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TIMOTHY C. MEYER

INTRODUCTION

In the years preceding the Civil War, two North Carolina Supreme Court Justices, Chief Justice Thomas Ruffin and Associate Justice William Gaston, offered starkly different legal opinions on issues relating to slavery. Despite broad similarities in their backgrounds and their agreement on many other legal and judicial issues, Ruffin and Gaston approached slavery from sharply contrasting perspectives. Both men used their positions on the bench to influence the treatment and legal status of slaves. While Ruffin vigorously defended the peculiar institution and took the concept of chattel to a logical extreme, Gaston denounced many of its dehumanizing elements. In fact, Gaston's opinions frequently attempted to ameliorate conditions for slaves. The contrast is especially noteworthy given that Ruffin and Gaston served on the same court, at the same time, with very similar backgrounds, including the fact that both were slaveholders. This Article analyzes their opinions on slavery and also partially seeks to explain the differences between the two men through their backgrounds in the areas of legislative service, religious affiliation and judicial aims.

I. THE PUBLIC LIVES OF RUFFIN AND GASTON

Thomas Ruffin was born in 1787 and raised in Essex County, Virginia in an Episcopalian family.¹ Prior to enrolling at the College of New Jersey (now Princeton), Ruffin moved to Warrenton, North Carolina.² After graduating and passing the bar, Ruffin eventually settled in Hillsboro, North Carolina.³ He was a large slaveholder,

¹. 16 DICTIONARY OF AMERICAN BIOGRAPHY 216 (1935).
². Id.
³. Id.
owning more than 100 slaves on two plantations. Ruffin had great influence among the plantation community and even served as president of the state agricultural society from 1854 to 1860. Ruffin was also engaged in many commercial pursuits. He was part of "an elite cadre of Piedmont lawyers who were intent on modernizing the state. These attorneys . . . [bridged] the economic and cultural gap between agrarian and commercial interests."6

Ruffin was an extremely active Jeffersonian-Republican. As a member of North Carolina's House of Commons, he eventually rose to become speaker in 1816. He later served as an elector for William Crawford in the 1824 Presidential election. His role as an elector was fundamentally local and it was not until 1861 that Ruffin was engaged on the national scene. Ruffin attended the Washington Peace Conference in 1861 and also participated in the Confederacy as a commissioner of North Carolina's sinking fund, which was a fund used to pay off the state's debt. But it was during his tenure on the State's Supreme Court from 1829 until his retirement in 1852 (and again briefly in 1858 when he was called back into service) that Ruffin unquestionably had his greatest and longest lasting impact.11

William Gaston was born in 1778 and raised in New Bern, North Carolina by a devoutly Catholic mother, as his father died when he was just two years old. Like Ruffin, Gaston also graduated from the College of New Jersey, although he initially enrolled at Georgetown as its first student. After graduating, Gaston returned to North Carolina where he studied law and owned a plantation. At his death, Gaston owned more than 200 slaves.15

5. Id.
7. Id.
8. 16 DICTIONARY OF AMERICAN BIOGRAPHY, supra note 1.
9. Id.
10. MORRIS, supra note 4.
11. 16 DICTIONARY OF AMERICAN BIOGRAPHY, supra note 1.
12. 6 DICTIONARY OF AMERICAN BIOGRAPHY 180 (1931).
14. Id. at 44.
15. 8 TIMOTHY S. HUEBNER, AMERICAN NATIONAL BIOGRAPHY 783 (1999).
Gaston was also very involved in Federalist and, later, Whig politics—both locally and nationally. Gaston served four terms in the state senate and seven in the house of commons, eventually rising to become speaker of the house, as had Ruffin. Unlike Ruffin, however, Gaston had national political experience early on in his career. For example, he served two terms in the United States House of Representatives, from 1813 to 1817. He was also offered the chance to represent North Carolina in the United States Senate in 1840 and to serve as William Henry Harrison's attorney general in 1841. Gaston, however, refused both offers. Although he died before the secession crisis of 1860–1861, Gaston had—at a much earlier time—been firmly committed to the preservation of the Union. Even though Gaston's impact while serving in North Carolina politics was likely broader than Ruffin's, Gaston's greatest achievements, like Ruffin's, came during his years on the state's highest court from 1833 to 1844.

II. A SHARED COMMITMENT TO AN INDEPENDENT JUDICIARY

In 1818, North Carolina was one of two states without a supreme court—that is, an appellate court separate from a law term of the trial court. The legislative debate about whether to create a "supreme court" in North Carolina was extremely contentious. Even after the pro-court advocates won the day in 1818, the North Carolina Supreme Court went through a period of roughly fifteen years where its long-term survival as an independent entity was in serious doubt, with anti-court forces continuing to press their case. These opponents, who urged

16. 3 CONNOR, supra note 13, at 44.
17. Id. at 46.
18. Id.
19. 6 DICTIONARY OF AMERICAN BIOGRAPHY, supra note 12, at 181.
21. See Walter F. Pratt, Jr., The Struggle for Judicial Independence in Antebellum North Carolina: The Story of Two Judges, 4 LAW & HIST. REV. 129, 143-44, 159 (Spring, 1986) (indicating that while Ruffin experienced political weakness in the eastern part of North Carolina, Gaston had no such problem, yet both made their biggest contribution while on the supreme court).
22. Id. at 134.
23. Id. passim. (discussing challenges to the formation of the North Carolina Supreme Court through the legislative process from the time of its inception in 1818 until the appointment of William Gaston as a supreme court justice in 1833).
democratic reforms throughout state government, viewed unelected judges as unresponsive to public opinion and an affront to their strongly held democratic ideals.\(^{24}\) The critics preferred a judiciary model which had no superior appellate court, in which "the judges of trial courts rode circuit...and met periodically to review their own decisions."\(^{25}\) This was similar to the arrangement of North Carolina's courts prior to 1818.\(^{26}\) Consequently, justices serving on the supreme court had to deal with frequent attacks including proposed salary cuts, a lack of protection for judges' tenure during good behavior, and even abolishment of the court itself.\(^{27}\)

Both Gaston and Ruffin's leadership and jurisprudence were critical to the establishment of an independent judiciary in North Carolina.\(^{28}\) Gaston was heavily involved in the process from the beginning as chair of the judiciary committee responsible for drafting the legislation creating the court in 1818.\(^{29}\) He was also influential in helping to prevent some of the court's critics from implementing a number of hostile responses. For instance, in 1819 while still serving in the state legislature, Gaston blocked an effort to reduce judicial salaries.\(^{30}\) During the remainder of his legislative tenure, he also used his influence to prevent further attacks on the court.\(^{31}\)

Ruffin's stature also contributed significantly to the stability of the court. Having become widely respected in North Carolina through politics, the practice of law and commercial pursuits, including a stint as president of the state bank, Ruffin brought legitimacy to the court at its most vulnerable time.\(^{32}\) This was critical because he replaced Chief Justice John Louis Taylor, one of the state's most able jurists.

Ruffin's jurisprudence was also crucial to the court's continued stability. In one of his most famous opinions, *Hoke v. Henderson*, Ruffin held that an appointed clerk had a vested interest in his office, not

\(^{24}\) Id. at 130.

\(^{25}\) Id.

\(^{26}\) Id. at 133–34.

\(^{27}\) Id. at 134–36.

\(^{28}\) Id. at 129.


\(^{30}\) Id. at 98.

\(^{31}\) Id.

\(^{32}\) Huebner, *supra* note 6, at 134.
subject to legislative manipulation. The plaintiff, who had been threatened with the loss of his office under recently-passed legislation that made the office of clerk an elected position, sued to keep his office. Although Ruffin’s holding did not apply directly to the offices occupied by state judges, there was a clear analogy between the tenuous situation of the clerk and the equally precarious position faced by the state’s judiciary.

By shielding the appointed clerks from legislative interference, Ruffin may have implicitly extended protection to the supreme court justices. Hence, Ruffin enhanced the position of the court by denying to the legislature the ability to “deprive the officers without further enquiry before a jury, into the fact or legal sufficiency of any cause of forfeiture or removal.” Within a single opinion, Ruffin managed to solidify not only the tenures of the justices, but he also carved out an expanded sphere in which the judiciary could operate, free of legislative interference.

Like Ruffin, Gaston was vital to the stability of the court. He played a crucial role in the formation of the court and his election to the court by the legislature in 1833 was also necessary for its continued existence. When Chief Justice Leonard Henderson died in 1833, both the stability and the credibility of the court were at another critical juncture. Within a period of five years, all three justices on the supreme court had been replaced, and the court needed to reestablish its legitimacy in the face of the increasing democratic reforms. By most accounts, Gaston was not only the perfect person for the job—he was the only one. For instance, the Governor at the time, David Swain, remarked to Gaston that, in light of the crisis, “if any other name but his own were presented to the legislature the court would die with the late chief justice.” Even his colleague-to-be Ruffin recognized the importance of Gaston’s election, saying that if Gaston did not accept the

34. Id. at 1.
35. Id. at 14.
36. Pratt, supra note 21, at 134, 148 (discussing Gaston’s crucial role in the development of the court by introducing a bill for its creation in 1818, and further indicating that his acceptance of a seat on the court in 1833 potentially saved the court’s existence).
37. Schauinger, supra note 29, at 101–02.
38. Id.
39. Id.
job, Ruffin would resign and the court would not survive.\textsuperscript{40} Gaston eventually yielded to the pressure and was elected to the bench in 1833.\textsuperscript{41}

Indeed, Ruffin's and Gaston's early careers followed remarkably similar paths as they displayed their ability to work in harmony to ensure the survival of the court and to protect the independence of the judiciary. On no issue, however, were their opinions more different than on slavery. Upon Gaston's elevation to the court in 1833, it quickly became apparent that this issue would precipitate sharp jurisprudential disagreements between the two.

Ruffin based his slavery jurisprudence on rigid logic and narrow assumptions. He consistently sought to strengthen the rights of slaveholders and, more generally, to fortify the institution of slavery against perceived threats ranging from abolitionists to slave revolts. The result was increasingly to define slaves solely as chattel, with an almost total de-emphasis on their humanity—and their legal rights. By contrast, Gaston took a more moderate view and sought to balance a greater variety of interests. Rather than focusing solely on a rigorous line of logic stemming simply from the rights of the slaveholder, Gaston adopted a broader perspective and took into account a wider array of competing interests including social, economic and general considerations of fairness. While his opinions did not overtly seek to hasten the demise of slavery, Gaston's moderate approach allowed him to exercise a subtle restraining influence.

III. FOUNDATION FOR CONFLICT

Ruffin had already weighed in on the issue of slavery well before Gaston joined the court. In 1829, Ruffin issued perhaps his most well-known opinion, \textit{State v. Mann}, in which he held that the dominion of a master over his slave was and must be absolute.\textsuperscript{42} This case was particularly noteworthy because it appeared to sanction the cruelest treatment imaginable: Ruffin overturned the conviction of a slave-hirer who had been convicted of assault for shooting a slave in the back who had run away while being chastised for committing a trivial, non-violent offense.\textsuperscript{43} In so doing, Ruffin vigorously defended the complete

\begin{footnotes}
\footnotetext[40]{\textit{Id.} at 102.}\footnotetext[41]{\textit{Id.} at 105.}\footnotetext[42]{\textit{State v. Mann}, 13 N.C. (2 Dev.) 263, 266 (1829).}\footnotetext[43]{\textit{Id.} at 268.}\end{footnotes}
subjugation of slaves based on the underlying rationale for the institution of slavery. He stated, “The end is the profit of the master, his security and the public safety; the subject, one doomed in his own person, and his posterity, to live without knowledge, and without the capacity to make any thing [sic] his own, and to toil that another may reap the fruits.”

Claiming that he was fulfilling his mandatory magisterial duty to follow the law strictly, Ruffin rejected a moralistic approach and instead insisted on looking at the issue through a public safety lens, stating: “And as a principle of moral right, every person in his retirement must repudiate it. But in the actual condition of things, it must be so. There is no remedy. This discipline belongs to the state of slavery.” Here, Ruffin’s incessant logic is at its clearest, with a single-minded focus on the rights of slaveholders, sweeping away any obstacles. Not surprisingly, he also expressly rejected the applicability of a comparison proposed by the attorney general between the relationship of a master to a slave and other relationships such as master to apprentice, parent to child, and tutor to pupil. The only limits that Ruffin recognized on the master’s power over his slave were those “where the exercise of [the master’s power was] forbidden by statute.”

This opinion is in stark contrast to views expressed by Gaston shortly after his elevation to the supreme court. In 1834, Gaston issued an opinion, *State v. Will,* which implicitly seemed to challenge Ruffin’s assertion that the master’s dominion was absolute. Although Gaston declared that he was not overruling *Mann,* he adopted the premise that Ruffin had expressly rejected, concluding that the relationship between master and slave was comparable to that between a master and apprentice in certain situations. By using this analogy, Gaston found a slave who had killed his master in response to being shot and subsequently pursued, guilty of manslaughter, but not guilty of murder. Gaston analogized that just as an apprentice escaping “correction” would be able to mitigate murder to manslaughter if the apprentice defended himself against a master who tried to kill him, so too might a slave under similar conditions. While Gaston paid lip

44. *Id.* at 266.
45. *Id.*
46. *Id.* at 265.
47. *Id.* at 268.
48. See *State v. Will,* 18 N.C. (1 Dev. & Bat.) 121 (1834).
49. *Id.* at 165.
50. *Id.* at 172.
51. *Id.* at 166.
service to Mann, saying that unconditional submission is the duty of slaves, he then limited the bounds of acceptable punishment by stating, "There is no legal limitation to the master's power of punishment, except that it shall not reach the life of his offending slave."52

However, in doing so, Gaston slightly strengthened the legal status of slaves. While reiterating slaves' inferior status, Gaston's holding recognized that malice aforesaid could not be attributed to the slave solely because of his "degraded" condition resulting from slavery.53 Although Ruffin did not write a dissenting opinion, Will does undermine what seemed to be the central tenet of Mann: A master's authority over and ability to punish his slaves must be absolute and beyond question. While not directly criticizing the holding of Mann, Gaston was able to mitigate its impact by limiting its application.

Here, one sees Gaston's approach most clearly. Unlike Ruffin, Gaston employs a complex line of logic that takes account of an array of factors beyond the rights of slaveholders. Ruffin made unqualified pronouncements based on a relentless logic, declaring that the master's authority over his slave was absolute. Gaston, on the other hand, sought a degree of moderation on contentious issues. For example, he emphasized that Will is in fact consistent with Mann. Gaston shunned the sweeping conclusions frequently reached by Ruffin, which allowed Gaston to balance more effectively a more diverse set of considerations.

As he had in Will, Gaston bolstered the legal status of slaves in State v. Jarrott.54 There, he reversed the murder conviction of a slave who had killed a white man after becoming engaged in a verbal altercation with the victim over a game of cards.55 When the victim threatened the defendant with a knife and a rail, the defendant responded by hitting the deceased with a three foot-long hickory stick.56 Gaston denied that a slave was entitled to the same legal protections as a white man, and even stated that a slave had to endure more than a white man before sufficient provocation would be found to mitigate a murder charge to manslaughter.57 However, he nonetheless allowed for the possibility that if the weapon used by the slave was not "deadly," then such mitigation

52. Id.
53. Id. at 172.
55. Id.
56. Id.
57. Id. at 86.
would be properly concluded. Although the defendant, as a slave, had the duty to "[tame] his passions," Gaston allowed for the possibility that the slave's conduct might have been defensible because "the law would be savage, if it made no allowance for passion." Gaston's argument again was masterful; he was able to undermine the absolute authority of whites over slaves not by deriding the conduct of the victim, but rather by focusing on the rationality of the defendant's conduct.

Several years later, even Ruffin came to acknowledge some limits on the master's power over the slave. In 1839, he issued arguably his most progressive opinion with respect to slavery, State v. Hoover, in which a master was charged with murder for savagely punishing his slave by means including excoriation and starvation, which ultimately led to the slave's death. Ruffin largely reiterated Gaston's conclusion in Will that there was at least one restraint upon the master's otherwise unfettered authority to punish by stating, "He must not kill." However, the apparent impact of the opinion was undercut when he explained that only killing which rises to the level of being "barbarous" was punishable. Rather, deaths that are accidental in nature and come as a result of the "master's chastisement of his slave, inflicted apparently with a good intent, for reformation or example" would not have raised the master's conduct to a criminal level. Furthermore, the reasoning in Ruffin's opinion was consistent with the rationale articulated in Mann.

When viewed from the vantage point of public safety, as Ruffin did in Mann, these opinions are easily reconciled. Rather than paying strict attention to statutory language, Ruffin sought the result which would best protect society at large—white society. This focus on protecting white society was in fact a second primary aim within Ruffin's opinions, in addition to his other primary objective: defending the rights of slaveholders. In detailing the defendant's gruesome treatment of the victim, Ruffin concluded that a man who was capable of such heinous behavior was not worthy of living in white southern society. It is

58. Id. at 87.
59. Id. at 86.
61. Id. at 368.
62. Id. at 370.
63. Id. at 368.
64. Id.; State v. Mann, 13 N.C. (2 Dev.) 263, 266 (1829).
65. Hoover, 20 N.C. (3 & 4 Dev. & Bat.) at 369-70 ("These enormities, besides others too disgusting to be particularly designated, the prisoner, without his heart once relenting or softening, practised [sic] from the first of December until the latter end of
plausible that Ruffin reached a verdict of guilt largely in spite of the fact that the victim was a slave—not because he felt slaves were worthy of enumerated protections. Obviously this decision did not provide meaningful protections to slaves against their cruel masters.

While Ruffin acknowledged that there may have been some negligible limits on the master's treatment of slaves, he sharply disagreed with opinions that improved the legal status of slaves, however gradually. For instance, in State v. Caesar, Ruffin wrote a vigorous dissent to an opinion by Justice Pearson which reversed the murder conviction of a slave who had killed a white man who was beating the slave's friend. Pearson correctly framed the defendant's predicament: either the slave must run away and leave his friend "at the mercy of two drunken ruffians... or he must yield to a generous impulse and come to the rescue." Pearson held that the law would be "savage, to allow him, under no circumstances, to yield to a generous impulse." Ruffin disagreed, concluding that because of the slave's absolute duty of submission, the victim's conduct could certainly not have risen to the level of legal provocation which would be sufficient cause to mitigate murder to manslaughter.

Ruffin accused Pearson, and perhaps indirectly Gaston (who is mentioned in both the majority and concurring opinion), of being naive about the actual state of southern society, explaining:

[j]udges cannot, indeed, be too sensible of the difficulty and delicacy of the task of adjusting the rules of law to new subjects; and therefore they should be and are proportionally cautious against rash expositions, not suited to the actual state of things, and not calculated to promote the security of persons, the stability of national institutions, and the common welfare.

the ensuing March; and he did not relax even up to the last hours of his victim's existence. In such a case, surely, we do not speak of provocation; for nothing could palliate such a course of conduct. Punishment thus immoderate and unreasonable in the measure, the continuance, and the instruments, accompanied by other hard usage and painful privations of food, clothing and rest, loses all character of correction in foro domestico, and denotes plainly that the prisoner must have contemplated the fatal termination, which was the natural consequence of such barbarous cruelties.

67. Id. at 405.
68. Id. at 406.
69. Id. at 427 (Ruffin, J., dissenting).
70. Id. at 415.
Ruffin objected to Pearson's decision of compassion. Rather, Ruffin asserted that judicial decisions should be derived from existing law. Because there was no precedent allowing for a manslaughter charge against a slave who was a third party to a dispute, Ruffin concluded that the trial judge had correctly denied an instruction allowing for the possible mitigation of the murder charge.\(^71\)

Here again one sees an example of Ruffin's incessant focus on the public safety of the white community, rather than a consistent justification based on statutes or common law. Ruffin even went so far to suggest that this decision, which merely reversed a murder conviction on the grounds that there might have been sufficient provocation to mitigate the charge to manslaughter, would sow the seeds of a slave revolt.\(^72\) He hypothesized that such a decision might lead slaves to "denounc[e] the injustice of slavery itself, and, upon that pretext, band together to throw off their common bondage entirely."\(^73\)

IV. TO EMANCIPATE OR NOT TO EMANCIPATE?

The rulings of Gaston and Ruffin highlighted the two men's very different attitudes about what ability masters should have to emancipate their slaves. In 1849 in Lemmond v. Peoples, Ruffin rejected the emancipation of two slaves via a trust that provided land for the beneficiary mother and her child to stay on.\(^74\) The plaintiffs, who were the administrators of the decedent's estate, were questioning the legality of the conveyance of a plot of land to the defendant slave.\(^75\) In holding such a conveyance void, Ruffin struck a predictable line of logic. He evaluated whether such a policy was in the best interest of the State—not necessarily whether such a decision derived from statutes or common law. Relying on public policy, Ruffin concluded that "[e]very
country has the right to protect itself from a population, dangerous to its morality or peace; and hence the policy of the law of this State prevents the emancipation of slaves, with a view to their continuing here.\textsuperscript{76}

In Ruffin's defense, emancipation was constrained by North Carolina statute. For instance, one statute passed nineteen years earlier required six weeks' public notice before the hearing of the petition to manumit; bond had to be given with two sureties for $1,000 that the slave would conduct himself appropriately while in the State and that said slave would leave the State within ninety days after liberation.\textsuperscript{77} Although North Carolina placed tight restrictions on emancipation, state statutes made it clear that slaves could still be freed, though they could not remain in the state.\textsuperscript{78} In deciding for the plaintiff, however, not only did Ruffin deny conveyance of the property to the slave, but he also denied the slave's emancipation altogether.\textsuperscript{79} This is another illustration of how Ruffin rejected a balanced consideration of competing interests in favor of simple lines of logic with sweeping policy implications.

Ruffin stuck to this same broad-based policy approach two years later in \textit{Thompson v. Newlin}, when considering whether slaves could be held in a trust by a Quaker, who refused to exercise any control over them because of his religious beliefs.\textsuperscript{80} The plaintiffs questioned the validity of a trust arrangement under which the defendants allowed slaves virtual freedom.\textsuperscript{81} Ruffin held that as long as the defendant held the slaves in such a state of quasi-freedom, such an arrangement could not be upheld by the court because "slaves can only be held as property, and deeds and wills, having for their object their emancipation or a qualified state of slavery are against public policy."\textsuperscript{82} As a result of an 1830 statute which made it lawful for slaves to be bequeathed for the purpose of emancipation and removal from the state, Ruffin gave the defendant two choices: either remove the slaves from the state and grant them freedom or keep them in North Carolina and exercise greater authority over them.\textsuperscript{83} In either scenario, one can see that Ruffin's perception of the public good for the state would have been served.

\textsuperscript{76} \textit{Id.} at 140.
\textsuperscript{77} JOHN SPENCER BASSETT, SLAVERY IN THE STATE OF NORTH CAROLINA 30 (1899).
\textsuperscript{78} \textit{Id.}
\textsuperscript{79} \textit{See Lemmond,} 41 N.C. at 143.
\textsuperscript{80} \textit{See Thompson v. Newlin,} 43 N.C. (8 Ired. Eq.) 32, 33 (1851).
\textsuperscript{81} \textit{Id.}
\textsuperscript{82} Thompson v. Newlin, 38 N.C. (3 Ired. Eq.) 341 (1844).
\textsuperscript{83} \textit{Id.}
Either the slaves would be enslaved within the state or they would be removed as freedmen and North Carolina would be rid of a potential problem.

Gaston had a markedly different perspective on manumission. Although in 1841, in *Cameron v. Commissioners*, he seemingly agreed with Ruffin that the public policy of North Carolina prohibited manumitted slaves from staying in state (as required by statute), Gaston allowed the manumission of slaves resulting from a will which specified for their relocation to the Colony of Liberia. Even more noteworthy was the way Gaston construed a statute in favor of the prospective beneficiaries. The plaintiffs had argued that only proceeds used for the actual removal of the freed slaves could be conveyed to the slaves. This result would have disallowed devisal of any sum used for their resettlement (such as costs for housing, clothing and the like).

However, in addition to giving the slaves their freedom, the testator also provided that some property be sold for their benefit in their resettlement. Under then-current trusts and estates law, slaves were unable to obtain a beneficial interest in property devised to them unless it was for a "charitable purpose." Gaston held that not only were the removal costs of emancipated slaves within the confines of such a charitable purpose, but so were the costs of resettlement. Thus, the slaves were deemed to have legal entitlement to receive the money devised to them beyond the mere costs of relocating them to Liberia. Skeptics may argue that the impact of this decision was minimal. Yet when viewed in connection with Gaston's other opinions, one continues to see a clear pattern: Gaston checked the advance of a more stringent slave policy and perhaps even provided some clarifications that augmented the legal status of slaves.

V. CRACKS IN RUFFIN'S PRO-SLAVERY IDEOLOGY?

Not every decision rendered by Ruffin was prima facie contrary to the interests of slaves. In some cases Ruffin arguably improved the legal status of slaves. However, he did so only when there was absolutely no
conceivable threat to the institution of slavery. For example, in *Cox v. Williams*, Ruffin allowed slaves designated for removal to Liberia by will to choose either emancipation followed by immediate removal to Africa or to remain in slavery in North Carolina—with no middle ground. The plaintiff, executor of the testatrix’s will, instituted a bill so the court could decide whether the deceased’s slaves would pass to the testatrix’s next of kin or the American Colonization Society. The next-of-kin defendant had contended that the devisal of slaves to the American Colonization society was against North Carolina law and therefore invalid.

Ruffin, in allowing slaves to make this circumscribed choice, may have recognized that slaves were at least rational beings and capable of making complex decisions, which was a grudging recognition by him of their inherent capabilities. Certainly, Ruffin felt that permitting the ability to make such a choice was an enhancement to the status of slaves. He echoed this sentiment in one of his last opinions when he said that slaves “are responsible human beings, having intelligence to know right from wrong, and perceptions of pleasure and pain, and of the difference between bondage and freedom, and thus, by nature, they are competent to give or withhold their assent to things that concern their state.” But again, these opinions can easily be reconciled with Ruffin’s emphasis on public safety. The slaves would either be free in Liberia, or they would be enslaved in North Carolina—in no way would either of these outcomes undermine the foundation of slavery at home, Ruffin’s preeminent concern. Ruffin’s approach left little gray area for interpretation or judicial maneuvering.

Another instance, which on its face seems inconsistent with Ruffin’s advocacy of a slaveholder’s absolute authority, came in *State v. Charity*, when the court considered whether a master’s testimony could be used against a slave. The prosecution insisted that the provision of such testimony in a murder trial was not prohibited by legal precedent which forbade interested parties from providing testimony in civil suits. Ruffin held that the analogy to the rule in civil lawsuits was controlling.

90. *Id.* at 15.
91. *Id.*
94. *Id.*
for criminal trials. Therefore, the master’s testimony, which the state attorney general desired to admit over the master’s protest for the purpose of corroborating a confession to murder, was inadmissible because the law did not permit testimony from people with an interest in the outcome of a civil judicial proceeding. This decision arguably improved the legal status of slaves. However, the net effect of this outcome cannot be considered better than neutral from the slaves’ perspective.

Although the testimony in question was alleged to have corroborated the slave’s guilt, one can easily imagine many more cases where this rule of automatic exclusion would have been detrimental to slaves. For example, Ruffin’s absolute bar of such testimony would also disallow the testimony of a master who wished to testify on behalf of his slave—even if for no other reason than to protect his property interest. If more slaves would be helped by their master’s testimony than would be harmed, Ruffin likely concluded that the public interest in protecting the institution of slavery was better served by disallowing the testimony of all masters. This would have resulted in more “guilty” slaves being put into jail; thereby preventing them from causing further social unrest within North Carolinian society, which is consistent with Ruffin’s usual public policy analysis.

In another opinion, Waddill v. Martin, Ruffin upheld slaves’ property rights to a patch of cotton that their master had allowed them to plant for their own profit. After their master died, his widow, who was the co-executrix of his estate, refused to remit the profits of this patch to the slaves. Interestingly, Ruffin did not cite any precedent in his argument. Rather, it seems to have been a case of first impression. While there do not seem to be cases in other jurisdictions that deal with this precise issue, there was a later opinion in North Carolina which cited Waddill approvingly for this point of law.

95. Id. at 544–45.
96. Id.
97. See id. at 545. It is true that slaveholders might have been indifferent to the outcomes of murder trials because masters were fully compensated for the value of executed slaves. However, in the vast majority of criminal trials—those for non-capital crimes—the owners received no compensation and hence would have had at least a financial interest in having their slaves exonerated.
98. See supra text accompanying note 45.
99. Waddill v. Martin, 38 N.C. (3 Ired. Eq.) 562, 563–65 (1845). Interestingly, Ruffin did not cite any precedent in his argument. Rather, it seems to have been a case of first impression. While there do not seem to be cases in other jurisdictions that deal with this precise issue, there was a later opinion in North Carolina which cited Waddill approvingly for this point of law.
100. Waddill, 38 N.C. (3 Ired Eq.) at 562–63.
patch. The defendant executrix claimed such an arrangement was not legally enforceable. Ruffin held that the slaves' agreement with their master was legally binding and that they were entitled to the profits derived after the costs of selling were subtracted. Seemingly particularly reproachful toward the testator's primary heirs, he noted that "we have never known or heard of an attempt hitherto, to charge an executor in favor of a legatee or even creditor, with the little crops of cotton, corn, potatoes, ground peas and the like, made by slaves by permission of their deceased owners."

It cannot be disputed that this decision minimally improved the legal status of slaves. However, its impact was dubious for two reasons. First, only the master's consent could have rendered this type of agreement binding. Far from increasing the rights of slaves, this holding further solidified the dominant position of the master over the slave. Although Ruffin's decision gave slaves increased property rights by legally sanctioning the recognition of a customary right, one must remember that such enforcement only came against the master's heirs, not the slaveholder himself. As a result, the institution of slavery could not have been eroded by this opinion. The master's control was still absolute and slaves could only garner further legal rights through a master's consent, which presumably was subject to revocation at the pleasure of the master—just not by those legally bound to carry out legal duties attributed to the consenting master.

Second, Ruffin hints at the apparent universal acceptance of such an arrangement when he says that there is a "sense pervading the whole community, of the utility, nay, unavoidable necessity of leaving to the slave some small perquisites." While Ruffin's opinion arguably expanded this custom between master and slave to allow for the enforcement of such custom against white heirs who otherwise would have owned the crops, it is highly likely that he did not rule this way in an effort to act in a beneficent manner toward slaves. Rather, he likely viewed the impact on the institution of slavery as inconsequential.

107. See id.
because North Carolinians were already operating under the assumption that these pacts with slaves were acceptable and enforceable. Accordingly, the state's citizens would most likely neither have been surprised nor upset as there would have been little possible detriment to North Carolina society.

Ruffin certainly issued a number of opinions that recognized an increased sense of humanity toward slaves. However, it is questionable whether any of these decisions added meaningful value to the legal status of slaves. For instance, in Cannon v. Jenkins, Ruffin rejected a stricter standard of scrutiny for investigating the general rule that slaves must be sold for the highest price (typically gained by individual auction) to uphold the combined sale of four brothers. The plaintiffs had argued that the slaves in question should have been sold independently because such a sale might have led to a higher price. Ruffin showed atypical compassion to the plight of slaves when he said that "the [court would not punish [the executor] for acting on the common sympathies of our nature unless in so doing he hath plainly injured those with whose interest he stands charged." Yet this decision did not improve the status of slaves or dispel any notions about Ruffin's harsh disposition toward slaves for two reasons. First, Ruffin certainly did not require an executor to take action that would be consistent with interests of humanity—even if reasonably fiscally prudent. Rather, he just allowed it at the discretion of the executor. Second, the opinion was consistent with Ruffin's line of reasoning—individually benevolent decisions were possible only if the general rule derived would not weaken the institution of slavery. Because slaves did not gain any additional rights or status as a result of this decision, it did not adversely affect the public interest. Moreover, this decision exemplified Ruffin's emphasis on both slaveholders' rights and public safety. Consequently, improvement to the legal status of slaves was still subject to two conditions: a master's consent and thorough public policy analysis.

110. Cannon, 16 N.C. (1 Dev. Eq.) 422.
111. Id. at 424.
112. Id. at 426.
113. Id.
114. Id.
Although Ruffin acknowledged slaves' capacity to make decisions regarding the choice between accepting freedom and continued servitude, in an 1840 case, White v. Green, he ruled that they were unable to inherit property via a will. The plaintiff, John White, argued successfully that he had acquired a legal interest in a life estate that had been granted to the deceased's niece. Moreover, the plaintiff claimed, in opposition to the defendant executors, that such life estate included two slaves whose manumission had been provided for in the will. Striking a provision that expressed the testator's intent to emancipate two of his slaves and provide them with a parcel of land, Ruffin reasoned, citing precedent, that “[s]laves have not capacity to take by will, and a legacy to them, is like the direction for their emancipation, void.” This decision not only inhibited the ability of slaves to gain their emancipation, but also indirectly degraded the rights of slaves granted freedom through a will because it curtailed their ability to obtain property (if only through a will).

Again, one continues to see a decision-maker focused on solidifying the rights of the slaveholder at the expense of the slaves' legal status—all apparently in the name of the “public good.” Ruffin rejected a more flexible policy that might have allowed slaves to receive property more easily under different circumstances.

VI. FREE BLACKS: LIBERTY IN NORTH CAROLINA?

The differences between Ruffin and Gaston on the issues of slavery and race extended to the treatment of freedmen. In one of his more historic opinions, State v. Manuel, Gaston upheld the constitutionality of a North Carolina law which required the sheriff to hire free blacks who had been convicted of crimes and were unable to pay resulting fines. The defendant claimed that the law was unconstitutional because it forced servitude on free blacks. At first glance, this decision seems contrary to Gaston's efforts to mitigate the inhumane effects of laws.

115. White v. Green, 36 N.C. (1 Ired. Eq.) 45 (1840).
116. Id. at 48–49.
117. Id. at 49.
118. Id. at 49 (citing Pendleton v. Blount, 21 N.C. (1 Dev. & Bat. Eq.) 491 (1837); Sorrey v. Bright, 21 N.C. (1 Dev. & Bat. Eq.) 113 (1835)).
119. Id. at 49.
120. See White, 36 N.C. (1 Ired. Eq.) at 45.
122. Id. at 149.
affecting blacks. However, Gaston still managed to elevate the legal status of slaves and former slaves because he also concluded that manumitted slaves born in North Carolina were citizens of the state. This was a meaningful improvement to the legal status of freed blacks.

Gaston's position, while not revolutionary, was extremely pragmatic. He likely recognized the probability that a decision which both struck down a law unfavorable to free blacks and also declared them to be citizens was too radical for the moderate North Carolina citizenry to accept. The import of Gaston's conclusion in this case was made clear by the Dred Scott decision, which denied slaves the privilege of American citizenship, regardless of whether any individual state granted citizenship. In fact, Justice Curtis' dissent cites Gaston's opinion, the only supporting judicial opinion cited for the proposition that manumitted slaves became citizens of the state in which they were manumitted.

By contrast, Ruffin frequently ruled against the interests of freedmen. For example, his opinion in Mayho v. Sears set out the proposition that a deed providing for the emancipation of a woman slave did not consequently also give freedom to her children born before the date that her emancipation became effective. This case arose from a rather simple trespass dispute. The plaintiff, a former slave, claimed title to the disputed tract of land and argued that he had been granted manumission by a deed which gave liberty to his mother in futuro many years earlier. Although Virginia law, under which the deed in this case was made, allowed for such emancipation in futuro, Ruffin still found a way to deny rights to freed blacks—by denying freedom to their children born while they were still enslaved. This decision was entirely consistent with his perception of what the public interest demanded: to keep the population of free blacks in North Carolina at a minimum. Although Ruffin does not admit to this underlying rationale, it does seem consistent with his thinking.

123. Id. at 151.
125. Id. (Curtis, J., dissenting).
127. Id.
128. Id. at 227.
VII. ATTITUDES TO SLAVERY AWAY FROM THE BENCH

Not surprisingly, the personal attitudes of Ruffin and Gaston toward slavery were congruent with the positions they expressed on the bench. Not only did Ruffin feel that slavery was beneficial for the white masters who ruled the slaves, but he felt that the institution of slavery was good for the slaves themselves.129 Noting the protections afforded by state statutes, the owners' economic interest in protecting valuable personal property, and the pariah status that befell a cruel owner in the eyes of a reproachful society, Ruffin went on to offer Haiti as a striking example of what would happen if slaves were to be left to their natural state.130 “[Slaves'] fate would soon be that of our native savages or the enfranchised blacks of the West Indies, the miserable victims of idleness, want, drunkenness, and other debaucheries.”131 Moreover, he added, “[s]lavery in America has not only done more for the civilization and enjoyments of the African race . . . but it has brought more of them into the Christian fold than all the missions to the benighted continent from the Advent to this day have.”132 Far from leaving blacks in a degraded condition, Ruffin argued that the authoritarian nature of southern slavery was in fact beneficial for slaves. Rather than dealing with criticism directed at slaveholders cautiously, Ruffin defended positions that left little room for compromise.

Ruffin and Gaston apparently were in fundamental disagreement about the economics underlying slavery. In 1855, in his annual address as president of the State Agricultural Society of North Carolina, Ruffin touted the economic benefits of slavery—both locally and nationally.133 One argument frequently made by anti-slavery advocates was that slavery had a deleterious effect on free white labor.134 Ruffin denied any such effect, declaring that “there is not a country on earth in which honest labor and diligence in business in all classes and conditions is considered more respectable or more respected.”135 Ruffin bolstered this argument with broad generalizations about the support for slavery in North Carolina saying, “There is an unanimous conviction of our people

129. HUEBNER, supra note 6, at 152–53.
130. MORRIS, supra note 84, at 191.
131. Id.
132. HUEBNER, supra note 6, at 153.
134. HUEBNER, supra note 6, at 152.
135. Id.
that slavery as it exists here, is neither unprofitable, nor impolitic, nor unwholesome."

Gaston frequently expressed very different views than Ruffin. Gaston thought that the character of slavery in North Carolina was as benign as it could be, reflecting that "[i]t is difficult to imagine a state of slavery to exist more mitigated than that which prevails in North Carolina. . . . Slavery is regarded as an evil not to be removed, but as susceptible to mitigation."

This approach seems consistent with Gaston's jurisprudential aims of gradually improving the legal status of slaves while moderating the institution of slavery itself. Realizing that North Carolinian public opinion was favorable toward slavery, it is possible that Gaston took a more moderate and restrained approach than he might have had the public's attitude toward slavery been more hostile. Had he attempted to take a less subtle approach and aimed for more sweeping change, Gaston's efforts might have been rebuffed as too radical by North Carolinians.

Gaston's most prominent criticism of slavery came in 1832 during a speech to the Philanthropic and Dialectic Societies at the University of North Carolina. Whereas Ruffin felt that slavery was a boon for southern prosperity, Gaston viewed it as blight upon southern society.

Contradicting Ruffin's assertion that slavery stimulated the southern economy, Gaston contended: "[Slavery] keeps us back in the career of improvement. It stifles industry and suppresses enterprise; it is fatal to economy and prudence; it discourages skill, impairs our strength as a community, and poisons morals at the fountain head."

Eschewing controversial pronouncements, Gaston sought to frame his criticisms of slavery in a manner that would be palatable to southern society. It is possible that Gaston relied on economic arguments because any moral objection likely would have fallen on deaf ears as leading religious denominations had essentially sanctioned slavery. While the influence of churches over slavery was questionable, the simple fact that they did not denounce slavery would have undercut any effort by Gaston to characterize slavery as a moral or social evil, rather than an economic

136. Id. at 153.
137. MORRIS, supra note 84, at 191.
138. See Gaston Address, supra note 20.
139. Id. at 14.
140. Id.
one. Gaston's economic argument exemplifies his consistently pragmatic approach.

VIII. SIGNIFICANT OR TRIVIAL DIFFERENCES?

Despite the perceived differences between them, there apparently was minimal discord between the opinions of Ruffin and Gaston. Similarly, other opinions of Gaston and Ruffin were not as sharply contrasting as this Author has proposed. In fact, one rarely sees Ruffin or Gaston directly criticizing the other's opinions. However, when viewing the body of their work on slavery as a whole, one readily sees a fundamental difference. Ruffin utilized a rigid public policy approach reinforcing slavery. Gaston, on the other hand, employed a more flexible approach that balanced a variety of factors and softened the impact of stringent slavery reforms, improving the legal status of slaves. Perhaps the reason for the seeming lack of discord between the two justices can be explained by these congruent jurisprudential approaches. It is plausible that Ruffin refrained from filing many opinions dissenting from Gaston because he did not view the resolution of those cases as having a noticeably detrimental impact on North Carolina's public policy. It is similarly possible that Gaston did not directly criticize Ruffin's opinions such as Mann because he realized the importance of taking a politically practical position. Therefore, Gaston might have placed emphasis on the gradual mitigation of slavery largely because he felt that only such a rationale would be accepted by the populace.

Despite Gaston's consistent efforts to moderate slavery, at the time of his death he owned two hundred slaves. Although he publicly denounced the institution of slavery as economically corrosive, he obviously found owning slaves acceptable. Moreover, his opinions make clear that he did not believe in equality between whites and blacks; he frequently made pronouncements, referring to the "difference of condition between the white man and the slave—as recognized by our legal institutions—and not the difference between personal merit and demerit—which creates a legal distinction between the sufficiency and insufficiency of the alleged provocation."
IX. MOTIVATIONS

It is difficult to understand why two men who superficially seemed so similar applied markedly different approaches to dealing with slavery. Particularly difficult to comprehend is why Gaston became instrumental in providing slaves increased protections, unlike Ruffin. There are several factors which seem relevant: differences in politics, religion, morality and judicial decision-making philosophy.

Although Gaston's political roots lay with the Federalist and Whig parties while Ruffin's rested in the Jeffersonian Republican and Democratic parties, simple political affiliation is not very insightful for the purpose of differentiating their judicial views. After all, the overwhelming majority of North Carolinians—irrespective of their political affiliation—were in favor of implementing more rigid protections into the state's system of slavery. Thus, it is unlikely that the root of Gaston's efforts to ameliorate the harshest edges of slavery was driven by a widespread state or local political ideology. Moreover, Gaston and Ruffin had remarkably similar experiences in state politics, both rising to the prominent leadership post of speaker of the House of Commons. However, there was one major difference in their political experiences which may be more telling: Gaston's relatively broad exposure to national politics. Whereas Ruffin only had local political experience focusing on issues of state importance while operating within the North Carolina legislature, Gaston's service in Congress between 1813 and 1817 (which included a significant portion of the War of 1812), in addition to his state service, likely gave him a broader perspective on the specter of the impending sectional crisis.

It is clear that Gaston sensed the potential catastrophe that a large-scale conflict could bring to the South. In the same 1832 speech in which he denounced slavery as an economic peril, he also emphasized his concern about the dangers of sectionalism: "Now then has come that period, foreseen and dreaded by our WASHINGTON... who with a father's warning-voice bade us beware of 'parties founded on geographical discriminations.' It is likely that Gaston's national experience led him to foresee the dangers of a sectional crisis tied to the

145. BASSETT, supra note 77, at 7.
146. 3 CONNOR, supra note 13, at 41 ("When... Mr. Gaston was a member of Congress, he opposed the War of 1812. Charged by his opponents with want of patriotism, he retorted: 'I was baptised [sic] an American in the blood of a murdered father.").
southern trend toward making slavery a more rigid and inhumane institution. Although an immediate ban on slavery would not have been politically feasible, Gaston's policy of gradually mitigating the excesses of slavery likely reflects a national perspective on the political divisiveness created by the peculiar institution.

Ruffin, by contrast, lacked this national perspective. As a state representative, he would have been in tune with the issues important to North Carolinians, but was probably less attuned to the national landscape—and slavery's position within that landscape. However, Ruffin clearly had keen political acumen. As Timothy Huebner observes, "Ruffin displayed a clear understanding of the political circumstances surrounding legal issues as well as a keen ability to craft his opinions to resolve social and political tensions." 148 Yet it was not until he became involved in the Washington Peace Conference in 1861 that he played a genuine national role. 149 Whereas Gaston had served in Congress in an era that fostered compromise, by the time Ruffin attended the peace conference, sectional reconciliation was impossible.

Moreover, Ruffin was a partisan politician. For instance, Huebner notes that "Ruffin devoted nearly as much of his life to partisan politics—a fact that influenced his judicial decision making." 150 It is plausible that as a result of his extensive partisan experience, Ruffin may have been more concerned with espousing a rigid point of view rather than working towards an effective compromise. Therefore, because he believed that the South was constitutionally entitled to maintain slavery in perpetuity, he largely refused compromise.

To be sure, Gaston too had been intimately involved in partisan politics. Furthermore, his ownership of slaves shows that he was not anti-slavery in his actions. However, Gaston's exposure to a national political forum in which compromise was essential likely led him to adopt a more cautious approach in dealing with fractious issues. One can speculate that in order to balance adequately competing core social, economic, as well as public policy considerations, Gaston had to adopt a more flexible approach. Gaston's cautious yet deliberate method was essential in allowing him to strike a compromise between forestalling national crisis while also allaying southerners' fears about the threat that increasingly lax measures of authority might pose.

148. HUEBNER, supra note 6, at 131.
149. Id. at 131, 155.
150. Id. at 131.
Another crucial difference that separated them was religion. Perhaps because Gaston belonged "to a minority faith, he probably defended more minority causes than any man of his day." Gaston's Catholic faith likely gave him an outsider's perspective in an overwhelmingly Protestant culture. Gaston's faith clearly was a hardship to him at times in public life. In fact, it almost kept him off the supreme court. When considering whether to pursue election to the court, Gaston was concerned about a provision in the North Carolina Constitution which mandated that only those who "believe[d] in the truths of the Protestant religion" could hold state office.

The opposition to Catholics' service in government was real. For instance, one prominent lawyer, Henry Seawell, expressed his concern that "the integrity of the Protestant religion would be seriously affected by Gaston's election to the bench." After consulting with both Ruffin and United States Supreme Court Chief Justice John Marshall, Gaston became convinced that the provision did not bar him from service on the court. Yet his discomfort with this provision was a primary catalyst behind his impassioned efforts towards amending the state's constitution. At the 1835 Constitutional Convention, he succeeded in a strenuous campaign to have the word "Protestant" replaced by "Christian."

Just as relevant for an inquiry into Gaston's personal motivations was that at this same convention, he also staunchly opposed, although unsuccessfully, an amendment which "deprived the free negroes of the right to vote." It is plausible that his experience as a member of a minority group made him less willing to assume that the defense of the established order was a necessary good. Hence, it may not be surprising that Gaston used his position on the court to take a more balanced approach on issues concerning minority interests, such as the legal status of slaves and free blacks. Moreover, it is possible that Gaston's minority faith led him to give greater weight to social considerations, particularly human rights.

151. SCHAUINGER, supra note 29, at 117 (quoting BRYCE R. HOLT, THE SUPERME COURT OF NORTH CAROLINA AND SLAVERY 22 (1926)).
152. Id. at 102.
153. Id. at 105 (quoting Swain to Gaston, Nov. 8 1933, Gaston MSS).
154. Id. at 102-03.
155. 3 CONNOR, supra note 13, at 76.
156. Id. at 75.
Ruffin had a very different religious background. Ruffin was actively involved in the Episcopal Church, serving as a delegate to the General Convention on several occasions. As a Protestant, wealthy, slaveholding, white male he had a strong incentive to maintain the status quo.

One could argue that religion was a negligible factor in either justice's jurisprudence and that any apparent links between Gaston's faith and advocacy of minority causes was little more than mere coincidence. It is not clear that Ruffin's Protestant beliefs played a significant role in his opinions. However, Gaston's vigorous attempt to protect both religious and racial minorities while attending the Convention of 1835 is strong tangible evidence of a link between Gaston's religious faith and his attempts to mitigate the institution of slavery. Thus, religion may be more critical to understanding Gaston's approach than Ruffin's. However, religion alone can hardly explain Gaston's jurisprudence.

X. JUDICIAL AIDS

One factor that may shed additional light on the differences between Gaston and Ruffin is their aim in judicial decision-making. Gaston perhaps was driven by the motive of attaining justice for individuals. This required balancing numerous social, economic and public policy considerations. For instance, in one 1833 decision unrelated to slavery, Gaston declared that the judicial resolution of conflicts must be guided by "[j]ustice, which it is the first object of every well regulated society to establish, and the repose of the community, an object second only in importance to justice." In attempting to carve out an improved legal status for slaves, Gaston aimed to achieve maximum justice for slaves as the legal system would allow—while at the same time staying within what he thought were defined judicial bounds. He alluded to this when outlining another decision, saying that "[o]ne of the duties of judges is to hand down the deposit of the law, as they have received it, without addition, diminution, or change." Hence, in order to stay within the guidelines prescribed by legal precedent, it was necessary that Gaston use a cautious methodology that

159. State v. Miller, 18 N.C. (1 Dev. & Bat.) 500, 526 (1836).
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delt with issues of slavery not in black and white but rather in amorphous shades of gray.

While Gaston focused more on achieving justice based on case-specific facts while balancing a variety of interests, Ruffin was influenced much more by his "political and policy-making endeavors."\(^{160}\) Therefore, he frequently rejected what he may have believed to be the "just" outcome based on the specific facts of cases in favor of either strict adherence to stated law or his impression of what strong state public policy necessitated. One instance of this was in *Mann*, when at the outset he claimed to be troubled by the tension between "the feelings of the man, and the duty of the magistrate."\(^{161}\) Ruffin focused on the broader policy implications of a decision curtailing a bailee's rights to punish slaves, rather than legal precedent, humane or moral considerations. By contrast, while Gaston's decisions certainly had an important impact on policy, his decisions were not rigidly guided by these considerations, but rather were primarily guided by achieving his notion of justice in the individual case. For Ruffin, justice seemed to revolve more around adherence to overarching, coherent themes.

Thomas Ruffin and William Gaston were similar men who came to very different conclusions about the most important political, economic and moral issue of their time. Ultimately, it is possible to understand and characterize the differences between them, but one cannot know for certain what caused the divergence in their approaches. A number of factors, however, are suggestive. It was likely that differences in their religious faith and political experience, in addition to their judicial aims, led to their sharply divergent views, rather than moral or altruistic reservations about the institution of slavery. Gaston's minority Catholic faith in addition to his national political experience likely made him more sensitive to the issue of legal status and seemingly less disposed to take for granted the views of the predominant majority. His national role also seemed to make him sensitive to the importance of working toward national compromise on slavery. Ruffin, as an elite southern planter, took the more prevalent and politically popular position that slavery was a guaranteed right of the South and that on behalf of social order it was necessary that masters have increasingly absolute power over their slaves. However, it was this type of uncompromising thinking that made slavery so repressive and reflected the hardening of attitudes which ultimately helped to precipitate the Civil War.

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