

**Legal Knowledge
Episode 4 Interview**

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—**Musical Intro**—

Meggan Cashwell 0:11

This is Legal Knowledge, a podcast that chronicles the two-hundred-year history of the Law School at the University of Virginia. I'm your host, Meggan Cashwell. In this inaugural season, I'm sitting down with a group of scholars to discuss the first hundred years of UVA Law, from Thomas Jefferson's founding vision for the Law School in 1819 to coeducation in 1920. Each of these scholars is writing a chapter for the Law School's forthcoming volume on legal education at UVA, for which I'm an editor. In every episode, I'll chat with one of our authors to find out the approach they've taken in their chapter and the stories they've discovered along the way.

In 1861, at the commencement of the Civil War, the University was desolate as its students enlisted in the Confederacy in droves. As Professor Liz Varon explains in this episode, UVA had been a hub of southern nationalism and pro-slavery thought. For its role, the Law School had trained generations of white men in legal lessons of states' rights and the importance of preserving slavery at all costs. Law professors John Minor and, in particular, James Holcombe, were vehement in their public defense of slavery. While Holcombe left at the start of the war, Minor stayed, kept the Law School open, and later helped negotiate with Union troops to preserve the University. In the war's aftermath, Minor strove to rebuild and reinvent the Law School largely by way of his reputation as a legal scholar and mentor. Enrollment climbed as Minor sent advertisements throughout the South, extended loans to students, and welcomed practicing attorneys to his popular summer law program. The Law School expanded and gained regional recognition becoming, as Liz observes, an incubator for Lost Cause ideology. The school produced many public officials, some of whom would rise to prominence in the world of Jim Crow politics.

In this rich conversation with Liz, she talks about the importance of this longer history to our identity as an institution today and the importance of our current moment of reckoning with that history.

Meggan Cashwell 02:26

Liz, thanks so much for being here.

Liz Varon 02:28

My pleasure, very honored to participate in this worthy project.

Meggan Cashwell 02:32

You start your chapter in March 1864, with a report written by law professor John Barbee Minor and other faculty on the state of the University of Virginia. And you have a line from that report, which says the committee hoped, quote, “The institution may be kept alive during the war, and be prepared at its close to commence a new career of vigorous usefulness,” end quote. Generally speaking, what was the state of the University of Virginia during the Civil War?

Liz Varon 02:58

Well, to understand that one has to talk some about its role in the secession crisis itself. To make a long story short, the University empties out as the war starts, as its young students all rush to enlist in the Confederate army of more than five-hundred of the six-hundred matriculated students would do so. This reflects a broader phenomenon, and that is a sort of generational component to secession. The secession movement was motivated by a desire on the part of these secessionist politicians to preserve and extend slavery, and that that was a popular position on the UVA campus because it was a campus steeped in the defense of slavery and catering to the needs and careers and cultures of Southern slaveholding families. But the generational component is the fact that young men were particularly keen on secession in the southern universities and colleges, not only in Virginia but Georgia and other states as well. This enthusiasm for secession resulted in the rush to enlist and reflected the fact that these Southern campuses had primed the pump for secession in their pedagogy and in their curriculum. And in the role that pro-slavery ideologues like Albert T. Bledsoe, a UVA mathematics professor who was also an outspoken defender of slavery, had played in making the case for the social and cultural and political incompatibility of North and South. There was a sense among the young men who rushed to secede that their aspirations, economic, political, and otherwise, could only be achieved outside of the Union, that the Union had become a barrier to the fulfillment of those aspirations for economic profit, for political influence. In the Virginia setting, a component of this was a sense of Virginia's own decline and of a need to recapture some lost glory, a lost primacy in the Union, which over the course of the late antebellum period, the state had lost and the young men who went to UVA were kind of steeped in a curriculum and culture that glorified the founding generation and asked them in a sense to be the new generation of Madisons and Jeffersons and so on, and desire to restore that lost primacy was one of the components of this rush to enlist. It essentially means that there is no student body, and the University has to begin to think, and its leaders like Minor and others, have to begin to think about how to justify and preserve their existence in preparation for the day after the war when they could restore that student body.

Meggan Cashwell 05:34

You mention in the chapter that in many respects, this is all a crisis of John Minor's own making. Law Professor John Minor, who serves from 1845 to 1895. What specific crises, in a literal sense, did the Law School face during the Civil War?

Liz Varon 05:51

It has to decide how it's going to survive financially in the absence of a student body, but also how it's going to reinvent itself in the event of victory and peace. What I meant by a crisis of its own making is that the Law School, and UVA in general, had been vehicles for Southern nationalism, for secessionism and for pro-slavery ideology. In the case of the Law School, what's perhaps most pertinent for a pro-slavery constitutionalism, which professors like Minor and James Holcombe preached. A figure like Holcombe, who was both a law professor and a pro-secession delegate from Albemarle County to Virginia's Secession Convention, gave voice to every element of pro-slavery ideology including the Calhounian doctrine of state sovereignty, which essentially posited that the states, in forming the Union, had relinquished none of their own sovereignty. That the Union was a compact between them, which they could revoke if it ceased to serve their interests, or to observe the terms of the compact. That the Union was there to serve them, but not to exercise dominion over the states. It's an extreme view of state sovereignty. It included, too, this pro-slavery constitutionalism, a stipulation that the purpose of the Constitution, the primary purpose, was to protect the right to property. And men like Holcombe believed that included the right to property in slaves. And then felt sort of vindicated when the Confederate constitution, modeled in many ways on the US Constitution, explicitly recognized that right to property in slaves, as Holcombe told his students. So, a pro-slavery constitutionalism, a belief in state sovereignty, and something a little bit less tangible, perhaps, a view of the South as victimized, which is a big part of the rhetoric of men like Minor and Holcombe throughout this entire crisis, a victim of abolitionist extremism. And a sort of psychology of wounded pride, as one historian has put it. A sense that somehow the abolitionists in critiquing the founding generation, Jefferson, Washington, Madison, had dishonored the South and that that dishonor had to somehow be answered. So, all of these things are elements of secession and a man like Holcombe had no compunction about bringing his politics into the classroom. I had never read law school student notebooks before I undertook this assignment. They were both really dull and really fascinating at the same time. On the one hand, much of the education pertained, as you know, to mechanics, to estates, and wills, and deeds, and contracts. There were flashes of overt politicking, in which these men, Holcombe in particular, made no, made no secret of the fact that they believed abolition to be a danger to their way of life and in which they, in effect, rejected an anti-slavery constitutionalism, which had been elaborated by abolitionists, and then by the Republican Party. While the pro-slavery constitutionalism said, property rights are the essence of the Constitution, the anti-slavery constitutionalism said, human freedom is the right that the Constitution was designed to protect. This way of framing it is by no means original to me. There are many, many scholars, James Oakes and Timothy Huebner and Stephanie McCurry, and others have written about this contrast between these sort of dueling constitutionalisms.

Meggan Cashwell 9:15

You use these terms that I was actually unfamiliar with, which is “conditional Unionist,” or “reluctant Confederate.” You say that Minor initially fell into this camp. And so, who were the conditional Unionists, and how did they differ from those who supported the Unionist or Confederate causes outright and unquestionably?

Liz Varon 9:32

Conditional Unionist is a term we use to refer to men, delegates at the Secession Convention, but also people who were not politicians by trade, who hesitated some about secession, didn't feel that Lincoln's election itself was provocation enough for secession, wanted to see whether there were possibilities at hammering out compromises, but who eventually did lurch into the secessionist column. Their condition was that they would countenance staying in the Union provided Lincoln didn't resort to what they called coercion. Some of the arguments they make are that Virginia, as the sort of mother of all states, having played such a crucial role in drafting the Constitution, should be in the vanguard of forging a Union-saving compromise. They also make a case, which is quite prescient, that nothing would be sure to destroy slavery than a war that invited the Union army into Southern territory, and they argue that Virginia will become the battleground. Those conditional Unionists change their tune and swing into the secessionist column, in part, because Lincoln gives an inaugural address in which he calls secession the essence of anarchy and vows to uphold the laws of the land. Then because after Fort Sumter, he decides to resupply Fort Sumter, the South Carolinians fire on it, this gives secession some momentum in Virginia. Kind of rage militaire, or the kind of war fever, begins to grip places like Richmond. Then Lincoln ultimately, on April 15, calls for troops to put down the South Carolina rebellion and he's calling for troops from all of the states that haven't seceded yet, including Virginia. And that is a kind of moment of decision in which Virginians like Minor have to decide whether they would join an army that would march into South Carolina to suppress the rebellion there. And they consider Lincoln's call for troops to be the act of coercion that breaks their commitment to Unionism and they then support secession. Often the conditional Unionists are some of the most avid secessionists once the war starts. You could describe people like Jubal Early and Robert E. Lee as conditional Unionists, but they're absolutely all in once the war starts. The debates among the Virginia electorate and among its politicians and its intellectual leaders, like Minor, was not about whether to protect slavery, but how to protect slavery. Whether slavery was best protected in the Union or out of the Union. Minor is one of those figures who, pretty deep into the crisis, believes slavery is best protected within the Union, but comes to believe that it can only be protected out of the Union.

Meggan Cashwell 11:59

One of the things that you say that really stuck out to me is, you know, we think about slavery going from being a necessary evil to a positive good, the ideological shift that we can see happening over the course of the antebellum period. But, you say that men like Minor, who eventually joined the secessionist cause, they come to see disunion as a positive good.

Liz Varon 12:18

For a long time in American politics, much of the antebellum period disunion, when Americans imagine it, is this kind of cataclysm, a sort of mutually assured destruction that's to be avoided at all costs. The thing that the secessionist movement does, and it begins starting to try to do this in the 1830s but doesn't really get traction until the 1850s, is to sort of, as one of secessionist put it, disarm disunion of its terrors and persuade white Southerners that under the right circumstances, disunion wouldn't be cataclysm and an abyss and mutually assured destruction, but it could be a positive good, lead to the creation of a prosperous and lasting Southern Confederacy. Secessionists build this case gradually, the case depends in part on convincing the Southern electorate that the Democratic Party, which had protected slavery and been led by Southerners, could no longer be trusted. And the big themes here in this bid to argue that disunion, under the right circumstances, could be a positive good, was an emphasis on Southern solidarity. So, there continues to be massive amounts of fear mongering by secessionists, but their message is: If white Southerners are not completely united, of one mind, then they are vulnerable to the incursions of abolitionism and will be losers in any kind of war with the North that comes. If they are completely united, then they will be victors and victors swiftly and virtually bloodlessly—it's delusional, of course. Their game is to promote this Southern solidarity. And as is a wonderful UVA Press book by a scholar named Charles Dew has argued, it's called *Apostles of Disunion*, and I recommend it to everyone. If you look at the case that secessionists made, the fears that they invoked were fears of race war, of race competition, of race mixing. All the things that a Republican president and Yankee dominion, and so on, would connote in their minds. Second major theme, again, is victimization. As many historians have noted, you could read the rhetoric of someone like Holcombe going back to the late 1850s, and never realize that Southerners had dominated the national government. That presidents willing to do their bidding won election in 1852 and 1856. That they had often invoked a kind of majoritarianism—you Northerners must yield to the majority—when they controlled the government. It was only when they faced the prospect of losing control of the government, that they committed fully to this state sovereignty position, which they had embraced sort of situationally over the course of the antebellum period when it suited them, when they felt that they were on the on the outs.

Meggan Cashwell 14:49

Let's take a break here. When we return, we'll discuss how UVA law professors use their lectures to promote secession and a pro-slavery agenda.

—Musical Break—

Rebecca Barry 15:08

Want to learn more about the history of the University of Virginia School of Law? Consider stopping by the Arthur J. Morris Law Library, located within the Law School in Charlottesville, Virginia. Explore the library and check out our rotating exhibits, or come to the Special Collections reading room to dig deeper into some of the sources we reference in our episodes. You can also visit the Special Collections website at archives.law.virginia.edu, where you'll find digitized archival material, oral histories, and

online exhibitions covering topics like UVA's first law library, the Scottish Court of Session papers, law student activism during the 1970s, and student organizations, including Virginia Law Women and the Black Law Students Association. Again, that's archives.law.virginia.edu.

—**Musical Break**—

Meggan Cashwell 16:02

We are back with Liz Varon, and we're talking about the Law School at the University of Virginia during the Civil War. Liz, you observe that our law professors, particularly John Minor, but also James Holcombe, try to impress on students the value of the Union, as well as the importance of states' rights. And that Minor, in particular, did so through lectures and specific legal texts. What did these law lectures entail and how did they advance a states' rights agenda?

Liz Varon 16:32

I would say that, for someone like Minor, a conditional Unionist, and the conditional Unionists were often less entranced by the Calhounian extreme state sovereignty position than the immediate secessionists were, the emphasis was on dual sovereignty, the idea that the states and the federal government each had their own sphere. And for pro-slavery Southerners, their preferred version of dual sovereignty was one that emphasized the power of the states and the idea that any jurisdiction or power or authority not expressly granted to the federal government in the Constitution was reserved to the states. So, it's dual sovereignty with an emphasis on the rights of the states and on the ways in which the federal power is circumscribed. They could look to texts like the Federalist Papers, where Madison the nationalist is defending the idea of creating a perpetual Union that could be perfected over time. And then counterpose the Federalist Papers with something like the Virginia and Kentucky resolutions, in which Madison and Jefferson are sounding warnings about the Adams administration's abrogation of free speech and the Alien and Sedition Acts, in which they're trying to galvanize the Southern electorate into voting for a new party, Jefferson's party, in the election of 1800, in which they are defending states' rights, although not yet taking a position as extreme as Calhoun's. What we see over time, as part of this process by which disunion is disarmed of its terrors and secessionists build a case, is that the Calhounian view with the emphasis not just on states' rights, but on state sovereignty. Again, the idea that states have alienated none of their rights in forming the Union, that the Union is a compact of states. So this position had all kinds of really divisive entailments, one of which was Calhoun's claim that Congress had no right to keep slavery out of the territories, because the territories were the property of the states and any kind of non-extension of slavery ran counter to that idea. We see over time a more aggressive defense of slavery as a positive good, aggressive defense of disunion as a positive good, and more overt preaching of what I'll call kind of zero-sum game philosophy of race relations. That any gains for Blacks' freedom or any rights would entail a loss of rights for whites. And we see someone like Holcombe give voice to this very explicitly in a January 1861 speech. He said the Republicans wanted to convert African slaves into freemen by converting Southern freemen into slaves. This is a sort of typical expression of this kind of zero-sum game idea and a use of slavery sort of metaphorically. An emphasis

on dual sovereignty gives way to an emphasis on state sovereignty. And the state sovereignty position is one that, again, runs counter not only to anti-slavery constitutionalism, but also to the prevailing sort of moderate hegemonic view in the North of a dual sovereignty with an emphasis on federal power and the rights of the federal government within its own jurisdiction.

Meggan Cashwell 19:31

Perhaps what's most interesting to me from a from a curricular standpoint about this, the curriculum that Minor is teaching from is really not that drastically different than the one that Jefferson selected for the first law professor. This idea of a states' rights agenda is there from the beginning. And then Lomax, who's the first law professor, and then those who come after him, are able to take this curriculum and build on it, and utilize it to justify their pro-slavery, and also their growing secessionist, perspectives.

Liz Varon 20:05

I think it's very important to note that the lectures the professors delivered, which are mirrored in the student notebooks that we have so many of as such fascinating historical documents, are chilling on two levels. Much of what was being lectured about was technical—contracts, deeds, estates, trusts, wills, and so on. Amidst all of that technical education were clinical descriptions of the legal protocols for things like buying and selling human beings, and the fact that they were so clinical is itself chilling, just woven right in with other matters of property law. The flashes of overt politicking, where Holcombe or Minor would refer to slavery as necessary, as they both did, necessary as a system of property rights, necessary as a means of personal profit, necessary as a means of social control. Those are also chilling, but the two things go hand in hand and, as you said, very rightly, and perceptively, these elements, the chilling clinical description of the protocols, the slave codes, and statutes that instantiated slavery, the matter-of-fact descriptions of these things next to the pro-slavery editorializing, you put the two together, and it's a powerful and unmistakable message, alas.

Meggan Cashwell 21:18

We have used these student notebooks all throughout this book. And we've talked about them extensively. They're really difficult. They're often long, the handwriting is terrible. I mean, they're very dense, right? And full of legalese. As you are reading them, and you get that it's the laying out of the laws in general, the things that practicing attorneys in Virginia [mmhmm] are really going to need to know. So, it's steeped very heavily in Virginia law, but also in property law [yeah]. Much of the curriculum is really a discussion of women as legal subjects [mmhmm], of enslaved people as legal subjects [mmhmm]. And this sort of abstract, legalized version of slavery that's happening in the classroom, there is then the lived experience of slavery [right] on Grounds.

Liz Varon 22:00

Yes, that's absolutely right. Chilling is the right word. Chilling both because men like Minor and Holcombe were again stoking the fires of pro-slavery ideology and of secession, but even more chilling because the curriculum remains so unchanged after the war, as did their attitudes. Minor justifies the

slave codes, both before and after the war, as necessary because the enslaved, as he puts it, were, quote unquote, "Barbarous," and needed this kind of stern system of correction and discipline. And as you say, these men were also practicing this repression and the purveyors of this kind of sadism in their personal lives as slave owners. It's perhaps not surprising that in a law school designed to serve the needs of the state that had more slaves and slaveholders in it than any other, right down to the eve of the Civil War, that this would be the case. But it's particularly striking the way this curriculum, and all of the assumptions built into it, persist after the war as well.

Meggan Cashwell 23:01

I think you put it beautifully when you say this turns into a history lesson. And one of the things that persists with Minor is this heavy emphasis on Blackstone, which again, is something that Jefferson set out in the curriculum. But one thing that another one of our contributors has pointed out, rather astutely, this is David Konig, is that there are no texts in the curriculum that specifically address slavery in Virginia. For these law professors to be giving their students tools with which to apply the laws, Blackstone, who's talking about slavery very abstractly. They're then able to take Blackstone's very generalized perspectives of slavery, and then insert their own ideas about Southern enslavement.

Liz Varon 23:43

You wouldn't know from reading these notebooks that there were these lively debates about the meaning of the Constitution that the nation was having. You know, any intimation that maybe the students should consider some of the abolitionist or Republican critiques, or the Whig or Federalist positions, anything that might challenge slavery is dismissed. It's not discussed and debated, and that's very important to note as well.

Meggan Cashwell 24:06

Well, let's talk about the end of the Civil War. You talked about Holcombe extensively earlier. Minor hires him in 1851. Up until that point, the Law School is a one-man-show, and Holcombe stays for about a decade, but then he leaves to join the Confederate Congress in 1861. How did Minor strive to preserve the Law School and the University in a very literal sense during the war, along with his own personal investment in slavery?

Liz Varon 24:32

Minor will continue during the war to rent and buy and sell enslaved people as an individual. The hope of Lincoln and the Republican Party was that if slaveholders were blocked from expanding slavery, they would see the writing on the wall and see fit to gradually dismantle the institution by themselves. Well slaveholders didn't see the writing on the wall. During the war, beginning in Virginia, in the first days of the war, the enslaved begin to resist, to take advantage of the presence of the Union army in Southern territories to flee from plantations and farms. And that flight, which will, in the end, amount to at least a half million enslaved people, pushes the Union army, the Republican Party, the Lincoln administration to elaborate an emancipation policy that begins with the confiscation acts and the deeming of runaways

as contraband, and eventually evolves into Lincoln's emancipation policy. And men like Minor are in denial, can't imagine why or that or how slaves would have a desire for freedom. To them any slave flight is Yankee enticement and the threat thereof. Famously Lincoln during the war offers, as one historian has put it, a sweetheart deal to border state slave owners saying: Look, slavery is being destroyed by the friction and abrasion of war by this massive flight and resistance by the enslaved. I, Lincoln, will pay you, compensate you for your slaves, if you free them voluntarily. I'll colonize them, this can all happen on a gradual timetable. And that offer is rejected. This is essentially Minor's mentality to cling to slavery as fiercely as possible. And that's precisely what he does during the war. He helps to form a group called the Albemarle Minutemen to protect white Charlottesvilleans against any incursions of the Yankee army and explicitly against the enticement of slaves away from their masters. Minor will, as one of the sort of fathers of the city being tasked to negotiate with Union troops when they finally appear on Charlottesville's doorstep in March of 1865. He'll ask them to spare the University in Charlottesville and they will. Minor views Appomattox, the surrender, as a disaster, grudgingly takes an oath of allegiance back to the United States, and clings to the idea that Virginia was somehow a blameless victim, kind of swept along by forces beyond its control. It's so important these projects we're all doing, of which this Law School project is one, to confront the University's history, reimagine regional history. It's just brought so many fascinating facts to light, and we'd be remiss if we didn't note a key one, which is that Albemarle County had a Black majority on the eve of the Civil War and that those Black Southerners viewed the arrival of the Union Army in Charlottesville as liberation, not as conquest or subjugation. And Minor remained utterly unable to see the world through their eyes.

Meggan Cashwell 27:17

You also note in your chapter lots of enslaved people are escaping from Grounds [yes]. Union troops literally come to Grounds, they come to Pavilion X, which is the home of Minor on the Lawn. At least one of the people enslaved by Minor, Henry, he escapes with Union troops.

Liz Varon 27:34

Minor at the end of the war writes that Blacks were, quote, "Doomed to a hopeless inferiority," unquote. He's learned nothing. We see that reflected in the curriculum after the war. How does he rebuild the school? He advertises throughout the South once the war is open to try to attract students. He hires a new faculty member, Stephen Southall, in 1867. Enrollments do begin to tick up. He does try to take some measures to make the school more accessible to a broader swath of Southern whites. So, he starts a summer school so that people who are practicing attorneys can take classes with him to enhance their skills during the summer. He creates a student loan system, so that students could defer payment of fees until they had an income as working lawyers. But it's important to know that the school rebounds, but it's still a decidedly regional and indeed sectional institution. And that was a choice. UVA Law hasn't yet emerged as a national institution, it's still a sectional one, largely assigning the same texts as before, giving the same lectures on slavery, but casting them now as history lessons rather than as descriptions of the present moment. Teachings of Minor and Southall were sectional. Southall says to students they must enlist under the banner of conservatism and beat back fanaticism. It's quite clear what he means by

that. And Minor in essentially repurposing the curriculum is helping to build a Lost Cause ideology, which UVA, alas, is very prominent in the vanguard of elaborating. It's an ideology that romanticizes the old South, romanticizes slavery and the Confederacy. Casts the South as blameless in the sectional controversy. Casts the Union victory as a victory of might over right. Casts the enslaved population as faithful and loyal unless they were enticed and gotten to by Yankees. And stipulates, perhaps more importantly than anything, that the cause was not, in fact, lost. It was lost militarily, but that of moral vindication of political resurgence would come. The Lost Cause elements are already very visible at the moment the war ends, but it comes to incorporate an argument that emancipation was a failure and a tragedy, and that reconstruction was a failure and a tragedy. Minor and Southall, sign on to this entire set of interlocking ideas and indeed help to elaborate them.

Meggan Cashwell 29:51

Let's take one final break. And when we come back, we will discuss Reconstruction and how the Law School chose to commemorate the Civil War.

—Musical Break—

Meggan Cashwell 30:07

If you're enjoying Legal Knowledge, we've got more content for you on our website, including short interviews, field recordings, photographs, and some of the archival materials we discuss with our contributors. For this episode, you can learn more about the Law School in the Civil War and explore the longer history of the land where the present-day Law School is located, all at legalknowledgepodcast.com.

—Musical Break—

Meggan Cashwell 30:40

We're back. And we're discussing the University of Virginia School of Law in the years following the Civil War and this question of legacy. And before the break, Liz, you were talking about John Minor and how he and Southall try to rebuild the Law School after the Civil War. In this time, a lot's happening in legal education that I think is worth noting. In 1870, Christopher Columbus Langdell comes to Harvard, he begins the case method of instruction, which is adopted widely by law schools in the following decades. Virginia Law decides not to pursue the case method. And that, I think, is in large part because John Minor is also rising to fame in the world of legal education in this time. He publishes his *Institutes* in the 1870s. His *Institutes* are really a published version of his lectures and he's making those more widely available. So, he has a name in the South and the Law School comes to be associated with Minor and with what some scholars have called this Blackstonian view of the law. Minor, in becoming this legal education figure, he also becomes known for his mentorship, and he mentors a lot of men who are well known, I mean one of which includes Woodrow Wilson, the President of course. In terms of Lost Cause ideology and passing this on to his students, who was he teaching and how do they

come to embody this Lost Cause ideology? And what do they do with it as they pursue their own careers?

Liz Varon 32:05

Yeah, that's a fascinating question. The Law School becomes an incubator, not only for Lost Cause ideology, but for Jim Crow segregation. We see this very clearly in some outspoken and powerful alums. I can give as one example RTW Duke, who went to the Law School in the early 1870s, became a very prominent lawyer and judge in Charlottesville. He went on the hustings, essentially, and made the case before countless audiences that Reconstruction was a tragic era of Republican misrule, that Lincoln was a loathsome radical, that Black voting was a travesty, that former slaves should have no place whatsoever in the Virginia body politic. Well into the twentieth century, Duke will go before audiences of whites in Virginia and say, quote, "Slavery was right and emancipation a wrong." This is the man who would preside over the unveilings of the Stonewall Jackson and Lee monuments in Charlottesville in 1921 and 1924. Alums who shared his attitudes literally translated them into racist laws as members of the Virginia General Assembly, and as members of the dominant Democratic Party. Men like John Warwick Daniel, J. Taylor Ellison, Andrew Jackson Montague, and others, establish measures like the poll tax in the 1902 Constitution to suppress Black voting. So, we see, a very, very clear translation of the Lost Cause ideology into repressive laws. We also see that some of those educated by the Law School and by Minor, don't stick to that script or playbook, but instead remain loyal to the Union during the Civil War and have careers that depart from, or counteract, this kind of Lost Cause and Jim Crow politics. There were about sixty-odd UVA students who sided with the Union during the Civil War. It's a tiny number compared to the thousands who sided with the Confederacy, but nonetheless, revealing. A student named James Patterson Sterrett of Pennsylvania, for example, became Chief Justice of the Pennsylvania Supreme Court. Another student became Chief Justice of the Utah territory Supreme Court. Most of these Unionists were not radical Republicans or abolitionists, but some of them were. A student named Charles Redmond of New Jersey became a judge in Arkansas during the Reconstruction Era and supported Black voting. The University did nothing to celebrate these men. Although, I mean, as you say, Minor's *Institutes* were beginning to gain the Law School some traction in a bid to become a national institution, and it might have been a smart thing to celebrate these students. But it didn't, it celebrated UVA's Confederate history as a foundation for this Lost Cause and Jim Crow political orientation. The story of UVA's Unionism and of the Unionism of the region, the Unionism of African Americans in the region was kind of swept aside, in a Lost Cause story that was meant to tell us the tale of a solid South committed to the Confederacy.

Meggan Cashwell 35:00

How did the Law School remember the Civil War in the decades that followed? And maybe you could also speak to how we're grappling with this legacy on Grounds today?

Liz Varon 35:11

For a very, very long time, UVA celebrated and then marked, or acknowledged, in a transition over time, only the Confederate history of the Civil War. Again, this is a story of Unionism swept under the rug. We do have a moment now where we're confronting this history and to confront the history is to gain a new perspective on the University, on the region, and on, in a sense, the kind of idea of school pride. One of the things our efforts, and there's been a movement among universities, in which UVA has been playing a leading role in recent years, to confront the histories of slavery and race relations at these institutions. One of the things that this wave of research has disclosed again, is a divided South. Albemarle County was divided, again, African Americans in the county supported the Union. No one asked their opinion when statues went up, but they did and they supported Reconstruction and the Republican Party. The Nau Civil War Center has unearthed the biographies of two-hundred-fifty African American men born in Albemarle County who served in the Union Army, a previously submerged history. They didn't enlist here in Charlottesville, the Union army didn't get here till the end of the war. They enlisted in seventy, eighty different regiments across the landscape of the war, were present in the places to which they had been sold, or moved in forced migration, or fled. It was a sort of diasporic story and a diasporic army, the USCT or United States Colored Troops. That's a wonderful new perspective on regional history. I commend the Law School for this project that you all are doing, which again should be thought of as a perspective on not only the school, but also on the region. It's so important because to confront this history makes us better citizens. It's the right thing to do, morally speaking. It's important, I think, for lawyers, in particular, and judges to know our history, and I fear lawyers and judges often don't know our history and that we, as a society, pay a steep price when they don't know our history, and sometimes people think of school pride as something that's tribalistic or partisan, defending your school and everything it's ever done at all costs. That's utterly unsustainable at a place like UVA, which was in the vanguard of just some toxic and divisive political ideologies, whether it was the defense of slavery, or the Lost Cause, or Jim Crow, or eugenics. But the flip side of that is that we can and should be proud of these current efforts to be honest about that history, because they underscore that the mission of the school is an educational mission. The mission is in part to learn about the past, but also to learn from the past. You can't learn from the past if you're not honest about it. If the historical record, as I've described it, shows a lot of negative things, we have to be honest about them, on the assumption that UVA students and alums are intelligent, discerning people who can handle the truth. That our role in the present is to be the place that researches and analyzes and sees and testifies that history, more honestly and more carefully and more fully than any place else. I think the fact that the Law School's current dean is herself a brilliant historian, Risa Goluboff, is a great model for the importance of knowing and learning and being honest about our history.

Meggan Cashwell 38:34

That is so powerful, and I wholeheartedly agree with you. And yes, we were so fortunate to have Risa supporting this project. And, as an institution, as a law school, we have some other ongoing projects that are also illuminating this history. One is our slavery.law.virginia.edu website, where we have student notebooks that you mention. Another project that we're working on now, you mentioned the Duke family earlier. The land upon which the Law School sits was owned at one point by the Dukes. It was

not sold until 1963. I'm looking at one of my producers, Addie Patrick, who is one of the individuals who is spearheading this project. We're also looking at our institutional ties to racism through the land and working to get historic markers put up on the Rivanna Trail.

Liz Varon 39:17

The spirit of all this work is that it's ongoing, that nobody gets the last word. One of the great damaging effects of the Lost Cause ideology, and its view of the Civil War and Reconstruction, is that it made no room for any kind of competing views and it indeed tried to sweep them under the rug. The purpose of projects like yours, of making all of this material accessible to the public, so that people can continue to research and continue to dig and our views can continue to evolve. And we can at last be sort of comprehensive, rather than having so much of our history screened from us by the Lost Cause is really exciting. I myself am a Virginian. I've spent my life studying Virginia history. I feel that it's very tragic and disappointing that Southerners have so often had their own history hidden from them by this kind of Lost Cause mentality and its demands for ideological purity, for pushing aside anything that doesn't buttress old retrograde beliefs. People have a right to see that history, not to be patronized by having it hidden from them, the full history of the region. There's just no getting around the fact that UVA as an institution and the Law School as an institution, were fully complicit. That word doesn't really even capture it because of the ways that these institutions played leadership roles in promoting ideologies of inequality and intolerance. We're grownups, we should look at this in a clear-eyed way, and commit ourselves, not just to research and study but to measures that will continue our course of recent progress.

Meggan Cashwell 40:54

Well, Liz thank you so much for this. I was hoping that you could talk a bit more about your work, the book is still very much in progress. It's forthcoming with UVA Press. But where can our listeners learn more?

Liz Varon 41:06

I would steer them to my most recent book, which is an overview of the Civil War called *Armies of Deliverance*, and this theme of divisions within the North and South, not thinking of either place as a monolith, but instead as a complex political construct of coalitions that had to be formed, and so on, by choices people made. This is one place to look. And the other thing I'd guide people to is the Nau Civil War Center's Black Virginians in Blue digital project, or BVIB we call it for short, which is the website that tells the story of African American men from Albemarle County who fought in the Union Army. It really is very powerful. And again, part of this broad project we're all engaged in of reimagining the Civil War and Reconstruction history of the region.

Meggan Cashwell 41:45

Liz, thank you so much for being here. I enjoyed this conversation so much.

Liz Varon 41:49

Thank you.

—Musical Break—

Meggan Cashwell 42:01

For more on today's episode, please visit our website, legalknowledgepodcast.com, where you'll find show notes, a transcript, and bonus content. We'd also love to hear from you, so if you have thoughts on the show, feel free to reach out to us via our Contact Us page, also at legalknowledgepodcast.com. I hope you'll join us for the next episode, as we continue to explore legal education at the University of Virginia. Thanks for listening.

Rebecca Barry 42:33

Legal Knowledge is a production of the Arthur J. Morris Law Library at the University of Virginia. The podcast is produced by me, Rebecca Barry, along with Meggan Cashwell and Addie Patrick. Special thanks to Loren Moulds for designing our website, Jane McBrian for assisting with transcription, and Randi Flaherty for supporting this podcast in countless ways. We also want to thank the staff at WTJU for use of the studio, and the staff at the Albert and Shirley Small Special Collections Library at UVA for use of their materials. Our theme song is *Center of Gravity* by Phutureprimitive. Please rate and review Legal Knowledge on your favorite podcast app and be sure to tell your friends about the show. We'll see you next time.

—Musical Outro—