.

⁵⁰ "Dedication of the Daniel Webster Statue," 1859, photographic print, 11x10 1/4 in. Boston Public Library, Boston, Mass., USA (Accessed through Digital Commonwealth Apr. 28, 2021) <https://www.digitalcommonwealth.org/search/commonwealth:ht24xf36n>; Deloss Barnum, "Inauguration of Daniel Webster Statue, State House, Boston, Mass.," 1859, Albumen silver print, J. Paul Getty Museum, Los Angeles, CA, USA. (Accessed Apr. 28, 2021) <http://www.getty.edu/art/collection/objects/68131/deloss-barnum-inauguration-of-daniel-webster-statue-state-house-boston-mass-american-1859/>. Image cropped from original. The statue is located next to the covered platform.

⁵¹ Mary P. Ryan, *Civic Wars*, 43.

⁵² *Ibid* 68.

Boston and Massachusetts. The *Liberator* accused the committee of selecting a public holiday to attract a larger crowd than usual and give “at least the semblance of universal homage to the memory of one who by his shocking recency to the struggling cause of freedom deserves to go unwept unhonored and unsung.”⁵³ As shown by abolitionists’ fears, the city and statue committee were occupying a time and space that associated Webster’s memory with popular government and the community’s civic identity. The only solace abolitionists found was that a torrential rainstorm forced the procession and attendants to drudge half a mile through the mud from the state house to the Music Hall under the protection of their soaked umbrellas made from slave-produced cotton.⁵⁴

Despite the weather, members of the statue committee and Massachusetts state officials proceeded to inaugurate the statue and commemorate Webster as the embodiment of the Union and a faithful servant of the Constitution. Speakers such as Harvard professor Cornelius C. Felton admired Webster and elevated him alongside George Washington for his contributions to the Constitution. “One established, the other defended the constitution of the country and their names shall live inseparable and immortal in the same transcendent eloquence and in the hearts of their grateful countrymen” boasted Felton. The Republican Mayor Frederick W. Lincoln Jr. assumed public custody of the statue and shared his expectations that it would renew peoples’ faith “in the stability of the Republic and the perpetuity of our institutions.” Republican Governor Nathaniel P. Banks also hoped that Webster’s statue would inspire a patriotic love of country and that the public would dedicate more statues to Massachusetts’s worthiest sons and daughters.⁵⁵

⁵³ “The Inauguration of the Webster Statue,” *Liberator* (Boston, Mass) Sept. 16, 1859.

⁵⁴ “Inauguration of the Statue” *Liberator* (Boston, Mass) Oct. 14, 1859.

⁵⁵ *Inauguration of the Statue of Daniel Webster*, 12-14, 15, 18, 27.

In the main speech of the afternoon, Edward Everett characterized Webster as one of the greatest statesmen of their time. Everett avoided the latter years of Webster's life and emphasized his earlier work as a foreign diplomat, his support for the Greek Revolution, his oratory and legal skills, and his role in the Webster-Ashburton Treaty of 1842. Everett underscored Webster's devotion to the Constitution and his ability to preserve national unity while also maintaining balance between extreme opinions.⁵⁶ "He was faithful to the duties which he inferred from the Constitution and the Law to which he looked for the government of civil society" exulted Everett. He warned that anyone who criticized Webster did his memory "a grievous wrong."⁵⁷ Everett expected the community to embrace his memorialization of Webster as the hero of the Union and reject wrongful criticisms. Everett concluded his speech claiming that if secession should come, the "monumental form would descend from its pedestal to stand in the front rank of the peril."⁵⁸ Through the statue inauguration, Everett, and the other speakers idolized Webster as the defender of the Constitution and the strength of the Union. The public warmly praised Everett's speech, and the state legislature invited Everett to deliver it again on the state house grounds later that month.⁵⁹ The Webster statue inauguration was a celebration of a great man whose bronze corporal form would continue to remind legislators and the public of his patriotic deeds.

The civic performance surrounding the Webster statue embodied elitist hopes of encouraging patriotism while also supporting obedience to the Union and the Constitution. During this key decade of commemoration, Hiram Powers and the statue committee wanted to

⁵⁶ Ibid. 85-86.

⁵⁷ *Inauguration of the Statue of Daniel Webster*, 96.

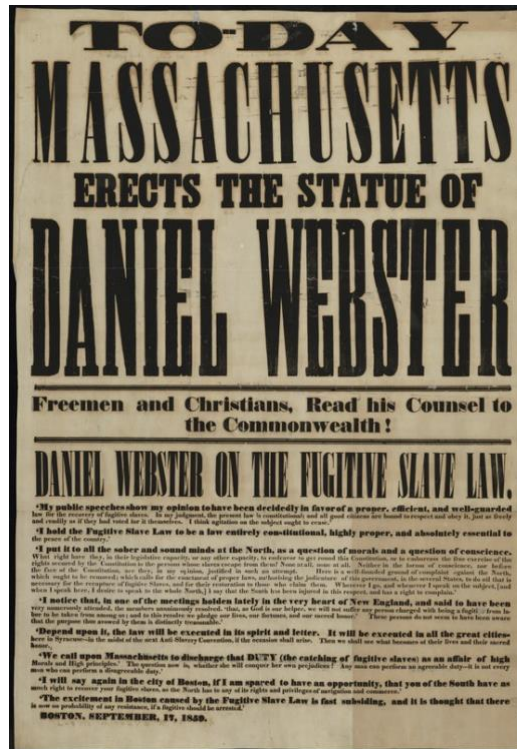
⁵⁸ Ibid. 102.

⁵⁹ "Massachusetts Legislature – Extra Session," *Boston Daily Advertiser* (Boston, Mass) Sept. 20, 1859.

present the public with a positive characterization of Webster and his political career that underscored his political significance as a symbol of constitutional law and national unity. By raising the statue in front of the State House and celebrating it on a public holiday, Webster's supporters sought to embed Webster's heroic memory into the physical landscape and the public mind.

Fighting the Moral and Physical Boundaries of Compromise.

The abolitionists in Boston disputed the statue committee's heroic commemoration of Webster in the public's domain. For abolitionists Webster was not a civic model, but an apostate, traitor, and the Father of the Fugitive Slave Law. Even before Boston inaugurated the statue, abolitionists were drawing the battlelines for a prolonged struggle over Webster's memory and the public commemoration of political compromise. They transformed the Webster statue and the State House grounds into sites of political contestation. Spectators on their way to the statue inauguration likely saw broadsides posted throughout Boston calling attention to Webster's past advocacy for the Fugitive Slave Law during the Compromise of 1850. They included excerpts from Webster's Seventh of March Speech and Everett's controversial comments on returning fugitive slaves when he was a congressman in 1826.



Abolitionist Broadside in protest of the inauguration of Daniel Webster’s statue dated September 17, 1859. Size 108 x 78 cm. Boston Public Library.⁶⁰

According to activist Theodore Tilton of Brooklyn, abolitionists posted more placards on the wooden platform and in the nearby neighborhood during the inauguration to supply information on the “marvelous omission” in Everett’s speech.”⁶¹ They also circulated petitions to remove the statue during the inauguration.⁶² During the statue protests, abolitionists contested the public space where these commemorations and identity-making occurred.

⁶⁰ "Today Massachusetts erects the Statue of Daniel Webster." Ephemera. 1859. *Digital Commonwealth*, <https://ark.digitalcommonwealth.org/ark:/50959/70796d096> (accessed Apr. 14, 2021). For the smaller leaflet with Webster’s and Everett’s comments on the Fugitive Slave Law see “Everett and Webster. A scene in Congress in 1826!” Broadside, 1859, 45.5 x 20.5 cm, Broadside, leaflets, and pamphlets from America and Europe, Portfolio 60, Folder 32, rbpe06003200, Library of Congress (Accessed Apr. 28, 2021) <https://www.loc.gov/item/rbpe.06003200/>.

⁶¹ “The Voice of Boston’s Idol,” *National Anti-Slavery Standard* (New York, NY) Oct. 8, 1859.

⁶² “Bad Taste in Boston” *New York Journal of Commerce* (New York, NY) Oct. 21, 1859.

Abolitionists disapproved of Everett's speech which intentionally omitted any mention of Webster's role in the Fugitive Slave Law. Wendell Phillips pointed out that Everett spent three feet by newspaper measurement talking about the Webster-Ashburton Treaty, "but not a line, or hardly one [foot], relating to the great treason of the 7th of March 1850."⁶³ The speakers at the inauguration, the abolitionist press pointed out, remained silent on Webster's compromise with slavery. "All the orators slid over the final years of Webster's life and said it was a statue of Webster in 1820 and not a statue of Webster in 1850," complained the *National Anti-Slavery Standard*.⁶⁴ Abolitionists brought attention to speakers' silence on the Fugitive Slave Law and refused to allow the monied elite to ignore Webster's controversial past. Furthermore, they forcefully inserted the issues of slavery and commemoration into public and civic space in the State House grounds.

Abolitionists did not argue that statues of Webster could not exist, but they did not believe that such commemorations on the state house grounds and public property was acceptable. "A statue of a legislative man erected on the grounds of the legislative house is a statue to his legislative memory" Tilton specified. "It is not as the orator or the lawyer but as the statesman that Daniel Webster stands in the shadow of the statehouse Dome; and as a statesman inasmuch as he dishonored the state he has no place before the statehouse steps."⁶⁵ Garrisonian abolitionists agreed that Massachusetts was "dishonored afresh" by the placement of the statue in front of the State House.⁶⁶ Garrison and Tilton did not object to Boston's aristocratic elite

⁶³ Wendell Phillips, "Idols," in *Speeches, Lectures, and Letters by Wendell Phillips* (Boston, Mass: Lee and Shepard 1872), 256.

⁶⁴ *Providence Tribune* quoted in the *Liberator* Sept. 23, 1859; *National Anti-Slavery Standard* quoted in the *Liberator* (Boston, Mass) Oct. 14, 1859.

⁶⁵ "Voice of Boston's Idol" *National Anti-Slavery Standard* (New York, NY) Oct. 8, 1859.

⁶⁶ Letter from William Lloyd Garrison to Samuel J. May, Sept. 19, 1859 in *The Letters of William Lloyd Garrison*, Vol. 4, ed. Louis Ruchames (Cambridge, Mass: The Belknap Press of Harvard University Press, 1975), 653-656.

placing such statues within the safe confines of their private studies or on their own property. They contented, however, that the state's participation gave abolitionists "the right to express an opinion."⁶⁷ They considered the state's decision to grant a portion of the statehouse grounds for the erection of the Webster statue an "outrageous abuse of trust and an insult to the moral and Humane feelings of the people of this Commonwealth."⁶⁸ For abolitionists, commemorating Webster in this space was a "renunciation to all the glory and sacrifices in achievements on behalf of Liberty in her past history."⁶⁹ They even feared that the statue on the State House grounds would corrupt the public by acclimating them to praising pro-slavery politicians. "The Shadow of that ugly idol will reach across a great way and fall across of many a man, should enough be found to put it anywhere on soil belonging to the commonwealth in its sovereign character" warned the *National Anti-Slavery Standard*.⁷⁰ Abolitionist protesters were not simply concerned that a statue of Webster existed, but that it took on even larger political significance because of the space that it occupied on public property in front of the state legislature, the symbol and space of political autonomy.

The Republican legislature's support for the commemoration of the Webster statue also shook abolitionists' faith in the party's willingness to challenge slavery. The "acceptance confirmed without objection or remonstrance by a Republican legislature," the *National Anti-Slavery Standard* explained, "gives significance to this event."⁷¹ Abolitionists questioned the ability of the Republican-controlled legislature and governor who approved and participated in commemorating Webster in the state capitol. The *Liberator* accused Republican Governor

⁶⁷ "The Mann Monument," *Liberator* (Boston, Mass) Oct. 14, 1859.

⁶⁸ "The Statue Must Be Removed," *Liberator* (Boston, Mass) Sept. 9, 1859.

⁶⁹ "The Statue Must Be Removed," *Liberator* (Boston, Mass) Sept. 16, 1859.

⁷⁰ "The Statue of Webster," *National Anti-Slavery Standard* (New York, NY) Mar. 18, 1859.

⁷¹ "The Webster Statue," *National Anti-Slavery Standard* (New York, NY) Sept. 24, 1859.

Nathaniel Banks of trying to form an alliance with the old Whig leaders to elevate himself to the presidency.⁷² For some abolitionists, the Webster statue revealed a moral weakness in the national Republican Party. “If this section be a specimen of what to expect from the National Party” the *National Anti-Slavery Standard* worried “we can draw but very faint hopes of an improved state of things from their victory.”⁷³ Abolitionists were particularly disappointed in Republican Ohio congressman Salmon P. Chase for not strongly rejecting his invitation to ceremony. Theodore Parker and the abolitionist press labeled the possible presidential candidate a coward when he did not strongly reject his invitation to the inauguration and claimed he would go far to celebrate Power’s statue and Everett’s speech of Webster.⁷⁴ The *Liberator* encouraged Massachusetts abolitionists to remove any state representatives who did not pledge to remove the Webster statue.⁷⁵ The Webster statue affected abolitionists’ faith in the Republican party on the state and national levels. With state and national Republicans showing some support for the statue, Bostonian abolitionists worried if the emerging Republican party was dedicated to the destruction of slavery or simply filling the shoes of the compromising Whigs who preceded them.

Unlike the Boston elites who worried over the statue’s appearance, abolitionists considered the removal of the Webster statue a moral obligation. They did not miss the opportunity to call the statue a “colossal abortion,” but their criticisms were moral rather than aesthetic.⁷⁶ “This act of justice and self-respect will be demanded on no grounds of the artistic

⁷² “The Webster Statue,” *Liberator* (Boston, Mass) Sept. 9, 1859

⁷³ “The Webster Statue,” *National Anti-Slavery Standard* (New York, NY) Sept. 24, 1859.

⁷⁴ “Letter from Theodore Parker,” *Liberator* (Boston, Mass) Sept. 16, 1859; “The Webster Statue,” *Boston [German] Pioneer* translated for the *Liberator* (Boston, Mass) Sept. 30, 1859.

⁷⁵ “Removal of the Statue,” *Liberator* (Boston, Mass) Oct. 7, 1859.

⁷⁶ “Statue of Webster,” *National Anti-Slavery Standard* (New York, NY) March 18, 1859.

qualities of the statue” explained the *National Anti-Slavery Standard*.⁷⁷ Removing the Webster statue was an issue of justice and a political statement that abolitionists would not tolerate a statue dedicated the father of the Fugitive Slave Law in their state capitol.

The Massachusetts Anti-Slavery Society started one of the first anti-memorial movements in the history of the United States. Before Everett’s first speech, abolitionists had already prepared petitions demanding that the state legislature remove the Webster statue that dishonored Massachusetts and was “repugnant to the moral sense of the people.”⁷⁸ This was the second time in recent memory that Massachusetts abolitionists attempted to remove a symbol of compromise with the slavery. The anti-Webster statue movement was reminiscent of the petition campaign to remove Edward G. Loring, the federal commissioner who enforced the Fugitive Slave Law and forced Anthony Burns back into slavery in Virginia. Abolitionists argued that Loring had acted “to the deep moral repugnance of the people of this Commonwealth to the Fugitive Slave Law.”⁷⁹ While Loring’s defenders argued that abolitionists wanted to “punish the man who has executed it,” petitioners claimed that Loring’s willingness to enforce the Fugitive Slave Law violated the “religious convictions of the State” and “the vital question of practical morality.”⁸⁰ Loring’s removal in 1858 was a symbolic victory over the slave power and a reassertion that Boston and Massachusetts was still the capitol of the anti-slavery movement.⁸¹

⁷⁷ “The Webster Statue,” *National Ant-Slavery Standard* (New York, NY) Sept. 24, 1859.

⁷⁸ “Circulate the Petitions,” *Liberator* (Boston, Mass) Oct. 7, 1859. The petitions can also be accessed on the Harvard University Anti-Slavery Database. [https://iif.lib.harvard.edu/manifests/view/drs:47698989\\$1i](https://iif.lib.harvard.edu/manifests/view/drs:47698989$1i).

⁷⁹ Petition from William Lloyd Garrison to the Joint Special Committee of Legislation, March 5, 1858, *Letters from William Lloyd Garrison*, Vol. 4, ed. Louis Ruchames, 514.

⁸⁰ “Remarks of Richard H. Dana, Jr. Esq. Before the Committee on Federal Relations on the Proposed Removal of Edward G. Loring, Esq. From the Office of Judge of Probate,” 46 in *Slavery Race, and the American Legal System, 1700-1872*, edited by William McKinley et al. Series II, Vol. 3 (Clark, NJ: Lawbook Exchange, 2007); “Argument of Wendell Phillips, Esq. Before the Committee on Federal Relations (of the Massachusetts Legislature) in Support of the Petition for the Removal of Edward Greely Loring from Office of Judge of Probate,” in *Slavery Race, and the American Legal System, 1700-1872*, 39.

⁸¹ R. J. M. Blackett, *The Captive’s Quest for Freedom*, 435.

After the Anthony Burns trial, abolitionists in Boston sought to remove symbols of compromise such as Judge Loring and later the Webster statue. As the *National Anti-Slavery Standard* enthusiastically expressed, “We got judge Loring turned out... and I imagine it will take much less time to clear our front yard of this brazen Idol.”⁸² Abolitionists were on a crusade to remove immoral symbols of slavery and Northern compromise in their communities. They contested the moral and physical boundaries of commemoration and wanted to rid public space and culture of symbols of compromise.

Abolitionists emphasized the need to confront Webster’s past and bring his memory into contemporary debate. Abolitionist Theodore Parker saw that it was necessary to revive Webster’s memory for public examination. “The statute debases the people thus the character of Daniel Webster must be discussed anew, and the dead not allowed to rest.”⁸³ Abolitionists sought to re-invigorate the trauma of Webster’s betrayal from almost a decade ago and instigate new public discussions about Webster’s memory. The *National Anti-Slavery Standard* even called for annual committees and public hearings because “as long as the statue stands the misdeeds of Daniel Webster will be kept fresh in the minds of men.”⁸⁴ The abolitionists petitioning for the removal of the statue did not allow Webster to rest even after his death. They believed it was necessary to draw Webster into the political conditions of the day and debate his memory as a community.

Abolitionists also went back to the ancient past to battle the academic elite who supported Webster. The day of the inauguration, Cornelius C. Felton, like many others of Webster’s supporters, praised Webster’s oratory skills and compared his skills with the renown Greek

⁸² “From our Boston Correspondent,” *National Anti-Slavery Standard* (New York, NY) Aug. 20, 1859.

⁸³ “Letter from Theodore Parker,” *National Anti-Slavery Standard*, Oct 14, 1859.

⁸⁴ “The Webster Statue,” *National Anti-Slavery Standard*, Sept. 24, 1859.

orator Demosthenes.⁸⁵ Wendell Phillips enjoyed turning Felton's ancient analogy on its head to critique Webster instead. In one speech Phillips claimed that Demosthenes was also a bad influence on the people of Athens and a coward who "fled from battle and his council though heroic brought the city to ruin."⁸⁶ Phillips even appropriated the words of Webster's adversary, Aeschines, who warned of the consequences for honoring an immoral figure: "If you take one whose life has no high purpose, one who mocks at morals, and Crown him in the theater every boy who sees it is corrupted."⁸⁷ In amusement, the *Brooklyn Daily Eagle* noticed that "the abolitionist controversy about the Webster statue in Boston is getting classical."⁸⁸ While rhetorical and seemingly innocent, Phillips used the educated elite's own high-brow analogies and heroic praise for Webster to mock their immoral worship of an icon of compromise and slavery. He cautioned against creating idols that might morally corrupt the people.

While petitioning against the statue, abolitionists complained of Webster's past allegiances to abolitionism's two greatest enemies. "There were two powers which seemed to have complete dominion over Mr. Webster in the later part of his life," The *Liberator* declared, "the money power and the slave power."⁸⁹ Garrisonian abolitionists understood the statue as a symbol of the slave power. In 1859 the Cape Cod Anti-Slavery Convention called it "a wicked homage to the slave power and a fresh stab at human freedom."⁹⁰ According to the *Liberator*, the petition movement to remove the statue was "so clearly connected with the abolition of the slave system and the overthrow of the slave power that we regard it as the special anti-slavery duty of

⁸⁵ Robert V. Remini, *Daniel Webster: The Man and His Time*, 330.

⁸⁶ Wendell Phillips, *Speeches, Lectures, and Letters by Wendell Phillips*, 261.

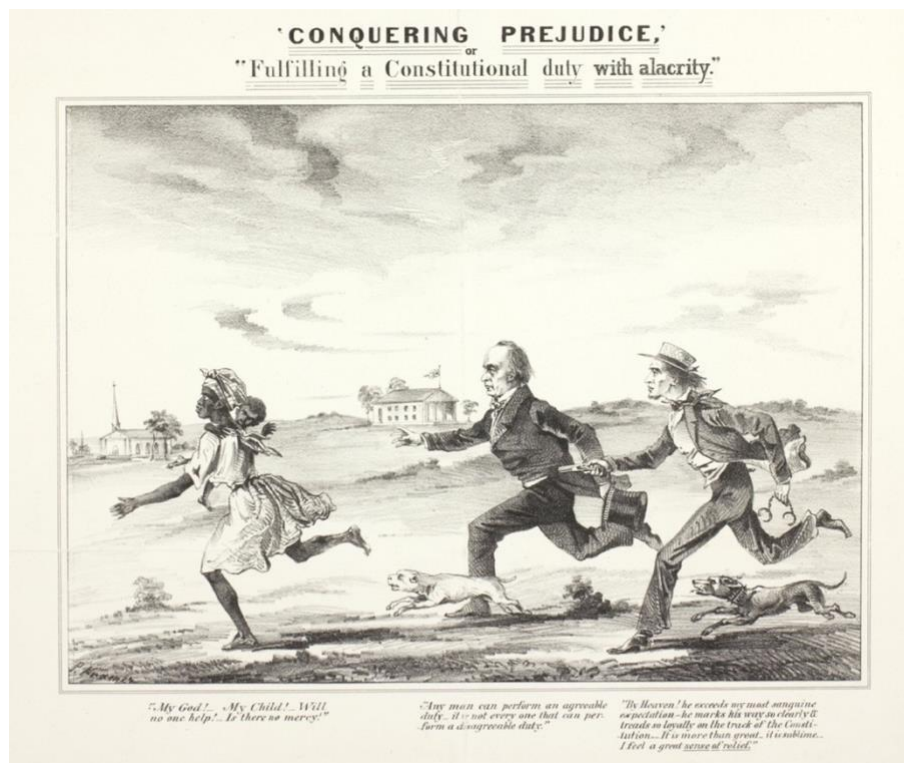
⁸⁷ *Ibid.* 261-262.

⁸⁸ "Getting Classical," *Brooklyn Daily Eagle* (Brooklyn, NY) Oct. 14, 1859.

⁸⁹ "The Statue Must Be Removed," *Liberator* (Boston, Mass) Sept. 16, 1859.

⁹⁰ "Cape Cod Anti-Slavery Convention," *Liberator* (Boston, Mass) Nov. 25, 1859

the hour in this state.”⁹¹ It further claimed that “Every blow that shall fall upon the iron image will break a fetter in Carolina. Its removal... will be a heavy stroke to the hopes and machinations of the enemies of impartial freedom North and South.”⁹² For abolitionists, the removal of the Webster statue was not a trivial matter, but part of the larger political struggle for emancipation and the destruction of American slavery. Abolitionists even distributed political cartoons of Webster in step with slave catchers to emphasize his compromise with the slave South. Abolitionists rejected Everett’s heroic commemoration and instead lowered Webster to a slave catcher.



Political cartoon that abolitionists distributed during the statue protests by Peter Kramer.⁹³

⁹¹ "Inauguration of the Webster Statue," *Liberator* (Boston, Mass) Sept. 16, 1857.

⁹² *Ibid.*

⁹³ "Republicanism Rampant – Let Old Whigs Read," *The Spirit of Democracy* (Woodsfield, OH) Oct. 12, 1859; Peter Kramer, *Conquering prejudice, or 'fulfilling a constitutional duty with alacrity,'* ca. 1851, lithograph, 33 x 45 cm, Library Company of Philadelphia (Accessed Apr. 28, 1859)

Garrisonian abolitionists also argued that the “money power” had long controlled Webster’s political career. They saw potential signs with Webster’s changing position on the national tariff. In 1816 Webster was a strong advocate for free trade. However, he gradually became more supportive of tariffs after attending to his wealthy constituents such as Francis C. Lowell, Nathan Appleton, Abbot Lawrence, and Amos A. Lawrence. These members of the Boston Associates, who were involved in the wool and cotton manufacturing business, later joined the Webster Statue Committee.⁹⁴ Merchants from Boston and New York were also known to give Webster bribes and monetary gifts which made abolitionists question his ability to act free from bias for the sake of the general good.⁹⁵ Rather than see Webster as a self-sacrificing statesman for the Constitution and the Union, abolitionists depicted Webster as an immoral supporter of slavery and a corrupt politician unworthy of public honor or commemoration.

These Cotton Whigs and the Boston Associates benefitted immensely from Webster’s compromise which allowed them to continue extracting wealth from Southern slave labor. The Lowell textile mills alone consumed some 15 million pounds of cotton, or 100,000 days-worth of slave labor every year.⁹⁶ It makes sense that the Webster Statue Committee comprised of sugar and cotton traders who profited from Webster’s compromises and economic policies.⁹⁷ As historian John C. Waugh explained, “Business interests, hating the idea of commerce-disrupting

<https://digital.librarycompany.org/islandora/object/Islandora%3A65077>; Kramer’s lithograph best matches the description of the drawing from the *Spirit of Democracy*.

⁹⁴ Carl E. Prince and Seth Taylor, “Daniel Webster, the Boston Associates, and the U.S. Government’s Role in the Industrializing Process, 1815-1830,” *Journal of the Early Republic* 2, no. 3 (Autumn 1982): 283-299; For a more critical analysis of Webster’s support for Northern economic interests see Richard N. Current, *Daniel Webster and the Rise of National Conservatism* (Boston, Mass: Little, Brown & Co, 1955).

⁹⁵ “The Statue Must Be Removed!” *Liberator* (Boston, Mass) Sept. 16, 1859.

⁹⁶ Edward Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York, NY: Basic Books, 2016), 317.

⁹⁷ “Two Great Questions Settled in Boston,” *New York Herald* (New York, NY) Jul. 24, 1859.

disunion, particularly liked it [the Seventh of March speech].”⁹⁸ Former slave Thomas Smallwood wrote in his narrative that the supporters for Fugitive Slave Law “composed mostly of the great merchants, manufacturers, and aristocrats of the North, who suck their riches from the South off from the sweat and blood of the African race.” He pointed out, “These are they who lauded the Idol of Massachusetts, Daniel Webster, the great apostate, for the part he had taken in that infamous measure.”⁹⁹ The members of the Webster statue committee included many of the merchants, manufacturers, and shipbuilders, who had accumulated wealth from Southern slave labor.¹⁰⁰

The statue became a symbol of the Northern manufacturing aristocracy that Webster had himself helped build. In 1860 Jane Ashby, a 76-year-old English poet, reflected on the monied aristocracy in a poem she wrote for the *Liberator* titled “The Webster Statue.” – “America thou wilt not have an aristocracy of birth / Like Europe but they almost have an aristocracy of worth / Displace that statue which recalls that dark page on the statute book / Freedom and Justice it appalls - love bows the head and will not look.”¹⁰¹ As Ashby identified, the statue was a symbol

⁹⁸ John C. Waugh, *On The Brink: The Compromise of 1850 and How it Changed the Course of American History* (Wilmington, DE: Scholarly Resources, 2003), 106.

⁹⁹ Thomas Smallwood, *A Narrative of Thomas Smallwood, (Coloured Man) Giving an Account of His Birth – The Period He was Held in Slavery – His Release – and Removal to Canada, etc. Together with an Account of the Underground Railroad. Written by Himself* (Toronto, Canada: James Stephens, 1851), 17.

¹⁰⁰ It is important to acknowledge that not all members of the Webster Statue Committee supported the Fugitive Slave Law in the later 1850s. During the trial of Anthony Burns in Boston, conservatives and Cotton Whigs such as Amos A. Lawrence and Samuel A. Eliot, who were both on the Webster Statue Committee, later reversed their position against the Fugitive Slave Law. As Amos Lawrence wrote, “We went to bed one night old fashioned, conservative, Compromise Union Whigs and waked up stark mad Abolitionists.” Quoted from Albert J. Von Frank, *The Trials of Anthony Burns: Freedom and Slavery in Emerson’s Boston* (Cambridge Mass: Harvard University Press, 1998), 207, 359n. It is important to avoid overgeneralizations and acknowledge that the members of the Webster Statue Committee may have considered their support for Webster’s memory as separate from their position on the Fugitive Slave Law by 1859. Similar to Hiram Powers, this situation makes one question their assessment of Webster while considering his advocacy for the Fugitive Slave Law. It reveals of the moral dilemma of whether a person can honor and commemorate a historical figure without disregarding their controversial decisions.

¹⁰¹ Jane Ashby, “The Webster Statue,” *Liberator* (Boston, Mass) Jan. 27, 1860; Jane Ashby was a woman who lived in Tenterden, Kent, and Hastings, England. She commonly wrote poems about slavery for Garrison to print in the *Liberator*. It is unclear if she was related to Garrison’s acquaintances, the Ashbys from Newburyport, Mass.

of the money power and the growing economic aristocracy of Northern merchants and manufacturers. The statue did not only remind abolitionists of chattel slavery, but wage slavery as well.

Webster's statue in Boston symbolized the convergence of the money power and the slave power, a combination that abolitionists feared in the later antebellum period. As the Whig party dissolved, Conservatives and Cotton Whigs considered forming political alliances with Southern Democrats to preserve one another's interests. This was the convergence of the Northern money power and the Southern slave power that Ohio Congressman Thomas Moore had predicted back in the 1830s; that slavery and banking exploited other peoples' labor and endangered republican institutions with their aristocratic character and concentrated power.¹⁰² According to abolitionists, Daniel Webster served two villainous masters. The statue erected in Boston was also a monument to the political economy of slavery and the mutually beneficial relationship between Southern slaveholders and the Northern economic aristocracy.

Although abolitionists did not think in such terms in the mid-nineteenth century, historians can now identify the Webster statue as a memorial of "racial capitalism." To borrow the term from historian Cedric J. Robinson, "racial capitalism" is the process explaining how the modern global capitalist world is dependent on racial slavery, extraction, violence, and imperialism.¹⁰³ The rise of Boston's cohort of capitalists cannot be understood without slavery. Racial capitalism is what made the Webster statue so offensive as it was the embodiment of a

¹⁰² Sean Wilentz, *The Rise of American Democracy* (New York, NY: W.W. Norton & Co., 2005), 660; Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War* (New York, NY: Oxford University Press, 1970), 90-93.

¹⁰³ Cedric J. Robinson, *Black Marxism: The Making of the Black Radical Tradition* (Chapel Hill, NC: University of North Carolina Press, 2000), xiii, 2-3, 8-9; For more on "racial capitalism" see also Walter Johnson, *The Broken Heart of America: St. Louis and the Violent History of the United States* (New York, NY: Basic Books, 2020).

political economy that created a northern economic aristocracy that profited from enslaved people's labor. For Bostonian abolitionists, this statue of Daniel Webster ordered by the monied elite whose pockets were lined with the profits of slave-produced sugar and cotton constituted a memorial to an attack on equality itself. The statue was not only a symbol for abolitionists to take out their frustrations on the man they believed betrayed them, but it was an attack on a symbol of the political economy where Bostonian elites and American public accepted slavery, aristocracy, and exploitation as society's foundations. One does not have to look to the post-Confederate South to locate how prejudiced interest groups engraved slavery's legacy into stone, marble, or bronze. Antebellum abolitionists found it in their epicenter of their movement, and they were determined to remove it.

Abolitionist objections to the Webster statue reveal the conflicts in public commemoration in the late antebellum period. Not content with the heroic memory that Everett and the Webster Statue Committee provided, white northern abolitionists contested the types of subjects deemed suitable for public commemoration in their communities. The growing concerns and objections over compromise, slavery, and the economic elite further politicized the Webster statue. Through their words and their efforts, abolitionists in Boston disputed the moral and physical boundaries of public commemoration. To commemorate a compromiser on public property was to dishonor the state and its anti-slavery politics. They actively fought over Webster's memory and its political meaning for abolitionism in Massachusetts. Abolitionists protested the statue and demonstrated their convictions against slavery to keep Massachusetts the epicenter of the anti-slavery movement.

Will They Let Daniel Webster Go South?

The debate over Daniel Webster's memory and the politics of compromise was not limited to the North. When Powers received news back in Florence that abolitionists in Boston had started a crusade against the statue, he asked, "what would they do with it? Would they let it go South?"¹⁰⁴ If Massachusetts rejected the statue, Powers believed that perhaps the citizens of New Orleans might accept it because Webster was more popular in the South.¹⁰⁵ Although Southern delegates did not give Webster any votes during the Whig presidential nomination in 1852, Southern politicians and newspapers honored Webster as an exceptional Northern statesman who upheld constitutional obligations to the South. After Webster died in 1852, the Massachusetts legislature received and approved multiple resolutions in Webster's memory from Charlestown, South Carolina, much to the disappointment of Garrisonian abolitionists.¹⁰⁶ Southern politicians and newspapers interpreted the abolitionists' protests against Webster's statue as a threat of disunion, and they offered to figuratively and physically memorialize him in the South.

Southern newspapers such as the *Daily Dispatch* in Richmond, Virginia, applauded the decision to erect a statue of Webster in Boston. The *Dispatch* identified Webster as one of the few honorable Northern men who upheld the Constitution and was not hostile to the Southern institution. According to one article, it was "as if he had lived in the Valley of Virginia, that spot which Washington chose as the last Citadel of Liberty, and which ought therefore to be, as it is, the great stronghold of loyalty to that Union without which Liberty could not live for a day."¹⁰⁷

¹⁰⁴ Letter from Hiram Powers to Edward Everett, Nov. 14, 1859, Hiram Powers Papers, AAA.powehira, Box 4, Folder 12, Archives of American Art, Smithsonian, Washington D.C., United States.

¹⁰⁵ *Ibid.*

¹⁰⁶ "Proceedings of Meeting of the Citizens of Charleston," *Charleston Mercury* (Charleston, SC) Nov. 1, 1852; "Statue to Webster and Jerry Sneak in the State House," *Liberator* (Boston, Mass) Apr. 29, 1853.

¹⁰⁷ "Daniel Webster," *Daily Dispatch* (Richmond, VA) Sept. 22, 1859.

For his willingness to prioritize the Constitution and compromise with the South rather than preach the Higher Law, the Virginian press accepted Webster almost as if he were himself a southerner.

Southern statesmen were, therefore, indignant when they learned that abolitionists in Boston wanted to remove Webster's statue. They found the abolitionists' demands unreasonable and even threatening to Southern interests and safety. Many Virginians reacted negatively after hearing Wendell Phillips's remarks on the statue. During one lecture, Phillips rejected the idolization of Daniel Webster and ended with a European folk story:

At Reval, one of the Hanse towns they will show you in their Treasury the sword which 200 years ago beheaded a long list Baron for daring to carry off his fugitive slave from the shelter of the city's wall. Our great slave hunter is beyond the reach of man's sword; but if any Noble soul in the state most are our mother Massachusetts to be had this image we will cherish the name of that true Massachusetts boy as secretly as they keep the brave old sword at Reval.¹⁰⁸

It is unlikely that Phillips desired his audience to mutilate the Webster statue, although it is not uncharacteristic of Boston's violent history with statues.¹⁰⁹ Regardless of his intent, Southern newspapers and state representatives, especially in Virginia, believed that Webster's statue was in danger and quickly moved to preserve his memory on their own regional terms. During a Virginian legislature meeting in December 1859 several representatives proposed naming a new county after Webster, "the great pacificator of the North whose statue recently erected in Boston had been threatened with mutilation by fanatics on accounts of the conservatism of the great original."¹¹⁰ Virginia dedicated 560 square miles to Webster's memory. In a celebratory speech

¹⁰⁸ Wendell Phillips, "Idols," *Speeches, Lectures, and Letters by Wendall Phillips*, 262.

¹⁰⁹ According to the diary of abolitionist Sallie Holley, during the Jackson administration a full-length figure of Andrew Jackson was to be placed as a pilot head on a ship of war. One night the statue was beheaded, and the culprit was never identified. Sallie Holley and John White Chadwick, *A Life for Liberty: Anti-Slavery and other Letters of Sallie Holley* (New York, NY: G.P. Putnam's Sons, 1899), 124-125.

¹¹⁰ "House of Delegates," *Daily Dispatch* (Richmond, VA) Dec. 16, 1859.

for the new county, Virginian state senator James G. Paxton remarked that “If the abolition authorities of Massachusetts consider her soil is desecrated by the statue of Webster, I doubt not the authorities of Virginia would give it a place in our capitol square.”¹¹¹ With the counties of Clay, Calhoun, and Webster adjacent to one another, Paxton called upon Virginia to “Cherish the memory of these fine men” who were true to the Constitution and advanced the prosperity of the Union.¹¹² Regardless of whether or not Paxton was serious about moving the statue to Virginia, he and other Virginian representatives commemorated Webster as a defender of the Constitution and the Union. The political debates and contestation over compromise and union not only politicized the commemoration of public space in the Northern city. They also politicized public commemoration and space in a different way with the Southern rural landscape.

Southern politicians’ remarks reveal that Webster’s statue became emblematic of the growing conflict between Northern and Southern sentiments. Paxton said, “It is enough for me to know that the black Republicans of Massachusetts who are now engaged in a war upon the constitution and rights of the South are now endeavoring to dishonor the name of Webster.”¹¹³ Even the prominent Southern Whig and staunch Virginian Unionist John Janney seemed concerned and made similar comments during the 1860 Whig Convention in Richmond. He also grew frustrated with Northern fanaticism ruining their public institutions and driving out prominent the men most sympathetic to the South. He argued if it were possible, Virginia should move the Bunker Hill monument stone by stone to Yorktown and place the Webster statue along with Virginia’s most prestigious men including Washington, Jefferson, George Mason, and Henry Clay. He vowed that, “we will cherish and defend both the living and the memorials of the

¹¹¹ “Memory of Daniel Webster Honored in Virginia,” *Daily Dispatch* (Richmond, VA) Jan. 11, 1860.

¹¹² Ibid. See also “New County of Webster,” *Alexandria Gazette* (Alexandria, VA) Jan 21, 1860.

¹¹³ Ibid.

dead.”¹¹⁴ Local Virginian politicians such as Paxton and Janney demonstrated how the South contested over Webster’s memory and practically adopted him as a member of their own political community. Growing frustrated with abolitionism’s rejection of political compromise, they argued that Virginia was willing to add Webster to the pantheon of famous Virginian statesmen.

The politization of the Webster statue is best demonstrated in Congressional debate. In his address on the deteriorating state of the union in 1861, Senator Thomas L. Clingman of North Carolina conveyed his annoyance with the growing anti-slavery sentiments in the North and believed it would lead the South to financial bankruptcy, political degradation, and social ruin. He finished his address by disapproving of abolitionists’ demands for the removal of the Webster statue because he was willing to compromise with the South:

How long will it be until it reaches that stage when it will require that the statues of such slaveholders as Washington and Jackson shall be thrown into the Potomac, the monument of the former razed to the ground, and the very name of this city changed the one in harmony with the anti-slavery feeling?¹¹⁵

To Clingman, the Webster statue was an emblem of compromise and faith in constitutional union. Abolitionist designs to remove it was an open attack on Southern identity. The fact that Clingman included the statue in his pessimistic state of the Union address reveals that the statue was integral to the politics of disunion as the North and South were reaching a violent impasse.

The Webster statue took on new political significance after John Brown’s raid in Harper’s Ferry, Virginia, on October 16, 1859, just a few weeks after the statue’s inauguration. Virginians looked on with disbelief as Northern abolitionists proclaimed that they would have

¹¹⁴ “Mr. Janney’s Valedictory,” *Alexandria Gazette* (Alexandria, VA) Mar. 5, 1860.

¹¹⁵ Thomas L. Clingman, *Speech of Thomas L. Clingman of North Carolina on the State of the Union*, (Washington D.C.: L. Towers, 1861), 13.

preferred a statue of Brown to Webster. “Who would not rather be John Brown and have his memory cherished with such tender gratitude by the poor impressed then to have his brazen statue set up in front of the statehouse labor board for hunting slaves?” wrote Lydia Maria Child in the *Liberator*.¹¹⁶ It is no surprise that Henry David Thoreau, one of John Brown’s strongest defenders, shared similar sentiments. During a lecture after Brown’s execution, Thoreau remarked, “I would rather see the statue of Captain Brown in the Massachusetts State-House yard, than that of any other man whom I know.”¹¹⁷ John Brown’s raid placed the icons of Webster and Brown in opposition to one another. For Southerners the first represented the union and compromise while the second embodied the threat of violence and disunion. John Brown’s raid further politicized the Webster and interwove the statue with sectional rhetoric of disunion between the North and South.

Pro-slavery forces in the South saw abolitionists’ praise for John Brown and hatred for Webster as a threat of disunion and a confirmation that the North could no longer be trusted. Virginians feared the prospect of radical abolitionists starting a slave revolt. They were in awe when they witnessed Northern abolitionists praising and defending Brown’s actions. A public meeting in Virginia’s Westmoreland County captured the region’s disillusionment. Virginian lawyer George W. Lewis claimed that it was no longer possible for the South to distinguish between the abolitionist minority and the larger Northern population since they refused to penalize its fanatics. “In a little while at least,” Lewis observed, “it is not improbable that we shall witness the demolition of the statue of Daniel Webster, and the inauguration in its place of a

¹¹⁶ “Letter from a Colored Man in Ohio to L. Maria Child,” *Liberator* (Boston, Mass) Dec. 23, 1859; “A Cry for ‘Revenge.’” *Richmond Whig* (Richmond, VA) Nov. 9, 1859.

¹¹⁷ Henry David Thoreau, “A Plea for Captain John Brown,” in *Echoes of Harper’s Ferry*, ed. James Redpath (Boston, Mass: Thayer and Eldridge, 1860) 30-31.

statue of Osawatomie Brown!¹¹⁸ The removal of a statue of Webster in Boston took on larger political meanings in the politics of disunion. For some southerners, the threat of removal confirmed the North's violent hostility and desire to destroy slavery and the bonds that held the country together.

Northern Whigs and Democrats also criticized abolitionists' protests. The Democratic *Chicago Times*, supported by Stephen A. Douglass, criticized the protests and defended Webster as a true representative of the Union.¹¹⁹ The *New York Journal of Commerce* also labelled Wendell Phillips as the "Great Villifier" for disputing Webster's memory.¹²⁰ In 1859, a political cartoon appeared in the *Vanity Fair* magazine that satirized Phillips and the abolitionists' protests of the Webster statue. The cartoon replaced Webster's decapitated head with John Brown's comically small cranium, the scroll with a revolver, and the bound fasces with bloody pikes.¹²¹ While Garrisonian abolitionists criticized those who idolized Webster's statue in Boston, Webster's supporters in turn mocked abolitionists who idolized the murderous John Brown. While the original statue embodied the principles of the Constitution, Union, and order, the satirized statue embodied chaos, violence, and disunion.

¹¹⁸ "Harper's Ferry Conspiracy. Signs of the Times," *Richmond Whig* (Richmond, VA) Dec. 3, 1859.

¹¹⁹ "Same on Massachusetts – Webster's Statue to be Removed," *Chicago Times* quoted in *Edgefield Advertiser* (Edgefield, SC) Oct 12, 1859.

¹²⁰ "Bad Taste in Boston" *New York Journal of Commerce* quoted in *Liberator* (Boston, Mass) Oct 21, 1859.

¹²¹ "The Webster Statue a la Wendell Phillips," *New York Journal of Commerce* quoted in *The Weekly Pioneer and Democrat* (St. Paul, MN) Jan 13, 1860; "The Webster Statue After a Design by Mr. Wendell Phillips." *Vanity Fair* 1, no. 1 (New York, NY), 13.



(Left) drawing of the statue of Daniel Webster in *Harper's Weekly*. (Right) political cartoon of statue of Daniel Webster in the *Vanity Fair* magazine. It reads, "The Webster Statue After a Design by Mr. Wendell Phillips."¹²²

Even though Daniel Webster and John Brown were antithetical in their political philosophies over the Constitution and slavery, John Brown's raid and the coming of the Civil War ironically saved Webster's statue and ended the memorial crisis. In March 1860, the *Liberator* expressed concern that John Brown and Harper's Ferry had captivated the public interest and diverted attention away from key local issues.¹²³ At the Annual Massachusetts Anti-Slavery Society meeting in February 1860, Wendell Phillips shared his disappointment that Harper's Ferry encouraged intellectual discussion rather focusing on the local problems such as the statue removal petitions.¹²⁴ The final number of petitions further reflected Phillips'

¹²² "The Webster Statue After a Design by Mr. Wendell Phillips." *Vanity Fair* 1, no. 1 (New York, NY), 13; "The Webster Statue," *Harper's Weekly*, (New York, NY) Oct. 1, 1859, 628.

¹²³ "Th Webster Statue," *Liberator* (Boston, Mass) Mar. 2, 1860.

¹²⁴ "Annual Meeting of the Massachusetts A.S. Society," *Liberator* (Boston, Mass) Feb. 3, 1860.

disappointment. After launching the petition movement back in September 1859, Garrison believed that “the number of petitioners would be very large in every town” and that they would be able to elect a new majority in the state legislature to remove the statue.¹²⁵ By March 1860, however, only 820 memorialists signed the petition with the majority of signatures coming from Boston and the surrounding towns.¹²⁶ The Massachusetts Anti-Slavery Society did request abolitionists to act as agents and support the petitions, however the lack of signatures from the western part of the state suggests their absence or their poor reception.¹²⁷ Ironically, John Brown’s capture of the public’s imagination disrupted abolitionists influence over public opinion with regards to local issues. While disappointed with the result, Garrison remained hopeful that another petition campaign the following year would be more successful. The Civil War, however, cut these aspirations short.

After the war the Bostonian abolitionists largely forgot about the Webster statue. A handful of abolitionists such as Maria Lydia Childs continued to associate it with the slave power. When a slave auction block from Charleston arrived in Boston in 1865, she thought “it would be a most appropriate pedestal for Daniel Webster statue.”¹²⁸ Childs, however, was one of the last abolitionists to mention the controversial statue as she and others eventually lost interest.¹²⁹ When Garrison ended the *Liberator* in 1865 believing that his work was complete, he eliminated the voice of the movement against Webster’s statue. Abolitionists forgot about their criticisms on the statue and their debates on the politics of commemoration, public space,

¹²⁵ “Removal of the Statue,” *Liberator* (Boston, Mass) Oct. 7, 1859.

¹²⁶ Harvard University Antislavery Petitions Massachusetts Dataverse (Accessed Apr. 28, 2021) [https://iiif.lib.harvard.edu/manifests/view/drs:47698989\\$1i](https://iiif.lib.harvard.edu/manifests/view/drs:47698989$1i).

¹²⁷ Letter from Samuel May to Charles Calistus Burleigh, Oct. 22, 1859, *Digital Commonwealth*, <https://www.digitalcommonwealth.org/search/commonwealth:dv144z696> (Accessed Sept. 9, 2021).

¹²⁸ “Letter from Mrs. Child,” *National Anti-Slavery Standard* (New York, NY) Mar. 25, 1865.

¹²⁹ “Letter from L. Maria Child,” *National Anti-Slavery Standard* (New York, NY) Jun. 27, 1868.

compromise, and disunion. Daniel Webster's statue has since stood unchallenged and largely hidden on the Massachusetts State House grounds today.¹³⁰

Epilogue

The Webster statue was most controversial during the 1850s due to its close association with the Fugitive Slave Law and the threat of disunion. After Congress repealed the law during the Civil War, the statue became nothing more than a piece of poor craftsmanship on the State House yard. The war further depoliticized the statue by eliminating the immediate threat of disunion. Even though the controversy quickly disappeared, it is important to recognize how commemoration became closely entwined with American politics during the late antebellum period. In a moment of political crisis, Americans gave political meaning to memory and public commemoration unlike any time before. As this essay demonstrated, the statue of Daniel Webster revealed this politization of space, commemoration, compromise, and the Union. Historians should recognize that different groups imbued statues and memorials with political significance that impacted the ways they navigated their physical and political environments before the Civil War. The concern over an eight-foot bronze statue demonstrates how conflicts of commemoration and memory merged into larger discussions of political identities and democratic ideals.

After the brief interruption from the Civil War, America's monumental era was ready to resume and flourish. The Civil War may have ended the Webster statue controversy in Boston, however, the politics of public commemoration and compromise continued into the postbellum

¹³⁰ "No Statue for Butler," *Boston Post* (Boston, Mass) Mar 25, 1897. There is one recorded mention of the statue in 1897 when state representative Edward B. Callender called Webster a supporter of slavery and that his statue was placed on the state house grounds to "satisfy the bankers and wealthy, whose idol Webster was." Besides a short debate in the legislature, nothing resulted from this outburst and the statue continued to stand undisturbed.

period. Public interest in Webster returned in the 1870s and 1880 after his centennial birthday celebration and New York erected another statue in Grand Central Park in 1876.¹³¹ When New York City accepted the new statue in 1876, one speaker celebrated it as a monument for generations of Americans to “renew their lessons of patriotism and duty which Mr. Webster in his lifetime taught so wisely and so well.”¹³² As shown in this drawing of the statue in Grand Central Park from the *Harper’s Bazar*, the Webster statue was a site for adults to teach the next generation of Webster’s heroism and patriotism.



Drawing of Statue of Daniel Webster Commissioned by Capitalist George W. Burnham in 1876. From *Harper’s Bazar Magazine*.¹³³

More statues appeared in Webster’s native New Hampshire and in Washington D.C. further emphasizing the statesman’s dedication to the Constitution and the Union. Unlike the antebellum period, however, commemorators attempted to address the Fugitive Slave Law. Some

¹³¹ Henry Cabot Lodge, “Daniel Webster,” *Atlantic Monthly* 49, No. 292 (Feb. 1882): 228.

¹³² *Proceedings at the Inauguration of the Statue of Daniel Webster, Erected in the Central Park, New York, July Fourth, 1876* (New York, NY: D. Appleton & Co., 1876) 14-15.

¹³³ “The Burnham Statue of Daniel Webster,” *Harper’s Bazar*, Vol. 11, no. 45 (November 1878): 720. Cornell University Library Digital Collections. (Accessed Apr. 8, 2021) https://digital.library.cornell.edu/catalog/hearth4732809_1448_045.

supporters used the convenience of hindsight to argue that Webster's compromise delayed the coming of Civil War and gave the North desperately needed time to prepare. One of Webster's biographers, Senator Henry Cabot Lodge, disregarded such claims and argued that Webster "must be judged according to the circumstances of 1850."¹³⁴ "We may grant all the patriotism and all the sincere devotion to the cause of the Constitution which is claimed for him," he observed "but nothing can acquit Mr. Webster of error in the methods he chose to adopt for the maintenance of peace and the preservation of the Union."¹³⁵ During an address at the inauguration of the Webster statue in Washington D.C. in 1900, Lodge argued that Webster deserved a statue because he embodied the national sentiment of the people and championed the national principle of the country, the Constitution.¹³⁶ The question again arises, can the American public commemorate historical actors as patriotic figures while also recognizing that they collaborated with immoral institutions such as slavery?

Webster was not the only Northern "doughface" politician whose statue and memory became a topic of political debate in the nineteenth century. Millard Fillmore, the lucky thirteenth president during the Compromise of 1850, was one such figure. After Fillmore's death in 1874, advocates in his home city of Buffalo desired to commemorate him by building a statue. In 1891 *The Buffalo Commercial* contended that the city had "reached a point of view, beyond and above the smoke of conflict," where Buffalonians should commemorate its most distinguished inhabitants.¹³⁷ Some readers questioned the proposal and argued such commemoration could not ignore Fillmore's past approval of the Fugitive Slave Act. One critic

¹³⁴ Henry Cabot Lodge, *Daniel Webster* (Cambridge, Mass: Houghton, Mifflin & Co., 1896), 317.

¹³⁵ *Ibid.*, 322.

¹³⁶ *Acceptance and Unveiling of the Statue of Daniel Webster in Washington on January 18, 1900* (Washington, Government Printing Office, 1900), 17, 29-31.

¹³⁷ "Justice to Millard Fillmore," *Buffalo Commercial* (Buffalo, NY) Feb. 25, 1891.

wrote that such an act would be an “attempt to ignore the moral distinctions of moral affairs.”¹³⁸ The *Commercial* responded that such moral principles “would decapitate every statue of Webster, level every memorial tribute erected by a grateful people to Clay, would erase from the patriotic roll the Fathers of the republic.”¹³⁹ Buffalo did not raise a statue of Fillmore until the twentieth century, but even here questions of morality and compromise with slavery politicized slavery.

Recently during the Black Lives Matter protests in 2020, more Americans have become conscious of the statues in their communities and have begun questioning how political compromisers reflect their communities’ values. Due to Fillmore’s association with the Fugitive Slave Law, the City of Buffalo and the University of Buffalo have begun reviewing the statues, buildings, and other public commemorations in his name. The present and historical issues of commemoration are not limited to symbols of southern confederate monuments or symbols of white supremacy in the South. While the Webster statue controversy effectively ended in 1865, the politics of compromise and public commemoration still influences civic identity and democratic values today. The public is facing a reckoning of public commemoration and it is not the first time that statues and memorialization have been politicized. Even back in 1859, Americans were raising many of the same questions the public struggles with today.

¹³⁸ “To Millard Fillmore: Vicarious Kick from an Old Timer,” *Buffalo Commercial* (Buffalo, NY) Mar. 4, 1891.

¹³⁹ “Justice to Fillmore: ‘Citizens’ Protest Answered,” *Buffalo Commercial* (Buffalo, NY) Mar. 10, 1891; For more on the debate on the statue and memory of Millard Fillmore in 1891 see *Buffalo Commercial* (New York, NY) Feb. 25, Mar. 4, Mar. 10, 1891, *Buffalo Courier* (Buffalo, NY) Mar. 15, 1891, and *Buffalo Morning Press* (Buffalo, NY) Mar. 26, 1891

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PROTECTING THE EASTERN MINES OF WEALTH: TAXING, POLICING,
AND DEVELOPING VIRGINIA'S OYSTER INDUSTRY, 1856-1916

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Protecting the Eastern Mines of Wealth - Abstract:

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This professional paper analyzes the history of the Virginian oyster industry over the course of the long nineteenth century. It argues that the Virginia state legislature debated and ultimately implemented protectionist economic policies aimed to guard the state from Northern exploitation. To make Virginia more commercially independent, policymakers determined that the taxation, policing, and strict regulation of state-owned oyster beds would facilitate the revenue necessary for industrial modernization. This essay adopts the oyster commodity as its focus to analyze the Southern political economy of the late antebellum period and postbellum period. This exploration of the oyster commodity reveals how sectionalism impacted the relationship between Southern agricultural goods and Northern businesses and consumers. This paper also argues that Virginia's oyster industry and state regulations relied on the threatened use of violence. The Virginia oyster police shows that the American regulatory state in the nineteenth century not only relied on matters of property and law, but also state-sanctioned violence. This professional paper contributes to scholarship on Virginian and Southern history. It also engages with scholarship on the Southern political economy in the nineteenth century.

On March 22, 1864, the U.S. House of Representatives launched an investigation into the murder of Theodore Reed, a Philadelphian ship captain murdered in Virginia. The investigation found that Captain Reed was sailing on the schooner Margaret Ann dredging for oysters along the eastern shore of Virginia when three armed oystermen from the local area boarded and arrested him and his six crewmates. The Virginians charged the Northerners with violating state law and catching oysters as non-residents without a license. They boarded the Margaret Ann and informed Reed that they would take him to be tried before a local magistrate. Shortly after hearing this, Reed seized a gun from an unsuspecting oysterman and roused his men to take back the ship by force. The insurrection aboard the Margaret Ann, if it could be called one, ended as quickly as it began. Before the ship became the scene of a gun fight on the Chesapeake Bay, Reed suffered a gunshot wound to his arm and surrendered. Reed's courage failed him and he submitted to his captors. Under the more alert watch of the Virginian oystermen, Reed and his crew were brought to the Accomack County jail. Reed's situation quickly worsened, however, as his wound became infected, and his health quickly deteriorated. Despite the best efforts of two local surgeons, Reed died in agony five days later in eastern Virginia before he could make it to his trial.¹⁴⁰

This deadly encounter on the Margaret Ann highlights two core aspects of the Virginia oyster industry during the nineteenth century. Virginia, highly protective of its oyster beds, passed legislation to prevent Northern exploitation of Southern resources. Reed's venture into Accomack highlights the prosperous interstate oyster trade that connected Virginian oyster beds

¹⁴⁰ "Letter from Colonel James A. Hardie in Answer to A resolution of the House of 22nd of March last to the Secretary of War in regard to the murder of Captain Theodore Reed, of Philadelphia, by the citizens of Accomack county, Virginia," *Executive Documents Printed by Order of the House of Representatives During the First Session of the Thirty-Eighth Congress, 1863-64* (Washington, D.C.: Government Printing Office, 1864).

to Northern consumer markets. Second, Captain Reed's death reveals that state policing and, at times, the use of violent force was foundational to the industry. The protection of state oyster beds and enforcement through means of policing and violence went hand in hand in the Chesapeake Bay. These core values guided the development of the Virginia oyster industry from the mid-to-late nineteenth century.

This paper argues that the Virginia state government implemented protective economic policies with its oyster industry from the mid-to-late nineteenth century. Virginia represents an example of the activist state implementing laws and regulations that sought to prevent non-residents and their capital from exploiting Virginia's oyster resources. Since the 1850s, Virginian statesmen targeted oysters as a taxable commodity and passed legislation to extract state revenue from its eastern coast. This plan to raise revenue, however, failed as Virginia's economy struggled in the latter half of the nineteenth century. After the Civil War emancipated its previous sources of wealth in slaves, Virginian policymakers were in desperate need of revenue to pay for government programs and increasing state debts. They decided to implement unprecedented and intrusive means of regulating the oyster industry. The legislature developed a legally problematic system of oyster taxation, created a new state police force that enforced oyster laws, guarded oyster beds from non-residents, and prohibited foreign capital from influencing the industry. Virginians sought to protect their eastern mines of wealth located off their shores and retain its riches within the state for internal development. However, by the end of the nineteenth century, this vision of state protectionism had failed and gave way to progressive-era rationalism and scientific cultivation.

Historians have not yet fully examined the smaller units and industries essential to Virginia's economy during the antebellum and postbellum periods. As historian Edward Ayers

has noted, “Virginia's tobacco factories, textile mills, oyster boats, and coal mines demand and deserve their own histories.”¹⁴¹ Even seemingly small or inconsequential commodities and industries in the nineteenth century became imbued with greater political significance and became entangled in the growing networks of capital as the market economy expanded. While undervalued by historians, the oyster commodity demonstrates Virginia’s position as a dependent producer of raw materials for Northern industries and consumption. Oysters also open a window to view the interstate relations across the Mason-Dixon Line when sectional tensions were prominent before and after the Civil War.¹⁴²

The cultivation and movement of Virginia oysters provides insights into the history of the Southern political economy. Historian John D. Majewski argues that Southern states such as Virginia and South Carolina implemented anti-Northern trade policies to achieve regional economic independence. This existing scholarship, however, is limited to the antebellum period and does not reference oysters, which were an important component in Virginia’s plan to modernize and obtain regional prosperity.¹⁴³ The history of oysters demonstrates how Virginia developed protectionist state economic policies to resist Northern exploitation of Southern oyster beds and labor. Even later in the postbellum period, Virginia taxed the extraction of oysters and banned Northern capital from influencing the oyster industry. Scholarship on the political economy after the Civil War argues that the federal government aided Northern capitalists and corporations during Reconstruction by integrating the natural resources from the South and West

¹⁴¹ Edward L. Ayers, “Virginia History as Southern History: The Nineteenth Century,” *The Virginia Magazine of History and Biography* 104, no. 1 (1996): 129-36.

¹⁴² For scholarship on the history of Virginia see Edward L. Ayers, *In the Presence of Mine Enemies: The Civil War in the Heart of America, 1859-1863* (New York, NY: W.W. Norton & Co., 2003); John Majewski, *Modernizing a Slave Economy: Civil War America* (Chapel Hill, NC: University of North Carolina Press, 2009); John Majewski, *A House Dividing: Economic Development in Virginia and Pennsylvania Before the Civil War* (New York: Cambridge University Press, 2000).

¹⁴³ Majewski, *Modernizing a Slave Economy*.

into Northern-dominated national markets.¹⁴⁴ While I do not dismiss these foundational arguments, the history of oysters in Virginia reveals that some industries and natural resources, were exceptions. By viewing Virginian economic history from the point of view of the oyster beds, historians obtain a new perspective on the Southern political economy as the country was undergoing radical economic and political transformations.

This essay contributes to the sparse amount of scholarship on the American oyster industries in the nineteenth century. Part of the problem is scholarly disinterest. As anthropologist Samuel P. Hanes recently remarked, “Oysters never had their Melville” and thus disappeared from scholarly and popular attention.¹⁴⁵ The few historians and anthropologists who research the American oyster industry treat it as a case study for progressive-era reform, riparian law, scientific cultivation, and conservation. This essay adopts a new framework and views the American oyster industries through networks of capital and extraction. Additionally, this essay brings older scholarship on the Virginia oyster industry into dialogue with contemporary understandings of political economies and state regulation in the nineteenth century.¹⁴⁶

Finally, an evaluation of the Virginia oyster industry provides a testing ground for historian William Novak’s concept of the regulatory state. Novak contends that the first three

¹⁴⁴ For scholarship on the Political Economy of Reconstruction see Noam Maggor, *Brahmin Capitalism: Frontiers of Wealth and Populism in America’s First Gilded Age* (Cambridge, Mass: Harvard University Press, 2017); Steven Hahn, *A Nation Without Borders: The United States and Its World in An Age of Civil Wars, 1830-1910* (New York, NY: Penguin Books, 2016); Richard Franklin Bensel, *The Political Economy of American Industrialization, 1877-1900* (New York, NY: Cambridge University Press, 2000).

¹⁴⁵ Samuel P. Hanes, *The Aquatic Frontier: Oysters and Aquaculture in the Progressive Era* (Amherst, Mass: University of Massachusetts Press, 2020), 1.

¹⁴⁶ For scholarship in on the American Oyster Industry see, Ernest Ingersoll, *The Oyster Industry* (Washington, DC: Government Printing Office, 1881); Samuel P. Hanes, *The Aquatic Frontier*, Christine Keiner, *The Oyster Question: Scientists, Waterman, and Maryland Chesapeake Bay Since 1880* (Athens, GA: University of Georgia Press, 2009); Bonnie J. McCay, *Oyster Wars and the Public Trust: Property, Law, and Ecology in New Jersey History*, 2nd ed. (Tucson, AZ: University of Arizona Press, 1998); Samuel P. Hanes, "Governor Henry Wise’s Antebellum Oyster Quest to Make Virginia Great Again." *Southeastern Geographer* 58, no. 4 (2018): 365-78; John M. Kochiss, *Oystering from New York to Boston* (Middletown: Wesleyan University Press, 1974).

quarters of the nineteenth century were dominated by a regulatory state comprised of local and state officials. To regulate its coastal waters, the Virginia state government passed multiple oyster laws and unleashed a small army of local state officers with police powers to enforce them. While Novak argued that the nineteenth-century regulatory state deprived citizens of their private property for the greater public good, he did not mention that the regulatory state also could deprive people of their lives.¹⁴⁷ The oyster industry was regulated by laws, but it also relied on the use of lethal force along the obscure marine border of the Chesapeake. As Captain Reed's fatal episode demonstrates, violence was an inherent part of the Virginia oyster industry. An evaluation of Virginia's political economy is a case study into the question of enforcement and state-sanctioned violence.

The lack of scholarship on the oyster industries of the United States is partially due to the limited source base. The oyster industries in the nineteenth century left a small paper trail as most of the labor force were uneducated and illiterate oystermen who left no first-hand accounts of their business activities. Additionally, the oyster trade operated largely on the cash principle which makes it difficult for historians to recreate the commodity chain from oyster bed to consumer.¹⁴⁸ Government regulations were inconsistent due to ignorant state officials. Richard H. Edmonds, the founder and editor of the *Manufacturer's Record* in Baltimore and voice for industrialization in the postwar South, once remarked, "There is, perhaps, no subject of such vital importance to either state [Virginia and Maryland], that is so little understood."¹⁴⁹ To counter

¹⁴⁷ See William Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill, NC: University of North Carolina Press, 1996).

¹⁴⁸ "Threatened Failure in the Supply of Oysters," *New York Daily Times* (New York, NY) Jan 12, 1857.

¹⁴⁹ Richard H. Edmonds, "The Oyster Interests of Maryland," *The Fisheries and Fishery Industries of the United States: Section II, A Geographical Review of the Fisheries Industries and Fishing Communities for the Year 1880*, ed. George Brown Goode (Washington, DC: Government Printing Office, 1887), 429. As Edmonds stated in his report, "Notwithstanding the great importance and value of the oyster trade of the Chesapeake Bay, it is a subject upon which there has been no trustworthy information, either as regards its extent, the amount of capital invested, or

these limitations, this essay focuses on state regulation of interstate commerce and the movement of oysters, people, and capital to and from Virginian waters. For simplicity, this essay analyzes oystermen as a singular collective group, but it should be noted for the sake of future research that different groups of oystermen including dredgers, tongmen, and shuckers had their own interests.

This paper overcomes uses a wide array of sources to make up for the lack of official documentation. Ernest Ingersoll's report for the U.S. Commission of Fisheries on the oyster industry in 1881 is still one of the most extensive collections of information on the nineteenth-century oyster industry. Newspapers and periodicals from Virginia and throughout the American Northeast often discussed matters of oyster taxation, regulation, and conflict in Virginia that impacted their local areas. Oyster inspector reports from the county records of the Library of Virginia also reveal how the regulatory state operated on paper in contrast with its complex reality. Additional sources such as logbooks and local government documents stitch together a more complete image of the Virginian oyster trade and industry.

Virginia is an ideal subject for a case study of the American oyster industry. The national industry was fragmented during the nineteenth century because state governments were the sole trustees for the oyster beds within their borders. There was not a single industry, but rather multiple industries that worked largely independent from one another. Ingersoll's report, *The American Oyster Industry* (1881), analyzed the history of each states' industry separately with little mention of intersections. Lieutenant De Broca, a French diplomatist who visited the United

the past and present condition of the business. The legislatures of Maryland and Virginia have, at every session for many years, revised and re-revised the laws upon this subject for their respective states; but have always been content to work in the dark, knowing nothing practically, and never seeing the value of obtaining full information upon so important an industry. There is, perhaps, no subject of such vital importance to either state, that is so little understood."

States in the 1860s, also identified this pluralism in his own report, *On the Oyster Industries of the United States*.¹⁵⁰ Virginia is one of the best industries for a case study because its eastern border to the Chesapeake Bay contained one of the richest natural supplies of oysters in the United States and was at the epicenter of the coastal trade that fed oyster industries and consumers in the northeastern states. It is no surprise then that after Virginia seceded from the Union in 1861 one Northern newspaper called it the “Mother of Oysters, niggers, and Presidents.”¹⁵¹ Virginia was also the first state to propose and implement protectionist economic policies such as oyster tonnage taxation and create a state oyster policing force. Analyzing the Virginian oyster industry as opposed to the Maryland industry provides historians with another commodity lens to view the relationships between the North and the South before and after the Civil War.

The extraction of oysters was not a matter of life and death for most American consumers due to the product’s low prices and easy accessibility, however, the industry did impact the livelihoods of Virginian oystermen. Thousands of oystermen, free and enslaved, worked along the coast to support themselves and their families. Furthermore, Virginia’s oyster beds were connected to the Northern capital and commerce which impacted consumers and businessmen in the North. Although it is not the primary goal of this paper, it should also be noted that the history of the Virginia oyster industry is also a history about human society shaping its environments to meet the needs of consumers and desires for profits. While the oyster trade may seem inconsequential to the larger transformations of the nineteenth century, it had significant socio-economic implications for its participants.

¹⁵⁰ P. De Broca, “On the Oyster-Industries of the United States 271-319,” *United States Commission of Fish and Fisheries, Part III: Report of The Commissioner for 1873-4 and 1874-5* (Washington Printing Office, 1876).

¹⁵¹ “Alarming State of the Oyster Fundum,” *Cincinnati Daily Press* (Cincinnati, OH) May 10, 1861.

This paper is structured chronologically and topically to examine how policymakers shaped the political economy and the oyster industry in Virginia from the late antebellum period to the end of the nineteenth century. First, this paper lays the foundations and analyzes the Southern oyster trade which connected Virginian oyster beds and Northern capital and markets in the antebellum period. Second, it analyzes Virginia's first attempt at passing the Oyster Fundum Bill in the 1850s. This section describes when Virginian policymakers first debated economic policies to protect the state from Northern exploitation and generate a profit from taxation. This first oyster tax law failed to pass, but it laid the foundations for postwar taxation, the Virginia oyster tonnage tax, and debates on interstate commerce, which is described in the third section. Fourth, this analyzes describes the marine border crisis in the Chesapeake, the effectiveness of the regulatory state, and the lengths Virginia went to protect its oyster beds from non-resident oystermen. This essay will conclude by analyzing how Virginian law prohibited Northern capital and corporations from investing in Virginian oyster beds until the turn of the century. From the twilight of antebellum period to the rise of corporate capitalism in the United States, Virginian policymakers attempted to pass legislation to protect the natural wealth of its oyster beds from Northern exploitation.

The Virginian Oyster Trade

The Virginian oyster industry developed in response to market demands of Northern consumers in growing urban centers. The Virginia oyster fishery did not become a functioning industry until the middle of the nineteenth century. Initially Virginian oysters were only accessible to colonial settlers who lived along the Southern coast. During the colonial period and the early U.S. republic, both colonial and state officials lacked the means to control the supply

and redistribution of oysters beyond those living in the immediate area.¹⁵² It was only during the antebellum period that Virginia developed an industry based on exporting its oysters to other states. The Virginia oyster, *crassostrea virginica*, was native to other regions along the eastern coast. However, by the end of the early republic, overfishing and overconsumption depleted oyster beds throughout the Northeast. When their native stocks ran out, Northern businessmen decided to artificially propagate oysters and financed shipments of Virginia oysters to Northern oyster beds and markets. In the 1820s the first Northern vessels entered the Chesapeake Bay and started what became known as the “Virginia Trade,” also known as the “Southern Trade.” The ships engaged in this trade interacted with local Virginian oystermen to purchase oysters and transport them to Northern markets.¹⁵³ By 1850, Virginia became the epicenter of a coastal trade that connected its oyster beds to Northern financiers and consumers from Baltimore to as far North as Maine.

In order for the Virginia trade to flourish, Virginian oystermen demanded that the state uphold their legal right to harvest the state’s oyster beds. Oystermen depended on the state government’s enforcement of the public trust doctrine which protected citizens’ rights to the commons. The public trust doctrine was a largely uncodified policy of riptide ownership that developed in the early nineteenth century which established that the residents of a state owned the rights to the water commons and that their representative body acted as their trustee. State governments did not own anything in the water, but the state managed the common fishing rights for the enjoyment of its residents.¹⁵⁴ The Virginia state government’s interpretation of the public

¹⁵² Charles Wharton, *The Bounty of the Chesapeake: Fishing in Colonial Virginia* (Williamsburg, VA: Virginia 350th Anniversary Celebration Corporation, 1973) 40-41.

¹⁵³ Ernest Ingersoll, *American Oyster Industry*, 27-28,

¹⁵⁴ Bonnie J. McCay, *Oyster Wars and Public Trust*, xx-xxi.

trust doctrine, however, became a contentious topic when policymakers later debated the possibility of taxing oysters for state revenue.

Most oystermen in Virginia lived in poverty and needed the state to uphold the public trust doctrine so that they could work and survive independently. Most Virginians involved in the oyster industry during the antebellum period were white men who lived along the coast. Oystermen were a small group in antebellum Virginia and made up less and one percent of all male professions in antebellum Virginia.¹⁵⁵ They were often poor, illiterate, and depended on harvesting oysters for their livelihoods and survival. Petitioners from the citizens of Accomack and Northampton counties emphasize this point by claiming the oysters were a “chief stock of support” for the poor.¹⁵⁶ Many oystermen lived from hand to mouth and lived notoriously short lifespans due to the hard labor, risk, and exposure to the elements.¹⁵⁷ Oystermen and citizens in Virginia’s oyster counties held a conviction that the state government had an obligation to support them. In 1833, petitioners from Lancaster County argued that any state attempt to prohibit citizens from freely using oysters “was contrary to the Constitution and spirit of our government.”¹⁵⁸ In summary, Virginian oystermen depended on a political and moral economy during the antebellum period that provided residents with unrestricted access to work the oyster

¹⁵⁵ *The Seventh Census of the United States: 1850* (Washington D.C.: Robert Armstrong, 1853), 272. According to *Population of the United States in 1860* (Washington D.C.: Government Printing Office, 1864), 525; the number of Virginian oystermen increased to 1,257, which is approximately 0.42 percent of all workers. The 1860 census did not specifically specify if this only included white men. According to Ernest Ingersoll, *The Oyster Industry*, 182; in 1881 there were over 11,000 Virginian tongmen in Virginia split practically evenly between blacks and whites.

¹⁵⁶ Petition to the Virginia Legislature from the Citizens of Accomack and Northampton, Virginia Library, Legislative Petition Digital Collection, December 23, 1818. Legislative Petitions of the General Assembly, 1776-1865, Box 1, Folder 60. Accessed February 18, 2020.

¹⁵⁷ Ernest Ingersoll, *The Oyster Industry*, 180-182; “Evidence Taken Before the Select Committee on the Oyster Fundum,” 3-4, 11-16, 18-21; in *Journal of the Senate of the Commonwealth of Virginia [1859-1860]* (Richmond, VA: James E. Goode, 1859).

¹⁵⁸ Counter Petition to the Virginia Legislature from the Citizens of Lancaster County, Virginia Library, Legislative Petition Digital Collection, April 1, 1833. Legislative Petitions of the General Assembly, 1776-1865, Box 136, Folder 46. Accessed March 24, 2020.

beds and sell the fruits of their labor to Northern trading vessels. Living in poverty, often illiterate, trading with Northern vessels, living in poorly made huts along the coast, paying rent for land, these oystermen fit the definition of dependency and disempowerment of the antebellum period.¹⁵⁹ Any attempts to restrict the oyster trade or implement protectionist economic policies could put their livelihoods at risk.¹⁶⁰

African American labor was also a significant component of the Virginia oyster industry, although scholars know very little about their laboring conditions during the antebellum period. Most debates about Virginian oystermen at the time only concerned poor white men. Enslaved and free black Virginians, however, also shaped the industry. Virginians in some coastal regions hired and used slave labor to collect oysters, although the extent of the practice is difficult to determine since enslavers feared Northern trading vessels were radicalizing enslaved laborers and aiding runaway fugitives.¹⁶¹ Formerly enslaved people took on a larger role in Virginia's oyster industry after the Civil War, but their labor and influence on Virginia's antebellum industry should not be forgotten. Poor white oystermen and enslaved black Virginians worked alongside each other in the harsh elements and engaged in a flourishing industry.

¹⁵⁹ *Speech of Joseph Christian on the 'Oyster Fundum' Bill* (Richmond, VA: Whig Book and Job Office, 1860), 12.

¹⁶⁰ It is important to note that this one petition from Lancaster County, Virginia is not representative for all Virginians. The petitioners at Lancaster wanted to repeal a law that prohibited the transportation of oysters during specific parts of the year and they viewed this as an affront to their rights to access the oyster beds as common property. Many other petitions in the Virginia Library Legislative Digital Petitions Collection express countering views that the government ought to have an active role in prohibiting the transportation and sale of oysters. There was not a single consensus on the political economy and public trust doctrine in Virginia.

¹⁶¹ Samuel P. Hanes, "'Governor Henry Wise's Antebellum Oyster Quest to Make Virginia Great Again.'" *Southeastern Geographer* 58, no. 4 (2018): 365-78.

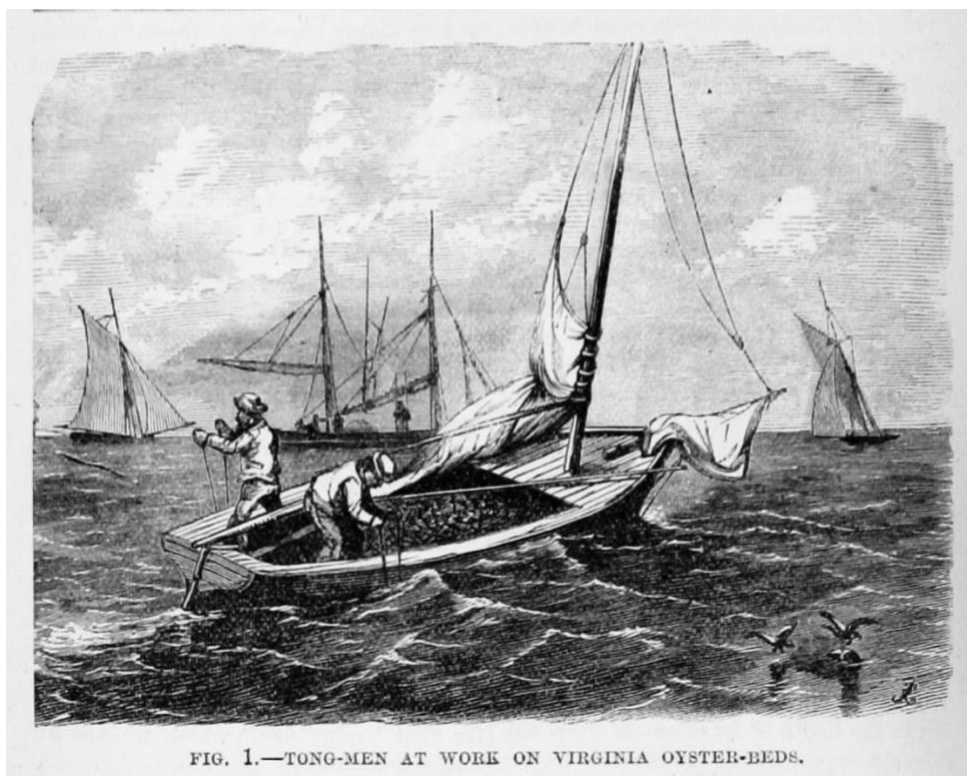


Figure 1. Tongmen working on the Virginian oyster beds¹⁶²

Northern oyster industries depended on extracting oysters from Virginia to supply their growing cities and consumer markets. The three largest recipients included Baltimore, New York and New Haven. Baltimore developed a thriving oyster canning industry in the antebellum period and by 1858 it had over eighteen oyster packing firms worth approximately one million dollars.¹⁶³ Many of these companies came from New Haven, Connecticut which also had its own thriving oyster packing industry.¹⁶⁴ Companies in New Haven such as Rowe & Co. packaged oysters from Virginia and shipped them to their branches in Canada and the Midwest.¹⁶⁵ This

¹⁶² "The Oyster Trade," *The American Odd Fellow* 13, no. 2 (February 1872): 114-117.

¹⁶³ "Fish and Oyster Trade of Baltimore," *Merchant's Magazine and Commercial Review* (New York, NY), May 1, 1858, 610-611.

¹⁶⁴ Ernest Ingersoll, *The Oyster Industry*, 167; John M. Kochiss, *Oystering from New York to Boston*, 17; Samuel P. Hanes, *Aquatic Frontier*, 35-36.

¹⁶⁵ "Information: Oyster Trade in Fair Haven, Connecticut," *Ohio Farmer* (Benson, OH), Feb, 7, 1857; Samuel P. Hanes, *Aquatic Frontier*, 35-36.

system relied on the Virginian oyster trade which connected raw materials to Northern cities. In 1858 the *New York Times* estimated that the Virginian oyster trade made up approximately 4 million dollars-worth of the 7 million dollars in annual oyster sales in New York.¹⁶⁶ Paul Van Name, Barnet Houseman, Isaac B. Decker and other oyster dealers in antebellum New York became household names. They took pride in their positions as oyster dealers and retired wealthy from the trade without ever having travelled to Virginia.¹⁶⁷ They never stood on the deck of a schooner in the Chesapeake Bay or dirtied their hands harvesting oysters. They left such work to hired hands and slave labor. Such oyster dealers mobilized their capital to charter vessels, extract Virginia's submarine wealth, and make a profit selling oysters to consumers hundred miles away.

Perhaps no event properly demonstrates the North's dependence on the Virginia oyster trade than the "Great Cold Storm" of January 1857. One of the greatest winter storms of the nineteenth century struck the eastern seaboard in the middle of the oyster shipping season which typically lasted from November to April. The combination of wind, low temperatures, and heavy snow froze New York harbor which prevented locals from harvesting the oyster beds in Prince's Bays, East River, and Staten Island. Even more devastating, the ice closed the East River Slips which prevented ships northbound from Virginia from delivering oysters to Catherine Market. Without a steady supply the price of oysters in New York almost immediately doubled. The storm created what one New York newspaper called an "Oyster Famine." Dealers reserved their supplies and temporarily denied the city dwellers their beloved oyster fries and stews.¹⁶⁸ They were only spared when shiploads of Virginia oysters landed in New Jersey and were transported

¹⁶⁶ "The Oyster Trade of New York," *New York Times* (New York, NY) Feb. 1, 1858.

¹⁶⁷ "The New-York Oyster Trade," *New York Daily Times* (New York, NY) Apr. 6, 1855.

¹⁶⁸ "The Oyster Famine," *Penn-Yan Democrat* (Penn-Yan, Ontario County, NY) Jan. 28, 1857.

by land. While New Yorkers were more likely to die of the cold than an oyster famine, the “Great Cold Storm,” reveals that consumers and businessmen in Northern cities such as New York depended on Virginia for a steady supply of oysters. The Southern oyster trade created artificial markets that depended on the transportation of natural resources hundreds of miles from their original location. If legal or economic barriers were to impede this trade, Northern markets would surely feel its impact.¹⁶⁹

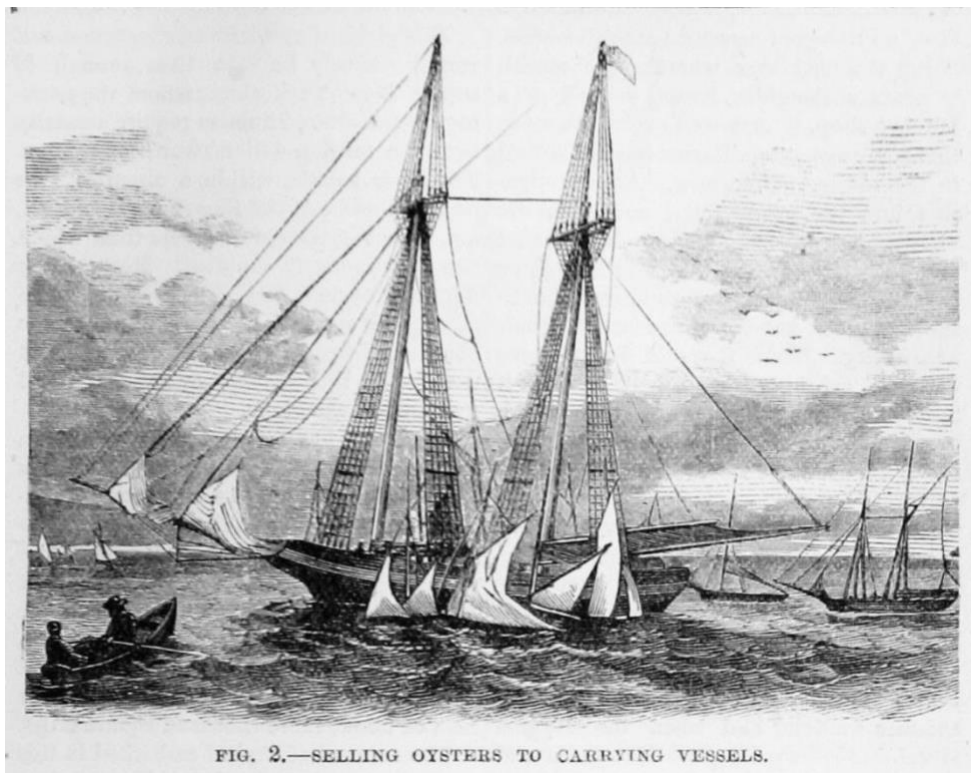


Figure 2. Virginian oystermen selling oysters to a Northern carrying ship¹⁷⁰

¹⁶⁹ David M. Ludlum, *Early American Winters, II 1821-1870* (Boston, Mass: American Meteorological Society, 1968), 53-61, 111-115; “Threatened Failure in the Supply of Oysters,” *New York Times*, Jan. 12, 1857; “The Weather – Boats Frozen In – Fatal Accident,” *Richmond Dispatch*, Jan 12, 1857; “Local Matters,” *Richmond Dispatch*, Mar. 14, 1857; “Tough Weather – Threatened Failure of Oysters,” *New York Times*, Jan. 30, 1857; Ernest Ingersoll, *The Oyster Industry*, 125.

¹⁷⁰ “The Oyster Trade,” *The American Odd Fellow* 13, no. 2 (February 1872): 114-117.

Oysters were one of Virginia's most important exports during the winter and spring months. From April to June in 1860, oysters exceeded all other Virginian exports to the North in both amount and value.¹⁷¹ There was a significant amount of capital invested in the shipment of Virginia oysters. According to the oyster dealers of New York City, approximately two hundred sailing vessels engaged in the oyster trade valuing at approximately one million dollars.¹⁷² The majority of vessels were fishing schooners that sold their services to supply oyster dealers in Baltimore, Philadelphia, New York, New Haven, and Boston. Northern-built ships spent multiple weeks in Virginia's tributary rivers before returning with thousands of bushels of oysters to Northern markets.¹⁷³ Although it was less common than chartering, some of the Northern entrepreneurs engaged in the oyster trade owned their own vessels. Some investors from New Haven, for example, used their capital to purchase captured slave ships from the Chesapeake and added them to their oyster fleets.¹⁷⁴ While few oyster firms such as Rowe & Co. of New Haven could afford to own their own freight ships, most of the vessels engaged in the oyster trade worked independently with profits divided between the captain, workers, and the ship's board of partners.¹⁷⁵ Schooners were involved in deep sea fishing and the West Indies fruit trade for most of the year and then contracted by oyster dealers and firms in the winter.¹⁷⁶

The infrastructure of the Virginia oyster trade bridged local communities along the upper Atlantic coast. The trade thrived in the closing years of the antebellum period because the ships and capital finally made this interstate commerce more manageable and profitable. Southern

¹⁷¹ "Trade of Virginia," *New York Times* (New York, NY) Jul. 31, 1860.

¹⁷² "The New York Oyster Trade," *New York Dailey Times* (New York, NY) Apr. 6, 1855.

¹⁷³ For an example of a schooner logbook for the Virginia oyster trade see [Cape Cod Collection] Nickerson William Logbook Accounts, W.B. Nickerson Cape Cod History Archives, Cape Cod Community College.

¹⁷⁴ "Latest Fair Haven News," *The Morning Journal Courier* (New Haven, CT) Nov. 14, 1904.

¹⁷⁵ Ernest Ingersoll, *The Oyster Industry*, 25-26. This is an example of profits from the 1870s, but a useful model for the division of costs and profits on a voyage in the Virginia oyster trade.

¹⁷⁶ John M. Kochiss, *Oystering from New York to Boston*, 129.

oyster beds became entangled in larger economic networks that connected poor Virginian oystermen with Northern oyster dealers, ship owners, sailors, and consumers. During the final years of the antebellum period, however, Virginian state politicians feared that the North was benefiting from these networks at Virginia's expense. In response, they strained these connections and debated erecting a protectionist economic policy that concerned all the parties involved.

Governor Wise Proclaiming the Oyster Fundum

Virginian policymakers started to worry at the close of the antebellum period that the state's oyster resources and poor white oystermen were becoming subservient to Northern market interests. They politicized Virginia's oyster industry as sectional tensions intensified and Southerners argued for greater economic independence from the North. In 1856, Henry A. Wise, the last Virginian governor from the eastern shore until the twenty-first century, started formulating plans to protect and promote the oyster industry. Wise started a discussion that would continue well into end of the nineteenth century and compel Virginian policymakers to reconceptualize the methods state governments should take to protect its trade and resources. Wise was a modernist who desired to build up Virginia's commercial power by investing in railroads, canals, and other internal improvement projects. Virginia's dependence on shifting agricultural production and its small free population impeded its urban growth. Wise hoped for a commercial revolution that would free Virginians from economic subservience to the North while maintaining its vibrant slave economy.¹⁷⁷ In 1856, Wise wrote a message to the Virginia legislature stressing the need to continue funding its projects as the Covington and Ohio Railroad

¹⁷⁷ John Majewski, *Modernizing the Slave Economy*, 81, 94-95.

and the James River and Kanawha Company.¹⁷⁸ By 1860, Virginia had taken on 33,243,141 dollars of debt to fund its internal improvement projects, making it one of the largest borrowing states during the antebellum period.¹⁷⁹ To continue with these costly projects, Wise argued that the state government had to find new sources of taxable revenue. Coming from the Tidewater region himself, Wise proposed a tax on the oyster trade to fund Virginia's modernization.

Wise surmised that a tax on Virginia's oysters was the best solution to the growing state debt. In his message to the legislature, he complained that past attempts to pay the debt by issuing bonds or "hocus pocus" legislation failed and hurt taxpayers.¹⁸⁰ "[I]f a state owed a debt," Wise argued, "it must exert the *sovereign remedy of taxation*."¹⁸¹ To succeed where past statesmen had failed, Wise recommended that the legislature to take note of its oyster beds, which he called Virginia's "vast and inexhaustible sources of revenue untouched and unnoticed."¹⁸² The governor anticipated that oyster taxes would generate a major source of state revenue. In his messages to the General Assembly in 1856, Wise described the oyster beds as an "eastern mine of wealth."¹⁸³ Further developing his comparison between oysters with mineral resources, Wise claimed that working in the Virginia oyster trade was "more productive than working in the gold mines of California."¹⁸⁴

The oyster banks will pay a better bonus than the banks of paper currency. An oyster mine is a richer source of profit to labor than any known mine of coal,

¹⁷⁸ Henry A. Wise, "Document No. 21, Communication Relative to the Internal Improvement Policy of the State of Virginia," 3-5, in *Journal of the Senate of the Commonwealth of Virginia [1855-1856]* (Richmond, VA: John Warrock, 1855).

¹⁷⁹ B. U. Ratchford, *American State Debts* (Durham, NC: Duke University Press, 1941), 124.

¹⁸⁰ Henry A. Wise, "Document No. 21, Communication Relative to the Internal Improvement Policy of the State of Virginia," 5, in *Journal of the Senate of the Commonwealth of Virginia [1855-56]*.

¹⁸¹ *Ibid.* 5. emphasis in original.

¹⁸² *Ibid.* 5.

¹⁸³ *Ibid.* 5.

¹⁸⁴ *Ibid.* 6.

copper, silver, or gold. If our oyster beds had been mines of metals, they would not have been so neglected by legislation as a source of revenue.¹⁸⁵

According to the Wise's optimistic estimations, an oyster tax would yield a revenue of nearly half a million dollars per year.¹⁸⁶ Wise had convinced himself that Virginia's abundance of oysters constituted a taxable mineral resource that could remedy the state's infrastructural and economic dilemma. The Virginian governor repeatedly shared his enthusiasm wherever he could in public and business life. During a dinner speech for the Central Railroad excursionists in 1856, Wise shouted out statistics about the wealth of the oyster beds and remarked how Northern Yankees were profiting from the "Virginia Golden Goose."¹⁸⁷ The following year Wise was trying to convince the representatives of the Franco-American Transatlantic Navigation Company trying to open a direct line of trade between France and Virginia. In his correspondence Wise boasted of Virginia's commercial potential and natural wealth which included its oyster beds.¹⁸⁸ Wise placed oysters at the heart of his policy to modernize Virginia and break free from economic subservience to dominant Northern markets.

The Virginian governor tactfully reinterpreted the public trust doctrine to legitimize the state government's right to tax its oysters. Wise's use of the term "oyster fundum" established the legal foundation to justify taxation.¹⁸⁹ The *Alexandria Gazette* explained, "The Oyster Fundum means Oyster Bottom, not the lower half of the fish, but the ground or 'bottom' whence it is raised."¹⁹⁰ Wise's use of the term *fundum* therefore connected the oyster beds to the

¹⁸⁵ Henry A. Wise, "Document No. 1, Message III on Miscellaneous Subjects to the General Assembly of Virginia," in *Journal of House of Delegates of the State of Virginia* [1857-58] (Richmond: William F. Ritchie, 1857), cxxxix.

¹⁸⁶ "Correspondence of M. Lacouture and Governor Wise," *Richmond Enquirer* (Richmond, VA) May 15, 1857.

¹⁸⁷ "Dinner to the Excursionists of the Central Railroad," *Richmond Dispatch* (Richmond, VA) Aug. 23, 1856.

¹⁸⁸ "Correspondence of M. Lacouture and Governor Wise," *Richmond Enquirer* (Richmond, VA) May 15, 1857.

¹⁸⁹ Henry A. Wise, "Document No. 21, Communication Relative to the Internal Improvement Policy of the State of Virginia," 5, in *Journal of the Senate of the Commonwealth of Virginia*, [1855-56]; the term "oyster fundum" first appears in his message to the state legislature on internal improvements in 1856.

¹⁹⁰ "The Oyster Fundum," *Alexandria Gazette* (Alexandria, VA) Feb. 27, 1858.

underwater soil which was legally state property under the public trust doctrine.¹⁹¹ This understanding of the public trust doctrine justified the state government's right to tax oysters as state property.¹⁹² The prior understanding of the public trust doctrine for the oyster industry gave the state the right to maintain the oyster commons for the people, not to tax it for the sake of generating revenue. Departing from past government precedents, Wise provided Virginia with a new prerogative to tax oysters and fund its modernization.

Legislators in the Virginia House of Delegates started debating Wise's proposal in 1858 and formed a special commission to investigate the feasibility of generating a revenue through taxing the oyster trade. Representative James G. Paxton led the commission even though, like many of his colleagues, he knew little about the industry. The committee summoned individuals engaged in the Virginian oyster industry to gather information before proposing the final tax bill. After several days inside the Senate clerk's office, the Exchange Hotel, and the Ballard House in Richmond, the seventeen-man committee questioned Virginians about their knowledge of the industry. Some traveled over two hundred miles from the eastern shore to give their testimony. In the process they revealed the lack of understanding between the oyster districts and the legislature in the state capitol that represented them.¹⁹³

¹⁹¹ *Arnold v. Mundy* (1821) was the first important case about the Public Trust Doctrine that took place in the New Jersey Supreme Court, McCay argued that it created the public trust doctrine. The U.S. Supreme Court case *Martin v. Waddell* (1842) confirmed the *Arnold v. Mundy* ruling that state governments had ownership of the soil beneath their waters. See McCay, *Oyster Wars and Public Trust*, 45-79.

¹⁹² McCay, *Oyster Wars and the Public Trust*, xxi; According to McCay the public trust doctrine and the state ownership were two names for the same legal concept, that the state possessed the right to regulate the soil beneath its waters.

¹⁹³ *Committee on Oysters: Papers*, 1858, Library of Virginia, Legislative Petitions Digital Collection, Legislative Petitions of the General Assembly, 1776-1865, Box 284, Folder 11; "Evidence Taken Before the Select Committee on the Oyster Fundum, January 27, 1860," in *The Journal of the Senate of the Commonwealth of Virginia* (Richmond, VA: James E. Goode, 1859).

Ship charterers, captains, sailors, oyster planters and coastal residents answered the state's summons, but few shared Wise's optimistic view of the gold mines off its eastern coast. They expounded on a variety of topics such as the quality of oysters, small-scale planting, domestic shipping, slave labor and poor white oystermen. Yet, they spoke of the lack of large profits in the industry. Despite all their knowledge and experience, they could only offer rough estimations to answer the committee's questions. A large majority of the testifiers believed that Governor Wise's proposed Oyster Fundum Bill would ruin the shipping trade and force them to leave the industry. The tax, they feared would drive Northern oyster vessels to purchase oysters elsewhere and lower oystermen's prices. One testifier from Princess Anne's County replied, "It does not fully appear to my mind that if the Legislature will impose a tax on oysters, that the consumers at the North will ultimately foot the bill."¹⁹⁴ Many of those engaged in the industry voiced their concerns about the devastating impact the Oyster Fundum Bill would have on themselves and poor oystermen. Another respondent remarked that a tax on the trade would drive the already oystermen into the poorhouse.¹⁹⁵ Any legislative attempt to tax the oyster industry, testifiers claimed, would end in disaster.

After spending weeks and several long nights examining and cross-examining littoral Virginians during the late winter of 1858, the select oyster committee became divided over how to proceed with the Oyster Fundum Tax Bill. The chairman, Senator James G. Paxton of Rockbridge County was confident that Virginia could prosper from an oyster tax. He submitted the Oyster Fundum Bill to the House of Delegates before the end of the year. The bill proposed a tax on Northern vessels taking oysters from Virginian waters and called for the state to fund the

¹⁹⁴ "Evidence Taken Before the Select Committee on the Oyster Fundum, January 27, 1860," 6.

¹⁹⁵ *Ibid.* 17-18.

creation of a small force of steamships to enforce the oyster laws of the state.¹⁹⁶ Paxton and his supporters argued that both Virginia and her oystermen needed state protection from Northern exploitation. William G. Lamb, the editor for the *Norfolk Argus* and an aid to Paxton's committee, claimed that Northern ships carried eighteen million bushels of oysters out of Virginia each year, and that Virginia only received one-fifth of the trade's profits.¹⁹⁷ Northern cities, such as Fair Haven, Connecticut, Lamb argued, enriched themselves at Virginia's expense. The Southern journalist and fire-eater J.D.B. De Bow reprinted Lamb's accusatory article in the *De Bow's Review*; "[I]ts streets are paved with Virginia oyster shells, and its people's pockets are filled with the profits on their contents."¹⁹⁸ Oyster planters in Northern areas such as New Haven purchased Virginian seed oysters and "planted" them over organized plots. After a few years the oysters grew to a marketable size and planters sold them for a higher profit.¹⁹⁹ Paxton and his supporters were convinced that they had to stop Northern markets from exploiting Virginia's oysters and "making the most of the poor white man's labor."²⁰⁰ For the Oyster Fundum Bill's supporters a tax would flip the script by protecting Virginian oystermen from profit-seeking Northerners and making consumers bare the costs.

¹⁹⁶ *Journal of the House of Delegates of the State of Virginia* [1857-1858] (Richmond: William F. Ritchie, 1857), 147, 148, 321; "Oyster Fundum of Virginia, Speech of James G. Paxton of Rockbridge," *Richmond Enquirer* (Richmond, VA) Jun. 4, 1858; "Oyster Fundum: Speech of Mr. Paxton of Rockbridge, [concluded]," *Richmond Enquirer* (Richmond, VA) Jun. 8, 1858.

¹⁹⁷ "The Virginia Oyster Trade," *Norfolk Argus* (Norfolk, VA) as quoted in *De Bow's Review* (New Orleans, LA), Volume 24, New Series Volume 4, 1858, 259-260; The actual number of oysters transported from Virginia to Northern markets is difficult to ascertain because it was not recorded by any federal or state authority. Historians must rely on biased approximations. Proponents of the Oyster Fundum Bill argued that Virginia transports millions of bushels to Northern markets. Senator Joseph Christian claims in his speech that the actual amount was closer to 848,733 bushels; *Speech of Joseph Christian on the "Oyster Fundum" Bill*, 10; The full text of Senator Joseph Christian's speech can also be found in the *Richmond Enquirer* (Richmond, VA), Apr. 12, 1860.

¹⁹⁸ "The Virginia Oyster Trade," *Norfolk Argus* as quoted in *De Bow's Review* (New Orleans, LA), 259-60.

¹⁹⁹ W. B. Hobson, *An Essay on the Oyster Industry of the United States* (New York, NY: McWilliams Printing House, 1885) 17-25, The same information can also be found at Ingersoll, *The Oyster Industry*, 71-78.

²⁰⁰ "Oyster Fundum of Virginia, Speech of James G. Paxton of Rockbridge," *Richmond Enquirer* (Richmond, VA), Jun. 4, 1858.

Opposing Paxton was Joseph Christian, the new Whig senator from the coastal Mathews County. Also a member of the select oyster committee, Christian heard the warnings from the testifiers and suspected a tax would devastate his constituents and the state's oyster industry. While Wise and Paxton saw the Oyster Fundum Bill as a necessity for Virginia's economic independence, Christian understood it to be a dangerous threat to the industry. In 1860, Christian claimed that the Oyster Fundum Bill was not in the best interest of Virginian oystermen and warned that a tax on the oyster trade would fall on the producer rather than the consumer since Northern vessels would likely refuse to pay oystermen higher prices. Concerned with the opposition and vague estimations from committee investigation, Christian reasoned that a tax on the carrying trade would encourage Northern ships to purchase oysters elsewhere which would destroy the fragile industry. In the process such a tax, Christian argued, would reduce poor oystermen to a state of pauperism by denying them their means of food and employment. He prophesized that "Every dollar they earn they obtain by selling oysters to these vessels, which this bill will drive from our waters." Driven by the committee's evidence and his own experience living in eastern Virginia, Christian saw the self-inflicted harm in taxing the oyster industry. The oystermen themselves also feared that excessive state involvement threatened resident's rights to the commons. In the only petition to protest the Oyster Fundum Bill, the oystermen of Gloucester County voiced their concerns about the privatization of oyster beds which would destroy the livelihoods of poor oystermen and enable the more competitive and affluent members of society to monopolize the coastline.²⁰¹ Christian suggested that the state

²⁰¹ Petition to the Virginia Legislature from the Citizens of Gloucester County. Library of Virginia. Legislative Petitions Digital Collection. n.d. Legislative Petitions of the General Assembly, 1776-1865, Box 89, Folder 83.

government uphold the public trust doctrine and conserve the oyster beds for the public's use rather than privatize it and drive the carrying trade from its shores.

Christian positioned himself as the rationalist and the oystermens' defender, but he was by no extent a Northern sympathizer. In fact, he fully supported making Virginia commercially, and if need be politically, independent. The Oyster Fundum Tax question took on a larger political significance as it became entangled with the sectional crisis of the late 1850s. Christian delivered his speech less than four months after John Brown's raid on the federal arsenal in Harpers Ferry, Virginia, which spread radicalism throughout Virginia and the deep South. In his criticism of the oyster tax bill, Paxton emphasized the military necessity for Virginia to protect its loyal oystermen from oppressive taxation and regulation in case civil war should break out. Paxton claimed, "If the day shall ever come when the sons of Virginia shall be called upon to protect and defend her honor and her sovereignty, no men will be found rushing into the conflict with more alacrity and truer courage to repel the invaders from her soil, then these same poor and humble oystermen."²⁰²Appealing to the radical and military fervor of the late antebellum period, Paxton argued that taxing the oyster industry would only impoverish the poor and loyal white oystermen willing to defend the South as the sectional crisis reached its breaking point.

Representatives from the eastern counties in the state legislature strongly rejected Paxton's bill. The politics surrounding the debates on the Oyster Fundum Bill were tied up in Virginia's geographic divide rather than partisan issues. The western part of Virginia which needed infrastructure conflicted with the eastern part which possessed most of the state's representation, slaves, wealth, and had less need for government spending on such projects.²⁰³

²⁰² Joseph Christian, *Speech of Joseph Christian on the "Oyster Fundum" Bill*, 13.

²⁰³ "Correspondence of M. Lacouture and Governor Wise," *Richmond Enquirer* (Richmond, VA) May, 15, 1857.

West Virginians gradually became more skeptical of the state government's ability to manage such projects and came to resent the increasing debt and how railroads extended aimlessly throughout the west. The Oyster Fundum Bill faced stiff opposition from all parts of the state. Proponents of the tax, therefore, resorted to framing the tax a measure to protect poor Virginians from Northern exploitation.²⁰⁴

Northern interests unsurprisingly disapproved of the Oyster Fundum Bill and saw it as an affront to free enterprise. The Northern press criticized the bill as an affront to "laissez-faire" trade between the states.²⁰⁵ The *Evening Post* warned that should Virginia pass the Oyster Fundum Bill every oyster-cellar, kitchen, and dining room in the region would label Wise a public enemy. The *Post* further criticized Wise for "his old doctrines of restraint upon trade and the intermeddling of government with the occupation of individuals."²⁰⁶ Consumers in New York, who were most dependent on Virginian oysters, deplored Wise's proposal as an improper obstacle on interstate trade. When the Oyster Fundum Bill failed to pass in the Virginia House of Delegates during the 1858 session, the *New York Times* celebrated:

Virginia's oysters are to be, as heretofore, an untaxed luxury. The doctrine of laissez faire is to be applied in its widest sense to the submarine wealth on the shores of the Old Dominion, and the oystermen of Staten Island will be permitted to follow their old trade without let or hindrance.²⁰⁷

²⁰⁴ William Link, *Roots of Secession: Slavery and Politics in Antebellum Virginia* (Chapel Hill: University of North Carolina, 2015), 36, 43, 77-8.

²⁰⁵ As demonstrated by the excerpt from the *New York Times*, "Laissez-Faire" was the term used. However, state governments were involved in the oyster industries and the oyster trade throughout the nineteenth century. For example, oystermen had to obey the laws within their respective states and ships engaged with the trade had to pay port fees.

²⁰⁶ "Virginia Oyster Tax," *Evening Post* (New York, NY), Feb. 18, 1856.

²⁰⁷ "Interesting to Oyster Eaters," *New York Times* (New York, NY), Apr. 7, 1858.

To Northern consumers, the Virginia oyster tax threatened to disrupt existing lines of capital and interstate commerce that has enabled New York oyster dealers to extract Virginia's natural wealth.

When the Virginia legislature attempted to pass the Oyster Fundum Bill again in 1860 it failed, and its opponents were elated. The celebrations, however, did not last long. Christian's speech in the Senate in 1860 effectively killed the Oyster Fundum Bill and any remaining chance of Virginia implementing protective economic policies for its oyster industry in the antebellum era. After years of debate, the legislature unceremoniously tabled the bill into oblivion without a recorded vote. The issues of state protectionism and oyster taxation, however, continued after the Civil War. The years from 1856 to 1860 was a crucial period in the development of Virginia's oyster policies because it was the first time that Virginian policymakers considered taxing interstate commerce and its submarine wealth.

Virginia's decision to secede from the Union at the start of the Civil War in 1861 halted the oyster trade and closed off the nation's access to the beloved bivalve. The trade's disruption did not go unnoticed in the North's oyster-eating cities. Early into the war New York's *Journal of Commerce* lamented that "the cutting off of the Chesapeake oyster trade [was] one of the incidental curses inflicted upon the North by secession."²⁰⁸ Not all despaired, however. After the last schooners sailed North with their cargoes of oysters, the U.S. Navy moved South and blockaded the coast. Union naval commanders such as Lieutenant Edward Hooker patrolled the Virginian coast for rebel activity. When Hooker was not evading mines, bombarding the coast, or monitoring shipping activity aboard his heavily armed New York ferry gunship the USS

²⁰⁸ *Journal of Commerce*, Nov. 6, 1862 (New York, NY) cited in Sven Beckert, *The Monied Metropolis: New York City and the Consolidation of the American Bourgeoisie, 1850-1896* (New York, NY: Cambridge University Press, 2001), 137.

Commodore Reed, he and his men helped themselves to dredging Virginia's oysters and sending barrels full to other U.S. officers.²⁰⁹ From 1861 to 1865 the Civil War made oysters into a highly desired and sought-after commodity for Northern consumers. After the war's end, however, the oyster question once again resurfaced into Reconstruction politics. Returning Virginian statesmen hoped to harness and regulate the North's desire for oysters for their own economic benefit to rebuild the state which was in dire economic circumstances.

The Virginia Oyster Tonnage Tax

The Civil War was the catalyst that revived the oyster question in postbellum Virginian politics. The federal blockade halted the Virginia trade for nearly four years and allowed oyster beds to repopulate which attracted more oystermen.²¹⁰ Virginia's hardships, however, only intensified. In addition to the 32,751 Virginians who died in the war, the state debt increased to approximately 41 million dollars and state revenue potentialities dropped by an estimated two-thirds. Furthermore, the admittance of West Virginia into the Union as a state reduced Virginia's size and population by nearly a third which diminished the state's taxable property.²¹¹ The abolition of slavery, additionally, eliminated a whole class of taxable "property" which constituted approximately a third of the state's total invested wealth during the antebellum

²⁰⁹ Edward Hooker's Logbook, 1863, MS 289, Series 2, Box 5, Folder 66, Hooker Family Papers, Yale University Archives, New Haven, Connecticut, United States. Lieutenant Edward Hooker's logbook contains his orders and activities while patrolling the Rappahonack River in Virginia as commander of the 2nd Division Potomac Flotilla on board the U.S.S. Currituck in 1863 and as the acting commander of the U.S.S. Commodore Reed from 1864-1865. On a few occasions, Reed noted that Union men were dredging and using tongs to catch Virginian oysters. He also noted towards the end of the war that Union ships protected and inspected oyster schooners in the area. Hooker ended his logbook by noting that in the final months of the war, U.S. Navy commanders were issuing special permits to allow the dredging of oyster beds from Sturgeon Bar to "Penalt Island." (spl.) From February to April 11, 1865 some 52,675 bushels of oysters were caught.

²¹⁰ Ernest Ingersoll, *The Oyster Industry*, 28, 180-81.

²¹¹ Virginia Military Dead Database, Accessed March 28, 2020; B. U. Ratchford, *American State Debts*, 200; 197-229: After the Civil War, West Virginia agreed to pay for an equitable portion of the Virginia State debt as it was in 1861, however, no settlement was reached until the early twentieth century. West Virginia claimed that the eastern counties were responsible for incurring the large debt.

period.²¹² The Civil War deepened Virginia's economic hardships and state representatives were hard pressed to find a solution. Recognizing that Virginia could no longer tax enslaved men and women, the new Republican Governor, Francis Pierpont, recommended that the legislature revive the oyster tax bill. Pierpont likely took inspiration from those who preceded him. Late in the war, U.S. General Benjamin Butler earned the ire of the unionist Virginia state government when he imposed military rule in eastern Virginia, restricted shipping, and taxed oystermen to support the provost marshal's fund during his occupation.²¹³ Pierpont voiced his complaints to President Lincoln and Congress about Butler's military occupation, but to no avail. Recognizing the state's horrific finances, however, Pierpont decided to follow Butler's and Wise's playbook. In 1865, Pierpont referenced the failed Oyster Fundum Bill and claimed that the "privilege of taking oysters is a legitimate subject of taxation."²¹⁴ Once again, a Virginian governor argued it was in the state's best interest to intervene in the oyster industry and interstate commerce to collect badly needed state revenue. In 1866 and The Virginia General Assembly passed the "Act Imposing a Tax on Oysters."²¹⁵ Similar to Wise's and Paxton's Oyster Fundum Bill in all but name, the tax charged ships transporting oysters out of the state three dollars for each ton of the vessel's tonnage.

Virginia's decision to pass an oyster tonnage tax was controversial because it violated Constitutional law. According to article 1, section 10, clause 3 of the Constitution, "No State

²¹² "Correspondence of M. Lacouture and Governor Wise," *Richmond Enquirer* (Richmond, VA) May 15, 1857.

²¹³ Francis Harrison Pierpont, *Letter of Governor Pierpont to His Excellency the President and the Honorable Congress of the United States on the Subject of Abuse of Military Power in the Command of General Butler in Virginia and North Carolina* (Washington D.C.: McGill & Witherow, 1864), 11; Thomas J. Wertenbaker, *Norfolk: Historic Southern Port*, Second Edition (Durham, NC: Duke University Press, 1962) 222-224.

²¹⁴ *Journal of the Senate of the Commonwealth of Virginia [1865-1866]* (Richmond: James E. Goode, 1865), 14-16.

²¹⁵ "An Act Imposing a Tax on Oysters," in *Acts of the General Assembly of the State of Virginia, Passed in 1865-1866* (Richmond: Allegre and Goode, 1866), 74-77.

shall, without the Consent of Congress, lay any Duty of Tonnage.”²¹⁶ The new tax law charged three dollars per ton on each oyster vessel transporting oysters out of Virginia. The Virginia state government was effectively taxing and regulating interstate commerce which was under the strict jurisdiction of the federal government. The Tonnage Clause is one of the least studied and understood clauses of the Constitution that deals with federal power.²¹⁷ The Virginia oyster tonnage tax was a challenge to the Constitution and some within the Virginian legislature was aware of this fact. Many representatives debated its constitutionality during the state Constitutional Convention in 1868.²¹⁸ Although state representatives were more concerned with state’s right to tax its property, the Virginia oyster tonnage tax was a state usurpation of powers granted to the federal government by the Constitution.

In addition to the carrying trade, the state legislature also taxed Virginian oystermen and especially targeted African Americans. Racial undertones influenced the creation of oyster tax laws after the Civil War. With the passage of the Thirteenth Amendment, thousands of freedmen and freedwomen moved to the Chesapeake Bay to live independently off the public commons. Richard H. Edmonds remarked that black Virginians had “nearly monopolized” the state oyster industry after the Civil War.²¹⁹ At the Virginia Constitutional Convention in 1868, one representative from the oyster districts suggested that the only reason anyone supported oyster taxes was to keep former slaves away from the rivers and make them pay for tools and boats.²²⁰ If it was the legislature’s intent to restrict African Americans’ access to the oyster beds, they

²¹⁶ U.S. Constitution, Article 1, Section 10, Clause 3.

²¹⁷ Erik M. Jensen, “Quirky Constitutional Provisions Matter: The Tonnage Clause, Polar Tankers, and State Taxation of Commerce,” *Faculty Publications*. 669-718.

²¹⁸ *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, VA: Office of the New Nation), 660-665

²¹⁹ Richard H. Edmonds, “The Oyster Industry of Virginia,” 464.

²²⁰ “Virginia State Convention,” *Daily Dispatch* (Richmond, VA) Feb. 15, 1868.

ultimately failed. By the time of Ingersoll's report in 1881 African Americans consisted of the majority of Virginian oystermen. During the antebellum period there were only a few hundred white oystermen and after the war they numbered in the thousands.²²¹

Northern businesses were anxious to resume the Virginia oyster trade immediately after the war. In some cases, the interference from the Civil War damaged the oyster industries in the North. For example, the town Wellfleet, Massachusetts was highly engaged in the carrying trade. In his travels Henry David Thoreau spoke to a Wellfleet oysterman before the war who remarked that the oyster trade with the South was still "good and improving."²²² The Virginia oyster trade resumed in the postwar era, however, competition from new railroads and steamboats damaged the schooner trade that thrived in the antebellum period.²²³ Other regions responded more enthusiastically. Ship builders in New York City continued building schooners and sloops for the Virginia oyster trade which aided businessmen to re-establish trade between the Empire State and the Old Dominion. Shipbuilder David Carll built various ships for the oyster trade including the H. W. Van Name, a 181-ton schooner named after a family of oyster dealers involved in the Virginia oyster trade since the antebellum period.²²⁴ New York newspapers such as the *Brooklyn Daily Eagle* were also reporting news of fraud about New York oyster dealers attempting to pass off planted Virginian oysters as Northern native blue points in the European trade.²²⁵ These cases of ship-building and fraud reveal that businessmen in Northern cities were anxious to resume the oyster trade after the Civil War.

²²¹ Ingersoll, *The Oyster Industry*, 182.

²²² Henry David Thoreau, *Cape Cod* (New York, NY: W.W. Norton & Co., 1951), 84-85.

²²³ Ernest Ingersoll, *The Oyster Industry*, 24.

²²⁴ "New Schooner W. H. Van Name," *Aquatic Monthly and Nautical Review* (New York, NY) Jan 1, 1873.

²²⁵ "The Oyster Trade," *Brooklyn Daily Eagle* (Brooklyn, NY) Feb 17, 1879. Ernest Ingersoll, *The Oyster Industry*, 105.

Ship owners and masters were therefore shocked and indignant when they heard the news of the new Virginian tax. After the Civil War Captain Samuel Freeman sailed into Nansemond County to purchase oysters for shipment back to Maine. Like many other sailors involved in the carrying business, he was surprised when the local Virginia oyster inspector John W. Ames approached him and issued a hefty 303-dollar tax on his schooner, the H. Prescott. Perhaps after pleading with the officer or shouting verbal abuse, Freeman likely informed Ames that such a tax was unreasonable and equaled nearly the same cost as chartering the ship for this voyage.²²⁶ Ames, however, gave no room for the negotiation and compelled Freeman pay one dollar for every ton of his ship. Freeman stormed away and spent the next few days sailing back to Maine contemplating how he was going to get paid and explain the situation to the ship's owners with the new Virginia tax law making the carrying trade nearly unprofitable. After he arrived back in Maine, word of Virginia's tax law quickly spread and eventually reached lawyer Rufus K. Sewall. Seeing an opportunity for litigation, Sewall printed the pamphlet, "Oyster Tonnage Tax on Commerce Illegal" telling the story of Captain Freeman's run in with the Virginia oyster tonnage tax. Sewall considered taking Virginia to court for violating the Constitution's Tonnage Clause and laid out the feasibility of prosecuting state officers such as John W. Ames who enforced the tax.²²⁷ In the end, however, neither Freeman nor Sewall decided to take legal action. Their reactions, however, show that oyster interests and legal professionals along the American Northeast as far as Maine felt the pinch of the Virginia oyster tonnage tax.

Northern economic interests were not alone with their criticism of the new tax law. Virginian oystermen and ship owners also sought to challenge the constitutionality of the oyster

²²⁶ "Evidence Taken Before the Select Committee on the Oyster Fundum," 8.

²²⁷ Rufus King Sewall, "Oyster Tonnage Tax on Commerce Illegal," Pamphlet (C.F. Barnes, 1866).

tonnage tax since they believed it threatened their livelihoods. In 1866, Virginian oystermen in multiple counties petitioned the Norfolk County court not to enforce the oyster tax until the courts established its constitutionality. They criticized the 1866 tax law and said, “we believe that such laws are burdensome, and that the tax on tonnage is alike unconstitutional, unlawful and well calculated to impair, if not utterly ruin, the oyster trade.”²²⁸ Just like Senator Joseph Christian predicted in 1860, Virginia’s oystermen opposed the oyster tax because it affected their ability to participate in the oyster trade.

While Virginia remained under federal occupation, the military did not challenge the oyster tonnage tax. Rather, they openly supported it. General John M. Schofield, the commander of Virginia, redesignated District One after the Civil War, made modifications to the 1867 oyster tax, but did not remove the tonnage tax because he believed it was necessary for Virginia to sustain its credit.²²⁹ The U.S. military even supplied Virginia with federal troops to assist in tax collection. In 1869, General Edward Canby sent a military detail of one officer and twenty soldiers to assist a Virginian oyster inspector collect taxes from disobedient oystermen in the Tangier Sound.²³⁰ Upon seeing the military’s support an oyster police inspector from Maryland remarked:

These regulations are not only in accordance with the State statute, but they are constantly enforced by the Military Commander of the District at the point of the bayonet, which leads us to the conclusion that there is no difference of opinion between the National and State Governments as to the constitutionality of those measures.²³¹

²²⁸ “Oystermen’s Meeting,” *Norfolk Post* (Norfolk, VA) Mar. 20, 1866.

²²⁹ “Oysters,” *Daily Dispatch* (Richmond, VA), Sept. 19, 1867; *Norfolk Virginian* as quoted in “The Oyster Tax,” *Daily Dispatch* (Richmond, VA), Dec. 19, 1867.

²³⁰ “Virginia Items,” *National Intelligencer* (Washington D.C.), Oct. 12, 1869; *Norfolk Virginian* as quoted in “The Oyster War – The Sinking of the Steamer Virginia,” *Daily Dispatch* (Richmond, VA), Oct. 27, 1869.

²³¹ Hunter Davidson, *Report Upon the Oyster Resources of Maryland to the General Assembly*, 9-10.

Although they were likely unaware of what their action legally implied, the U.S. military empowered the Virginia state government use unconstitutional mechanisms to enact a protectionist economic policy and interfere with interstate commerce.

Ship owners and consumers from across the American Northeast petitioned Congress seeking relief from Virginia oyster tonnage tax. Citizens and ship owners from New Jersey, Delaware, Maryland, Rhode Island, and Massachusetts all signed and circulated petitions to protest the Virginia oyster tonnage tax.²³² Even the wealthy wholesale oyster dealer and “Oyster King” James Freeman from Maine, whose business was situated over 700 miles from Virginia, petitioned Congress for the repeal of the oyster tonnage tax.²³³ American consumers felt the impact of the oyster tonnage tax up the entire length of the Atlantic coast. At first, it appeared that the memorialists had succeeded when Republican Congressman John Peter Cleaver Shanks of Indiana proposed a joint resolution to terminate the Virginia oyster tonnage tax in 1869. The resolution, however, fell on deaf ears and disappeared in the Congressional Committee on Commerce never making it past a second reading.²³⁴

Without the help of Congress or Northern entrepreneurs, Virginian oystermen and ship owners took it upon themselves to remove the tonnage tax. In 1871 the Supreme Court of Virginia heard two cases together in *Johnson v. Drummond* that addressed the constitutionality of the oyster tonnage tax. The plaintiffs were vessel owners engaged in the Virginia oyster trade

²³² U.S. *House Journal*, 1869, 40th Cong., 3rd sess., 27 January, 216; U.S. *Senate Journal*, 1869, 40th Cong., 3rd sess., 23 January, 135; U.S. *Senate Journal*, 1869, 41st Cong., 1st sess., 9 March, 23; U.S. *Senate Journal*, 1869, 41st Cong., 1st sess., 15 March, 40; Cong. *Globe*, 40th Cong. 3rd sess., 662 (1869); “A petition is...,” *Daily Dispatch* (Richmond, VA), Nov. 11, 1868; “Among the petitions...,” *Daily Dispatch* (Richmond, VA): Feb. 3, 1869; “State Tonnage Dues,” *New York Herald* (New York, NY), Sept. 15, 1869.

²³³ James Freeman was a wholesale oyster dealer who lived in Cumberland, Maine. According to the US Federal Census of 1870 Freeman had collected for himself 20,000 dollars-worth of personal and real estate value; Randy Lackovic, “A History of Oysters in Maine (1600s-1970s)” (2019). Darling Marine Center Historical Documents, 11.

²³⁴ *House Journal*, 1869, 41st Cong., 1st sess., 29 March, 129; *Cong. Globe*, 41st Cong., 1st sess. 334 (1869).

who refused to pay the tax and argued that it unconstitutional for its violation of the Tonnage Clause. The court ruled in their favor and found the tonnage tax to be an unconstitutional state tax on commerce rather than a tax on oysters.²³⁵ As a result of legal action, the Virginia legislature repealed the oyster tonnage tax of 1866 and replaced it with a new tax law in 1871 with more careful language which charged ships for licenses and the amount of oysters taken rather than just the ship's tonnage.²³⁶

The failure of Congress to terminate the Virginia oyster tax is an odd exception to the usual narrative of Congress's role in reorganizing the national economy after the Civil War. Scholars agree that the federal government under the control of the Republican party formed alliances with capitalists and manufacturers in the Northeast and helped them extract natural resources from the American South and West.²³⁷ During the mid-to-late nineteenth century, the federal government sought to suppress state and local attempts to control interstate commerce.²³⁸ In 1869 the *Macon Telegram* of Georgia accused Congressman Shanks of taking money from New York and New Jersey oystermen and claimed that "the Radicals are very particular to enforce the Constitution to the interest of plunder."²³⁹ In this instance, however, congressional Republicans did not head businessmen's calls to help integrate Virginia's natural wealth in oysters into the Northern-dominated economy. Instead, Congress allowed Virginian state law to impede the flow of oysters into Northern markets. While this case study is not an absolute

²³⁵ *Johnson v. Drummond*, 61 Va. 419, 1871 Va. LEXIS 13, 20 Gratt. 419 (Supreme Court of Virginia March, 1871).

²³⁶ "An Act Imposing a Tax on Oysters," in *Acts and Joint Resolutions Passed by the General Assembly of the State of Virginia, at its Session of 1870-'71* (Richmond: C. A. Schaffter, 1871), 180-186.

²³⁷ Steven Hahn, *A Nation Without Border: The United States and Its World in an Age of Civil Wars, 1830-1910*. (New York, NY: Penguin Books, 2016) 323-324, 329.

²³⁸ Richard Frank Bensel, *The Political Economy of American Industrialization, 1877-1900*. (New York, NY: Cambridge University Press, 2000) 292.

²³⁹ "Going to Steal Virginia Oysters," *Macon Telegram* (Macon, GA) Apr. 9, 1869.

challenge to the narrative of the leviathan federal government, the Virginia oyster tonnage tax reveals that there were some industries and natural resources that the Federal government did not integrate into the emerging national economy. The Virginian oyster industry thus reveals the unevenness of industrial consolidation of natural resources during Reconstruction. Despite the complaints of capitalists and consumers throughout the greater Northeast, such as “Oyster King” James Freeman of Maine, Congress remained ambivalent to the Virginian oyster question. Perhaps this was due to governmental ignorance, lack of interest, or prioritization in more important natural resources. In the end, the so-called American leviathan let the Virginian oyster slip through its hands.

Policing the Line in the Sand

On August 29, 1875, oyster inspector Madison W. Hudson from Northumberland County, Virginia, issued Robert Lewis a license to catch oysters in his small canoe. Hudson filled out his report book in detail: the type of boat, the average amount of oysters sold and caught per day, the river where the oysters were caught and the tax prescribed to it.²⁴⁰ This specific record keeping suggests that historian William Novak’s regulatory state was at work in Virginia’s oyster industry during the later nineteenth century. Local laws created an army of oyster inspectors and local officials who kept records, issued licenses, and collected taxes. Novak’s analysis, however, does not significantly address how the regulatory state relied on violence to protect local natural resources. The state government sought to prevent non-resident oystermen, usually from Maryland, from illegally stealing oysters from Virginian waters in the southern Chesapeake Bay. To accomplish this goal, the Virginia state government created an

²⁴⁰ Oyster Inspector’s Report, 1871-1876, Northumberland County, *Virginia County Records*, microfilm, Library of Virginia, Reel 171.

armed police force to patrol the coast, keep Maryland depredators out of state waters, and enforce the oyster tax laws. Unlike the inspector's report book, the Virginian oyster industry was disorderly, violent, and in desperate need of state authority.

Going back to the antebellum period, state officials have struggled with regulating the oyster industries. The Virginia state government had been regulating its oyster industry and fighting against oyster pirates since the early 1800's, however, its effectiveness was always a question of dispute. Since the early republic, Virginia passed laws prohibiting its citizens from certain activities such as using dredges to collect oysters or burning oyster shells to produce lime.²⁴¹ Most importantly, it was the responsibility of the local government to prevent non-residents from stealing Virginian oysters. During the antebellum period, local authorities in Virginia and Maryland struggled to stop outsiders from harvesting their oyster beds. Local officials relied on forming a *posse comitatus* and chartering vessels to capture and chase off depredators. In one instance in 1850, the Sheriff of Nansemond County, Virginia, accommodated a steamship and an artillery company, captured 10 vessels, and arrested 75 men.²⁴²

Back during the debate on the Oyster Fundum Bill in the 1850s, Governor Henry Wise and Senator James Paxton argued that the creation of a state police force of armed steamships would better enforce the oyster laws of the state and keep non-residents from raiding Virginian oyster beds. Paxton argued that past legislation was ineffective because "violators of the law

²⁴¹ "An Act to prevent the destruction of oysters inside this Commonwealth," in *A Collection of Acts of the General Assembly of Virginia*, Chapter XVII, Vol. 2 (Richmond: Samuel Pleasants Junior, 1808), 47.

²⁴¹ A dredge is an oyster harvesting tool that consists primarily of metal frame that is dragged through an oyster bed.

²⁴¹ "An Act, to amend the Act, entitled an Act, to prevent the destruction of oysters inside this Commonwealth," in *Supplement Containing the Acts of the General Assembly of Virginia*, Chapter LXXI, Vol. 2 (Richmond: Samuel Pleasants Junior, 1812), 76-77.

²⁴¹ Samuel P. Hanes, *Aquatic Frontier: Oysters and Aquaculture in the Progressive Era* (Amherst: University of Massachusetts Press, 2019), 23.

²⁴² "The Oyster War," *New York Herald* (New York, NY), Apr. 6, 1850.

were afloat, and the officers ashore, that the latter had no means of detecting offenders, and when detected, no efficient means for their arrest.” Seeing that past enforcement was ineffective, Paxton believed it was necessary to rely on the force of cannons.²⁴³ After Joseph Christian’s protest that the bill would grant excessive police power to an armed navy and threaten citizens’ civil liberty, the issue of the oyster navy disappeared.²⁴⁴ After the Civil War, however, Virginia desperately needed a police force to protect its oyster beds from the encroachment of non-residents. One Northern newspaper predicted that “unless the State of Virginia does something to prohibit people living outside of that State from gathering oysters, the business the coming season will be large, and the prices materially cheapened.”²⁴⁵ To prevent this from happening, the Virginia legislature then created its first oyster navy in 1867. Maryland would quickly follow its example the following year.

²⁴³ “Oyster Fundum: Speech of Mr. Paxton of Rockbridge, [concluded],” *Richmond Enquirer* (Richmond, VA), Jun. 8, 1858.

²⁴⁴ *Speech of Joseph Christian on the “Oyster Fundum” Bill*, 4,13, 19-20.

²⁴⁵ “The Oyster Trade,” *Brooklyn Daily Eagle* (Brooklyn, NY) Sept. 9, 1865.



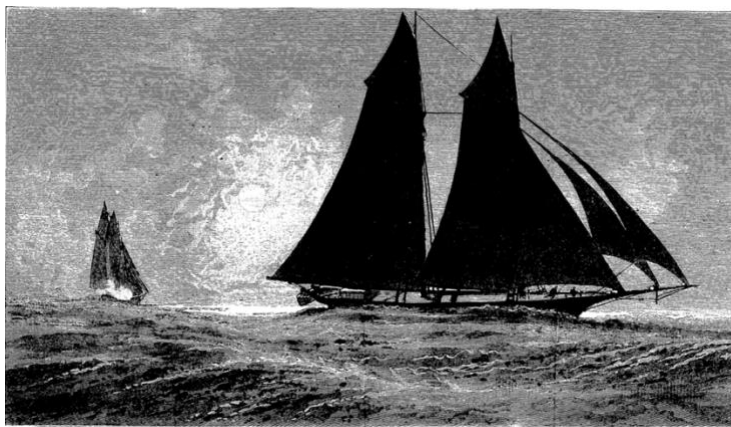
Figure 3: A Steamboat from the Virginia oyster police examines a carrying ship²⁴⁶

The effectiveness of the Virginian oyster police, commonly called the oyster navy, remained limited in the face of its Herculean task. For one, the responsibility of patrolling the state's waters fell to only three small armed steam tugboats and a collection of inspectors scattered along the coast. Even with this force, the state's ability to effectively regulate and monitor the southern Chesapeake Bay remained limited. As historian Christopher Pastore, observed, historically it is challenging for societies to impose order and control over the coast, which is the conjunction between ordered land and the ungovernable sea.²⁴⁷ In other words, it is exceptionally difficult for state officials to project their authority over a marine environment. The Virginia oyster navy faced the daunting task of having to patrol the disputed maritime border in

²⁴⁶ "The Oyster Trade," *The American Odd Fellow* 13, no. 2 (February 1872): 114-117.

²⁴⁷ Christopher L. Pastore, *Between Land and Sea: The Atlantic Coast and the Transformation of New England* (Harvard University Press, 2014), 3.

the Chesapeake Bay where valuable oyster beds attracted oystermen from Virginia, Maryland, and neighboring states. After the Civil War, the chief inspectors of the Virginia and Maryland oyster navies formed the Davidson-Lovett Line, an informal agreement that failed to prevent oyster boats from working on the other state's oyster beds.²⁴⁸ The state legislatures in Maryland and Virginia failed come to any agreement, leaving the oyster navies scrambling to contain the damage.



AN OYSTER PIRATE BEING CHASED BY A POLICE BOAT IN CHESAPEAKE BAY.



ON THE LOOKOUT FOR PIRATES.

Figures 4 and 5: An Oyster Pirate Being Chased by a Police Boat in the Chesapeake Bay. Oyster Police Officers Looking for Pirates²⁴⁹

The Virginia oyster navy attempted to protect its oyster beds from Marylanders through the use of violent force. Although small, the steamships in the oyster navy were armed representatives of the state. The steamships often patrolled the disputed regions in the Tangier

²⁴⁸ “The Oyster War,” *New York Daily Tribune* (New York, NY) Mar. 5, 1869; ²⁴⁸ Louis Napoleon Whealton, “The Maryland and Virginia Boundary Controversy (1668-1894),” PhD diss., (John Hopkins University, 1897), 34-52; Craig M. Simpson, *A Good Southerner*, 295: Virginia and Maryland have had border disputes dating back to the seventeenth century. Following the oyster police arrests on the Lovitt-Davidson Line, Both the Virginia and Maryland state governments agreed to send commissioners to meet and arbitrate a new border in the 1870s. Henry Wise was among the Virginia commissioners to debate the state borders in the Potomac River, Chesapeake Bay, and the Pocomoke Sound. The Black-Jenkins Award in 1877 gave most of the claims to Maryland. Virginia lost its claim to the Pocomoke River, the Pocomoke Sound was split in half. Virginia lost what Wise estimated to be some fifty million dollars-worth of oysters in taxable property. The issue of oyster taxation and law enforcement created an interstate crisis that continued into the 1890s.

²⁴⁹ “The Oyster War in Virginia,” *Frank Leslie Illustrated Newspaper* (New York, NY) Jan. 31, 1880.

Sound and Potomac Sound arresting Maryland oystermen for allegedly stealing Virginian oysters. In one incident in 1868, the Virginian oyster navy got into a gunfight with oystermen in the Tangier Sound causing the death of one oyster inspector.²⁵⁰ The legislature sold the boats in the first Virginian oyster navy in 1874 when it became clear that the revenue from the oyster tax was lower than anticipated and the maintenance costs for the steamships could not be justified.

Animosities between the oyster navy and oyster pirates in Virginia and Maryland amplified in the 1880s and 1890s.²⁵¹ After Virginia disbanded its first oyster police force, the state failed to effectively collect any revenue and by 1879 the oyster beds were almost completely depleted. In the early 1880s Virginian Readjuster Governor Cameron advocated for a new second oyster police force to enforce state laws. Building a larger steamship, the Chesapeake, the Virginian oyster navy returned and used force to arrest and chase oyster pirates out of state waters. Gun fights were not frequent, but it was not uncommon for the oyster navy to use force or for oystermen to die while attempting a daunting escape. Before, the oyster navies used their guns in self-defense or to scare the violators back across the state line, but in the 1890s, they started shooting to hit and kill.²⁵² In 1894, Maryland oystermen on Smiths Island started a gunfight with a Virginia police boat which fired back with its cannons.²⁵³ After witnessing a battle between some forty small oyster boats in 1895, one journalist asserted, “this is the only occasion since the close of the civil war upon which a cannon has been fired, with hostile intent, in territory belonging to the United States.”²⁵⁴ While the reporter’s comment was

²⁵⁰ “The Oyster War,” *Richmond Dispatch* (Richmond, VA) Nov. 9, 1868.

²⁵¹ James Tice Moore. “Gunfire on the Chesapeake: Governor Cameron and the Oyster Pirates, 1882-1885.” *The Virginia Magazine of History and Biography* 90, no. 3 (1982): 367-77.

²⁵² “War on the Oyster Pirates,” *New York Times* (New York, NY) Dec. 31, 1886.

²⁵³ “The Chesapeake Oyster War,” *Brooklyn Daily Eagle* (Brooklyn, NY) Mar. 18, 1894.

²⁵⁴ “With the Oyster Police,” *Lippincott’s Monthly Magazine* (Nov. 1895) 707.

perhaps an exaggeration within America's larger military history, it emphasizes that the protection of the oyster industries in Virginia and Maryland was at times a matter of life and death. In their attempt to raise revenue from its oysters, Virginia relied on state-sanctioned force to protect its resources from non-residents.

Northern Capital in Virginian Oyster Beds

Although the state government was in desperate need of revenue and wealth, the Virginia legislature continued to reject Northern capital from aiding its oyster industry after the Civil War. Some individual capitalists from the North such as James Sands Darling brought their wealth with them to Virginia by becoming a resident. After obtaining special permission from the Virginia state legislature, Darling planted some 30,000 dollars-worth of oysters off the coast of Hampton, purchased his own vessels, and employed over 5,000 men in his oyster packing business.²⁵⁵ Because Darling moved to Virginia after the war, he received special permission to invest his capital in his private oyster beds and develop the oyster industry. Before the war there was only one oyster firm in Norfolk, but with the help of capital from Boston and New York, and individuals such as James S. Darling, that number increased to fifteen by 1880.²⁵⁶ Darling's story, however, is an exceptional case. After the Civil War, Virginian law continued its protectionist policies and prohibited Northern capitalists from investing their capital into Virginia's oyster beds unless they moved South.

Virginian law prohibited non-residents from placing their capital in Virginian oyster beds unless they engaged through approved channels in the Southern oyster trade, or if they relocated to Virginia. In 1876 the Supreme Court of the United States heard a case concerning James W.

²⁵⁵ "Virginia Oyster Wealth: Flourishing Trade at Norfolk – Profits of Planting – Maryland's Opportunities," *Baltimore Sun* (Baltimore, MD) Mar. 38, 1887.

²⁵⁶ Edmonds, "The Oyster Interests of Virginia," 466-467.

McCready, an oyster trader from Maryland, who was fined five hundred dollars for illegally planting oysters in Virginian waters as a non-resident. McCready claimed that Virginia's laws violated the U.S. Constitution for denying the citizens from other states the privileges and immunities of Virginians and for interfering with Congress's ability to regulate interstate commerce. The court, however, ruled in support of Virginia's claim to regulate tidewater oyster beds and give state residents the exclusive right to use them.²⁵⁷ The *McCready v. State of Virginia* (1876) ruling re-affirmed Virginia's protectionist economic policies to prevent non-residents from profiting from Virginian oyster beds outside of legal channels of trade.

Various Virginians complained about the state government restricting "foreign capital" from the oyster industry. One reader of the *Richmond Dispatch* commented that it was unfair to permit "foreign capitalists to invest their capital in lands, merchandise, railroads, and other property and business within her limits" while also "consistently prohibit the use and employment of such capital in the oyster business."²⁵⁸ Virginians often protested that this restriction was detrimental to the state's industry. In an ironic inversion of the antebellum debates, advocates for Northern capital used Northern exploitation as a justification for opening new lines of credit. "Reason" from the *Richmond Dispatch* wrote that the laws prohibiting foreign capital inhibited the state's wealth and prosperity and made Virginian tongmen "'hewers of wood' for the northern planter." Using similar language to Paxton back in the antebellum period, "Reason" argued that repealing this law would encourage planting and packing houses and open a home market to benefit oystermen. He argued against the "suicidal policy" that limited foreign capital from Virginia's oyster industry.

²⁵⁷ *McCready v. Commonwealth*, 68 Va. 985, 1876 Va. LEXIS 88, 27 Gratt. 985 (Supreme Court of Virginia January, 1876); *McCready v. Virginia*, 94 U.S. 391 (Supreme Court of the United States, 1876).

²⁵⁸ "Our Oyster Industry – A Word to the General Assembly," *Richmond Dispatch* (Richmond, VA) Feb. 14, 1886.

What would be thought of a law which forbade the non-resident capitalist from investing his money in a Virginian manufactory?... No matter how desirous the enterprising citizen of New York may be to invest his money in oyster-planting in Virginia the law says” ‘No. Keep your money In New York waters. You can’t bring it down here to our oysters, but we will allow out oysters to be carried to New York to your money.’²⁵⁹

Advocates for Northern capital argued that removing restrictions would enrich the state, the Northern capitalist and Virginian oysterman alike. The Virginian legislature, however, was not convinced and the restriction remained.

Many influential Virginians and Northern advocates favored opening Virginia’s oyster beds to foreign capital. After completing his survey of the oyster grounds in Virginia in 1893, James B. Baylor, recommended that the state promote oyster culture by renting out barren regions along the coast and repealing the restriction on foreign capital. In order for Virginia to implement the artificial oyster cultivation practiced in the Northern states, Baylor argued that oyster planting and deep-water oyster cultivation required large amounts of capital for rent and labor-saving appliances. He said “If she [Virginia] is to derive a direct revenue from the rental of this barren area, she must let in capital from sister States for its cultivation.”²⁶⁰ Baylor later argued against state restrictions on foreign capital again in 1894 when various men involved in the oyster industry attended a convention to share their visions for the oyster industry with the Richmond Chamber of Commerce. Virginian Governors Philip W. McKinney and Charles O’Farrell wanted to improve the industry so that the state could generate a larger oyster tax revenue since past laws were inefficient and rarely generated any profit. Baylor again advocated for allowing

²⁵⁹ Ibid.

²⁶⁰ J. B. Baylor, *Survey of Oyster Grounds in Virginia: Report of J.B. Baylor to the Governor of Virginia* (Richmond, VA: J. H. O’Bannon, Superintendent of Public Printing, 1895), 6.

outside capital and selling barren oyster grounds to generate a heftier revenue.²⁶¹ Northern oyster monopolists such as Henry C. Rowe of New Haven also traveled to Richmond to share his thoughts on Virginia's oyster legislation. Rowe spoke of his role in developing deep-water oyster culture in Connecticut and the Long Island Sound, his purchase of 15,000 acres of submarine land, the hundreds of thousands of dollars he spent on experiments and labor, and how his enemies back in Connecticut called him a "damned capitalist."²⁶² Rowe was the living example of what Virginian oystermen could accomplish by permitting large amounts of capital to be invested in oyster grounds. Despite their best efforts, the Richmond Chamber of Commerce and the Virginia legislature, however, remained unconvinced and the state continued to prohibit non-residents and their capital from touching the Virginian coast.

While surveyors, capitalists, and newspaper writers supported opening Virginian oyster beds to Northern capital, many Virginian oystermen also opposed it. Oystermen expressed their views during the Hampton Oyster Convention, one of the first large conventions that debated the state of the industry held in Norfolk in 1885. Black and white representatives of Virginian oystermen committed themselves to their predecessors' belief that the industry should support the local oysterman rather than the Northern capitalist. They argued that oyster beds were held in common for public use and that the state government did not possess the right to lease them out to anyone. They feared that such power would eventually encourage the state to allow "mammoth corporations" to enclose Virginia's oyster beds. Rather than permit Northern capital from entering their waters, the oystermen wanted to state government to return to the moral

²⁶¹ *Proceedings of the Convention Called to Consider and Discuss the Oyster Question held at the Richmond Chamber of Commerce, Richmond, VA., Jan. 12, 1894, with Papers Issued in Calling the Convention* (Richmond, VA: J. W. Fergusson & Son, Printers, 1894) 20-21.

²⁶² *Ibid.* 22-24.

economy of the antebellum period when the state only held the oyster beds in trust for the oystermen.²⁶³ Just as in the antebellum period, oystermen rejected the state government's authority to lease the coast off to wealthy capitalists and monopolists.

Virginia maintained its ban on foreign capital through the end of the century and remained especially hostile to out-of-state corporations. In 1903 the new Virginia Corporation Commission refused to grant a charter to an out of state corporation for oysters. This was the first the commission had rejected a corporation charter since it started a year ago. The commission rejected the charter because there were multiple applicants and signers from Maryland which violated the prohibition on non-residents engaging in the Virginian oyster industry. While the Commission acknowledged that corporations could transfer stock from residents to non-residents, they could not issue the charter without violating state law.²⁶⁴ The Virginia state legislature finally repealed the ban on foreign capital in 1916, under the condition that such corporations be chartered in Virginia.²⁶⁵ Upon repeal of the old law, capitalists from around the country celebrated. One capitalist who owned oyster beds throughout the Northeast wrote to the Virginia Commission of Fisheries, "I believe that the idea that other States of the Union are not foreign countries, but are part of our whole nation is steadily increasing."²⁶⁶ After over half a decade, oystermen's worst fears were realized as Northern corporations and planters had access to their oyster beds. After decades of failure, Virginian statesmen finally threw in the towel and opened the state's eastern mines of wealth to the North.

²⁶³ "The Hampton Convention," *Richmond Dispatch* (Richmond, VA) Dec. 18, 1885.

²⁶⁴ "A Charter Refused: Non-Residents Cannot Take Virginia's Oysters," *Norfolk Landmark* (Norfolk, VA) Oct. 2, 1903.

²⁶⁵ Philip Alexander Brice, *Virginia: Rebirth of the Old Dominion*, Vol. 2 (Chicago, IL: Lewis Publishing Co.) 275-276.

²⁶⁶ *18th Annual Report of the Commission of Fisheries of Virginia* (Richmond: Davis Bottom, Superintendent of Public Printing, 1917) 11-12.

Conclusion

As it became clear towards the turn of the nineteenth century that Virginia's attempt to control the coast had failed, the industry adopted a more progressive approach. Rather than pass legislation to influence an extracted resource, Virginians turned towards privatization, rationalization, and modern science to promote oyster cultivation. However, historians should recognize that the history the Virginian oyster industry is also the story about an attempt to escape regional economic dependency and a violent battle over regulating a coastal industry full of people who were as unruly as the waters they worked on. Virginian policymakers attempted to regulate a resource that they did not have ability to control. When they attempted to assert some sense of control over the oyster beds of the Chesapeake Bay, it resulted in violence, confusion, and conflict with the law. Moving forward reformers would develop a new form of oyster cultivation that reconciled these chaotic, ineffective, and contradictory methods with the promises of rationalization, scientific cultivation, efficiency.²⁶⁷

However, as this narrative has shown, the Virginian oyster industry was not simply an instance of chaos. While certainly chaotic, violent, and perhaps ineffective, Virginia's oyster industry demonstrates consistencies over the course of the nineteenth century when viewed through the lens of interstate commerce, economic protectionism, and fears of exploitation. From Governor Wise's messages in the 1850s to the repeal of the ban on foreign capital in 1916, Virginia struggled to support its oyster industry and establish itself alongside the entrepreneurs, capitalists, and markets in the North. By analyzing the oyster commodity, this essay has analyzed several key economic and political developments in Virginia's history. Wise believed his desire

²⁶⁷ See Samuel P. Hanes, *The Aquatic Frontier*.

for the Southern commercial revolution depended on his ability to protect Virginian oysters from Northern exploitation. Virginia's protectionist policy carried over into the postbellum period when it implemented the illegal tonnage tax and challenged federal authority. The Virginian legislature created a police force to prevent non-residents from crossing an ill-defined marine border to take its resources. Finally, the Virginia state government prohibited non-resident oyster planters from investing in oyster cultivation. For most of the second half of the nineteenth century, Virginia implemented protectionist economic policies with its oyster industries, however, it is difficult to argue that these policies were a success. The state legislature repealed the oyster tonnage tax in 1871. For most of their existence, the oyster police struggled to prevent foreign depredators from harvesting oysters or justify its existence. Virginia's oyster beds were constantly on the verge of depletion. The prohibitions on Northern capital further stagnated the development of the oyster industry. In its own efforts to protect its domestic industry and generate a large state revenue to fund modernization, Virginian policymakers only hampered their own progress. Governor Wise predicted that the oyster beds would be the eastern mine of wealth, but it never lived up to his expectations. It was only at the end of the nineteenth century that Richard H. Edmonds realized the ugly truth. He claimed in his report:

Many who have never lived near the water, and who gain their information from the rose-colored pictures, drawn by correspondents who see only the best features of the trade, imagine that an oyster bed is a mine of wealth, from which every oysterman may gather a liberal competence with but little labor. Nothing could be more erroneous.²⁶⁸

²⁶⁸ Richard H. Edmonds, "The Oyster Interests of Maryland," 429.

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