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# **Warrior, Statesman, Jurist For The South: The Life, Legacy, And Law Of Thomas Goode Jones**

**John A. Eidsmoe\***

At the top of the stairs in the foyer of the Thomas Goode Jones School of Law stands a sculptured bust of a distinguished-looking gentleman. Beneath the bust are the words "Warrior, Statesman, Jurist." The gentleman is Thomas Goode Jones.

Thousands of times, I have ascended those stairs. Often my eyes have come to rest upon that sculpture. Often I have wondered, what sort of man was Thomas Goode Jones? What was his philosophy of law, his philosophy of life? What would he think of the law school that bears his name? What would he think of me, a transplanted South Dakotan serving as a professor in this Alabama institution? Would this distinguished Confederate Army officer approve of me, an Air Force Lt. Colonel, writing his story?

To understand the mind of Thomas Goode Jones, it is not enough to read his writings and what has been written about him. To truly capture the essence of this man, one must go to his boyhood home, the church he attended throughout his life, Virginia Military Institute, the battlefields of the War Between the States, and the Alabama State Capitol. One must talk with his descendents, study his speeches, examine his actions as

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governor, explore his role in the 1901 Alabama Constitutional Convention, and observe the workings of his mind in the decisions he authored as a federal judge.

After having studied Thomas Goode Jones in all of these ways, I hope I can present an accurate portrayal of this man - a man I have come to view as a Southern constitutionalist in the tradition of John C. Calhoun, Alexander Stephens and Jefferson Davis, but a man too vast and complex to be cast strictly in the mold of anyone else. His contribution to jurisprudence is consistent with the Southern tradition, but it is still uniquely his own.

This study will examine Jones' background, his upbringing, his education, his military experience, his law practice, his work as a legislator and Governor, his contribution to the Alabama Code of Legal Ethics, his role in the 1901 Constitutional Convention, and his service as a federal judge.

### FAMILY BACKGROUND

In 1913, Judge Walter Burgwyn Jones, son of Thomas Goode Jones and founder of Jones School of Law, published a family history titled *John Burgwin, Carolinian; John Jones, Virginian: Their Ancestors and Descendents*.<sup>1</sup> While the Jones's were of Welsh extraction, his most famous ancestor was Pocahontas. He traces the ancestry as follows:

- Powhatan (died 1618).
- Pocahontas married John Rolfe 1613, died 1616.
- Lt. Thomas Rolfe, born 1615, married Jane Poythress.
- Jane Rolfe (1655-1676) married Col. Robert Bolling.
- Major John Bolling (1676-1729) married Mary Kennon.
- Ann Bolling (born 1718) married James Murray.

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<sup>1</sup> Walter Burgwyn Jones, *John Burgwin, Carolinian; John Jones, Virginian: Their Ancestors and Descendents* (privately printed, 1913, Alabama State Archives and History, Montgomery, AL) [hereafter WB Jones, *Burgwin-Jones*]. The reader will note that at different times in history, the Jones' ancestors have used both the Burgwyn and the Burgwin spellings. In each instance, this author has endeavored to use the spelling used in the cited document

- Mary Murray (1754-1823) married Alexander Gordon.
- Peggy Gordon married William Knox.
- Mary Ann Knox married Dr. Thomas Goode.
- Martha Ward Goode married Samuel Goode Jones.<sup>2</sup>

Thomas Goode Jones was the first child of Martha Ward Goode and Samuel Goode Jones.<sup>3</sup> Walter Jones traced the Jones side of his father's family:

The Reverend Richard Jones, of Welsh extraction, [who] married Lady Jeffries, of the Manor of Ley, and settled in Devonshire, Eng[land]. He patented 1500 acres of land in Prince George County, near Merchant's Hope. ... One of his sons, Major Peter Jones, married Margaret Wood, dau[ughter] of Major General Abraham Wood "who came to Virginia in 1620, as a little boy of ten years . . . ."<sup>4</sup>

On both sides of his family tree, Thomas Goode Jones' ancestors seem to have been imbued with a sense of calling and civic purpose. In pursuing that calling, they appear to have been a family of high achievers, particularly in the fields of law and military. Among those of his ancestors who achieved distinction during the 1600's were:

- Rev. Richard Jones of Wales and England;<sup>5</sup>
- Major General Abraham Wood, who served in the Virginia House of Burgesses, commanded Fort Henry in 1646, served as a colonel in the militia of Charles City and Henrico Counties in 1658, and negotiated a treaty with the Indians in 1680;<sup>6</sup>
- Major Peter Jones, who commanded the militias of Elizabeth City, Warwick and James City counties in 1676.<sup>7</sup>

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<sup>2</sup> *Id.* at 89-90.

<sup>3</sup> *Id.* at 90.

<sup>4</sup> *Id.* at 77.

<sup>5</sup> *Id.* at 77-78.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

Distinguished ancestors of the 1700's include:

- Captain Peter Jones, who served as a church vestryman in Bristol Parish in 1722 and was captain of the Prince George County militia.<sup>8</sup>
- Major Peter Jones, who like his father and grandfather, served as captain of the Prince George County Militia and vestryman of Bristol Parish.<sup>9</sup>
- John Jones, who served as Speaker of the Virginia House of Burgesses, as a Virginia State Senator during the 1770's and 1780's, and also as a colonel in the Virginia militia during the War for Independence.<sup>10</sup>
- John Jones, who, though very young (born 1764), fought in the Battle of King's Mountain in 1780 and the Battle of Cowpens in 1781, rising to the rank of captain.<sup>11</sup>
- Samuel Goode, who served as a member of the Virginia House of Burgesses (1779-1783), a colonel in the Virginia militia during the War for Independence, and a United States Congressman (1799-1801). Colonel Goode married Mary Armistead Burwell, daughter of Colonel Lewis Burwell and descendent of a long line of military officers, members of the House of Burgesses, and governors. Colonel and Mrs. Samuel Goode's daughter, Mary Armistead Goode, married Thomas Williamson Jones, grandfather of Thomas Goode Jones.<sup>12</sup>
- Dr. Thomas Williamson Jones (1789-1824), a prominent physician until his death in 1824, married Mary Armistead Goode. Their eldest son, Samuel Goode Jones, married his first cousin, Martha Ward Goode. As noted earlier, Martha Ward Goode was of the ninth generation from Pocahontas, and her ancestors included many distinguished persons. Their eldest son was Thomas Goode Jones.<sup>13</sup>
- Samuel Goode Jones (1815-1886) was born September 20, 1815, in Mecklenburg County, Virginia. He received his basic

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<sup>8</sup> *Id.* at 78.

<sup>9</sup> *Id.* at 78-79.

<sup>10</sup> *Id.* at 79-80.

<sup>11</sup> *Id.* at 80-81.

<sup>12</sup> *Id.* at 82.

<sup>13</sup> *Id.* at 81-82.



education at Old Ebenezer Academy in Brunswick County, Virginia, and graduated with honors from Williams College in 1837. He worked most of his life as a civil engineer, first with a Virginia canal company where he supervised the construction of canals and bridges, and then with the Monroe Railroad, later called the Macon & Western R.R.<sup>14</sup>

## Early Life

While Thomas Goode Jones was born into a family of distinction and high achievement, this did not mean he had an easy or luxurious early life. Samuel Goode Jones was a competent and successful engineer, but his career was marked with several bitter disappointments. On several occasions, he was promised jobs that did not materialize; on other occasions, he worked for companies that became insolvent and could not pay him; he placed his inheritance in a bank that failed and could pay him only 25 cents on the dollar; on another occasion, he placed substantial money in the hands of a road agent who disappeared with it.<sup>15</sup> In 1885, a year before he died, Samuel Goode Jones wrote a lengthy letter to his son Thomas Goode Jones in which he described their early life:

We settled first in Griffin, Ga., where David Clopton, Robert Lanier and myself, all newly married, lived together. We subsequently bought a double log cabin in Griffin, one end of which we used as our chamber, the other as a kitchen and the space was enclosed and made into a dining room. I daubed the outside with my own hands, and your mother's good taste arranged the interior so neatly and comfortable that to this day I have never had a home more to my satisfaction . . . .

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<sup>14</sup> Letter from Samuel Goode Jones to Thomas Goode Jones (May 4, 1885), in WB Jones, *Burgwin-Jones*, *supra* n. 1, at 84-89.

<sup>15</sup> *Id.*

It was about these times that you were born at the house of our special friend, L.N. Whittle and wife, in Vineville, Ga., a suburb of Macon, Ga. Our families had been friends in Virginia, and our friendship had strengthened with increasing years. The kind and considerate attention showed by Mrs. Whittle supplied the place of those usually shown by tender mothers to daughters under the trying circumstances of a first confinement, and I shall ever remember with sentiments of the liveliest gratitude the delicate kindness of the Whittles and need not, I know, enjoin on you payment in any manner in which you can this debt of gratitude. Your own generous heart would prompt this act. When you were able to bear the trip we moved to a little place on the railroad then called Leekville, about half way between Griffin and Atlanta, but now Jonesboro, the name having been changed as a compliment to myself.<sup>16</sup>

In the Spring of 1849, the Montgomery and West Point Railroad offered Samuel Goode Jones the position of Engineer. For a year he divided his time between the Montgomery Railroad and the Muscogee Railroad in Georgia, but in April 1850, he decided to work full-time for the Montgomery Railroad and moved with his family to Montgomery, Alabama.<sup>17</sup>

Thomas Goode Jones was the first of eight children, six of whom survived infancy:

- Thomas Goode Jones, born November 26, 1844; died April 28, 1914.
- Mary Virginia Jones, born April 6, 1847; married chemist and geologist William Gesner.<sup>18</sup>

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<sup>16</sup> *Id.* at 86-88.

<sup>17</sup> *Id.* at 89.

<sup>18</sup> *Id.* at 90. Some death dates are unavailable. In some instances the reason may be that these persons were still living when WB Jones published this work in 1913.

- Lucy Spottswood Jones, born August 3, 1851; married Francis Henry Armstrong; died February 4, 1879.<sup>19</sup>
- Edwin Francis Jones, born December 21, 1853; attended Virginia Military Institute and served as an Assistant U.S. Attorney and Special Judge in Alabama, and later as an Assistant U.S. Attorney in Arizona.<sup>20</sup>
- Carter Jones; born March 19, 1855.<sup>21</sup>
- Charles Pollard Jones, born June 13, 1858, died November 6, 1907; practiced law with his brother Thomas Goode Jones and served as Colonel and Adjutant General of the Alabama State Troops.<sup>22</sup>

After locating to Montgomery in 1850, Samuel Goode Jones continued to excel in his work, but nevertheless, experienced several financial misfortunes. In 1867, he became president of Savannah & Memphis Railroad, but when the corporation's directors wanted him to swear that the first twenty miles of the road was built with the railroad's own resources so the corporation could receive state aid, he refused and resigned his position. Later he, became chief engineer for Savannah & Memphis, but again, he resigned because the directors wanted him to refuse to cooperate with an investigation.<sup>23</sup>

Despite his own mixed financial success, Samuel Goode Jones was a major force in the development of Alabama. The railroads he built facilitated increased commerce for central and southern Alabama and were most helpful to the Confederacy for the movement of troops and supplies.<sup>24</sup> Undoubtedly Samuel Goode Jones' entrepreneurial energy influenced Thomas Goode Jones to aspire toward civic leadership.

But, Samuel Goode Jones influenced his son in other ways. As Walter Jones relates:

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 91, 116.

<sup>21</sup> *Id.* at 91.

<sup>22</sup> *Id.* at 91, 114-116.

<sup>23</sup> *Id.* at 91.

<sup>24</sup> *Id.* at 92.

Mr. [Samuel Goode] Jones was deeply religious by birth and inclination and was a devoted and genuinely consistent member of the Episcopal Church, giving lavishly of his time and means toward its support. The first church service held by the Episcopalians of Atlanta was held in his home and was the beginning of the present St. Luke's Parish. The Rev. W. C. Whittaker, in his *History of the Protestant Episcopal Church in Alabama, 1763-1891*, referring to some of the splendid personalities among the laymen of the Church in Alabama, during the ministrations of Bishops Cobbs and Wilmer, says: "Yet six men must be named, in passing, to ignore whom were to ignore six of the strongest pillars of the Diocese" and thus refers to Mr. Jones: "Samuel G. Jones, a foundation stone of Hamner Hall and of the original church of the Holy Comforter." He was ardent in his efforts to organize and support the University of the South, at Sewanee, [TN], and was one of the principal laymen who aided in establishing it. He was the chief donor of the fourteen acres of land and building for Hamner Hall and a liberal contributor for Bishop Cobb's Home for Orphan Children. He also gave generously to the building of St. John's Church at Montgomery and was one of her vestrymen from 1852-1862, when he gave the church building on Perry Street, opposite the present First Baptist Church to the parish of the Holy Comforter, which was established to give a parish to his friend Rev. Jackson Scott, who had left Pensacola when that place was occupied by the Union soldiers. Mr. Jones used to say that, looking backwards, his donations to hospitals, churches and schools were the greatest savings he ever made, and he was thankful that the War could not depreciate or destroy the investment. The petition in the litany of the Episcopal Church for the "fatherless

children and widows and all who are desolate and oppressed" impressed him deeply, and it was his constant endeavor to make his life and conduct square with this prayer. Sympathetic and tender hearted in his nature, the sorrows and distresses of others moved him deeply and his purse was ever open to the needy and quick to relieve the suffering. He was very modest and retiring in his disposition with a humbler estimate of his worth than his merit would well warrant.<sup>25</sup>

Mattie Pegues Wood, in *The Life of St. John's Parish: A History of St. John's Episcopal Church From 1834 to 1955*,<sup>26</sup> lists Samuel Goode Jones as a trustee of Hamner Hall, a church-sponsored boarding school and rooming house for girls.<sup>27</sup> She also describes his work on behalf of the University of the South in Sewanee, TN, established as "a church university for Southern men."<sup>28</sup> Efforts to establish this university began in the 1850's but were not successful until the 1860's.<sup>29</sup> Describing the later growth of St. John's, she writes, "[w]hilst penning the above lines, the memory of Col. Samuel G. Jones, formerly of this diocese, comes vividly before me – one of our foremost men in Montgomery in every good word and work."<sup>30</sup> She also suggests that when President and Mrs. Jefferson Davis arrived in Montgomery and began attending St. John's, "[p]erhaps the usher that first Sunday, who showed the Davis into pew 115, was Col. Samuel G. Jones."<sup>31</sup>

The Right Rev. Nicholas Hamner Cobbs, First Episcopal Bishop of the Diocese of Alabama (1844-61) and Rector of St. John's 1854-55, seems to have greatly influenced Samuel G.

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<sup>25</sup> *Id.* at 92-93.

<sup>26</sup> Mattie Pegues Wood, *The Life of St. John's Parish: A History of St. John's Episcopal Church From 1834 to 1955* 46, 98 (Montgomery, AL, Black Belt Press 1955, 1990).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 38.

<sup>29</sup> *Id.* at 38-45, 67-73.

<sup>30</sup> *Id.* at 109.

<sup>31</sup> *Id.* at 53.

Jones. Wood says of him, "[o]f the way he preached, his successor as bishop was to write: 'He preached Christ, not himself; and not himself preached Christ, but the Church through him. His hearers thought not of the speaker but of their own sins.'"<sup>32</sup> And when he resigned the rectorship so he could devote more of his time to founding the University of the South, "in this last sermon he spoke of things imperishable. Divine Law of God's loving purpose which would be obscured, but which in time would break through the clouds of war."<sup>33</sup> Almost certainly, seated in the pew beside his father listening to the sermon was young Thomas Goode Jones.

Ultimately, one's legal and political philosophy is based upon one's basic values and worldview, which in turn are based upon one's religious beliefs. One's view of God and His character and will, and what laws, if any, God has ordained for humanity, find their expression in law. Law is simply an expression of the deepest moral values of society, given the endorsement and enforcement of the state. The religious faith and practice, engendered by his father, nourished and guided Thomas Goode Jones throughout his life, and he passed it on to his children.

Politically, Walter Jones describes Samuel Goode Jones as "an old line Whig, becoming a Democrat with the disbandment of the former party."<sup>34</sup> The Whig Party of the 1800's was an amalgamation of former Federalists, conservative factions of the Democratic-Republican Party, Southern cotton planters who opposed the leveling doctrines of Andrew Jackson and his followers, and industrialists who wanted the protection of high tariffs. During the 1850's the Party broke up over the issue of slavery; most Southern Whigs joined the Democratic Party while most Northern Whigs joined the new Republican Party.<sup>35</sup> As a Southern Democrat, Samuel Goode Jones was not an ardent supporter of secession at first, but strongly supported the Confederate government and even converted a portion of his

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<sup>32</sup> *Id.* at 41.

<sup>33</sup> *Id.*

<sup>34</sup> WB Jones, *Burgwin-Jones*, *supra* n. 1, at 93.

<sup>35</sup> The World Book Encyclopedia (1985) "Whig Party."

residence into a hospital for wounded Confederates. After the War, he moved to Lee County and represented Lee County in the Alabama House of Representatives for the 1872-1874 term,<sup>36</sup> an act of service which almost certainly influenced his son Thomas Goode Jones' decision to run for the legislature twelve years later.

Like many Southerners before the War, Samuel Goode Jones owned slaves. Walter Jones says of him:

No man ever dealt more kindly with his slaves. He never sold one of his own and oftentimes, at the instance of husbands and wives, he would buy slaves to prevent a separation. His slaves worshipped him and seemed never more content than when performing some service for him. On one occasion a slave (Sarah Ann) whom he had carried North with him as a nurse, ran away and Mr. Jones had to return home without her. Afterwards he received a pitiful appeal from her for aid in getting back to him and his family. And Mr. Jones sent her the money to return.<sup>37</sup>

The experience of growing up in a family that owned slaves, who also treated their slaves kindly, undoubtedly affected Thomas Goode Jones' beliefs and attitudes concerning slavery, the War, and race relations thereafter.

The wife of Samuel Goode Jones and mother of Thomas Goode Jones was Martha Ward Goode Jones, through whom Thomas Goode Jones traces his ancestry to Pocahontas and Powatan. Other distinguished ancestors of Martha Ward Goode Jones include John Rolfe, husband of Pocahontas, and their son Lieutenant Thomas Rolfe (born 1615) who returned to Virginia and commanded Ft. James on the Chicahominey; Colonel Robert Bolling (1646-1709) who married Thomas Rolfe's daughter,

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<sup>36</sup> WB Jones, *Burgwyn-Jones*, *supra* n. 1 at 94.

<sup>37</sup> *Id.* This author presents this quotation not as a justification for slavery, but rather as evidence of Samuel Goode Jones' character. This author also recognizes that WB Jones, though a respected judge and a careful and meticulous scholar, understandably desired to present his ancestors in a favorable light.

Jane Rolfe, and served as a vestryman of old Blandford Church; their son Major John Bolling (1676-1729); James Murray of Scotland, church-warden and vestryman of Bristol (Va.) Parish, who married Ann Bolling, daughter of Major John Bolling and Mary Kennon; Alexander Gordon of Scotland, who married Mary Murray (1754-1823), daughter of James Murray and Ann Bolling; William Knox of Philadelphia (died 1809), who married Peggy Gordon, daughter of Alexander Gordon and Mary Murray; and Dr. Thomas Goode, who married Mary Ann Knox, daughter of William Knox and Peggy Gordon. Dr. Thomas Goode and Mary Ann Knox were the parents of Martha Ward Goode, who married Samuel Goode Jones and was the mother of Thomas Goode Jones.<sup>38</sup>

Martha Ward Goode Jones died on August 2, 1861,<sup>39</sup> when Thomas Goode Jones was sixteen years old and away from home as a student at Virginia Military Institute. Walter Burgwyn Jones quoted the *Church Intelligencer* concerning her:

Mrs. Martha Ward Jones was exceedingly beautiful in person, and of strong, but nicely balanced and judiciously educated intellectual faculties; she was also endowed with such loving and lovely affections and qualities of heart, that up to the hour when she left her father's house as a married woman, she had been from a child a source of joy and happiness unalloyed by a single willful act of disobedience on the development of a single unlovely characteristic. Sensitively shrinking from observation and notoriety and indiscriminate social intercourse, she sought and had, comparatively, few intimate friends; but to those few, of like refinement and congenial tastes, she revealed, in every revelation of life, an harmonious assemblage and combination of

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<sup>38</sup> *Id.* at 89-90. So far as this author can determine, there was no blood relationship between Dr. Thomas Goode, father of Martha Ward Goode, and Colonel Samuel Goode, grandfather of Samuel Goode Jones. It is fair to assume that Thomas Goode Jones' parents gave him his middle name in honor of both sides of the family.

<sup>39</sup> *Id.* at 90.



natural attractions and Christian graces, which was as beautiful as it is rare, and they will remember her as a model of all that constitutes female loveliness.<sup>40</sup>

The following year, on October 16, 1862, Samuel Goode Jones married Aurora Serena Elmore, the daughter of a distinguished family whose ancestors included an author of the Mecklenburg Declaration.<sup>41</sup> Samuel and Aurora had seven children, all boys, one of whom died during infancy. Samuel and Aurora resided in Sewanee, Tennessee, where Samuel served as Treasurer of the University of the South, engaged in coal mining, and managed the Summer Resort Hotel Company. In 1886, at the urging of friends, he became a candidate for the Tennessee General Assembly. During the campaign his opponents charged that his sympathies lay with the upper classes and that he was indifferent to the poor. He responded by narrating his early struggles, failures and successes, and declared:

I am in favor of raising the lower classes to a level with the higher, by education and kindly sympathy, rather than by bringing all to the lower level and while it is true that I favor levelling [sic] society when I begin I want to level men up -- not down.<sup>42</sup>

On October 4, 1886, shortly after delivering this speech, he died. His funeral was held at the University Chapel at

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<sup>40</sup> *Id.* at 90 (quoting *Church Intelligencer*). No date or author is given, but this is possibly an obituary or eulogy.

<sup>41</sup> *Id.* at 94. The Mecklenburg Declaration, proclaimed by Scotch-Irish Presbyterians of North Carolina May 20, 1775, declared independence from England more than a year before the Declaration of Independence of 1776. Much of the language is similar, and the Mecklenburg Declaration may have influenced the drafters of the Declaration of Independence. The chief drafter was Aurora Serena Elmore's ancestor, Ephraim Brevard [See Loraine Boettner, *The Reformed Doctrine of Predestination* 387, 388 (Philadelphia: Presbyterian & Reformed Publishing Co. 1972)].

<sup>42</sup> *Id.* at 96 (quoting a speech given by Samuel Goode Jones, October 4, 1886).

Sewanee, Tennessee, and he was buried in Sewanee. His wife Aurora died in 1912 and is buried beside him.<sup>43</sup>

Thomas Goode Jones was raised in this loving, refined, high-achieving, civic-minded, slave-owning family. This author believes people are responsible, moral agents, not simply products of their heredity and environment. Nevertheless, our heredity and environment do influence us. What really matters, however, is what we do with our heredity and environment. One might say our heredity and environment are the tools that are given us; what matters most is what we do with those tools. Thomas Goode Jones was blessed with some remarkable tools, a distinguished ancestry, and a good home. As our story unfolds, we will see what he did with them.

## WARRIOR

### “The Spirit of VMI!”

In the fall of 1860, at the age of fifteen, Thomas Goode Jones enrolled in Virginia Military Institute (VMI), Lexington, Virginia.<sup>44</sup> In July 2000, this author traveled to Lexington to research the VMI Archives, hoping to glimpse more of the mind of Thomas Goode Jones by learning what professors he studied under, what organizations he participated in, and what textbooks he read. While the Archives are excellent and the staff extremely helpful, its records are incomplete for the years 1861-65, since most of the students, faculty, and staff were away from the

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<sup>43</sup> *Id.* WB Jones quoted a poem, the author of which he did not identify, as appropriate to commemorate the passing of Samuel Goode Jones:

Again a prince has fallen in the fight -  
The val'rous champion of the truth and right;  
Determined, honest, level-headed, just,  
Who broke no promise nor betrayed a trust!  
His genial face with courtly kindness beamed -  
By friends beloved, by all mankind esteemed.  
Peace to his manly soul and sweetest rest  
With that glad throng whom love of God has blest!

<sup>44</sup> *Id.* at 97.

campus serving in the War, and Federal troops destroyed many of the records when they burned the Institute in June 1864.<sup>45</sup>

But the nature of VMI as an institution tells us much about the training he received. VMI was founded in 1839 as a Virginia complement to the United States Military Academy at West Point. After the War of 1812, an arsenal had been established at Lexington, but many citizens of the community were concerned about the immoral and uncouth behavior of the garrison at the arsenal. After lengthy discussion, the idea emerged of converting the arsenal into a military institute in which the cadets would “find their daily schedule so crowded with academic studies and military duties that they would be much less likely to affront the town’s mores.”<sup>46</sup> Lexington attorney John Thomas Lewis Preston, who later served as acting superintendent of VMI, developed the concept further in a series of articles in the *Lexington Gazette* and suggested the name Virginia Military Institute: Virginia because it was to be “a State Institution, neither sectional nor denominational;” Military, “indicating its characteristic feature;” and Institute, “something different from either a college or a university.”<sup>47</sup>

The initial rules of VMI were patterned after those of West Point, with some variations. They prohibited cadets from playing cards, dueling, and using tobacco or liquor, rules similar to those of many colleges of that era. The cadets and faculty wore uniforms, and there were frequent room inspections.<sup>48</sup> But while VMI was not affiliated with any specific denomination, the 1863 *Register of the Officers and Cadets of the Virginia Military Institute* makes it clear that it was far from an irreligious institution:

The government of the Virginia Military Institute,  
although military in its organization, is carefully

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<sup>45</sup> Interview with Lt. Colonel Diane Jacob, VMI Archivist, Lexington, VA (July 2000); See also Richard M. McMurry, *Virginia Military Institute Alumni in the Civil War: In Bello Praesidium* 52, 70 (Lynchburg, VA: H.E. Howard 1999) [hereinafter McMurry, *VMI Alumni in the Civil War*].

<sup>46</sup> McMurry, *VMI Alumni in the Civil War* at 4.

<sup>47</sup> *Id.* at 4-5 (quoting John Thomas Lewis Preston).

<sup>48</sup> *Id.* at 6.

arranged for the protection and development of the moral character of the cadets. Attendance on the public services of the sanctuary and regular Bible instruction on the Sabbath are positively enjoined by the regulations.<sup>49</sup>

This view of the need for moral training was based on a theological understanding of original sin and human depravity. As Major General Frances H. Smith, Superintendent of VMI from 1840 to 1866 and Professor of Mathematics and Moral Philosophy, wrote in his report to the Board of Visitors in June 1859:

There is no part of the duty of the Superintendent which weighs so heavily upon his mind and heart as that connected with the control and government of the moral conduct of those committed to his charge. No general idea of the wayward and depraved character of the human heart is at all equal to that which experience of the follies and vices of young men makes known to the conscientious teacher.<sup>50</sup>

Despite his view of human depravity, General Smith had hope that good character could be formed through discipline, religious, and moral training. Quoting the Head-Master of Rugby School in his introductory remarks in the *Register*, he wrote:

Ignorance, absence of temptation, the presence of all good impressions, constitute of the innocence of mere childhood -- so beautiful while it lasts -- so sure to be blighted. It is blighted in the first experience of life, most commonly when a boy

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<sup>49</sup> *Register of the Officers and Cadets of the Virginia Military Institute Livingston, VA., July, 1863* 5 (Richmond: McFarlane & Fergusson 1863) [hereinafter *Register*].

<sup>50</sup> *Id.* (quoting Major General and Superintendent Francis H. Smith, Report of the Superintendent to the Board of Visitors, June 1859).

first goes to school. Then his mere innocence, which, indeed, he may be said to have worn rather instinctively than from choice, becomes grievously polluted. It is indeed a discouraging season -- the exact image of the ungenial [sic] springs of our natural year. But after this, there comes, as it were, a second beginning of life, when principle takes the place of innocence; when thought and inquiry awaken; when, out of the mere chaos of boyhood, the elements of the future character of the man begin to appear. Blessed are they for whom the confusion and disarray of their boyish life is quickened into a true life by the moving of the Spirit of God! Blessed are they for whom the beginnings of thought and inquiry are the beginnings also of faith and love, when the new character receives, as it is forming, the Christian seed, and the man is also a Christian. And then, this second beginning of life, resting on faith and conscious principle, and not on mere passive innocence, stands sure for the middle and the end.<sup>51</sup>

In keeping with this philosophy, the cadets followed a strict regimen six days a week. The day began with the firing of the cannon at sunrise followed by breakfast, guard mount, morning classes, drill, dinner, afternoon classes, military activities, supper, and studying in the evening until 10:00 p.m. The cadets lived four to six in a room with sparse but neat and clean furnishings and followed strict regulations, violations of which resulted in demerits, cadet-run honor courts, and possible dismissal.<sup>52</sup>

Academic work the first year consisted of Algebra, Geometry, Trigonometry, Geography, French, Latin, and English Studies with Composition and Declamation. The second year saw Analytical Geometry, Descriptive Geometry, Shades,

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<sup>51</sup> *Id.* at 7.

<sup>52</sup> McMurry, *supra* n. 45, at 11-13.

Shadows and Perspective, Surveying, Differential and Integral Calculus, French, Latin, Drawing, Declamation and Composition. Third year cadets studied Natural Philosophy, Chemistry, Latin, Drawing, and Rhetorical Exercises. Fourth year cadets completed their studies with Geology & Mineralogy, Agricultural Chemistry, Military Engineering, Civil Engineering, Rhetoric, Logic, Mental Philosophy, Moral Philosophy, History, Constitution of the United States, Infantry Tactics, and Artillery.<sup>53</sup>

After six days of academic rigor and military discipline, Sundays were devoted to religious worship and study:

Since the purpose of education included the development of the students, "moral character and virtue," Institute regulations mandated "duties appropriate for the Sabbath, including attendance at Divine service." Responsibility for implementing this regulation fell upon [General and Superintendent] Smith, and he decreed that all cadets would attend weekly Bible classes unless an individual cadet's parents requested that he be excused. Smith and Preston conducted those classes. The Superintendent followed up on the requirement by presenting to each cadet at his graduation a Bible that had been inscribed with verses that Smith regarded as especially appropriate for the individual graduate.

Since the regulations stated that church attendance "shall be imperative," VMI required the cadets to attend Sunday services in Lexington's churches unless their parents requested that they be excused, they belonged to a denomination that did not hold services in the town, or the weather was bad. By the time the Institute opened, four sects were active in Lexington. Smith set up a rotating schedule whereby the Corps worshipped with the

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<sup>53</sup> *Register*, *supra* n. 49, at 24.

Baptists on the first Sunday of the month, the Episcopalians on the second, the Presbyterians on the third, and the Methodists on the fourth. In months with a fifth Sunday, the cadets' place of worship on the last weekend was determined by lot.

Still later, when the Corps had become too large to attend one church, the companies went to different houses of worship. Each company, however, rotated from church to church so that it attended all four in successive weeks. When the month had a fifth Sunday, the company commander selected the church his company would attend that day. For a part of the time prior to the Civil War, Smith required the cadets to attend both morning and evening services. The Superintendent also required his faculty to worship at one of the churches attended by the cadets.<sup>54</sup>

The faith engendered by the Institute appears to have taken root with many. In 1863, General Smith wrote that VMI had graduated 330 cadets since its founding, and of these, "*not one graduate (exclusive of the first graduating class, of which I cannot speak positively) has ever left the Institution, who was not, at the time of graduation, thoroughly convinced of the Divine Character of our Holy Religion.*"<sup>55</sup>

This author's interaction with VMI alumni and staff during his twenty-three years of experience as an Air Force officer and thereafter, has convinced him that to a large extent the Institute still adheres to the values of its founders. On the altar of VMI's chapel is a Celtic Cross; behind it is a large mural battlefield scene in which columns of young men in gray uniforms are charging into a fierce battle. The artist was Benjamin West Clinedinst, and the mural is titled "Charge of the

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<sup>54</sup> McMurry, *supra* n. 45, at 13-14.

<sup>55</sup> *Register*, *supra* n. 49, at 8 (quoting Smith). It is noted that General Smith had been recommended for the Superintendent position by George Baxter, President of Union Theological Seminary.

New Market VMI Cadets.” It depicts the Battle of New Market, in the Shenandoah Valley of Virginia, May 15, 1864, in which 257 VMI cadets, some as young as fifteen or sixteen, executed a daring charge into Federal lines that turned the battle into a Confederate victory.<sup>56</sup> As a 1997 VMI publication, *The Institute*, observes:

In a relativistic world, life at VMI is still run according to absolutes. From the moment he arrives, the new VMI man feels a distance growing between himself and his old life and friends. They have hair and he does not. They wear the clothes they want to wear; he wears a uniform. They organize their lives according to their own needs; his day is so rigorously scheduled that he marches to meals. To them, right and wrong are different shades of the same color -- gray -- while he lives according to the inflexible standards of the Honor Code. There is nothing like a drum out [dismissal for Honor Code violation] to make a VMI man aware of the difference between his world and the one he's left behind.<sup>57</sup>

As Thomas Goode Jones journeyed to VMI in the fall of 1860, the South was moving toward secession and the nation was moving toward war. And the War Between the States would cut short his academic career. Even while he was a cadet at VMI, he and other cadets were ordered by Virginia's Governor to help with war preparations. Jones served in Richmond as drillmaster of recruits for a Virginia regiment, under the direction of then-Major Thomas H. “Stonewall” Jackson who was a Professor at

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<sup>56</sup> William C. Davis, *The Day at Newmarket* (Historical Times, Inc. 1971) (enlarged and republished as *Battle of Newmarket* 1979, available at VMI Museum Bookstore). This author personally observed the Celtic Cross and mural painting during his visit to VMI, July 2000.

<sup>57</sup> Geoffrey Norman & Anthony Edgeworth, *The Institute: Virginia Military Institute* 75 (New Canaan, CT: VMI Foundation, Commonplace Books, Edgeworth Editions 1997).



VMI. Unlike West Point, where the cadets were from all across the nation and were deeply divided between Union and Secessionist positions, the VMI student body came mostly from the South. McMurry says “[t]he overwhelming majority of the Corps was pro-secession in its sentiments, many extremely so;” and “[m]any of the faculty, including Superintendent Smith, seem to have shared those feelings.”<sup>58</sup>

By the summer of 1861, it was apparent that most of the cadets would be going to war. Superintendent Smith proposed to organize the cadets and faculty as an infantry battalion, which he would command. The cadet corps opposed the idea, preferring instead to join regular regiments and hoping to receive commissions therein as officers. Most of the cadets were from Virginia and joined Virginia regiments, but most of the out-of-state cadets joined regiments in their own respective states, including a few from Union states. As a result, McMurry says, the VMI cadets had a greater influence on the entire Confederate Army than they would ever have had as a separate VMI regiment.<sup>59</sup>

On December 12, 1861, the VMI Board of Visitors declared the Class of 1862 and some others including Thomas Goode Jones “war graduates” and in effect awarded them honorary degrees without requiring them to return.<sup>60</sup> Thus did Thomas Goode Jones’s academic career come to a close; thus did a new chapter of his life begin.

The early months of Thomas’s military career are difficult to trace. During part of 1861, he served under Stonewall Jackson training recruits in Richmond. Later in the year, he apparently returned home to join an Alabama regiment, but because of his youth, his father wanted him to return to VMI. On June 28, 1861, Samuel Goode Jones wrote to Superintendent Smith:

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<sup>58</sup> McMurry, *supra* n. 45, at 35, 37; See also WB Jones, *Burgwin-Jones*, *supra* n. 1, at 97.

<sup>59</sup> McMurry, *VMI Alumni in the Civil War* at 41.

<sup>60</sup> *Id.* at 39; See also WB Jones, *Burgwin-Jones* at 97.

Dear Sir:

Thomas availed himself of the permission extended to Cadets from other states than [VA] to resign his appointment at Lexington and has been at home some time. I am highly gratified at this improvement resul[ting] from his connection with the Institute & desire that he should renew it as early as practical and write to ascertain when he may return. I regret his leaving the Institute at all, and have tried to impress him with the truth that it is as important & as much the duty of a soldier to keep garrison as to undergo the more active and stirring labors of the field.

He seems very anxious to return and I was very glad to learn through my Brother that he may be permitted to do so.

Very respectfully,  
Samuel G. Jones<sup>61</sup>

Apparently Thomas did return to VMI in late 1861 or early 1862 to receive his honorary diploma. But on April 23, 1862, he wrote to the Superintendent:

Virginia Military Institute  
Lexington, [VA] April 23 1862  
(inside address deleted)

Sir:

Enclosed I have the honor to tender my resignation as a Cadet of the [VA] Military Institute which I have agreeably held for nearly two years. You will also find a letter from my Father giving me permission.

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<sup>61</sup> Letter from Samuel Goode Jones to Superintendent Smith (June 28, 1861) (on file with VMI Archives).

It has been my intention to resign since February, and my present intention is therefore no hasty conclusion derived from ill-conceived opinions.

The State of Alabama has the first right to my services, and should the "Corps of Cadets" be called into service, I would prefer to enter it with men from my State and County.

The state of affairs in the Country, the consequent excitement, and some what disorganized condition of the Institute, render it impossible for me to prosecute my studies with credit to myself or justice to the Institute, and consequently a longer stay would be a waste of "time and money." One of these contingencies must happen; the Institute must be carried on or disbanded; and in either case I would prefer to go on to service from my own state than to remain at the Institute.

I am, General, with great respect,  
Yours obediently,  
Thos. G. Jones  
Cadet from Montgomery, Alabama<sup>62</sup>

Three months later he wrote to Supt. Smith again:

Dear Sir:

I write to ask you for your recommendation as to my standing and capacity at the Institute. I wish to get a Cadetship in the Army, and I think your recommendation would have the desired effect. I could have gotten a

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<sup>62</sup> Letter from Thomas Goode Jones to Superintendent Smith (April 23, 1862) (on file with VMI Archives).

position in the Volunteer Army but Father thinks the Confederate Cadets would be ordered to Lexington to complete their education as this is the only position he was willing for me to accept.

I remain your friend and pupil,  
Thos. G. Jones

Please direct your answer Care S.G. Jones  
Montgomery Ala.<sup>63</sup>

His desire to return to Alabama does not appear motivated by any ill will toward VMI. Years later, in 1889, he wrote to General Joseph R. Anderson of Richmond:

Dear Sir:

Thanks for circular. I am coming if possible. All our courts are in session at that time, and [it] is impossible to know this far in advance whether I can get off.

I have not set eyes on the grounds since I left there in May 1862 My last interview as a cadet with "Old Specs," [an apparent reference to Supt. Smith] was at the old Superintendent's office, and that venerable old gentleman told me I was a "fool" to think of entering the army -- that there would be plenty of time after I graduated. He was a true prophet, but I did not believe him then. I was afraid the war would be over before I could get a chance. I often think over my cadet days, and of the noble fellows who were with me there, who have long since answered their last roll call. I shall write a short paragraph in our papers

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<sup>63</sup> Letter from Thomas Goode Jones to Superintendent Smith (July 19, 1862) (on file with VMI Archives).

here to catch the eyes of any straggling cadets whom you may not reach in this state.

In haste, yours very truly  
Thos. G. Jones<sup>64</sup>

On at least one occasion, Thomas Goode Jones was severely upbraided by his superiors, and this time by none other than Professor "Stonewall" Jackson. Walter Burgwyn Jones relates the story:

Jackson was a rather stern disciplinarian. Jones had been at the institute for two or three years, and had come to be a sergeant of cadets. He had one day to drill an awkward squad, and lost his temper in his work, whereupon he made the boys "double quick" around a tree. He had them "going it hard" when suddenly he heard from behind him the short, sharp command: "Double-quick there!" "Double-quick," repeated the wrathful future Governor of Alabama.

"No; you, sir! You, sir! Halt!"

Jones looked behind him, and there stood "Old Jack," as Jackson was called by the boys.

"You, sir! You double-quick yourself!"

Jones looked at his superior officer in amazement. "Double-quick!" was the stern command, and instantly Sergeant Jones was trotting around the tree at a great rate, hot, thoroughly indignant and furiously angry. His awkward squad looked on with delighted approval.

Within an hour Jones had sent in his resignation. In answer he received an invitation to supper at Jackson's home. He declined. Then came an order

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<sup>64</sup> Letter from Thomas Goode Jones to General Joseph R. Anderson (April 29, 1889) (on file with VMI Archives). The occasion appears to have been a VMI reunion. VMI Archivist, Lt. Col. Diane Jacob, confirms that a reunion did occur in 1889, but the Archives do not disclose what graduates attended.

for him to report to Jackson instantly. That order was obeyed. After some talk, Jones said: "But, Sir, you humiliated me before my men!"

"You lost your temper," said Jackson calmly, "and, besides, you forget you are not an officer at all." That ended the trouble, and now nobody more reverences the memory of "Old Jack" than Governor Jones.<sup>65</sup>

That was a humiliating lesson, to be sure. But perhaps Stonewall Jackson helped Thomas Goode Jones develop the "coolness" in adversity that was to serve him so well in the trials and battles that lay ahead.

### **"Ye Cavaliers of Dixie"**

After leaving Virginia Military Institute in May 1862, Thomas Goode Jones served the Confederacy until the close of the war in 1865. In 1894, he summarized his military career in a letter to General Scott Shipp:

Dear General:

Your favor of recent date. Being of tender years when the corps disbanded in 1861, my Father returned me to the Institute, and I accompanied the corps in the campaign of McDowell, and when it was disbanded at Stony-Point in 1862, I returned home and enlisted in a company of partisan rangers commanded by Felder. I became 1<sup>st</sup> Sergeant and afterwards Lieutenant. Was wounded in the fight at Thompson station and in the fall of 1862, was appointed 1<sup>st</sup> Lt. and Aide de Camp of Brig. Gen.

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<sup>65</sup> Walter Burgwyn Jones, Address, *Anecdotes About Governor Thomas G. Jones of Alabama* (Alabama Polytechnic Institute, Auburn, AL, May 25, 1956) (printed in *In Memoriam: Thomas Goode Jones 1844-1914; Georgena Bird Jones 1846-1921* 11-12 (Montgomery, AL: Thomas Goode Jones Camp. Sons of Confederate Veterans 1956) [hereinafter *In Memoriam*]).

Jno. B. Grodon, of Early's Division, 2nd corps A.N.V. [Army of Northern Virginia]. When Gordon was promoted to Major General, I became Captain and afterwards, under the new staff law of Congress Lt. Colonel though never commissioned to that rank, Major being the highest rank held on the Staff. I participated with my Command in all the engagements until the end, including the last charge at Appomattox. Was wounded at the second battle of Kernstown and Hares-Hill. Was complimented for gallantry at Bristow and Hares-Hill, or Ft. Steadman as the other side called it.

Very truly,  
Thos. B. Jones<sup>66</sup>

Jones' meteoric rise to the rank of major was remarkable even for that era, considering he was only twenty years old when the war ended. Even more remarkable, though, were some of his deeds during the war. As First Sergeant of Company K of the 53<sup>rd</sup> Alabama Partisan Rangers, Sgt. Jones caught the attention of Thomas Hill Watts, then Attorney General of the Confederacy. Watts recommended him to General John B. Gordon of the Army of Northern Virginia, and he became a 1<sup>st</sup> Lieutenant on Gen. Gordon's staff. According to Dr. Malcolm Cook McMillan, Research Professor of History at Auburn University:

He participated in all the campaigns of the Army of Northern Virginia after Fredericksburg. Six times wounded in battle, he was cited for conspicuous bravery at the battles of Cedar Creek

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<sup>66</sup> Letter from Thomas Goode Jones to Gen. Scott Shipp (November 14, 1894) (on file with VMI Archives). A few days before the war ended, Jones was selected for promotion to Lt. Colonel. The promotion was approved by the Department of the Army and was on President Jefferson Davis' desk awaiting signature when the surrender took place at Appomattox.

and Bristoe's Station and, although only eighteen years old, was promoted to major.<sup>67</sup>

General Gordon wrote of Thomas Goode Jones, "I think I may truthfully say without one [undecipherable word] of exaggeration, that if the bare facts connected with his services in the Confederate Army were written out, it would furnish as thrilling a romance as one ever read."<sup>68</sup> In his book *Reminiscences of the Civil War*, General Gordon recorded an amazing incident of courage and resourcefulness:

After the battle of Sharpsburg, there was sent to me as an aide on my staff a very young soldier, a mere stripling. He was at that awkward, gawky age through which all boys seem to pass. He bore a letter, however, from the Hon. Thomas Watts, of Alabama, who was the Attorney General of the Confederate states, and who assured me that this lad had in him all the essentials of a true soldier. It was not long before I found that Mr. Watts had not mistaken the mettle of his young friend, Thomas G. Jones. Late one evening, near sunset, I directed Jones to carry a message from me to General Lee or to my immediate superior. The route was through pine thickets and along dim roads or paths not easily followed. The Union pickets were posted at certain points in these dense woods; but Jones felt sure that he could go through safely. Alone on horseback he started on his hazardous ride. Darkness overtook him before he had emerged from the pine thicket, and he rode into a body of Union pickets, supposing them to be Confederates. There were six men on that post.

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<sup>67</sup> Malcolm Cook McMillan, A.B., M.A., Ph.D., Address, *Thomas Goode Jones 1844-1914: Warrior, Statesman, and Jurist* (Alabama Polytechnic Institute, Auburn, Alabama) (printed in *In Memoriam*, *supra* n. 65, at 46).

<sup>68</sup> Email from Lt. Colonel Diane Jacob, VMI Archivist, to John Eidsmoe (June 15, 2001). Information obtained from handwritten notes of VMI Historiographer Joseph Reed Anderson, Jr. (1908-1910), 6 (VMI Archives).



They seized the bridle of Jones's horse, leveled their rifles at him, and ordered him to dismount. As there was no alternative, one can imagine that Jones was not slow in obeying the order. His captors were evidently new recruits, for they neglected to deprive him of his six-shooter at his belt. Jones even then had in him the oratorical power which afterward won for him distinction at the bar and helped to make him governor of the great State of Alabama. He soon engaged his captors in the liveliest conversation, telling them anecdotes and deeply enlisting their interest in his stories. The night was cold, and before daylight, Jones adroitly proposed to the "boys" that they should make a fire, as there was no reason for shivering in the cold with plenty of pine sticks around them. The suggestion was at once accepted, and Jones began to gather sticks. The men, unwilling for him to do all the work, laid down their guns and began to share in this labor. Jones saw his opportunity, and burning with mortification at his failure to carry through my message, he leaped to the pile of guns, drew his revolver, and said to the men: "I can kill every one of you before you can get to me. Fall into line. I will put a bullet through the first man who moves toward me!" He delivered those six prisoners to my headquarters.<sup>69</sup>

Gen. Gordon described another incident of bravery at Hare's Hill (Fort Steadman):

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<sup>69</sup> Major General John B. Gordon, *Reminiscences of the Civil War* 112 [hereinafter Gordon, *Reminiscences*]; quoted by WB Jones, *Anecdotes About Governor Thomas G. Jones of Alabama*, *supra* n. 65; reprinted in *In Memoriam*, *supra* n. 65, at 13. Note that Anderson's notes say nine Federal prisoners while Gen. Gordon says six. Since Gen. Gordon had first-hand information, this writer believes his account is more reliable.

*When the retreat to our own works had ended, a report reached me that an entire Confederate regiment had not received the order to withdraw, and was still standing in the Union breastworks, bravely fighting. It was necessary to send them orders or leave them to their fate. I called my staff around me, and explained the situation and the extreme danger the officer would encounter in carrying that order. I stated to them that the pain I experienced in sending one of them on so perilous a mission was greater than I could express. Every one of them quickly volunteered to go; but Thomas G. Jones of Alabama insisted that as he was the youngest and had no special responsibilities, it should fall to his lot to incur the danger. I bade him good-bye with earnest prayers that God would protect him, and without an apparent tremor he rode away. A portion of the trip was through a literal furnace of fire, but he passed through it, both going and returning, without a scratch.<sup>70</sup>*

Gen. Gordon described another, slightly lighter incident in which he impressed upon his young officer a principle of horsemanship:

*When the daring charge of the North Carolina brigade had temporarily checked that portion of the Federal forces struck by it, and while my brigades in the rear were being placed in position, I rode with Thomas G. Jones, the youngest member of my staff, into the intervening woods, in order, if possible, to locate Hancock more definitely. Sitting on my horse near the line of the North Carolina brigade, I was endeavoring to get a view of the Union lines, through the woods and through the gradually lifting mists. It was*

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<sup>70</sup> Gordon, *Reminiscences* at 412; quoted by WB Jones, *Anecdotes About Governor Thomas G. Jones of Alabama*, printed in *In Memoriam*, *supra* n. 65, at 14.

impossible, however, to see those lines; but, as stated, the direction from which they sent their bullets soon informed us that they were still moving and had already gone beyond our right. One of those bullets passed through my coat from side to side, just grazing my back. Jones, who was close to me, and sitting on his horse in a not very erect posture, anxiously inquired: "General, didn't that ball hit you?" "No," I said; "but suppose my back had been in a bow like yours? Don't you see that the bullet would have gone straight through my spine? Sit up or you'll be killed." The sudden jerk with which he straightened himself, and the duration of the impression made, showed that this ocular demonstration of the necessity for a soldier to sit upright on his horse had been more effective than all the ordinary lessons that could have been given. It is but simply justice to say of this immature boy that even then his courage, his coolness in the presence of danger, and his strong moral and mental characteristics gave promise of his brilliant future.<sup>71</sup>

This author has located only one letter written by Thomas Goode Jones from the actual battlefield. This letter to his father, written while Thomas was nineteen years old, shows good writing skill as well as remarkable powers of observation and analysis:

Camp near New Market, [VA].  
21st Oct. 1864

My dear Father:

As it may interest you, I will give you a brief but accurate description of the plan of action

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<sup>71</sup> Gordon, *Reminiscences* at 277; quoted by WB Jones, *Anecdotes about Governor Thomas Goode Jones of Alabama*; printed in *In Memoriam*, *supra* n. 65, at 13-14.

and the battle of the 19th of Oct. Day before yesterday dawned brightly for the Confederacy, but its declining rays shone on dark disaster which is all the more humiliating because it was caused by the sluggish, timid and do-nothing policy which characterizes some of our commanders.

At 10 o'clock on the morning of the 19th of Oct., our army had gained a most glorious victory. At 6 o'clock in the evening it was routed and driven back. The fiendish policy pursued by the enemy in destroying all the grain and forage in this valley had left the country in our rear, so destitute of forage that our army was compelled to advance or fall back. The Commanding General of this Army resolved on the former alternative, and the Army was accordingly ordered to be ready to move.

Gen'l. Early proposed to move on the enemy's right. A Cavalry raid of Gen'l Rossers had made Sheridan uneasy about his right, and he had accordingly moved up his splendid Cavalry to this point. The plan was liable to another objection. Operations from that point, even if successful would not have given us possession of the Pike in time to effect the capture of the enemy's immense train or to keep them from retreating on it -- their most direct route to Winchester.

Maj. Gen'l. Gordon suggested another plan. The arguments in favor of this plan were so pointed, and so well expressed, that Gen'l. Early adopted it. The plan of battle was to attack the enemy's left flank at Daybreak, with a large force of infantry, a charge of Cavalry into their camps, followed up by the infantry with great vigor, thus taking possession of the Pike near Middleton and

compelling the enemy to retreat or take to the woods and fields on the West side of the Pike. Gen'l. Gordon was so positive of success that I am told that he told Gen'l. E. he would bear all the blame in case of a failure resulting from the adoption of his plan. The plan, when was matured was as follows -- Three Divisions of Infantry (Gordon's, Ramseur's, Pegram's) and one brigade of Cavalry, Lomax's commanded by Col. Paine, all under command of Maj. Gen'l. Gordon, were to move by a circuitous route and at Daybreak, pounce upon the enemy's left flank. Maj. Gen'l. Kershaw was to attack the enemy's works in front while the gallant Rosser was to move on the enemy's right -- and strike whatever blow he could. The troops moved out of Camp at dark marched all night and a little before daybreak arrived at their appointed position in readiness to commence the attack. At daybreak Rosser's guns were heard on our left. Then a heavy roll of Musketry and loud yell proclaimed how well Kershaw had done his part of the work. Col. Payne, command[ing] Lomax's Brigade, having dashed upon the enemy's pickets, drove them across the river and made a dash for the Pike, capturing waggons [sic], ambulances, and ordinance. A picked squadron dashed up to Sheridan's [Headquarters] and came near capturing him, his horse, his carriage, a great many of his official papers, show how nearly the enterprise came to succeeding. Gordon pushed on after Paine rapidly, crossed the Shennendoah and soon had his foremost Division (his old Div. commanded by Brig. Gen'l. C.A. Evans of Ga.) in line and advancing on the enemy's left. Ramseur was quickly moved forward and his gallant Div. with its accustomed vigor soon drove everything before it. Gen'l. Pegram's Division which was the

rear of the column was also rapidly pushed forward but did not meet much resistance.

Kershaw had captured 6 pieces of Artillery. Gordon's Corps had captured 18 pieces more. The enemy's Camps, their tents and waggons [sic], artillery breast works, everything was in our possession. The enemy unled and unshattered thought only of covering their retreat. For this purpose, the 6th Army Corps which had been only partially engaged was ordered to cover the retreat of the enemy by Sheridan. Our troops still continued to advance. Rosser kept their splendid Cavalry engaged with him, and all that remained to complete the total annihilation of that Army was the destruction of this Corps. For this purpose, Gordon still in actual command (Gen'l. Early not yet having crossed the Creek) ordered three Divisions of Infantry and 39 pieces of Artillery to move rapidly down the Pike, mass on the enemy's left, and by one grand charge, sweep the 6th Corps to four winds. Who could doubt the result? Gen'l. Early at this time appeared on the field and Gen'l. Gordon of course took command of his Division again.

Gen'l. Early in joyous extasy [sic], gave no orders -- did nothing, allowed precious moments to slip thru his grasp. The shattered troops of the enemy halted, their splendid Cavalry, the best in the world was brought, and our Army was still halted. Gen'l. Early seemed to be unable to make up his mind what to do. Nothing was done on either side save a little artillery firing for about an hour. At this time, the enemy having completed his preparations, charged on our extreme left. His line was heavier than ours and overlapped it. Our line had to fall back but it halted for half an hour behind a fence and others behind whatever shelter

they could find. Artillery was sent to their assistance but it was too late. Our line continued to fall back. The falling back became a rout, the rout a stampede. Our troops falling back to Fishers Hill in squads. The train of ordinance and medical wagons came back down the Pike which was already blocked up, capturing 30 or more pieces of Artillery, most of our ambulances, and a good many wagons. Gen'l Ramseur who was wounded and placed in an ambulance was captured on the Pike. The Army was collected at Fishers Hill and at two o'clock in the morning commenced moving to this place. Fishers Hill though a strong position when attacked in front, was liable to be flanked. The line was too long for our small army.

Gen'l. Early would perhaps have remained but for the loss of most of his Artillery, the want of which would have rendered him powerless in case of attack. The enemy's loss was very heavy. They were surprised in camp and slaughtered terribly. It has been my fortune to be on many of battle fields of the war but never have I observed one on which the dead were strewn at every step. The enemy did not pursue us as closely as we did them. They lost full 500 men, killed, the usual proportion of 5 wounded to one killed would give 2500 wounded. This added to our 2000 prisoners would give 5000 as their loss. I think this is an under estimate.

The Yankee Major Gen'l. Wright commanding the 6th Army Corps was wounded. This general you will remember succeeded Sedgwick who was killed at Spottsylvania Ct. H. The only casualties in general officers are Gen'l. Ramseur wounded and captured and Brig. Gen'l. Battle of Alabama. Gen'l. Ramseur it was feared

was mortally wounded but hopes are entertained for his recovery. Our loss in killed and wounded was miraculously slight, in fact the only loss we had to speak of was in falling back. 1500 will cover our whole loss.

Your aff son  
Thos. G. Jones<sup>72</sup>

By 1864, the tide of battle had clearly shifted to the Union side. Out-manned by the Union forces three to one (seven to one by the time of Appomattox) and behind the North in steel production, railroad tracks, and practically every other aspect of the war except horses and fighting spirit, the South was becoming convinced that its cause was nearly hopeless. Having been promoted to Major at the remarkable age of eighteen, Jones was selected at age twenty for promotion to Lt. Colonel, and the Commander of the Army had endorsed the promotion. But on April 9, 1865, while the promotion order lay on the President's desk awaiting the signature of Jefferson Davis, Major Jones rode out from Gen. Gordon's lines carrying a white flag of truce and surrender to General Grant.<sup>73</sup>

But the night before the surrender, the Confederate generals held their last council of war and decided to mount one last desperate offensive the following morning, hoping to cut through General Grant's lines. At dawn General Fitz Lee's cavalry swept around the Union left flank, and General Gordon's infantry attacked the front, backed by General Longstreet's artillery. Spearheading General Gordon's charge was a hand picked cadre of 400 soldiers led by Major Thomas Goode Jones. As Walter Burgwyn Jones says, "[i]t was these immortal 400

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<sup>72</sup> Letter from Thomas Goode Jones to Samuel Goode Jones (October 21, 1864) (on file with Alabama State Archives). Most of the spelling, punctuation and capitalization have been left as they appear in the original letter.

<sup>73</sup> John Witherspoon DuBose, *A Historian's Tribute to Thomas Goode Jones* at 9; reprinted from XIV:1 Ala. Law. (January 1953).



men, foot-sore and starving, who made the Last Charge of the Army of Northern Virginia.”<sup>74</sup>

Years later Colonel W. Gordon McCabe of Richmond wrote to Mrs. Thomas Goode Jones:

In the “Army of Northern Virginia” he [Jones] was our beau ideal of the daring and skillful young soldier, who, in homely phrase, “would go anywhere and do anything.” As you know, in the last eventful and tragic days, when Lee made his desperate attempt to break through Grant’s line of fortification (pronounced “impregnable” by the Federal engineer) in front of Petersburg, March 25, 1865 [Col. McCabe appears to be mistaken on the date; it was April 9, 1865], Tom Jones led the “forlorn hope” of Gordon’s immortal three hundred [other sources say four hundred], and these amazing veterans of confirmed hardihood (all picked men, from an array where all were brave), led by this dauntless stripling, did storm and carry those frowning bastions pronounced impregnable, and, had the “supports” arrived on time, as had been ordered, “history” might have read differently today. Fighting there was in plenty, that morning, where my own guns were, but ours was mere child’s play compared to the desperate assault delivered with such amazing valor by the “forlorn hope” led by “little Tom Jones,” as we fondly and admiringly called him. How well I remember to this day how the whole of that veteran army run with his praises, when we fully understood the last day what this devoted little handful, greatly daring, had so greatly done. It seemed mere madness, but it was not. It was the daring of wisdom and not the rashness of ignoble

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<sup>74</sup> WB Jones, *Last Charge of the Army of Northern Virginia*, The United Daughters of the Confederacy Magazine 18, 45 (April 1962).

despair, and so, now, the best military critics hold it.<sup>75</sup>

General Gordon's 2,000 infantry and Major Jones' advance force of 400 managed to drive back General Sheridan's forces, but Sheridan then fell back upon General Ord's supporting force of 30,000 infantry. The Southern command recognized that a strike against Ord's infantry would be hopeless and would produce needless carnage on both sides, so they fell back to the Appomattox courthouse. In the deathless prose of which he was later capable, Jones portrayed the last chare of the Confederacy and its significance for both nations:

As the sun drove away that Sunday morning mist, it looked down upon a scene that will forever thrill Southern hearts. In a steady line, sustained on the left by artillery, which flamed forth at every step, with cavalry charging fiercely on the right, the Confederate line of battle, scarlet almost from the array of battle flags floating over it, went forth to death, driving before it masses of blue cavalry and artillery. Spring was just budding forth, and the morning sun, glistening from budding leaf and tree, shed a halo around the red battle flags with the starry cross, as if nature would smile on the nation that was dying there.<sup>76</sup>

So the Confederate forces returned to General Lee with the grim news that they had been unable to break through the Federal forces. At that point, General Lee determined that further resistance was hopeless, and he sent several officers with flags of truce to various points in the Union lines. Major Thomas Goode Jones carried the flag that reached General Chamberlain, and through him reached General Grant.

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<sup>75</sup> Letter from Colonel W. Gordon McCabe to Mrs. Thomas Goode Jones (May 3, 1914) (on file with VMI Archives and State of Alabama Archives).

<sup>76</sup> George R. Farnum, *Thomas Goode Jones: Warrior, Jurist and Apostle of Unity*, 29 ABA J. 719 (December 1943).

In 1902, William Shore of Pittsburgh, PA, wrote to Thomas Goode Jones. As Sergeant-Major of the 155th Pennsylvania Volunteers, he was the first Union soldier to meet the officer carrying the flag of truce. Having just learned of Jones' appointment to a federal judgeship, he wondered if Jones had been that officer.<sup>77</sup> On April 14, 1902, Jones replied in part:

My Dear Sir:

Your letter of April 7<sup>th</sup> revives some very interesting memories, and I reply at the earliest opportunity.

When the war ended at Appomattox, I was an officer on the staff of Major-General John B. Gordon, who then commanded the Second Corps of the army of Northern Virginia, and parts of Anderson's corps. General Gordon was selected to command the troops which attempted to cut out about daybreak on April 9th, and I was with him in that charge. As you will remember, we drove the cavalry some distance; when, coming upon General Ord's forces, we retired, without attempting to break through, then being closely pushed by the infantry. When General Gordon ascertained that General Ord's command was in front of him, he gave up all hope of cutting through, and as he had been directed in that event, by General Lee, with whom he was in communication by messenger and courier, sent in flags of truce at several points on the line of our front. As the emergency was very pressing and your people were about to swoop down upon us, it was all important to stop hostilities at once, and General Gordon directed flags to be carried to several points along the line which was advancing

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<sup>77</sup> Letter from William Shore to Thomas Goode Jones (April 4, 1902) (on file with VMI Archives).

on us. I was then not quite twenty-one years old, and was mounted on a good-looking bay horse, and was in full dress, having put on our best uniforms for fear they would be captured with the wagons. We all expected the worst and wished to be dressed as decently as possible. I rode in on the right of Appomattox Court House, coming from the direction of our lines. Some of your skirmishers opened fire on me at first, but they stopped as soon as they perceived my flag of truce, which was a large, white napkin in which some ladies had wrapped some snack for me the day before, the napkin being all that remained in my haversack. I have always had a vague recollection that the officer I met was an artilleryman, and it may be you were the man who told me where to go. I think the first general officer I was carried to was General Chamberlain, of Maine, who was a Division Commander, and if I am not mistaken, he carried me to General Griffin. I remember distinctly having some talk with a General Forsythe, who, if I remember correctly, was a cavalry General. General Sheridan was near by. I think he or some of his staff rode out into a part of the field where I was, and said something about having another flag of truce and that "we seemed anxious to stop" and so on. From this point I was sent with a Union officer to some Confederates, who did not understand the situation, and were trying to move off and were occasionally firing. After this, I went back into the Confederate lines to where General Lee was sitting on the road about a mile from Appomattox Court House on some rails near an apple orchard, waiting to hear from General Grant. It would give me great pleasure to meet you should chance ever bring you to Alabama, and I will hunt you up if I ever come to Pittsburgh.

Yours very truly,  
Thos. G. Jones<sup>78</sup>

On October 7, 1903, Union Brevet Major-General Joshua L. Chamberlain presented a paper at Appomattox in which he described the battle and the flag of truce from the opposite viewpoint:

Suddenly rose to sight another form, close in our own front -- a soldierly young figure, handsomely dressed and mounted, -- a Confederate staff-officer undoubtedly, to whom some of my advanced line seemed to be pointing my position. Now I see the white flag earnestly borne, and its possible purport sweeps before my inner vision like a wraith of morning mist. He comes steadily on, -- the mysterious form in gray, my mood so whimsically sensitive that I could even smile at the material of the flag, -- wondering where in either army was found a towel, and one so white. But it bore a mighty message, -- that simple emblem of homely service, wafted hitherward above the dark and crimsoned streams that never can wash themselves away. The messenger draws near, dismounts; with graceful salutation and hardly suppressed emotion delivers his message: "Sir, I am from General Gordon. General Lee desires a cessation of hostilities until he can hear from General Grant as to the proposed surrender."<sup>79</sup>

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<sup>78</sup> Letter from Thomas Goode Jones to William Shore (April 14, 1902) (on file with VMI Archives). Shore's letter is dated April 4<sup>th</sup>, and Jones refers to it as April 7<sup>th</sup>. Possibly, he used the postmark date rather than the letter date.

<sup>79</sup> Brevet Major General Joshua L. Chamberlain, Paper presented at Appomattox, VA (April 14, 1902) (on file with VMI Archives).

### **“When the General Roll Is Called, We’ll Be There”**

Thomas Goode Jones’ service in the War Between the States helped to shape the kind of man he was to become.

Warfare brings out both the worst and the best in a man. The extremes of the battlefield can drive a man to unspeakable acts of depravity, but also to unimaginable acts of strength, valor and heroism. Combat forces a man to search inside himself and discover what kind of man he really is, to learn whether beneath all the facades he is really a man of courage or a coward. It forces him to reach into his innermost depths and draw upon strength he never knew he had and to call upon his God.

The battlefield, with death an ever-present reality and an imminent possibility, often leads men to think of eternity and the state of their souls. This was especially true during the War Between the States. Dr. W.W. Bennett, in his 1876 book *The Great Revival in the Southern Armies*, states:

The great moral phenomenon of the war was the influence and power of religion among the Southern soldiers. War is a dreadful trade, and the camp has always been regarded as the best appointed school of vice; the more wonderful then is it to see the richest fruits of grace growing and flourishing in such a soil.<sup>80</sup>

The Confederate Bible Society printed thousands of Bibles for distribution among Confederate forces, but they were unable to keep up with the demand. A Lt. Colonel of the 10<sup>th</sup> South Carolina Regiment wrote to the General Agent of the Bible Societies of South Carolina:

I would be very glad if you will supply the regiment to which I am attached with the

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<sup>80</sup> W.W. Bennett, *A Narrative of the Great Revival in the Southern Armies*, 1876 (reprinted 1989 by Sprinkle Publications, P.O. Box 1094, Harrisonburg, VA, 22801) [hereinafter Bennett, *A Narrative*]. Dr. Bennett wrote about the Southern forces, of which Thomas Goode Jones was a part. This does not imply that there was no such revival among the Northern troops.

Scriptures, as I see by the papers that you are engaged in the work of distribution among the soldiers. We prefer Testaments, as they would be much easier for soldiers to carry in their knapsacks. I have made this application to you because of finding that all our men have not Bibles or Testaments, and I consider a soldier poorly equipped without one or the other.<sup>81</sup>

Many denominations sent chaplains, pastors, and missionaries to minister to the Southern soldiery. A soldier writing for the *Southern Lutheran* observed that “[w]hen we first came into camp, swearing was a common practice; but now, thank God, an oath is seldom heard. Our men seem to feel as if they ought to be more observant of God’s law.”<sup>82</sup> Another wrote:

The Church of Christ is very strongly represented in the regiment. We have many praying men; and indeed a more quiet, orderly, and religiously-disposed body of troops cannot, I presume, be found in the service; and be assured that when the time for fighting comes, beneath the banner of the Cross and our country’s flag, we shall present an unflinching front.<sup>83</sup>

Generals Robert E. Lee and Stonewall Jackson were both devout, outspoken Christians.<sup>84</sup> Jackson called upon all denominations to send ministers to reinforce the chaplains,<sup>85</sup> and after a summer 1862 victory in the Shenandoah Valley he issued a General Order declaring that his:

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<sup>81</sup> *Id.* at 131.

<sup>82</sup> *Id.* at 212.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 51, 140, 157, 160-161, 371; See also, Mary Anna Jackson, *Memoirs of Stonewall Jackson* (Louisville, KY: Courier-Journal Printing Co. 1895 and reprinted by Morningside Bookshop, Dayton, Ohio 1976) (printed in William J. Johnson, *Robert E. Lee the Christian* (Arlington Heights, IL: Christian Liberty Press 1993)) (printed in J. Steven Wilkins, *Call of Duty: The Sterling Nobility of Robert E. Lee* (Elkton, MD: Highland Books 1997)).

<sup>85</sup> Bennett, *A Narrative* at 51-52.

[C]hief duty today, and that of the army, is to recognize devoutly the hand of a protecting Providence in the brilliant success of the last three days . . . . For this purpose the troops will remain in camp today, suspending, as far as practicable, all military exercises, and the chaplains of regiments will hold divine service in their several charges at 4 o'clock today.<sup>86</sup>

Lee, carrying out a directive from the Confederate Congress, issued a General Order declaring Friday, April 8<sup>th</sup>, a day of fasting, humiliation and prayer. The Order stated:

All military duties, except such as are absolutely necessary, will be suspended. The chaplains are desired to hold services in their regiments and brigades. The officers and men are requested to attend. Soldiers, let us humble ourselves before the Lord our God, asking through Christ the forgiveness of our sins, beseeching the aid of the God of our forefathers in the defence of our homes and our liberties, thanking him for his past blessings and imploring their continuance upon our cause and our people.<sup>87</sup>

Describing the Christian fervor of the Southern general officers, Rev. J. J. Hutchinson wrote:

Ten days ago Gen. Pendleton, a hero of Manassas memory, preached to the soldiers at Dalton. General Johnston and very many other officers were present. On the same day Major-General Stewart, who is an Elder in the Presbyterian Church, assisted in this brigade in the administration of the Lord's supper. On the same

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<sup>86</sup> *Id.* at 156-157.

<sup>87</sup> *Id.* at 371.



day I preached to Gen. Finley's brigade, where the General and his staff were present, and where he united audibly with our prayers. Gen. Cleburne, the hero of many battle-fields, treated me with much attention and kindness -- had a place prepared for preaching in the center of his division, where himself and most of his officers were present, and where I was assisted by Brigadier-General Lowry, who sat in the pulpit with me and closed the services of the hour with prayer. I partook of the hospitality of General L. at dinner, and spent several delightful hours in profitable religious conversation. The General is a Baptist preacher, and, like the commander of the division, is a hero of many well-fought battlefields. He takes great interest in the soldiers' religious welfare, often preaches to them, and feels that the ministry is still his high and holy calling. Never have I seen such a field for preaching the gospel and inculcating religious truth as the Confederate army now presents: "the fields are white unto the harvest."<sup>88</sup>

Bennett estimated that, in addition to those Confederate soldiers who were already Christians when they entered the army, nearly 150,000 soldiers had been converted during the War.<sup>89</sup> Soldiers attended church services on Sundays, sometimes in camp and sometimes in local churches, and well-attended prayer meetings were held in the camps several nights each week.<sup>90</sup> Messages written or dictated by soldiers like "Say to my father that all is well between me and my Saviour; tell him to meet me in heaven,"<sup>91</sup> or "If I fall on the field of battle I shall be safe, for I know in whom I have believed, and he will keep what

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<sup>88</sup> *Id.* at 368-369.

<sup>89</sup> *Id.* at 413.

<sup>90</sup> *Id.* at 117, 254-255.

<sup>91</sup> *Id.* at 161.

I have committed to his charge,"<sup>92</sup> were typical of countless others.

The "revival flame swept through every corps, division, brigade, and regiment" of the army of General Lee,<sup>93</sup> including that of General Gordon to whom Thomas Goode Jones was attached. Rev. P.O. Harper wrote:

Gen. Gordon takes an active interest in religious exercises and in the spiritual welfare of those under his charge, which, I am sorry to say, is not the case with all the officers in his brigade. On yesterday (fast-day) morning his brigade, or all who chose to attend, were called together by his order at sunrise for prayer in the open air. He addressed the assemblage in a sensible and feeling discourse. The scene was most affecting and impressive. The morning was clear and brilliant, and, apparently, God smiled upon the sight. The assembly, to the number of eight hundred or a thousand, bowed their knees (and I trust their hearts) before the Omnipresent and Omnipotent God. The occasion, the circumstances, and the brilliancy of the lovely spring morning, rejoicing in the God of nature and declaring his glory and goodness, was well-calculated to stir to their deepest depths the souls of devout worshippers.<sup>94</sup>

Without any wartime correspondence from Thomas Goode Jones, this author is unable to state with certainty how the religious fervor of the Confederate armies, and particularly within that of General Gordon, affected him. But knowing his Christian upbringing, the religious training he received at Virginia Military Institute, his respect for Generals Lee, Jackson and Gordon, his faithful religious worship and service throughout his post-war life at St. John's Episcopal Church and

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<sup>92</sup> *Id.* at 163.

<sup>93</sup> *Id.* at 333.

<sup>94</sup> *Id.* at 372-373.

in his public life and the faith he passed on to his children, it is likely that Jones supported in, participated in, and drew spiritual strength from this religious revival.<sup>95</sup>

The principles of warfare as they were taught at that time -- General Clausewitz's theories of economy of force, mobility, concentration of force, timing, momentum -- are applicable to legal battles and political campaigns. By 1865, Thomas Goode Jones had become a true soldier, fully prepared for the battles that were to come.

### **"Furling the Conquer'd Banner"**

The War also influenced Jones in two special ways. First, during his spare time in winter quarters he studied law. He did so in the method that was common at that time, reading law books rather than enrolling in a law school.<sup>96</sup> It is not clear whether at this time he had made up his mind to become a lawyer, but he certainly showed an interest in that field of study.

Second, a tragic event early in the War helped him to realize that Yankees were people too. Former Assistant U.S. Attorney General George R. Farnum of Boston, writing in the *American Bar Association Journal*, tells the story, quoting frequently from Jones himself:

In the early days in the Valley when, as he said, "[w]e had not yet become accustomed to the horrors and sights of war," he had assisted in the burial of a Union soldier "hardly old enough to carry a musket." By his side was a Bible and a letter from his grandmother in Ohio. "It was," Jones related, "almost word for word the letter which had come to me by the last Army mail from

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<sup>95</sup> These points are documented elsewhere in this article. Note that Thomas Goode Jones' son, WB Jones, the Founder of Thomas Goode Jones School of Law, was a noted Bible teacher, President of the Alabama Bible Society, and Editor of the *Alabama Bible Society Quarterly*.

<sup>96</sup> Marie Bankhead Owen, Director, Alabama State Department of Archives and History, *The Story of Alabama: A History of the State* 1:274 (New York: Lewis History Publishing Co. 1949).

my grandmother in Virginia.” Among other things “both dwelt upon the happy return when peace should come. Both breathed in every line, trust in God and love of country, and the righteousness of the cause the absent ones were serving.” That night, as Jones lay sleepless on his blanket, he asked himself time and time again, “[h]ow was it possible that men of the same race, who worshipped the same God, read the same Bible, spoke the same language, and lived under the same institutions which their forefathers under the same flag of the past had made such fearful sacrifices to create and sustain, could become embroiled, in a day as it were, in the deadliest struggle of modern times,” adding, “[t]hen and there the conviction came to me, to abide forever, that the dead boy was actuated by motives as pure and high as mine, loved his country as well, and sacrificed himself to as noble ideas of truth and manhood as those who gave him a soldier’s burial, that he and I were but types of all the rest, and behind us in the hostile lands were millions as good and true as the grandmothers who wrote the letters.”<sup>97</sup>

In no way did this incident slacken his fighting zeal for the cause of the Confederacy. But if this author may make a suggestion, that moment was a landmark in Thomas Goode Jones’ transformation from a fighter to a true warrior.

A true warrior has opponents, not enemies. Soldiers who are consumed by hatred for the other side are unstable and make fatal mistakes. A true warrior fights not out of hatred, but out of duty, love of country, commitment to the cause, respect for his officers, and the combat bond with his companions. And a true warrior can recognize and respect valor in his opponent, even while fighting to the death.

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<sup>97</sup> George R. Farnum, *Thomas Goode Jones: Warrior, Jurist and Apostle of Unity*, 29 ABA J. 720 (1953).

The zeal and magnanimity of the true warrior shone forth in the oration he delivered in the Confederate Cemetery at Montgomery, Alabama, on Confederate Memorial Day, April 27<sup>th</sup>, 1874. This author believes this address contains eloquence comparable to General Douglas MacArthur's "Duty, Honor, Country" address at West Point, the eloquence that comes not from glibness but from deep thought and conviction, and therefore reproduces the address in its entirety:

Ladies of the Memorial Association, and Fellow-countrymen:

It has often been the fate of people in other climes to mourn defeat and slain warriors, while bending under the yoke of the captive on the shores of a foreign land. No picture of human woe is more touching than that of the nation "that wept by the rivers of Babylon" o'er its children slaughtered -- its cities sacked and overthrown.

But that cup was not for us. We, thank God, stand in unshackled manhood beside these graves, and under native skies, to render fitting tribute to the dead -- tribute worthy of the men -- tribute worthy of the Cause for which they died.

And that Cause -- shall I wrong it by arguing its Right, or seek to trace in the misty tomes of by-gone days the purity of its source? Nay! The law, which nerved these men to die, was graven on their inmost souls by the finger of the Almighty. *He* instilled in them love of native land. *He* gave them heroic aspirations and lofty thoughts. *He* was the author of their manhood and their courage. *He* was Ruler of the Storm and King of Battles, and in *His* providence storm and battles came. If in *His* wisdom, the storm was permitted to lash about them, who shall dare condemn these men, when obeying God-given instincts, they,

breasting the storm, marched along down the pathway of duty to death?

What need has that Cause of the tongue of man or pen of poet? The graves of the dead, "severed far and wide, by mount, and stream, and sea," and hallowed half a continent, are its mightiest defenders.

In the Old World, marble and bronze perpetuate the deeds of the emperor -- the chieftain dead in victory. With pomp and ceremony *they* bury the great in the shadow and mildew of the Abbey. We reverently lay down *all our dead* out in the sunshine, under the shade of the trees. But where in all the eastern lands -- where, at Rome or Greece -- where, at Warsaw or Marathon, may the patriot weep beside the untitled graves of martyrs, gone down in freedom's cause? In the New World, no such mournful enquiry rises to the lips. These impressive ceremonies -- the solemn hush falling on all hearts -- the thronging of the living in the "silent cities of the dead," that sanctify, with their glory, all the land stretching from the heights of Arlington to the utmost shores of Rio Grande, tell, alas, their own mournful story.

Brass and marble crumble. Time, with corroding hand, changes chronicles of glory into heaps of ashes. But *these* tombs will not pass away. They are monuments built of the soul -- glorious protests of Valor and Truth against fate. They are builded [sic] not "of the earth, earthy," but of the soul -- sublime, immortal. Simple and humble though they be, the hand of love can add nothing to their grandeur -- nor the tongue of eloquence aught to their teachings.

At Thermopylae, a monument towers to Heaven, on which is inscribed, "Stranger, go tell at Lacedemon, that we lie here in obedience to her laws!" And when the dead are brought back from glorious war, there was appointed unto them, by Grecian law, special days of mourning and high honors. Do *we*, living in a land of more than one Thermopylae, need any cold words chiseled on stone, to tell us for what these men died? All human law sinks into nothingness beside the great command that brings us here. Not alone did it bid us come when first they "laid the dear dumb warriors down" -- but forever in the flowers of each returning spring, it beckons all hearts to these tombs.

The simple recital of the deeds of these men -- their lives -- their deaths -- even now thrills all Christendom. There were no depths of misfortune they did not sound -- no path of duty they left untrod [sic]. They defied time, the elements, man -- all things, save their honor and their God. Fate could not quench their valor, nor death quell their convictions.

The Great Eternal Pen has registered up in Heaven their weary midnight marches -- the gnawing of hunger and the weakness that comes of famine -- the agony of that hope deferred that maketh the heart sick -- the supplicating prayer for a cup of cold water, and the parching fever -- the blood-stained tracks like those at Valley Forge -- the wasting of the trenches -- the silent vigils of the outpost -- the last sigh in the hospital -- the unseen death on the picket-post -- the sublime end in the forlorn hope -- the glorious sunset of manhood in the arms of victory.

Girt on the east and south by a hostile sea, that floated no friendly ensign -- traversed everywhere by broad rivers -- corralled in by a brave and warlike people for more than a thousand miles on its northern and western confines -- well might the world pause in mute admiration on that April day, thirteen years ago, when the Sunny South, upstarting, faced a world in arms! For long years these men watched the seashore and girdling native land with wall of fire and steel, twice forced their banners to the Ohio. Twice across the Potomac their valor almost reared, on the shores of the little stream that runs hard-by Sharpsburg, and on the heights of Gettysburg, a new nation amongst the people of the earth.

They lit all the sea-shore with their glory, and sanctified all the mountains and plains with their dead bodies. More than one Austerlitz illumined their pathway -- no Ulm, no Sedau darkened their end. That end came not until the armies were so worn by battle and toil, that the colors almost twined above the thin line. They fell, not like the old tree, limb by limb till it toppled down, but like the giant oak against which the earthquake hurls the mountain side -- not until every root and fibre was shattered and torn.

Such, my countrymen, is a feeble outline of the men whose memory we this day embalm in fond affection!

The dead have "passed from the sphere of earth's wrongs and earth's reparations." No more will the sheen of the warrior's spear brighten the green woods -- ne'er again will his glad steps pass over the threshold to the hearthstone. The bivouac fire has flickered and gone out -- the tents are all



folded, and the warrior waits the great final reveille.

There remains to us but their fame -- the widow and the orphan.

Who that has ever touched elbows in the line of battle, but has heard the whispered prayer:

“Whatever fate those forms may show,  
Loved with a passion almost wild,  
By day -- by night -- in joy or woe --  
By fears oppressed, or hopes beguiled,  
From every danger -- every foe --  
Oh God! protect my wife and child.”

Have we healed all the wounds that would yield to our touch? Have we fed all the lips that lacked bread, and cheered all the souls that lacked light? Have we watched and waited and prayed for discernment to give, with genuine love, that which the dead can not ask for the little ones?

‘Tis said that the dead some times hover around the hearthstone that mourns them. But, be that as it may be, one by one, messengers leave us for the unknown land. Not long since a noble spirit, on this very spot, uttered words of heroic manhood in eulogy of his dead comrades, but like them, too, he has “crossed over the river and rested under the shade of the trees.”

Think you that he bore those dwellers beyond the stars no joy in the tidings of what his eye had seen and his heart felt here? What greater reward need we than the thought!

The same sun that mellows the landscape here, lingers lovingly o’er a new made grave on the

banks of the Chattahoochee. The gentle white hands that first toiled to shelter the Confederate orphans are folded to rest. The pure spirit which first whispered with seraphic love of this Memorial Day, gazes into a face which makes glorious her own, midst throngs of angels.

Her whole life was but "to heal the sick, to lift the lowly, to bind the broken." Who shall tell her reward? To what shall I liken her? "The violet -- the dew drop -- the evening star -- the gentle rain - - Through all symbols I search for her sweetness in vain."

[At this point in his address, Thomas Goode Jones likely thought of the young Union soldier he had buried early in the War, with his Bible and the letter from his grandmother by his side.]

And while we ponder thus, the mind carries us Northward, where the tombs -- *not of our dead* -- are whiter than the sands of the sea, and more numerous than the stars in the Heavens. In them lie men of the same race as ourselves -- who spoke the same language, and worshipped the same God. Fond mothers sent them to battle, and tender tears and agonizing prayers watched their pathway. *They* followed a flag that was as dear to them as was to us the "star-crossed banner that has long since taken its flight to greet the warrior's soul;" and he that worthily speaks for the dead or the living, must say that no feeling of hate to the northern dead, or those who mourn them, pervades this Memorial Day! "One touch of pity makes the whole world kin." From scenes like this, where the warring sections mourn their dead, let the statesman draw inspiration to guide the living.

And while honoring ourselves and our dead, let us do all that men may do to hasten the coming of

that great day when peace and goodwill shall once more prevail over all the land.

But there are duties that will not wait the coming of that day. Before the bar of history we must appear as "rebels" or as "patriots." Ours be it to see that no rude hand writes the record of our dead, or scrawls the word "traitor" on their tombstones.

No, not ours! But to you, oh women of the South -- you who were ever "last at the cross and first at the grave" -- you who sustained and honored and cheered these men to the last -- to you, more noble than the Spartan woman who gave her tresses for bow-strings and her girdle for swordbelt -- to you, who dared all the danger and sorrow of the strife and shared none of the wild joys -- to you, who ne'er murmured, save when your warrior lost faith -- to *you*, God has left the memory of the dead!

A glorious and noble past is a nation's highest treasure. All that makes man great is fed in the contemplation of unselfish heroism. "Honor thy father and thy mother, that thy days may be long in the land which the Lord thy God giveth thee," was written not alone of those whose name and blood we inherit, but also of the noble and great of the forefathers -- the founders of the State. The nation may neglect the command and forfeit the promise, as well as the child. 'Tis something akin to the immortals that makes us long not to be altogether unworthy of the fame of our ancestors. Lycurgus has said that the character of the child, worthily reared, is formed by the age of seven; however this may be, it is certain that if the child respect himself he must honor his father. 'Tis your God-given mission to fashion the man in the boy, and nurture the true woman in the girl. 'Tis

yours to feed the manly instinct -- to train the young eagle to the flight of the old. Then gather around this spot, when the flowers sweeten the air and the song of birds makes melody, with the children that cluster around your knee, and tell them the story of their fathers and brothers. Teach them that "the man is noblest when he dies for man" -- that their fathers were heroes and patriots, worthy of and winning the admiration of the gods. And if any wound their young hearts with epithet against the dead, point to the answer.

When the victor of Chancellorsville resigned his soul to the angels who bore him in their upward flight o'er that "tangled wilderness" in whose solitude the dead lay yet unburied, and the shrieks of the wounded and the thunder of the cannon were yet unhushed, and was joined by the souls reft from the bodies that lay wrapped in the blue and in the grey -- when the throng with reverential awe approached the Great White Throne, and the God of Battles crowned him, midst the angels and archangels, think you that in all the corridors of Heaven any dared whisper "treason?" Or when the blue-eyed "boy captain," who wrapped his colors round his breast at Franklin, and on a stormy night -- made calm by Christian resignation -- entered into his rest, think you that the pen of the recording angel had traced any line of disapproval in the Golden Chronicle that told of the cause to which he gave his life and his faith?

What may not be muttered in Heaven of our dead must soon pass away from earth. Until that hour strikes, be it yours to keep undefiled the memory of the dead! And this struggle -- was it all in vain? Is there nothing come back to us out of all this woe?

What has become of all the deeds, all the heroism  
of the unknown and unmarked dead -- those who  
had no rank to attract the eyes of the country -- no  
interest savoring of earth but what bid them flee  
the conflict -- no guiding star but duty -- no  
plaudits but the echoes of their own faithful  
hearts?

Is there nothing to bless us in return for all the  
wealth of youth we gave -- for all the agonies we  
dared?

Nothing can perish. The wasting substance in  
matter will soon greet us in a thousand blossoms,  
and mingle in a thousand living forms. How,  
then, shall actions, crystallized out of the souls  
and prayers and tears of millions, pass utterly  
away? Methinks they still linger about these  
"God's acres" -- that they float everywhere around  
us -- in the air -- in the clouds -- in the river -- in  
the rain -- on the mountain top -- and, like the  
lightning now slumbering in the skies, will yet  
illuminate with a blaze of glory all the Heavens!

We failed --

"That's best

Which God sends

'Twas His will -- it is ours."

But who is there that looks on this scene,  
but feels "that love, though love be given in vain,  
is yet lovely?"

"No stream from its source

Flows seaward, how lone so ever its  
course,

But what some land is gladdened.

No star ever rose and set without some  
influence somewhere.

No life can be pure in its purpose and  
strong in its strife,

And all life not be purer and stronger thereby."

"The gathering hand of time puts in the sickle," and soon all the comrades of the dead, like them, will rest in the silent furrows of the fight. Let us so act, that when one by one the living soldier shall join the ranks of the dead, he shall carry with him remembrance of no act which would make us accounted unworthy of "the grand army of martyrs which is still marching onward beyond the stars."

But the sun sinks in the west, and we must yet strew our flowers --

And you,

Whom this song can not reach with its transient breath,

Deaf ears that are stopped with the brown dust of death,

Blind eyes that are dark to your own deathless glory,

Silent hearts that are heedless of the praised murmured o'er ye,

Sleep deep! sleep in peace! sleep in memory ever!

Wrapt each soul in the deeds of its deathless endeavor,

Till the great Final Peace shall be struck through the world;

Till the stars be recalled and the firmament furled!

What is worth living for, is worth dying for too.

And therefore, all honor brave hearts; unto you

Who have fallen that Freedom, more fair by your death,

A pilgrim may walk where your blood on her path  
Leads her steps to your graves!"<sup>98</sup>

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<sup>98</sup> Thomas Goode Jones, Address, (Oakwood Cemetery, Montgomery, Alabama, April 27, 1874) (reprinted in Alabama Bible Society Quarterly, Vol. 11, No. 2, April 1955, at 2-6).

This Confederate Memorial Day address drew nationwide attention, and an Ohio widow who had lost her husband and two sons in the war read of it. She was so touched by it that she sent Jones a silver cup inscribed with the words, "A Northern Woman Widowed and Bereft of Her Sons by the War."<sup>99</sup> She had asked to be unnamed, so Jones sent a letter to the jeweler who engraved the cup, stating in part:

No holier plea for peace and reconciliation could rise to heaven or touch the hearts of men than the sight of a mother "widowed and bereft of her sons" sweetly communing in the sorrows of those who were foes to her dead. Nor could there be more delicate and tender token of sympathy than where the heart-prompting Christian consolation hides the gentle hand which tenders it.

The reflection that my words, mere echoes of every honest Southern soldier's feelings should have fallen like a balm on the wounded spirit of a Northern mother, bereaved by our arms, has filled me with a sense of intense gratification -- a gratification which could not be heightened by any honors I could win.

God permitted the storm to lash about us, and none of either section who followed cherished convictions into battle can regret it; but we may do much to assuage the bitterness of the past.

Nothing would give more joy to the soldiers of the South than to heal all the wounds of that unhappy struggle.<sup>100</sup>

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<sup>99</sup> DuBose, *supra* n. 73, at 18.

<sup>100</sup> Letter from Thomas Goode Jones to unknown widow, in WB Jones, *Burgwin-Jones*, *supra* n. 1, at 104.

Three years later, on September 6, 1877, the Grand Army of the Republic invited Jones to their reunion in Marietta, Ohio, and presented to him a gold medal. Accepting the medal, Jones told the G.A.R., "although the soldier's hand has tendered me this beautiful gift, that hand is reached out to Alabama; this generous greeting is not to me -- it is the voice of Ohio speaking to Alabama."<sup>101</sup> Years later, in 1902, the Grand Army of the Republic selected him to be the orator at their Decoration Day service at Grant's Tomb in Washington, D.C.<sup>102</sup> Yet in 1887, he spearheaded the drive for funding the Confederate Memorial on the Alabama State Capitol grounds, and twenty years later he delivered the dedicatory address at the unveiling of that monument.<sup>103</sup>

It seems Thomas Goode Jones saw himself as a true American patriot and a faithful Confederate at the same time. Like most American patriots, he believed passionately in the U.S. Constitution. But like many Southern patriots, he also believed John C. Calhoun and Jefferson Davis interpreted that Constitution more correctly than Daniel Webster and Abraham Lincoln. With this perspective, he served as a bridge and helped to heal the hostility between the South and the North.

In 1893, during a major nationwide financial crisis, Governor Thomas Goode Jones found that an earlier act of generosity toward the North proved beneficial for Alabama. In April 1864, at Plymouth, North Carolina, Alabama Confederates defeated and captured the 16th Regiment of Connecticut Volunteers. An Alabama soldier, Pvt. G.M. Williams, seized a blue silk regimental guidon from a Connecticut prisoner, but at the prisoner's request Williams allowed him to cut off and keep a small portion of the flag. The flag was then sent to the Alabama State Capitol in Montgomery. In 1887, during a cleaning of the capitol, the guidon flag was discovered in a box. Colonel Thomas Goode Jones, now in charge of the Second Regiment,

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<sup>101</sup> Thomas Goode Jones, Address (Grand Army of the Republic, Marietta, Ohio, September 6, 1877) (quoted in WB Jones, *Burgwin-Jones* at 104).

<sup>102</sup> Program Brochure for Presentation of Bust of Thomas Goode Jones, Hall of the House of Representatives, State Capitol, Montgomery, Alabama, June 23, 1943 (on file with VMI Archives).

<sup>103</sup> WB Jones, *Burgwin-Jones*, *supra* n. 1, 105.



Alabama State Troops, suggested to Williams, who was now a member of his command, that the flag should be returned. Williams agreed, and Col. Jones sent the flag to Connecticut Gov. Phineas G. Lounsbury with the following note:

Restored to its defenders, this banner will tell now of peace, not of war. At the sight of its worn folds in its old home, it will recall no ignoble thought or passion, and will bind the men more strongly to foes of other days who, leaving the past to God and history, are now fellow citizens and co-workers for the prosperity and glory of a common country.<sup>104</sup>

At their reunion of September 17, 1887, the Sixteenth Connecticut Volunteers directed Colonel Cheney to send the following resolution to Colonel Jones:

We honor in you the magnanimity, which can thus wipe old scores, and with a battle flag proclaim peace. You have kept it well, and only the piece cut off to be saved by one of ourselves is wanting. Could this sacred little bit be found, we should reunite the severed parts, thread by thread, till we should have again one flag, as we have already one country.<sup>105</sup>

Six years later, in 1893, Morgan G. Bulkeley of Connecticut read in his morning newspaper that Governor Thomas Goode Jones had arrived in New York seeking money to keep his state from financial disaster. A Union war veteran and former Connecticut governor, Bulkeley was now head of the Aetna Insurance Company. Remembering Jones' act of generosity toward Connecticut, he wired the Alabama Governor: "I heard of your

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<sup>104</sup> Letter from Thomas Goode Jones to Connecticut Governor Phineas C. Lounsbury (1887), in Ralph Minard, *Flag Brings Foes Together*, unknown newspaper (April 13, 1955) (on file with VMI Archives) [hereinafter Minard, *Flag*].

<sup>105</sup> Letter from Colonel Cheney to Colonel Jones (September 17, 1887), in Minard, *Flag*.

arrival. Meet me at Delmonico's Broad St. for lunch. Hold off on business until I see you. You can have all the money you want, and still be our creditor. It is Connecticut talking."<sup>106</sup>

They met for lunch at Delmonico's, but Mayor Lehman of New York, a former Alabamian and personal friend of Jones, had already arranged a \$200,000 loan. The story still stands as a reminder that acts of generosity can reap unexpected benefits in return.<sup>107</sup>

But his magnanimity toward the North did have a limit. Two years after President Theodore Roosevelt appointed him a Federal Judge, Jones attended a meeting of Southern leaders at the White House. Walter Burgwyn Jones, who at the time would have been fourteen or fifteen years old, accompanied him on this trip and vividly recalls their visit:

I was just a small boy at that time and recall to this day, being in the White House and shaking hands with the President and seeing all the distinguished people waiting there. I noticed at one end of the large reception hall, a distinguished man in the dress uniform of a Major General of the United States Army. I immediately recognized him from his pictures as being General Nelson A. Miles. President Roosevelt, after a few minutes, turned to my Father and said: "Judge, there is a very fine soldier here this morning, and I would like to have you meet him. Let me call him over. He is General Nelson A. Miles." My father looked the President steadily in the eye and said to him: "Mr. President, I appreciate your kindness in wishing me to meet General Miles, but Mr. President, I cannot shake hands with the man who ordered iron shackles placed on my old Commander in Chief, Jefferson Davis." The

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<sup>106</sup> Telegram from Morgan G. Bulkeley to Thomas Goode Jones (1893), in Minard, *Flag*.

<sup>107</sup> See Minard, *Flag*, *supra* n. 104.

President replied: "I respect your feelings, Judge," and changed the conversation to another subject.<sup>108</sup>

### STATESMAN

When Thomas Goode Jones led that last desperate charge at Appomattox, and later that day when he carried the flag of truce for General Lee, he and his fellow officers fully expected to be killed or imprisoned before the day was finished. Instead, he and most of his fellow officers were given paroles and allowed to keep their horses provided they consented to return to their home states and be peaceful citizens. And so, with his mount, his parole, a decoration for bravery, and his uniform, twenty-year-old Thomas Goode Jones returned to Alabama.<sup>109</sup>

### Farming

Upon his return, Jones began his post-war life by farming. His grandfather, Dr. Thomas Goode, had died in 1858, and his mother, Martha Ward Goode Jones, had died in 1861. Through his mother, Thomas Goode Jones received a portion of his grandfather's estate, and he used this inheritance money to purchase a 750 acre plantation in the southwest corner of Montgomery County, between the towns of Sellers and Davenport. He personally hewed the timbers for the log house he built on the land, cleared new ground, ditched the swamp, dug the cistern, and planted his crops of corn and cotton. According to old residents of the area, he hitched his old warhorse, the one

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<sup>108</sup> Walter Burgwyn Jones, Address, *Anecdotes About Governor Thomas Goode Jones of Alabama* (Alabama Polytechnic Institute, Auburn, AL, May 25, 1956), in *In Memoriam*, *supra* n. 65, at 22-23.

<sup>109</sup> DuBose, *supra* n. 73, at 9-10.

he had ridden home from Appomattox, to the plow to farm the land.<sup>110</sup>

The farming enterprise did well in 1866; Jones sold his first cotton crop for a record \$150 per bale. But 1867-1868 brought disaster. Farm prices slumped drastically, Reconstruction Era taxes were heavy, and good laborers were hard to find. Jones had no alternative but to allow his creditors to foreclose on his farm. He lost everything, but in the years that followed, through industry and frugality he paid all his creditors in full.<sup>111</sup> Very likely this bitter experience influenced his later opposition to repressive regulation and heavy taxation. But this period was not entirely bleak. In three other areas, Jones was far more successful: marriage, law, and politics.

## Marriage

On December 20, 1866, Thomas Goode Jones and Georgena Caroline Bird were married. Georgena was a native of Montgomery and the daughter of a respected family whose ancestors included two South Carolina governors, an army surgeon, and a brigadier general in the American War for Independence. Two respected colonial families, the Burgwyns and the Clitheralls, appear prominently in her ancestry. Born on October 9, 1846, she was two years younger than her husband; but she had been a communicant of St. John's Episcopal Church from early girlhood,<sup>112</sup> so it is likely she and Thomas had known

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<sup>110</sup> Mildred Smith, Advertiser County Reporter, *Alabama's 28<sup>th</sup> Governor Built . . .*, Montgomery Advertiser 2-A (date of article unavailable) (on file with VMI Archives). Smith wrote her article sometime after 1940, as she referred to a 1940 painting, and not later than 1960 as she wrote that Luther Johnston was living on the property, and local residents say Johnston died about 1960. She wrote that the house was still standing at the time she wrote her article. However, this author visited the site on June 30, 2001, and was told by Mr. & Mrs. John D. Boyd, Jr., current owners of the property, that they tore the house down shortly after 1960. Mr. Boyd showed this author the site on which the house had stood, and there were still indentations in the ground where the cisterns had been. The home-site was located on Hickory Grove Road about a mile west of Sellers, Alabama. Surrounded by trees, it was a most peaceful place to begin a marriage and family.

<sup>111</sup> DuBose, *supra* n. 73, at 11-12.

<sup>112</sup> WB Jones, *Burgwin-Jones*, *supra* n. 1, at 67, 101-102.

each other since childhood. Historian Marie Bankhead Owen wrote of her:

Mrs. Thos. G. Jones, is one woman who is bitterly opposed to having her picture taken. For this reason there is no "counterfeit presentment" of this noble woman in this galaxy of the "first ladies of Alabama." She has left a picture of her beautiful life and sweet, unselfish nature in the hearts of the thousands of people who know and love her. She is possessor of the universal mother-heart and feels that humanity is her brethren. If an old friend or the child of an old friend is in trouble or ill it's a wager that "Miss Gena" is the first to be sent for. All Montgomery knows and all Montgomery loves her. While several of the governors have possessed large families, the Jones family heads the procession with thirteen children.<sup>113</sup>

These thirteen children were:

- Marshall Bird Jones, born November 3, 1869, married Allie Stickney -- died September 1901.
- Gena Moore Jones, born November 26, 1871, married Charles Thomas Holt, son of Governor.
- Thomas Michael Holt of North Carolina and his wife Louisa Moore Holt. After Holt died in 1900, Gena Moore Jones married Rev. Horace Thornburgh Owen in 1902.
- Thomas Goode Jones, Jr., June 6, 1873 -- August 17, 1873
- Martha Goode Jones, born August 10, 1875, married Williss Everett Cohoon.
- Carrie Bird Jones, August 25, 1876 -- August 5, 1901
- Madeleine Clitherall Jones, August 23, 1878 -- August 14, 1879.

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<sup>113</sup> Marie Bankhead Owen, *Montgomery Advertiser* (January 15, 1911), in WB Jones, *Burgwin-Jones*, *supra* n. 1, at 67-68.

- Gordon Houston Jones, June 15, 1880 -- July 30, 1911.
- Elizabeth Clitherall Jones, August 15, 1883 -- May 5, 1885.
- Lucy Spottswood Jones.
- Thomas Goode Jones, Jr., born June 9, 1885.
- Samuel Goode Jones, May 23, 1887 -- February 12, 1912.
- Walter Burgwyn Jones, October 16, 1888.
- Netta Sampson Jones, born November 18, 1889.<sup>114</sup>

Thomas brought Gena to the home he had built on the farm near Sellers, and they lived there approximately two years. Mildred Smith describes Gena as:

[A]n industrious, careful and neat housekeeper, who willingly aided her husband in every way. She had a small flock of hens, and one of her most valued wedding presents was a fine cow which furnished milk for the family. She made the little two-room cottage so comfortable that even when he lived in fine houses in later days, Thomas G. Jones said many times he had never lived in a more comfortable home than the little cottage he built with his own hands.<sup>115</sup>

The interest in law that had manifested itself in his reading at winter quarters during the War years never left Thomas Goode Jones, and during the winter evenings in his farmhouse, he continued to study law. At that time, few aspiring lawyers went to law school; in fact, there was no law school in Alabama until 1872. The most common way to become a lawyer was to read law books and apprentice oneself to a successful lawyer or judge. Jones first apprenticed himself to the law office of John A. Elmore, "the acknowledged head of the Alabama bar, to continue his studies under that great instructor."<sup>116</sup> Two

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<sup>114</sup> WB Jones, *Burgwin-Jones* at 67-74. Some of these dates are incomplete, perhaps because these persons were still living when WB Jones published this family history in 1913.

<sup>115</sup> Mildred Smith, *supra* n. 110, at 2A.

<sup>116</sup> DuBose, *supra* n. 73, at 11.

partners of the firm, Major Henry C. Semple and Captain E.J. Fitzpatrick, were distinguished war veterans of the Army of Tennessee.<sup>117</sup> Later he enrolled in a night law class taught by A. J. Walker, the Chief Justice of the Alabama Supreme Court.<sup>118</sup>

Chief Justice Walker may have been a role model and formative influence on Thomas Goode Jones' philosophy of law. Born in 1819 in Tennessee, he attended the University of Tennessee at Nashville as an undergraduate, taught school for two years, and studied law in the office of John Trimble of Nashville. He was admitted to the Tennessee Bar in 1841 and moved to Jacksonville, Alabama around 1842. He served in the Alabama State House of Representatives and the Alabama State Senate, was elected to the Alabama Supreme Court in 1855, and became Chief Justice in 1859. He was re-elected Chief Justice in 1861 and 1865, but was removed by Reconstruction measures in 1868, after which he practiced law in Montgomery until his death in 1872. At the Governor's request, he recompiled the Alabama Code into the present *Code of Alabama*. He was a Southern Democrat, a Presbyterian, and Eminent Commander of the Knights Templar, an order of Freemasonry.<sup>119</sup>

An examination of the cases decided with opinions written by Chief Justice Walker give the picture of a dispassionate, even-handed judge who wrote clearly and sensibly, without extensive citations or quotations. In his earlier years, most of his opinions were less than a page in length, though after the War they became lengthier. He seems to have been a Justice who took the law and applied it as written, rather than trying to make new law or bending legal principles to suit his own ends. For example, before and during the War, when slavery was the law of the land, he handled cases involving the sale of slaves as any other commercial transaction of personal property.<sup>120</sup> In an 1861 case involving possession of slaves, he ruled that in cases governed by the common law:

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.*; See also Mildred Smith, *supra* n. 110, and WB Jones, *Burgwin-Jones, supra* n. 1, at 102.

<sup>119</sup> Owen, *The Story of Alabama: A History of the State* vol. II, *supra* n. 96, at 340-341.

<sup>120</sup> *Wood & Kimbrough v. Fowler*, 18 Ala. 55 (1860).

[T]he wife cannot possess personal property; that her property is the possession of the husband, and that this principle resulted from the unity of husband and wife. If the absurdity could be conceived, of a wife's holding adversely to her husband, what reason or authority is there to support the position, that she thereby not only acquired a title, but a title of such character as to exclude her husband?<sup>121</sup>

After the War, he ruled that a promise made in 1859 to deliver slaves was valid under the laws then in force and also the laws of the Confederacy, but after the War delivery of slaves was both impossible and illegal. Therefore the promise was not only unenforceable but void, for it "stands now in the same category, as if it had been illegal in its inception."<sup>122</sup> Whatever he believed personally about the rightness or wrongness of such laws, he did not believe the State of Alabama had entrusted him with the authority to pass judgment on such questions. His duty was to determine what law applied, interpret its meaning, and apply it as written.

But in many respects Walker applied the law strictly. In *Wynne v. Walthall*,<sup>123</sup> he ruled that "the prime object of search in the construction of wills, is the testator's intention, which, if legal, is the law of the instrument."<sup>124</sup> In *Stein v. State*,<sup>125</sup> he held that "[t]he theory of the law is, that a criminal intent is a necessary ingredient of every indictable offense," though he added that sometimes intent could be established by presumption.<sup>126</sup> He held a narrow view of court authority, ruling that "[t]he general principle is, that judgments and verdicts are only binding on parties and privies."<sup>127</sup>

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<sup>121</sup> *Bell v. Bell's Administrator*, 37 Ala. 536 (1861).

<sup>122</sup> *Glover v. Taylor & Co.*, 41 Ala. 124 (1867).

<sup>123</sup> *Wynne v. Walthall*, 28 Ala. 34 (1860).

<sup>124</sup> *Id.*

<sup>125</sup> *Stein v. State*, 37 Ala. 123 (1861).

<sup>126</sup> *Id.* at 132.

<sup>127</sup> *Lawrence v. Ware*, 37 Ala. 553 (1861).



But while he generally deferred to the will of the legislature, he did not hesitate to strike down legislative acts that violated the Alabama Constitution. When the legislature passed a bill that amended a previous statute, Chief Justice Walker invoked Article IV of the Alabama Constitution which required that any bill amending a statute must cite the old statute in its entirety: "A judicial exclusion of such an act from the prohibition of the constitution, would practically disregard its mandate. While it remains, it is our duty to enforce it, whether wise or unwise, convenient or inconvenient."<sup>128</sup>

Chief Justice Walker believed the duty of a judge was to apply the law fairly and firmly, giving substantial deference to the "ancient common law"<sup>129</sup> and the intent of the legislature, unless these clearly conflicted with the Alabama Constitution. We can only assume that young Thomas Goode Jones learned these principles from his mentor.

As the aspiring attorney read for the law, he must have paid careful attention to the authors of his textbooks and the philosophy of law they expressed. So what texts did he read? Unfortunately, this author has not been able to find a list of texts, either by Jones or by Walker.<sup>130</sup> But, it is reasonably safe to assume that in his studies, both in winter quarters in Virginia and after the War in Alabama, he used the standard works most aspiring attorneys used.

In the 1860's, legal treatises were the main source of legal study. Christopher Columbus Langdell would become Dean of the Harvard Law School in 1870, but his legal positivism and case law method of legal study would not influence Alabama for many years to come. Abraham Lincoln wrote in 1858 that "the cheapest, quickest and best way" to become a lawyer was to read Blackstone's *Commentaries*, Chitty's *Pleadings*, Greenleaf's

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<sup>128</sup> *Tuskaloosa Bridge Co. v. Olmstead*, 41 Ala. 9 (1867).

<sup>129</sup> Chief Justice A. J. Walker, Tribute to the Late Attorney General Marion A. Baldwin, March 1, 1866, 28 Ala. xii.

<sup>130</sup> The author searched without success for this information in the Alabama State Archives, the Alabama Supreme Court Library, the VMI Archives, and the George H. Jones Library of the Thomas Goode Jones School of Law. This does not mean such records do not exist. This author would welcome any information anyone could supply, either about the legal education of Thomas Goode Jones or about legal training generally in that time period.

*Evidence*, Story's *Equity*, and Story's *Equity Pleading*, get a license, and go into the practice and still keep reading.<sup>131</sup>

While Thomas Goode Jones was studying law, there was no law school in Alabama. The University of Alabama opened its law school in 1872, and the first law school class used the following texts:

*Introduction to American Law*, Walker  
*Principles of Pleading*, Stephen  
*Commentaries on American Law*, Kent  
*The Law of Evidence*, Greenleaf  
*Commentaries on the Laws of England*,  
Blackstone  
*The Doctrine of Equity*, Adams  
*The Law of Contracts*, Parsons  
*The Law of Evidence in Criminal Cases*, Roscoe  
*Revised Code of Alabama*.<sup>132</sup>

One staple on these lists is Blackstone, whose *Commentaries* probably sold more copies in America than in England, a quotation from which settled many an argument in an American court.<sup>133</sup> From Blackstone Thomas Goode Jones would have gained not only a thorough and systematic understanding of English common law, but also Blackstone's God-centered view of law. Blackstone wrote of three types of law, the Law of Nature, the Revealed Law, and the Municipal or Man-Made law. Of the Law of Nature Blackstone wrote:

This will of his Maker is called the law of nature.  
For as God, when he created matter, and endued it  
with a principle of mobility, established certain  
rules for the perpetual direction of that motion; so,

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<sup>131</sup> Letter from Abraham Lincoln (1858), in Jack Nortrup, *The Education of a Western Lawyer*, 12 Am. J. Leg. History 294 (1968) (quoted in Lawrence M. Friedman, *A History of American Law* 525 (New York: Simon & Schuster 1973)).

<sup>132</sup> Robert H. McKensie, *Farrah's Future: The First One Hundred Years of the University of Alabama Law School, 1872-1972*, XXV Ala. L. Rev. 121 (Fall 1972).

<sup>133</sup> Donald S. Lutz, *The Relative Influence of European Writers on Late Eighteenth Century American Political Thought*, 189 Am. Pol. Sci. Rev. 195-196 (1984).

when he created man, and endued him with free will to conduct himself in all parts of life, he laid down certain immutable laws of human nature, whereby that free will is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purport of those laws. . . . These are the eternal, immutable laws of good and evil, to which the creator himself in all his dispensations conforms; and which he has enabled human reason to discover, so far as they are necessary for the conduct of human actions. Such, among others, are these principles: that we should live honestly, should hurt nobody, and should render to everyone his due; to which three general precepts Justinian has reduced the whole doctrine of law. . . . This law of nature, being coeval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times: no human laws are of any validity, if contrary to this . . . .<sup>134</sup>

A devout Anglican, Blackstone also wrote of the Revealed Law:

This has given manifold occasion for the interposition of divine providence; which in compassion to the frailty, the imperfection, and the blindness of human reason, hath been pleased, at sundry times and in divers manners, to discover and enforce its laws by an immediate and direct revelation. The doctrines thus delivered we call the revealed or divine law, and they are to be found only in the Holy Scriptures. These precepts, when revealed, are found upon comparison to be really a part of the original law of nature as they tend in all their consequences to

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<sup>134</sup> Sir William Blackstone, *Commentaries on the Laws of England* 39-41 (Philadelphia: Bell 1771).

man's felicity. But we are not from thence to conclude that the knowledge of these truths was attainable by reason, in its present corrupted state; since we find that, until they were revealed, they were hid from the wisdom of the ages. As then the moral precepts of this law are indeed of the same origin with those of the law of nature, so their intrinsic obligation is of equal strength and perpetuity. Yet undoubtedly the revealed law is of infinitely more authenticity than that moral system, which is framed by ethical writers, and denominated the natural law. Because one is the law of nature, expressly declared so to be by God himself; the other is only what, by the assistance of human reason, we imagine to be that law. If we could be as certain of the latter as we are of the former, both would have an equal authority; but till then, they can never be put in any competition together. Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human law should be suffered to contradict these.<sup>135</sup>

Blackstone's *Commentaries* inspired Chancellor James Kent to write his *Commentaries on American Law*.<sup>136</sup> Kent insisted that law should be regarded as "deriving much of its force and dignity from the same principles of right reason, the same views of the nature and constitution of man, and the same sanction of Divine revelation, as those from which the science of morality is deduced."<sup>137</sup> He believed that "the Christian nations of Europe, and their descendents on this side of the Atlantic, by the vast superiority of their attainments in arts, and science, and commerce, as well as in policy and government; and, above all, by the brighter light, the more certain truths, and the more

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<sup>135</sup> *Id.* at 41-42.

<sup>136</sup> David M. Walker, *The Oxford Companion to Law* 136 (Oxford: Clarendon Press 1980).

<sup>137</sup> James Kent, *Commentaries on American Law 1826-1830* 1:2 (12<sup>th</sup> ed., Littleton, CO: Rothman 1989).

definite sanction which Christianity has communicated to the ethical jurisprudence of the ancients, have established a law of nations peculiar to themselves.”<sup>138</sup> He added:

The law of nature, by the obligations of which individuals and states are bound, is identical with the will of God, and that will is ascertained, says Mr. Manning, either by consulting Divine revelation, where that is declaratory, or by the application of human reason, where revelation is silent. Christianity, in the words of Butler, “is an authoritative publication of natural religion,” and it is from the sanction which revelation gives to natural law, that we must expect the gradual increase of the respect paid to justice between nations. Christianity reveals to us a general system of morality, but the application to the details of practice is left to be discovered by human reason.”<sup>139</sup>

Simon Greenleaf (1783-1853), Royall Professor of Law at Harvard, was the leading authority on evidence in America and perhaps in the entire English-speaking world. His *The Law of Evidence* was the standard work on evidence while Thomas Goode Jones was studying law, and modern evidence casebooks today contain citations from Greenleaf.<sup>140</sup> Like Blackstone and Kent, he held a Christian, God-centered view of law. In his classic *The Testimony of the Evangelists*, he scrutinized the four Gospel of the New Testament according to the rules of evidence commonly used in American courts and concluded that they were in fact written by Matthew, Mark, Luke and John, and that they are worthy of belief.<sup>141</sup>

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<sup>138</sup> *Id.* at I:4.

<sup>139</sup> *Id.* at I:4 n.a.

<sup>140</sup> Christopher B. Mueller & Laird Kirkpatrick, *Evidence Under the Rules: Text, Cases, and Problems* 2 Ed. 522 (Boston: Little, Brown & Co. 1993).

<sup>141</sup> Simon Greenleaf, *The Testimony of the Evangelists* (1874 ed., Grand Rapids, MI: Baker Book House 1984).

Spoken or unspoken, the God-centered world view described above was a common assumption of most lawyers and law students in the 1860's. The Langdell Revolution and its humanistic premises did not come to Harvard until the 1870's, and to Alabama much later than that.

With this background in law, Thomas Goode Jones was admitted to practice in the lower courts of Alabama in December 1866, in the Supreme Court of Alabama on January 9, 1868, in the United States District Court on May 25, 1868, and in the United States Supreme Court in 1876.<sup>142</sup> Historian DuBose adds that his favorite areas of study were equity and constitutional law.<sup>143</sup> Jones and Hal. T. Walker formed the Montgomery law firm of Jones & Walker,<sup>144</sup> and Thomas and Gena moved from the farm to Montgomery, where Thomas served as president of the Montgomery Literary Society in 1868. First they lived with Gena's mother on the corner of Adams & Bainbridge Streets; then they moved to a house at 114 South Bainbridge, then to 302 Alabama Street, and then to 215 South Hull Street. In 1879, they purchased a home at 323 Adams Street, where they lived the rest of their lives.<sup>145</sup> At later times Jones practiced with the firm of Rice, Chilton & Jones; Rice, Jones & Wiley; Jones & Faulkner; and Thomas G. Jones & Charles P. Jones, the latter a brother of Thomas Goode Jones.<sup>146</sup>

Jones concentrated on civil practice, often representing corporations and especially railroads, perhaps because his father had been in the railroad business. His clients included Louisville & Nashville Railroad Company, South & North Railroad Company, Mobile & Montgomery Railroad Company, Standard

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<sup>142</sup> DuBose, *supra* n. 73, at 11.

<sup>143</sup> *Id.* at 16.

<sup>144</sup> *Id.* at 15.

<sup>145</sup> Mildred Smith, *supra* n. 110. This author notes from personal observation on June 30, 2001, that the houses at 302 Alabama and 323 Adams are still standing, and markers designate them as historical sites. Both are now occupied by law firms. The Joneses' youngest son, Walter Jones, lived in the 323 Adams house after his parents passed away, and the first classes of Jones School of Law met in a building next door to the north.

<sup>146</sup> DuBose, *supra* n. 73, at 15. The law firm name Jones & Faulkner is an interesting coincidence since Jones School of Law is now part of Faulkner University.

Oil, Western Union Telegraph Company, the Southern Express Company, and Capital City Water Works Company.<sup>147</sup>

Generally he did not care for criminal law, but he did agree to represent the State of Alabama on appeal in the case of *State v. Stripling*,<sup>148</sup> in which the defendant had been charged with selling tickets of wager on a horse race, which occurred outside the State of Alabama. The lower court held that the Alabama statute was unconstitutional, but Jones persuaded the Supreme Court to reverse the lower court and uphold the constitutionality of the statute.<sup>149</sup> On another occasion he represented the appellants in *Bell & Murray v. State*,<sup>150</sup> a case involving breaking and entering and theft. He persuaded the Alabama Supreme Court that the convictions should be reversed on the ground of double jeopardy. Justice Bricknell wrote in his opinion: “[w]e have been aided in our investigation in this case, and the important and delicate questions it involves, by the elaborate and exhaustive briefs of counsel for the appellants, creditable alike to their industry and discrimination.”<sup>151</sup>

## Politics

War, law, and politics are difficult to separate. Clausewitz observed that war is simply an extension of politics,<sup>152</sup> and it was only natural that once the guns fell silent at Appomattox, the young warrior from VMI would turn to law and politics to continue his battle for the values he believed in and the Alabama he loved.

Alabama at this time was under the heel of Reconstruction. The various Reconstruction Acts and the policies they established remain controversial today, but in the view of many Southern whites, Reconstruction treated the Southern states as conquered provinces, eradicated the legitimate

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<sup>147</sup> *Id.* at 16.

<sup>148</sup> *State v. Stripling*, 113 Ala. 120, 21 S. 409 (1897).

<sup>149</sup> *Id.*

<sup>150</sup> *Bell & Murray v. State*, 48 Ala. 684 (1872).

<sup>151</sup> *Id.* at 698.

<sup>152</sup> Carl von Clausewitz, *On War* (1827), reprinted by (Princeton University Press, Princeton, NJ 1976, 1984; Ed. & Trans. Michael Howard and Peter Paret, Book I, Ch. 1, Section 24, 87).

state governments and replaced them with unrepresentative governments led by unqualified persons, oppressed Southern whites with unreasonable taxation and regulation, destabilized the Southern economy, and threatened the very basis of Southern civilization itself.<sup>153</sup>

Faced with what they perceived to be a threat to their way of life, but effectively prevented from raising a military defense, Southern whites continued their struggle in other ways. According to General James T. Holtzclaw:

The first meeting to organize the Democracy of Alabama in opposition to the reconstruction acts was held in the office of Stone, Clopton & Clanton in 1867. A county committee of ten was selected, and Thomas G. Jones was one of that committee and throughout the trying times that followed for the next seven years, he was always ready to fight or work, speak or write for the Democracy. When the fight was practically over, and our party thoroughly organized and victorious, he retired with LeGrand and others to let the county have representation since the original committee was entirely from the city beats.<sup>154</sup>

In June 1868, Jones and Walker became editors of the *Daily Picayune*, a small Montgomery newspaper that served as a

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<sup>153</sup> Thomas A. Bailey & David M. Kennedy, *The American Pageant 9th Ed.* 477-500 (Lexington, MA: Heath & Co. 1991); Alan Brinkley, *The Unfinished Nation: A Concise History of the American People 2nd Ed.* 419-453 (New York: McGraw-Hill); Alexander H. Stephens, *A Compendium of the History of the United States from the Earliest Settlements to 1872* 468-480 (New York: Hale & Son 1872), reprinted by (Bridgewater, VA: American Foundation Publications 1999); John Remington Graham, *Principles of Confederacy: The Visions, the Dreams and the Fall of the South* 734-761 (Salt Lake City: Northwest Publishing Co. 1990); W.B. Jones, *Alabama's Economic Loss Due to Reconstruction*, XIV:2 Ala. Law. 3-11 (April 1953) (reprint); John Witherspoon DuBose, *Alabama's Tragic Decade 1865-74* (James K. Green ed., Birmingham, AL: Webb Book Co. 1940).

<sup>154</sup> WB Jones, *Burgwin-Jones*, *supra* n. 1, at 102 (quoting General Thomas T. Holtzclaw). So far as this author can determine, the Democracy of Alabama had no connection with the Ku Klux Klan or other violent or illegal organizations or activities.



voice for the Democratic Party and for opposition to Reconstruction. He assumed this position because, as new lawyers, he and Walker did not yet have enough law business to occupy them full-time. By November 1868, their practice had expanded so rapidly that they no longer had time for the *Picayune*, so they passed the editorship to others and devoted themselves to law practice.<sup>155</sup>

Most of those who have written about Thomas Goode Jones have treated his work with the *Picayune* as a brief sideline or avocation on his way to a serious career in law and politics. But an examination of the *Daily Picayune* from June through November 1868 has convinced this author that this brief editorship was a pivotal point in Jones's development as a thinker and a leader. Writing daily editorials for the *Picayune* enabled him to clarify and crystallize the ideas that had been taking shape in his mind during the War years and his farming years thereafter. It also gave him the opportunity to develop and display the skill with words that would make him an effective writer and a consummate orator. And of course, it also made him better known to the Montgomery public. His editorials are even more remarkable when we remember that, at the time, he was only twenty-three years old.

As he assumed the editorship he began with a Salutation to the City of Montgomery:

A bantling born of storms and adversity, we send it [*The Picayune*] forth into the busy world without hesitation and without doubts. Face to face we have met the obstacles which bear down those whose only capital is strong arm and stout hearts, and conscience of high purpose and noble aims, have no misgivings of the future. Our mission is simple and noble. The ravages of war and the miseries of a doubtful peace, have well nigh ruined our once prosperous "Sunny South." As living sons, who cling with fond affections to the land of our birth, we will endeavor,-- as far as

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<sup>155</sup> WB Jones, *Burgwin-Jones*, *supra* n. 1, at 102; DuBose, *supra* n. 73, at 13.

in us lies -- to do our full share in bringing back former prosperity and happiness. The bone and sinew of a country is to labor. To build up a torn and shattered state, we must foster and cherish every principle which tends to elevate and strengthen its working men. The divine mandate to our first ancestor, that his "bread should be eaten only by the sweat of his brow," is one that cannot be safely disregarded, even now. History tells, with startling emphasis, the fate of nations, which favored by fortune have gained prosperity and wealth, without toil and labor. Vice and degeneracy have followed fast upon the foot-steps of wealth, to give wing in turn to factions, bloodshed, famine and misrule -- then wealth without a solid basis, "takes unto itself wings and flies away;" often, descendents of wealthy ancestors, from the stern strength imparted to manhood by trial, build up honor and greatness amidst the ruins and ashes of the past. Oftener still, years of slavery and woe follow such prosperity -- and we may safely say that *for every generation which has enjoyed prosperity and wealth without labor, two generations have atoned for it in poverty and misery.*<sup>156</sup>

The salutation went on to stress the need to attract and develop skilled labor for the State of Alabama and emphasized, "[w]e wish to see schools, libraries, and the various means of education, liberally sustained. Education is a lever to labor."<sup>157</sup>

As a man who had fought in war, built a house with his own hand, and farmed as well as practiced law, Jones returned

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<sup>156</sup> Thomas Goode Jones, *Salutation*, Daily Picayune, 2 (June 11, 1868). The July-November issues of the *Picayune* are in the Alabama State Archives. In all of the following citations from the *Picayune*, italics, spellings, punctuation and capitalization are as in the original. As is customary with newspaper editorials, the editorials were not signed. The thought and phraseology sounds similar to later writings and orations of Jones, but it is fair to assume that the editorials reflect their shared ideas.

<sup>157</sup> *Id.*

again and again to his belief in the dignity of honest labor. On September 23 he wrote:

[W]e have a true nobility -- one titled by the great Creator himself. It is every man and woman in the land who with hands, or brains, or both, adds to the common wealth of all, who adds to the happiness and prosperity of the human family. It is he who makes two blades of grass to grow where one grew before -- it is he who turns the furrows, who stands behind the anvil, who builds our edifices, makes our beautiful furniture, brings forth the hidden wealth of our mines, or in any other manner adds to the wealth and knowledge of mankind or their resources of enjoyment. These are Nature's true nobility -- the only nobility of a republican government worthy of consideration.<sup>158</sup>

And despite his own very recent failure in farming, he expressed confidence that those who possess ability and work hard will ultimately achieve success:

We do not believe that men often fail to reach their proper level; and it is fair to infer, that, when a person is found at mature years occupying a very inferior position, that there was something about him that made him small potatoes. The only exceptions to this, if there are any, only prove the rule; and it may be said to be as certain as any principle in business can be, that in any profession, good ability, close application and patient and courageous effort, during the day of small things, will ultimately be rewarded by success.<sup>159</sup>

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<sup>158</sup> Thomas Goode Jones, *True Nobility*, Daily Picayune 1 (September 23, 1868).

<sup>159</sup> Thomas Goode Jones, *Small Potatoes*, Daily Picayune 1 (September 15, 1868).

While he believed in the dignity of all kinds of labor, menial and otherwise, he distrusted the populists and their schemes for income redistribution. Exempting the poor from taxation and imposing more taxes on business and industry would not work, because businesses would have to pass their increased costs on to their consumers: "There is no way in which poor men can be exempted from taxation but by their ceasing to be consumers."<sup>160</sup>

Rather, he insisted, and continued to insist throughout his life, the prosperity of all Southerners depended upon the creation of business and industry, and this necessitated a political and economic climate favorable to both: "[T]he future prosperity of the South greatly depends on the development of the boundless resources with which God has blessed her. We must build railroads . . . we must build factories."<sup>161</sup>

The welfare of his fellow veterans and their families was of high importance to Jones. On June 12<sup>th</sup>, he wrote:

The war has ceased -- many of its causes have died away forever, the white-robed angel of peace has faintly shadowed the land with promise. In God's good time peace and plenty will be ours . . . Who can recall without sadness the scenes once enacted around us -- who cannot hear the "bye, bye" of little lisping lips -- who cannot see the agony with which that little one's mother clings to him, whom her child hardly knows as "papa?" . . . A mound of neglected earth covers many a soldier; and suffering and woe have borne the sharer his joys to "the better land" -- *leaving to us the legacy of his fame and his helpless orphans*. There are voices in the land that cry, "What! Aid a traitor?" There are no traitors in this land!

Our country called -- our soldiers came  
Theirs was not to make reply,

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<sup>160</sup> Thomas Goode Jones, Daily Picayune (June 19, 1868).

<sup>161</sup> Thomas Goode Jones, Daily Picayune 2 (June 23, 1868).

Theirs not to reason why,  
Theirs but to do and die.

The United States provides for the widows and orphans of those it sent forth to battle, by taxation! Let Alabama care for her orphans by a spontaneous tribute of affection!<sup>162</sup>

And yet, when General Ulysses S. Grant was running for the Presidency, Jones questioned whether one who has been trained as a soldier should ever enter politics. He might have reconsidered those words later in his career:

The whole tendency of a soldier's life and education inclines him to centralism. . . . A soldier who must reason on every order, could not be effective or reliable. . . . When a military man finds himself at the head of affairs in a republic, he has to reverse the whole tendency of his education and training, and act entirely different from what he would do in command of an army.<sup>163</sup>

Pride in Southern institutions and customs is a recurrent theme throughout his editorials. In this respect, he saw the Southern way of life, especially Southern hospitality, as a continuation of ancient and good traditions:

In all ages the noble people of the earth, be they savage or civilized, have treated the stranger with distinguished consideration. Among all the charges made by the enemies against the South, we have never known any to charge her with being inhospitable, either in peace or war. The stranger has always had a warm welcome among

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<sup>162</sup> Thomas Goode Jones, *An Appeal*, Daily Picayune (June 12, 1868).

<sup>163</sup> Thomas Goode Jones, *Soldiers Should Not Be Politicians*, Daily Picayune 2 (September 2, 1868).

us -- and our heart and purse have been at his disposal.<sup>164</sup>

Like many Southerners, he vigorously opposed Reconstruction, believing that it treated the Southern states unfairly as conquered provinces. On June 13<sup>th</sup>, he expressed pleasure that Alabamians had rejected a Reconstruction -oriented state constitution:

Alabama, in a great political issue, on which depended her moral and material interests, taking the law from its conquerors and following *in its plainly pointed out steps*, defeated an attempt to force upon her a Constitution deemed subversive of her ancient rights, and destructive of her honor. . . . There is no hereafter for nations -- they must be punished or rewarded here. Vices and virtues are social in their character. The arched strength of virtue is broken when the keystone of truth is wanting.<sup>165</sup>

And on June 24<sup>th</sup>, he declared:

The issues upon which we fought are dead, slavery and secession are buried with the past; but the "*idea*," the "*principles*," that freemen have a right to govern themselves and to resist tyrants, will never die on this continent, as long as Anglo-Saxon blood runs in our veins. The memory of our slain countrymen will *never* lie buried!<sup>166</sup>

Again and again he called upon his fellow Montgomerians to recall the valor of their former leaders, but to do so as civilized people and work to rebuild:

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<sup>164</sup> Thomas Goode Jones, *Strangers*, Daily Picayune 2 (August 25, 1868).

<sup>165</sup> Thomas Goode Jones, *Admission of Alabama*, Daily Picayune (June 13, 1868).

<sup>166</sup> Thomas Goode Jones, *Northern Immigration*, Daily Picayune (June 24, 1868).

Lee was glorious, when he sat on his grey charger unmoved, on the Richmond lines, as the shouts of his triumphant hosts told him that the army of McClelland was shattered and drawing back. He was grander still, when rallying his veterans under the frowning guns of "Cemetery Heights," after the repulse, which was the first step to Appomattox, he told his warriors, "it is all my fault." He was *sublime*, when, on the same grey steed, while the last ray of the dying glory of his army was being translated from time to immortality with the furling of his star-crossed banners, with Virginia's fields and forest just budding out in spring-time gladness as if in mockery of his shattered hopes -- he surrendered his good sword. With no words of disappointed rage or baffled hope, his serene face, bearing no sign of the agony grappling and struggling in his broken heart for utterance, Lee left Appomattox on that day, riding out from the prejudices and envy of time -- into the glory of immortality. Lee was our leader in war -- let us follow him in peace!<sup>167</sup>

But for all his Southern pride, Jones generally was able to rise above bitterness and recognize virtue even in his opponents. He could refer to General William Tecumseh Sherman as "the man who fought with hatred, slaughter and flames; but who, when the war had ceased, made peace with his whole heart and soul."<sup>168</sup> He could say of President Andrew Johnson, who had been Lincoln's Vice-President but who after the War had opposed the more radical elements of Reconstruction: "Hated as he was two years ago, no man now had a deeper place in our

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<sup>167</sup> Thomas Goode Jones, *Adversity the True Test of Nobility*, Daily Picayune (June 26, 1868).

<sup>168</sup> Thomas Goode Jones, *The Amnesty Proclamation -- Step in the Right Direction*, Daily Picayune 2 (June 8, 1868).

affection.”<sup>169</sup> Though always a Democrat, he could say of Reconstruction Republican Governor Smith: “We believe that he is conscientious and upright, and much prefer him to any man in his party,”<sup>170</sup> and “[t]here are in the [Alabama] Senate some eminent Republicans, who are upright and fearless; and while clinging to their Republican principles, do not go to party extremes in oppressing and traducing our people.”<sup>171</sup>

Arguing that a Northerner’s war record should not be held against him, Jones wrote on July 21:

The best, the bravest, and the wisest have differed -- and differed, too, at sword-point. If a soldier be but conscientious and brave, it matters not under what banner he battles -- fame rewards him in history. It is not given to men to judge with unerring certainty, the correctness of the judgments or consciences of other men. . . . We must allow men to differ in a Republic -- we must allow them to differ, if we be Christians. The fact that this or that man fought in grey or blue does not necessarily make his political position right or wrong.<sup>172</sup>

Jones also had a way of facing present realities. Whatever may have been the glories of the antebellum South and the Old Confederacy, he recognized that they were gone, and could not return, at least in the same form: “If statesmanship means anything, it means this: The ability to comprehend new situations as they occur.”<sup>173</sup> On the slavery issue he wrote, “[t]he people of the South would not re-establish slavery if they could; but they have always regarded the sudden emancipation of the slaves as a crime against all classes of the South, and as utterly

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<sup>169</sup> Thomas Goode Jones, *Adversity the True Test of Nobility*, Daily Picayune 2 (June 26, 1868).

<sup>170</sup> Thomas Goode Jones, Daily Picayune 2 (July 15, 1868).

<sup>171</sup> Thomas Goode Jones, *A Bill to Establish Monarchy*, Daily Picayune 2 (July 30, 1868).

<sup>172</sup> Thomas Goode Jones, *War Record*, Daily Picayune (July 21, 1868).

<sup>173</sup> Thomas Goode Jones, *Northern Immigrant*, Daily Picayune (June 24, 1868).



destructive of the negro.”<sup>174</sup> He did insist, however, that Southern slavery was not the absolute form of slavery that had existed in certain other parts of the world:

Cobb says, “. . . murder, and other offenses against the person were punished in the same manner as a person, and is treated as such by law. There were other laws making it an offence to withhold proper supplies of food or clothing. *Absolute slavery*, whereby the master had absolute control over the life, liberty and property of the slave, *never* existed in Alabama.” Our courts, our statesmen, our soldiers, our laws, and our people have all declared that slavery is dead! Let it be buried!<sup>175</sup>

Nevertheless, he seemed to accept separation of the races as right and proper. Concerning a proposal for “forcing Negroes and whites to attend the same schools,” he wrote that “[w]e do not believe that any sensible Negro in the State desires such a mixing. There is a growing tendency among them to go to themselves . . . . The Negro does not desire, nor wish the antagonism now prevailing -- nor is he responsible for it.”<sup>176</sup> Jones believed Northern whites were exploiting blacks and creating hostility between the races in the South:

The negro is superstitious and credulous, and evil-minded men have taken advantage of it, to instill into his mind the idea that the whites intend to enslave him, and other like slanders, which are calculated to make him the tool of the adventurous. We should take care to disabuse his mind of these falsehoods, and to explain to him his interests. If this is done, and we be determined, and put down his violence promptly,

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<sup>174</sup> Thomas Goode Jones, *General Howard's Speech*, Daily Picayune 2 (September 17, 1868).

<sup>175</sup> Thomas Goode Jones, *Slavery*, Daily Picayune 2 (August 26, 1868).

<sup>176</sup> Thomas Goode Jones, Daily Picayune (July 10, 1868).

there will be a wonderful change. *The negro is beginning to find where his true interest and friends are, and is ripe for a change.*<sup>177</sup>

On another occasion he wrote:

The two races cannot unite or intermingle. It would be contrary to the instincts of nature and the laws of God, for such a fusion to take place, to any extent. . . . Experience tells us that such a contact between races never brings peace -- but always war. *Is there anything in our condition at the South, to change the verdict of history?* If there be, we cannot perceive it.<sup>178</sup>

Jones felt the Ku Klux Klan was a "silly" organization that was not to be taken seriously:

As to the "Ku Klux Klan" -- it was the concoction, we think, of a few thoughtless young men, who from a desire for fun, worked on the superstition of one class of our citizens. The press of the South gave currency to the idea, and the political opponents of the South took advantage of the circumstance to charge every crime in the community, upon the "Ku Klux Klan." The writer of this article would have had abundant opportunity to know if such an organization ever existed in Montgomery. We have never yet seen or heard of any one who was a Ku Klux.<sup>179</sup>

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<sup>177</sup> Thomas Goode Jones, *The Negro*, Daily Picayune 2 (September 7, 1868).

<sup>178</sup> Thomas Goode Jones, *Does It Mean Peace*, Daily Picayune (August 31, 1868).

<sup>179</sup> Thomas Goode Jones, Daily Picayune 2 (July 9, 1868); T.G. Jones, Daily Picayune 2 (July 30, 1868): "The movement about the Ku Klux Klan was a silly thing;" T.G. Jones, Daily Picayune 2 (July 31, 1868): "Has any one ever seen a Ku Klux in Alabama? Does any one know of any? . . . The only Ku Klux in the country are a few foolish school boys."

Thomas Goode Jones could find qualities to admire in General Ulysses S. Grant, but he did not favor Grant for the Presidency:

[H]is magnanimous conduct at Lee's surrender, was worthy of a great leader . . . The man's modesty and noble generosity, did more to unite us than all his bayonets . . . He has been the father of the Military Reconstruction Laws -- has advocated the removal of his Commander-in-Chief, while still a soldier under him. . . . We of the South, while giving him credit for all his past successes -- his generosity at Appomattox, his manly stand, when it was attempted to indict Gen. R.E. Lee for treason -- can never wish him success in his Presidential aspirations. We think he is better as General of the Armies than he would be as President.<sup>180</sup>

And when Grant won the election, Jones' editorial expressed disappointment but not despair:

If Gen. Grant's "Let us have peace" means anything, it means that the monarchical experiment lately ended in these states shall not be re-established. . . . In the mean time, let us plough, dig and mine. Let us get good men at the head of our State affairs, and bide our time. If we can console ourselves in no other way, we can be philosophic enough to see that we might be in a worse condition. Eight millions of people are but fit subjects for slavery, if they despair of a future, because of a few years of adversity.<sup>181</sup>

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<sup>180</sup> Thomas Goode Jones, *Grant*, Daily Picayune 2 (June 27, 1868).

<sup>181</sup> Thomas Goode Jones, *What Is Ahead?*, Daily Picayune 2 (November 11, 1868); T.G. Jones, *Whither?*, Daily Picayune 2 (November 6, 1868): "We desire to live in a republic -- but *can endure* a monarchy."

His editorial of October 8<sup>th</sup> showed considerable thought and foresight. He predicted that the day would come when the populations of the West and South would outnumber those of the Northeast, and a power shift would then take place. When that happens, he predicted, the South would be in a much better position than if it were a separate nation:

The interests of the great Northwest and those of the South are almost identical. In time, the West and South will shape the policy of the country, and rid us forever of New England *isms* and sectional taxation. If we should establish a separate nation we would always be liable to have wars with our neighbors. The Mississippi River would be a bone of contention between the West and the South. We believe our people prefer the Union if they can ever be allowed the rights and privileges belonging to us.<sup>182</sup>

A central thought seemed to be emerging in Jones's mind, a theme that would run through his orations, writings, and actions for the rest of his life. He could be an American patriot and a loyal Confederate at the same time. He could support the principles of freedom, limited government, and states' rights, because these were the impelling vision of the Pilgrims who landed at Plymouth Rock in 1620, the signers of the Declaration of Independence in 1776, and the framers of the Constitution in 1787. And the vision of those venerable fathers was best expressed by the Southern constitutionalists like John C. Calhoun, Alexander Stephens, and Jefferson Davis. "A great and beneficent [sic] idea landed on Plymouth Rock in the 17<sup>th</sup> century; it wrote the Declaration of Independence in the 18<sup>th</sup> century; it received the reverted sword of Gen. Lee in the 19<sup>th</sup> century."<sup>183</sup> And if the nation were ever to have a rebirth of

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<sup>182</sup> Thomas Goode Jones, *This Is Our Country*, Daily Picayune 2 (October 8, 1868). The "New England isms" Jones spoke of probably included Transcendentalism, Unitarianism, Universalism, Deism, and possibly Darwinism (See also Dr. Thomas E. Woods, *Sitting Amidst the Ruins*, Southern Partisan 16-22 (2<sup>nd</sup> Quarter 2001)).

<sup>183</sup> Thomas Goode Jones, *Northern Immigrants*, Daily Picayune (June 24, 1868).

liberty, perhaps it would be through the influence and example of the Southern heirs of this tradition. Possibly his July 3<sup>rd</sup> editorial summarized his thinking best of all:

Tomorrow's sun will usher in the natal day of American freedom. It is a day which we of the South still remember, for its glories are but dearer to us in the time of humiliation. The grandeur of the achievement which it commemorates is imperishably affixed in history side by side with the names of our Southern ancestors. The celebration of the day -- even though it be a hideous mockery, here, recalls to us proud memories and glorious names. The land now ruled by strangers and our former slaves, furnished in the early struggles of the Republic, its first General -- its first President. . . . The liberty which Massachusetts and Virginia fought side by side to gain, *no longer exists*. The Old Dominion, the land of Washington, the mother of statesmen, is overthrown and in the dust her great limbs are shackled, and Massachusetts and her sister States daily rattle in our ears the chains which they have forged for Virginia and her Southern brethren! The people must remember the 4th of July! . . . Let them remember the circumstances which gave birth to the declaration of independence and clinging steadily to principle, let them reiterate the declaration of independence, by manly and statesmanlike action! The 4th of July ushered the nation into existence; it will be doubly glorious, if on that day the people *save* the nation.<sup>184</sup>

A lifelong Democrat, Thomas Goode Jones could and did work with both political parties. As a conservative, he shared the Democratic Party's support for states' rights and opposition to Reconstruction. But he could also identify with the pro-business

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<sup>184</sup> Thomas Goode Jones, *Fourth of July*, Daily Picayune 2 (July 3, 1868).

sentiments of the Republican Party, and he distrusted certain populist elements in the Democratic Party.<sup>185</sup> The Republican Sheriff of Montgomery County feared rioting and violence during the 1868 election, so he appointed Thomas Goode Jones his chief deputy, and order was preserved.<sup>186</sup>

In 1870, the Republican Reconstructionist Alabama Supreme Court, desiring to mend the rift with the overwhelmingly Democratic Alabama Bar, asked the Bar to nominate a candidate for Supreme Court Reporter, whose primary responsibility would be to publish the decisions of the Alabama Supreme Court in various volumes of the *Alabama Reporter*. The Bar nominated Thomas Goode Jones, and the Court appointed him. After the 1874 elections brought an end to Reconstruction and returned the Alabama Supreme Court to Democratic control, the new Justices chose to retain Jones as their Reporter, even though there were many applicants for the position. He held the position for ten years, until 1880, during which time he published sixteen volumes of the *Alabama Reporter*, all the while maintaining a law practice.<sup>187</sup>

After the early partnership with Walker, Jones joined the law firm of Rice, Chilton & Jones, which later became Rice, Jones & Wiley. The senior partner of the firm, Judge Rice, had been an active conservative Democrat, but became a Republican around 1868 and served as legal counsel for many high Republican officials.<sup>188</sup> This did not prevent Rice and Jones from working together, perhaps because beneath the party labels their beliefs and goals were much the same. When he ran for Governor in 1890 and for re-election in 1892, he received considerable Republican support. Not surprisingly, in 1901 when Republican President Theodore Roosevelt needed to appoint a federal judge for the northern and middle districts of Alabama, he chose Thomas Goode Jones.

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<sup>185</sup> The reader may note that the Republican and Democratic Parties today have seemingly reversed their positions on questions of states' rights and federalism.

<sup>186</sup> WB Jones, *Burgwin-Jones*, *supra* n. 1, at 102.

<sup>187</sup> *Id.* at 102-103; Owen, *supra* n. 96, at II:274; DuBose, *supra* n. 73, at 14. DuBose states that Jones served as Reporter from 1870 to 1884.

<sup>188</sup> DuBose, *A Historian's Tribute to Thomas Goode Jones* at 15.

Besides these activities, Jones was elected a City Alderman for Montgomery, representing the Fourth Ward from 1875 to 1884. DuBose says he was “remarkably active as a reformer and did much on the work which compelled the railroads entering Montgomery to move their depot to its present location, at the foot of Commerce Street, from its former inconvenient location in the northern bounds of the city. He was also recognized as a wise counselor in the straightened finances of the city.”<sup>189</sup> The *Southern Agriculturalist* said Jones had been elected to redeem the city from the regime of the “carpetbaggers and reconstructionists:”

The city was in debt, without credit, and staggering under many difficulties and the successful conduct of its government presented most of the problems arising in the larger affairs of the State. He took a laborious and prominent part in shaping and executing the various policies and measures which finally rescued the city from many of its difficulties, and aided in restoring its credit and property. The city is indebted to him for much wise legislation improving its police, perfecting its quarantine system, equalizing and lessening the burdens of taxation and improving its condition.<sup>190</sup>

In 1884, at the close of his service as city alderman, Jones was overwhelmingly elected to the Alabama House of Representatives. On November 10, 1886, his colleagues unanimously elected him Speaker of the House of Representatives, an unusual honor for a legislator in his second term. His accomplishments in the legislature included the passage of a riot act which he personally drafted and which was copied by eleven other states, and securing an appropriation for a Monument to the Confederate Dead on Capitol Hill. Twenty years after the appropriation was approved, the Monument was

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<sup>189</sup> *Id.* at 27.

<sup>190</sup> WB Jones, *Burgwin-Jones*, *supra* n. 1, at 105 (quoting *Southern Agriculturalist*).

completed and unveiled, and Jones gave the dedicatory address.<sup>191</sup>

### **But Always a Soldier**

Thomas Goode Jones battled for his beliefs in the courts and the legislative halls. But the martial instinct that had been kindled at Virginia Military Institute and fanned to flame on the battlefields of the War Between the States was never extinguished in his heart. Recognizing that the State of Alabama needed a reserve militia to protect its interests and preserve order, and that the State was entitled to a militia under Article I, Section 8 of the U.S. Constitution and the Second Amendment thereto, shortly after the War, Jones organized and commanded a company of volunteers to report to the Governor, chartered by the State as the Governor's Guard.<sup>192</sup> In 1874, Governor Houston appointed Jones to his military staff and commissioned him a Lieutenant Colonel and Aide de Camp, and in 1876, he became Captain of the Montgomery Greys, one of the most famous military organizations in the South.<sup>193</sup> In 1880, he was unanimously elected Colonel of the 2<sup>nd</sup> Regiment, Alabama State Troops. He was re-elected to that position in 1883 and again in 1886, and served until his nomination for Governor in 1890. In this capacity, he frequently led the militia to control riots and other disturbances of public order.<sup>194</sup> In 1898, his old commander, General John B. Gordon, recommended to President McKinley that he appoint Thomas Goode Jones a Brigadier General of Volunteers for the Spanish-American War, writing that "the State of Alabama could not furnish one more worthy of the Government's confidence, nor whose characteristics, mental

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<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at 107; DuBose, *supra* n. 73, at 17.

<sup>193</sup> WB Jones, *Burgwin-Jones* at 107; Owen, *supra* n. 96, at II:274.

<sup>194</sup> WB Jones, *Burgwin-Jones* at 107-108; Owen, *supra* n. 96, at II:274; DuBose, *supra* n. 73, at 17-18. At that time, militia units commonly elected their own officers.



and moral, more eminently fit him for the high command which is sought for him."<sup>195</sup>

### Alabama Lawyers Code of Ethics

Thomas Goode Jones was actively involved in the Alabama Bar, and in 1901, he was unanimously elected its President.<sup>196</sup> But his most significant contribution to the legal profession was probably the Code of Ethics he drafted, the first Code of Ethics adopted by any Bar association anywhere in the nation. Treatises on legal ethics had been written, but none had been formally adopted.

Mary Edge Horton, Assistant Curator of the Alabama Supreme Court and State Law Library, says Thomas Goode Jones "was interested in the welfare of the younger lawyers of the Montgomery Bar, and frequently assisted them with their questions and problems. They consulted him often about many matters, including the subject of professional ethics."<sup>197</sup>

Horton says Jones kept a copy of the 1854 "An Essay on Professional Ethics" by George Sharswood on his desk and consulted it regularly.<sup>198</sup> Sharswood had been Chief Justice of the Pennsylvania Supreme Court, founder of the law school at the University of Pennsylvania, and a Presbyterian Sunday School teacher.<sup>199</sup> It seems generally agreed that Jones also used David Hoffman's 1817 "Course of Legal Study" and his 1836 "Resolutions for Professional Deportment," which Hoffman used to teach legal ethics at the University of Maryland. Hoffman tended to visit various churches on Sunday mornings to compare the sermons he heard there. Although he does not appear to have

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<sup>195</sup> WB Jones, *Burgwin-Jones* at 108-109 (quoting a letter from General John B. Gordon to President William McKinley). This author has not been able to determine whether President McKinley acted on this recommendation. In any event, Colonel Jones did not serve in the Spanish-American War.

<sup>196</sup> *Id.* at 109.

<sup>197</sup> Mary Edge Horton, *Alabama's Code of Legal Ethics*, Ala. Law. 128 (March 2000).

<sup>198</sup> *Id.*

<sup>199</sup> Thomas L. Shaffer, *Legal Ethics and the Good Client*, 36 Cath. U. L. Rev. 319, 321 (Winter 1987).

clearly identified with any one church, he was well-versed in the Bible, theology, and Christian literature.<sup>200</sup>

Former Alabama Supreme Court Justice Alva Hugh Mattox wrote that “[b]oth Hoffman and Sharswood relied heavily on scriptural teachings and moral principles as a basis for their work. Sharswood, for his part, believed that ‘law is derived from principles laid down by a Supreme Being.’ Both men believed that the book of ‘Proverbs was a source of ethical principles for lawyers.’”<sup>201</sup> Susan D. Carle agrees:

Hoffman’s approach to legal ethics, like his jurisprudence generally, was steeped in religious conviction. Hoffman envisioned human law, human morality, and the laws of nature and the physical world as part of one integrated, divinely inspired system: Law, in its most comprehensive signification, is that system of rules to which the intellectual and physical worlds are subjected; either by God their creator or by man; by which the existence, rest, motion, and conduct of all created and uncreated entities are regulated, and on the due observance of which their being or happiness depends.<sup>202</sup>

Sharswood’s work was likewise “religiously based jurisprudence,”<sup>203</sup> but he differed from Hoffman in at least one important respect: Hoffman believed an attorney’s moral responsibility to the public outweighed his duty to his client, while Sharswood believed a lawyer must give his client his entire devotion.<sup>204</sup>

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<sup>200</sup> Thomas L. Shaffer, *Towering Figures, Enigmas, and Responsive Communities in American Legal Ethics*, 51 Me. L. Rev. 229, 231 (1999).

<sup>201</sup> Hon. Alva Hugh Mattox, *Lawyers: The Aristocracy of Democracy or ‘Skunks, Snakes, and Sharks’?*, 29 Cumb. L. Rev. 323, 329 (1998-99).

<sup>202</sup> Susan D. Carle, *Lawyers’ Duty to Do Justice: A New Look at the History of the 1908 Canons*, 24 Law & Social Inquiry 1, 11 (Winter 1999).

<sup>203</sup> *Id.* at 13.

<sup>204</sup> Mattox, *supra* n. 201, at 329.

But as of 1881, these treatises were just that -- treatises, with no binding force. And so, in 1881, Thomas Goode Jones, Chairman of the Alabama State Bar Association's Committee on Judicial Administration and Remedial Procedure, recommended that the Association appoint a committee with instructions to report a Code of Legal Ethics for consideration at the next annual meeting. While making the recommendation he declared, perhaps prophetically, "[t]he lawyer who shall frame such a Code need ask no greater nor more enduring fame."<sup>205</sup>

For some reason, the Association did not act upon the motion until a year later, when Major Henry C. Semple moved that a committee of three be appointed with Jones as chairman. The motion passed, but the Association did not name the other committee members until 1883, at which time Colonel Richard Orrick Pickett and Colonel Daniel Shipman Troy, both Confederate veterans, were named to the committee.<sup>206</sup>

While Pickett and Troy examined and approved the report, Thomas Goode Jones prepared the actual draft of the Code of Ethics. He relied substantially on Hoffman and Sharswood, and in at least one respect he agreed more closely with Hoffman: "The client cannot be made the keeper of the attorney's conscience."<sup>207</sup> But he began the Code of Ethics with a quotation from Sharswood:

There is, perhaps, no profession after that of the sacred ministry, in which a high-toned morality is more imperatively necessary than that of the law. There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the lines of strict integrity; in which so many delicate and difficult questions of duty are constantly arising. There are pitfalls and man-traps at every step, and the mere youth, at the very outset of his career, needs often the prudence

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<sup>205</sup> Horton, *supra* n. 197, at 128.

<sup>206</sup> *Id.* at 128-129.

<sup>207</sup> Shaffer, *supra* n. 199, at 321 (quoting Thomas Goode Jones Alabama Code of Ethics).

and self-denial, as well as the moral courage, which belongs commonly to riper years. High moral principle is his only safe guide; the only torch to light his way amidst darkness and obstruction – Sharswood.<sup>208</sup>

After careful work and some delays, the report of the committee was to be presented to the Alabama Bar Association at 4:00 p.m., December 2, 1886. But Thomas Goode Jones rose and stated that he could not present the report at that time because of an accident: The proposed code of ethics had been placed on a desk near an open window, and part of it had blown through the window and was lost!<sup>209</sup>

Finally, at the next annual meeting on December 14, 1887, Jones presented the Code of Legal Ethics for consideration. The members of the Bar discussed the Code extensively and adopted it with few modifications. One thousand copies were printed, and a copy was sent to every lawyer and judge in Alabama.<sup>210</sup>

Jones' effort to draft a Code of Legal Ethics had an impact beyond Alabama. Between 1887 and 1906, at least ten other states adopted Alabama's Code of Legal Ethics with minor changes: Georgia, Virginia, Michigan, Colorado, North Carolina, Wisconsin, West Virginia, Maryland, Kentucky, and Missouri.<sup>211</sup>

In 1907, the American Bar Association decided to draft a code of ethics for the nation. As the ABA examined various state codes of ethics, they were so impressed by the work of Thomas Goode Jones that they invited him to serve on the committee even though he was not at that time a member of the

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<sup>208</sup> George Sharswood, quoted in Code of Ethics, Alabama State Bar Association 1887; reprinted from 2 Ala. Law. 3 (July 1941), at 259.

<sup>209</sup> Horton, *supra* n. 197, at 129. This author reports this incident with unmitigated relish and a sense of vindication, for it establishes that he is not the only person associated with the Thomas Goode Jones School of Law who has lost a paper occasionally!

<sup>210</sup> *Id.* One of the few provisions stricken was Section 20: "An attorney should not conduct his own cause."

<sup>211</sup> Ellen S. Podgor, *Criminal Misconduct: Ethical Rule Usage Leads to Regulation of the Legal Profession*, 61 Temp. L. Rev. 1323, 1350, n. 17 (Winter 1988).

ABA.<sup>212</sup> Colonel Thomas Hamlin Hubbard of New York City, presenting the report of the Committee on a Code of Professional Ethics, stated:

The report which I now present gives the Alabama Code and the variations made by the ten associations other than the association of the State of Alabama that have followed it. So that you have before you in this report, as we think, the substance of all that is needed to prepare canons of ethics and you have in the main a form which may safely be adopted; for manifestly, it is safer to follow a good precedent if one has been made than to establish a new one.<sup>213</sup>

And on August 27, 1908, the Committee presented its final report and paid special tribute to the Alabama Code and Thomas Goode Jones:

The foundation of the draft for canons of ethics, herewith submitted, is the code adopted by Alabama State Bar Association in 1887, and which, with but slight modifications, has been adopted in eleven other states. The committee in this connection desire to record their appreciation of the help they have received in this work from their fellow member, Honorable Thomas G. Jones, of Alabama, who was the draftsman of the Alabama code of ethics, and who attended the three days' session of your committee in Washington, March 30 to April 1, 1908, and moved the adoption of a number of your committee's modifications of the Alabama code drafted by him more than a score of years ago.<sup>214</sup>

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<sup>212</sup> DuBose, *supra* n. 73, at 17.

<sup>213</sup> Horton, *supra* n. 197, at 130.

<sup>214</sup> *Id.* (quoting the Final Report, American Bar Association Committee on a Code of Professional Ethics, August 27, 1908).

James Ronald Kennedy and Walter Donald Kennedy have suggested that after the Reconstruction Era ended around 1875, an uneasy and unspoken truce set in between the North and the South. By the unwritten terms of the truce, the South would, for the most part, be allowed to govern its own affairs without outside interference, but the South would not have dominant influence in the rest of the nation. By the terms of this uneasy truce, the South continued as a region somewhat isolated from the rest of the nation from the end of Reconstruction until the beginnings of the Civil Rights Movement in the 1940's.<sup>215</sup>

If, during this period, any one person could be said to have served as a bridge from the South to the North, that person was Thomas Goode Jones.

### Governor of Alabama

In the spring of 1889, two years after his work on the Alabama Code of Ethics was completed, Thomas Goode Jones announced his candidacy for Governor of Alabama. His chief opponent for the Democratic Party nomination was Captain Reuben F. Kolb, the Alabama Commissioner of Agriculture who was backed by the powerful Alabama Farmers Alliance. Kolb styled himself a Jeffersonian Democrat, and his populist policies attracted considerable farm support. He and his supporters favored a graduated income tax, regulation of the railroads, direct election of senators, free and unlimited coinage of gold and silver, anti-trust legislation, and repealing the charters of national banks.<sup>216</sup> According to historian John Craig Stewart:

To his followers, Kolb was a reformer *par excellence*, a man capable of quick change in government for the betterment of the people, in keeping with the larger Populist revolt. To the

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<sup>215</sup> James Ronald Kennedy & Walter Donald Kennedy, *The South Was Right!* 179 (Gretna, LA: Pelican Publishing Co. 1991, 1994).

<sup>216</sup> DuBose, *supra* n. 73; John Craig Stewart, *The Governors of Alabama* 135 (Gretna, LA: Pelican Publications 1975).

conservatives, he was an unscrupulous demagogue, ambitious and radical and a danger to the state. Had Kolb confronted a lesser man, he probably would have won either the first or second election; but Thomas Jones was a powerful figure in Alabama long before he ran for governor. A four time wounded war veteran, he was intelligent, aggressive, and a master speaker on the stump. He represented the epitome of the conservative stance in the state.<sup>217</sup>

With five candidates in the race, Captain Kolb led with a plurality on the first thirty-three ballots at the Democratic State Convention. But on the thirty-fourth ballot, the other three candidates gave their support to Colonel Jones, and he defeated Kolb 269 to 256. As the Democratic nominee, he won the general election handily, defeating Republican B.M. Long 139,912 to 42,390.<sup>218</sup>

During Jones' first term as Governor, the legislature passed a law requiring that the Commissioner of Agriculture be elected. This legislation left an uncertainty as to the date of the expiration of Kolb's term as Commissioner, so Governor Jones appointed Herton Lane to serve as Commissioner from the alleged expiration of Kolb's term until the 1892 elections. Kolb's followers were furious, and Captain Kolb again challenged Jones for the Democratic nomination in 1892. When Jones won the Democratic nomination 320 to 146, Kolb and his supporters walked out and formed the Jeffersonian Party. They campaigned on many of the same themes as in 1890, and also called for federal control of communications and transportation and federal guarantees for real estate loans. Jones and his supporters responded that these measures would be an unconstitutional abridgement of powers reserved to the states. Kolb also attacked Jones for having worked for the railroads and supporting the interests of large corporations over those of the

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<sup>217</sup> Stewart, *The Governors of Alabama* at 135.

<sup>218</sup> *Id.* at 135-136.

people.<sup>219</sup> Jones' supporters charged Kolb's supporters with "conspiring with Republicans, Independents, Populists, and the deadly enemies of the Democratic Party in general;<sup>220</sup> however, at least some Republican support went to Jones. The Republicans did not run a slate of statewide candidates in 1892, and on July 27th, 1892, E.W. Locke, Chairman of the Republican Executive Committee of Wilcox County (Camden, Alabama), released a statement that read in part:

THOMAS G. JONES has made as good a DEMOCRATIC GOVERNOR as we ever had in protecting the rights of every citizen of the State, both white and colored and as a DEMOCRAT is bound to be GOVERNOR of the State, I think it wise and prudent for us to turn out en-mass on election day and vote for the re-election of THOMAS G. JONES for GOVERNOR of the STATE OF ALABAMA; in doing so we will bring about a more friendly feeling between the whites and blacks of this County.<sup>221</sup>

On July 29, Camden attorney Peter M. Horn sent a copy of the release to Governor Jones along with a handwritten note:

Dear Governor:

Enclosed find circular which is genuine and it will reach all leading Negroes in this County by Monday. We did this thinking there would be a contest and we would be prepared. You can safely put Wilcox down for 3 to 2000

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<sup>219</sup> *Id.* at 136-137. The reader may note that despite their use of the name Jeffersonian Party, the policies advocated by Kolb and his supporters were in some respects very different from those of Thomas Jefferson, who favored states' rights and limited government.

<sup>220</sup> *Id.*

<sup>221</sup> Public Statement from E.W. Locke addressed "To the Republicans of Wilcox County" (July 27, 1892) (on file with Alabama State Archives). Please note that the words capitalized appear in the original.



majority for organized Democracy. The leading white Republicans in this county prefer you to Kolb. Look for a good report from Wilcox -- Confidential.

Your friend,  
Peter M. Horn<sup>222</sup>

The election was close, but Jones was re-elected by 11,425 votes. Allegations of voter fraud and ballot box stuffing ultimately led to passage of the Sayre Election Law which required educational qualifications for voters and provided for secret ballots.<sup>223</sup>

The controversy and strong feeling during the 1890 and 1892 elections continued throughout both of Governor Jones's administrations. Nevertheless, Historian Stewart wrote:

But aside from all the bitter conflict, the achievements of Jones' administration were substantial. The Educational Apportionment Act was passed, which provided for appropriation of educational funds to counties on a basis of school population. The Alabama School for Negro Deaf Mutes and Blind (later the Alabama Institute for Deaf and Blind) was established at Talladega. Alabama College (later Montevallo University) was founded and agricultural schools were established at Athens and Evergreen. A complete reform of the convict system was begun, and the legislature finally increased taxation, raising the tax from four to five mills on the dollar.<sup>224</sup>

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<sup>222</sup> Letter from Peter M. Horn to Governor Thomas Goode Jones (July 29, 1892) (on file with Alabama State Archives). Please note that underlined word appears in the original.

<sup>223</sup> Stewart, *supra* n. 216, at 137.

<sup>224</sup> *Id.* at 138. Jones considered the tax increase necessary to retire the state'

Jones' overhaul of the convict system involved reforming out the practice of the Convict Bureau leasing out convicts to mines and other kinds of labor, and the purchase of several thousand acres of farmland on which the convicts could work.<sup>225</sup> Walter Jones describes an incident that shows Governor Jones' strong feelings on the subject of convict labor:

[T]he bad practice prevailed of farming out convicts to labor camps. Under law, they were let out by contract to the highest bidder, and the convicts were liable to neglect and maltreatment. The Governor had to administer the laws as he found them, but to this law, says a writer in *Harper's Weekly*, he was stoutly *opposed*. One day a Negro was sentenced to ten years' imprisonment. The law required the Governor's signature to a paper before the man could be sent to the convict camp. The Governor did not act as promptly as those who contracted for the labor of the convicts thought desirable, so they sent a representative to him to find out what the matter was. "I have delayed acting in this man's case," said the Governor, "because I have heard that measles, in a very malignant form, has broken out in your camp, and that many of the convicts are dying. Is it true?" "Yes," said the agent lightly, "but what difference does that make? Send him along. He may not catch the measles, anyway, and if he does, and dies, why, it's only one [racially offensive epithet deleted] the less." "That is all I wanted to know," replied Governor Jones. "I send no more persons, black or white, to your camp till the disease is under control." The agent reddened. "See here, Governor," he snapped out angrily, "you don't own the State of Alabama! We still have some courts open. If you

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<sup>225</sup> DuBose, *supra* n. 73, at 21-22.

refuse to send that man to camp, we shall go into court and get out a mandamus, and then you will have to do it." It was now the Governor's turn to flush. He wheeled upon his visitor with a gesture toward the door. "You go to the nearest court and try your best to force me to do what I do not believe is right!" he thundered. "Try it -- it will teach you a lesson. The same laws which give me the power to sign that paper give me authority to pardon a convict. Now I serve you with fair warning that the instant I see your emissary enter the door with your mandamus in his hand, I will sign a pardon for the convict! Now get out of my office."<sup>226</sup>

Frequently his military experience was helpful in preserving law and order in Alabama. Walter Jones wrote:

He was firm in the suppression of lawlessness and frequently used the military to prevent mobs from lynching prisoners -- no matter what crime was charged against them, and on the other hand, freely used the pardoning power in favor of the weak and humble who, in the passions of the times, were frequently dealt with harshly for small offenses. In May, 1894, he took personal charge of the troops and put down without bloodshed the Coal Miners' Strike in the Birmingham District and later, in July of that same year, the Debs Strike.<sup>227</sup>

On debtor relief, Governor Jones was firm. On August 14<sup>th</sup>, 1893, R.A. Moseley, Jr., Chairman of the Alabama State Republican Executive Committee, wrote to the Governor urging a "stay" or moratorium on mortgage foreclosures, saying "[t]here

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<sup>226</sup> WB Jones, *Anecdotes About Governor Thomas G. Jones of Alabama*, *supra* n. 65, at 16-17.

<sup>227</sup> WB Jones, *Burgwin-Jones*, *supra* n. 1, at 106-107.

is no money, and unless relief is thus given you will hear the cry for bread from many parts of our beloved State.”<sup>228</sup>

Governor Jones responded on August 16<sup>th</sup> that he would not support such a moratorium or stay. First, he said, such a law would not “survive the ordeal of the courts.” But second, he argued, a moratorium would make it impossible for farmers to obtain loans, because no lender would loan money to an Alabama farmer if he knew the legislature might prohibit him from recovering his money by foreclosure.<sup>229</sup>

Walter Jones related another incident that may reveal Governor Jones’ way of ensuring that justice was done. A black man had been condemned to hang for murder. The murder was particularly brutal, and Governor Jones believed the death penalty was appropriate for such a crime, but he had some lingering doubts about the defendant’s guilt since the evidence was circumstantial. Finally he wrote out a thirty-day stay of execution and told Kirk Jackson, his private secretary, “Kirk, you go down to the County Jail this morning before the hanging, tell the sheriff you have a stay of execution for thirty days, but do not let the condemned man know about it. If, when placed on the gallows, he denies the crime and maintains his innocence, then tell the sheriff he is to proceed no further, the stay of execution becomes effective. If, however, the condemned man confesses his guilt on the gallows, you are to tear up the stay of execution.”

The condemned man confessed on the gallows, and the execution took place on schedule.

When Governor Jones completed his second term in December 1894, the *Shelby Sentinel* editorialized:

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<sup>228</sup> Letter from R.A. Moseley, Jr., to Gov. Thomas G. Jones (August 14, 1893).

<sup>229</sup> Letter from Thomas G. Jones to R.A. Moseley, Jr. (August 16, 1893). Jones may have correctly predicted the courts’ likely treatment of such a law at that time, although forty-one years later the U.S. Supreme Court upheld a Minnesota mortgage moratorium in *Home Building & Loan Association v. Blaisdell*, 290 U.S. 398. Given the absolutist language used in Article I, Section 10[1] of the U.S. Constitution, “No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . .” this author believes Governor Jones was right and the *Blaisdell* decision was wrong.

No abler hand has ever held the helm of State of our proud commonwealth than that of Thos. G. Jones. No pilot heretofore has ever been called upon to steer our ship of State through stormier waters. No braver leader has ever rallied to his bugle call the true sons of Alabama. No cooler head, or warmer heart, nor steadier arm has ever battled for Alabama's welfare. She has had many noble sons to fill her executive chair, but among them all there was no more noble than he. Many gallant sons have illustrated Alabama valor, both in the forum and in the field, in peace and war, but none has ever illustrated it more courageously than he. To his strong hand, brave heart, cool judgment indomitable courage, sterling integrity and unflinching patriotism are the people of Alabama indebted for the safe conduct of their craft during the last four years between the raging waters of Charybdis and the threatening rocks of Scylla. Well as he illustrated in his gubernatorial course that grand idea of Gen. Lee that duty is not only the sublimest word in the language, but the sublimest action of which man is capable. . . . He is again plain Tom Jones, but he has left an impression on the State that will last while courage is commended and devotion to duty is honored by the Anglo-Saxon race.<sup>230</sup>

### **Drafting the 1901 Alabama Constitution**

As might be expected, "plain Tom Jones" did not stay out of the public arena for long. In 1896, William Jennings Bryan sought the Democratic nomination for President, and many in the South and West saw Bryan's free coinage of silver as the answer to their problems of mortgage and debt. But Jones and other old-line Cleveland Democrats opposed Bryan's platform of free

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<sup>230</sup> WB Jones, *Burgwin-Jones*, *supra* n. 1, at 107 (quoting *Shelby Sentinel*).

coinage of silver, believing the gold standard advocated by outgoing President Grover Cleveland and Republican candidate William McKinley was necessary for a stable economy. The Cleveland Democrats held a separate state convention in Montgomery, over which Jones presided, and Jones led that convention's delegation to the national convention. Bryan won the Democratic nomination, and in the November election he carried Alabama and most of the South and West, but Republican McKinley won the election. Outgoing President Cleveland took no part in the election but hoped for a McKinley victory. Jones likewise found himself in a dilemma: He could not in good conscience support Bryan and his free silver policies, but he also could not bring himself to vote for Republican McKinley.<sup>231</sup> Walter Jones says his father worked and voted for the third-party candidacy of Palmer and Buckner.<sup>232</sup>

In 1897, a yellow fever epidemic spread through Montgomery. Many prominent leaders evacuated Montgomery, but Jones stayed and served as chairman of the Relief Committee that aided people throughout this tragedy.<sup>233</sup>

1901 was an important year for Jones. Besides being appointed a federal judge by President Theodore Roosevelt and being unanimously elected President of the Alabama State Bar Association, he was elected a delegate from the Second Congressional District to the Alabama Constitutional Convention.<sup>234</sup>

Present-day journalists have irresponsibly labeled the 1901 Convention as dominated by white racists and Bourbon

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<sup>231</sup> Bailey & Kennedy, *supra* n. 153, at 619-627; World Book Encyclopedia (1985), "Bryan," "Cleveland, Grover;" DuBose, *supra* n. 73, at 22; WB Jones, *Burgwin-Jones*, *supra* n. 1, at 109.

<sup>232</sup> WB Jones, *Burgwin-Jones* at 109.

<sup>233</sup> Owen, *supra* n. 96, at 275; DuBose, *supra* n. 73, at 17.

<sup>234</sup> WB Jones, *Burgwin-Jones*, *supra* n. 1, at 109.

property owners.<sup>235</sup> In reality, the convention was attended by 155 delegates, all duly elected from every county and district in the state.<sup>236</sup> While some delegates were more active, more knowledgeable, and more influential than others, each delegate had an equal vote and equal opportunity to be heard.

On the second day of the proceedings, upon being elected President of the Convention, John B. Knox delivered an address in which he called for the preservation or restoration of white rule.<sup>237</sup> But if one goes beyond that speech to the deliberations of the Convention through all eighty-two days and all 5,070 pages of the *Proceedings*, one finds that race played little factor in the day-to-day discussions and debates of the delegates. They were much more concerned about the nuts and bolts of effective republican government. A careful reading of the *Proceedings* demonstrates that the delegates had done their homework; repeatedly they cited the constitutions of other states, north and south, east and west, and even those of other nations, and compare and contrast the provisions of those states and countries in determining what would be best for Alabama. They divided into twenty-one standing committees to consider specialized issues and provisions. And each morning they opened with a prayer by a different pastor from a different church, some mentioning Jesus Christ, some not. The prayer of the third day of the Convention, May 23, by Rev. Mr. Andrews, is typical:

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<sup>235</sup> See for example, Birmingham News, *Dear Governor* 2C (January 28, 2001); *Malicious Intent* 6A (January 30, 2001); *State's Straitjacket* 8A (January 31, 2001); *Hogtied, Handcuffed* 14A (February 2, 2001); *Wet Rag* 7A (February 3, 2001); *Daybreak in Alabama* 2C (February 4, 2001); *Power to Change* 1C (February 4, 2001); Mobile Register articles, *When the Lights Dimmed* (October 15, 2000); *The Beast in the Garden* (October 16, 2000); *Blessed Are the Privileged* (October 17, 2000); *Faces from the Future* (October 18, 2000); *The Last Big Mule* (October 19, 2000); *Absurd in Alabama* (October 20, 2000); *Let Us Convene* (October 21, 2000) (compiled by the Mobile Register in a booklet titled *Century of Shame: Alabama's 1901 Constitution*). In this author's opinion the hysterical tone of these editorials, coupled with the shallowness of their research, reflects their frustration at their inability to arouse their readers and enlist public support for a new constitutional convention.

<sup>236</sup> *Official Proceedings of the Constitutional Convention of the State of Alabama May 21st, 1901 to September 3, 1901* 1:4 (4 vols., Wetumpka, AL: Wetumpka Printing Co. 1940) [hereinafter *Proceedings*].

<sup>237</sup> *Id.* at 1:7-16.

O Lord, our Heavenly Father, we thank Thee that through the riches of Thy grace and Providence we are permitted to meet this morning. We thank Thee for the health and strength and vigor of mind and body which characterizes all of Thy servants who this morning have met to carry out the mandates of their constituencies and to act for their good and for their future welfare. We thank Thee, O Lord, for thy blessings upon our beloved State. We thank Thee that Thou hast led us along the paths of prosperity and in the ways of peace. We pray this morning that Thy blessings may rest upon our Commonwealth. Bless our State and all those, we beseech Thee, who are in authority over us. Bless Thy servant, the Governor. Bless all who aid him in the responsible work that he has in hand, and may the Lord give to our people gracious and abundant prosperity and grant that they may not only be blessed with the goods of this world, but that they may be everlastingly rewarded in the world that is to come. We pray Thee our Heavenly Father that every department of our State government may receive Thy blessing, and that our people in the common, ordinary walks of life may be people who love God, who serve Him with consistency and fidelity and who honor Him with pure lives and holy thoughts and with noble and upright walks, and we pray Thee, our Heavenly Father, that Thou wouldst bless not only our State, the State so dear to our hearts, but bless this government in which we live. Give unto the President of this Republic and all his counselors wisdom that in the delicate and responsible work which lies before our government they may have Divine direction and that they may receive the blessings and the guiding wisdom that God alone can give. We pray Thee, O Lord, to bless this body assembled from all parts of the State. Bless



Thy servants. Grant that their lives and their influence in our Capital City may be pure and wholesome and good. Grant that they may represent their constituencies not only in these halls, not only in the faithful discharge of duty, but, O Lord, help them that they may represent them in pureness of thought and life so that when they are gone, the influence that they have left behind them will tell for good upon future generations. And, O Lord, help them, especially, we pray Thee, in the difficult work that calls them together. We know, Our Father, in all things we need Divine aid, and that in the work which lies before this Convention they especially need the direction that cometh alone from on high. They stand with uncovered heads before Almighty God in the presence of an expectant people, and we pray Thee that they may prove worthy of the trust committed to their care. Help them that they may be careful, help them that they may be prudent, but help them that they may be eminently wise in all that they do and in all that they say, and when the work is done, may it be such as God will approve and such as their people will applaud and such as that their consciences will tell them that they have done the best they could, and grant our gracious Lord that their deliberations from day to day may be honored by Thy presence and that truth may characterize all that they do, and when their work is done, may they go back to the people and may the gracious Father on high say unto each one, "Well done, thou good and faithful servant." Grant, our Father, as we are preparing here for the best method of living amid the conditions of our own Southern life, that we may all of us act and live in such a way that when the time shall come that we must pass to the judgment bar of the Eternal One, we may there receive the plaudit of Our Father and an abundant entrance into the

home on high. Bless Thy servant who is called to preside over this Convention. Give him wisdom, and, O Lord God Almighty, grant that he may have the health which God can give in his difficult work. Bless each one of the officers, bless all of our people and finally, O Lord, when our work below is done, when by the will of God, we have served our day and generation and sleep with our fathers may we rightly enter upon the heritage which remains for those who lived right and honored God and throughout eternity we will praise Thy matchless name forever, through Christ our Redeemer. Amen.<sup>238</sup>

Thomas Goode Jones did not preside over the 1901 Convention, but he was an active and respected delegate. No delegate except Governor William C. Oates has more entries in the *Proceedings Index* than he.<sup>239</sup> He chaired the Standing Committee on Executive Department and served on the Standing Committee on Order, Consistency and Harmony of the Whole Constitution and on the Standing Committee on Militia,<sup>240</sup> positions that would utilize his literary and analytical skills and his experience as a governor and military officer.

As Chairman of the Committee on the Executive Department, Jones' most significant contributions to the 1901 Constitution concerned the Governorship and the executive branch. In general, he worked to ensure that the governor would have sufficient authority to fulfill his responsibilities properly. He argued for a higher salary for the governor, noting that when he held that office, there were months in which his work-related expense exceeded his monthly salary of \$250.<sup>241</sup> He urged, unsuccessfully, that when the Governor vetoed a bill, he should have the authority to veto it with specific suggestions for amendments, and the legislature should then have authority to

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<sup>238</sup> *Id.* at I: 32-33.

<sup>239</sup> *Id.* at IV: 5071-5150 (especially note 5108-5110, 5121-5124).

<sup>240</sup> *Id.* at I:101-103.

<sup>241</sup> *Id.* at I: 481, 584-585.

pass the bill with the suggested amendments instead of overriding the Governor's veto.<sup>242</sup> Seemingly foreseeing an issue that would command public attention a century later, he also urged that the Executive Department include a Board of Arbitration for the arbitration and settlement of disputes between employers and employees.<sup>243</sup> He urged the creation of the office of Lieutenant Governor, noting that "[t]here is a Lieutenant Governor in nearly all of the older States,"<sup>244</sup> and proposed a system of succession, beginning with the Lieutenant Governor, in the event of the death or resignation of the Governor.<sup>245</sup> The report issued by the Committee he chaired recommended increasing the term of office of the Governor and certain other officials from two years to four years.<sup>246</sup>

On other matters, Jones opposed a provision that the Attorney General must "be learned in the law," because "it looks like a reflection on the people of Alabama to put in the Constitution an implication that they will elect an Attorney General who does not know any law."<sup>247</sup> Jones prevailed, and the provision was defeated.<sup>248</sup> He favored placing the Attorney General on the Board of Pardons, because:

[I]t is the hardest matter in the world when a man is to be hung, and his people come up before a Board, or a Governor, asking a pardon or a commutation of his sentence, to have anybody to come there and say hang this man, don't extend any clemency. People don't like to do that. They say let the Governor or the Board tussel it out, and our object in having the Attorney General in there was not to make a blood-thirsty Board, but to have some one man who, above all others, if he leaned

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<sup>242</sup> *Id.* at I:201-202, 481-482.

<sup>243</sup> *Id.* at I:203, 340, 862-865.

<sup>244</sup> *Id.* at I:480.

<sup>245</sup> *Id.* at I:686.

<sup>246</sup> *Id.* at I:480, 527-528.

<sup>247</sup> *Id.* at I:528.

<sup>248</sup> *Id.*

any way, would lean towards looking after the rights of the State.<sup>249</sup>

Human nature being what it is, Jones believed legislators should be ineligible for any other office during their terms in the legislature. He argued:

We have already said that the Governor was human; that he might be tempted by the possession of certain powers to do things that were not for the good of the State. The committee was not dealing with the Governor's office alone, we were trying conscientiously it may be mistakenly, to reach human nature wherever we found it. Don't we all know that the independence of members of the General assembly is often entirely killed by the consideration they think some office is in sight, and by supporting the measures of the Executive -- it may be against their better judgment -- they may ingratiate themselves in his favor, and thereby secure an office? Don't we all know it? Now it is said, Mr. President, that good men will not go to the Legislature of Alabama if you shut them out, not from all offices, but from all appointments by the Governor for the term of two years. They say it is hard enough now to get good men. Mr. President, I do not fall in with the general censure of Legislatures. I never saw one that was quite as black as it was painted. I have seen assemblies made up individually of men for a majority of whom I had the most profound respect, yet when they got under this, the subtle influence, the hypnotism of the appointing power, they did things which almost universally met with disapproval. I venture to make this suggestion: There will be less difficulty in getting good men

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<sup>249</sup> *Id.* at 1:615.

to go to the Legislature when the scramble for the office ceases, and when it is not confined to men who want to go there because it may give them a leverage on the office of Probate Judge or Solicitor or something else. I may be pardoned for repeating a conversation, which illustrates the position which I maintain, with one of the greatest jurists that ever adorned the Bench of Alabama or elsewhere in this Union -- Chief Justice George W. Stone. In the bitterness which prevailed at times in 1892, some of us thought perhaps if we could remove from the field of strife the two candidates whose claims then engrossed the attention of the people of Alabama, it might tend to some public good. With that purpose I was in hearty sympathy. I had the honor to call on Judge George W. Stone for we believed if that great and good man could be induced to take the office of Governor that perhaps it would save much bitterness and strife which we desired to avert. He turned to me -- because he regarded me rather as a son than a grown man -- and said: "My son, do you forget the Constitution of the State?" I said I had overlooked it. Read this -- and he pointed out the section in the Constitution which made a judge ineligible for any other than a judicial office during the term for which he was elected. I remarked that in this instance, at least, it was a misfortune that there was such a provision in the Constitution, and I shall always remember his answer: "No, sir; it is a wise provision. It has done more to elevate the bench in Alabama and in other States where there is such a provision, than all the other causes combined, because it removes those who have judicial power from temptation." Now we say, Mr. President, remove those who have the legislative power from temptation. Let them come up here to legislate solely for the good of Alabama. If they do that, and are

“disenfranchised,” as they call it, for two years, the plaudits of the people will await them for unselfish service; and in the end they will be thrice repaid for the temporary disenfranchisement. The people seldom fail to promote a faithful and unselfish public servant.<sup>250</sup>

He forcefully argued that the legislature should meet every other year instead of every four years:

[T]here is not a civilized government, certainly not one whose people speak the English language, which refuses to allow its Legislature to meet except once in four years. Away back in the history of our institutions, during the time of Charles II [1660-1685 AD], unbounded indignation flooded the English nation because the king undertook to keep Parliament out of session for several years. They passed an act that the Parliament should never be prolonged longer than three years at a time. That is the law of England today. Nobody thinks of changing it. In all the American States, every one of them -- Mississippi not excluded -- they have either annual or biennial sessions of the Legislature. Ought we not to pause, therefore, when we are asked for the first time in the eighty-one years of our history, to favor a position opposed to the practice of the whole civilized world?<sup>251</sup>

The delegates confronted vital issues of local authority to tax and regulate property. Most had lived through the War Between the States; nearly all had lived through Reconstruction. They had seen firsthand what they considered to be excessive taxation and regulation, with its devastating effects upon the industry and agriculture they considered essential to Alabama's

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<sup>250</sup> *Id.* at I:745-746.

<sup>251</sup> *Id.* at II:2288.

future development, and particularly its oppressive effect upon the small farmer and modest homeowner. As Colonel John W. A. Sanford told the delegates:

What have we done here in Montgomery? I tell you gentlemen it has been confiscation. Men have left the city. Men have houses in Montgomery for which they can never pay owing to the debts on them for pavements and sidewalks and tessellate streets, and Belgian blocks, and there is starving inside of their houses. . . . Why, only the other day a citizen said to me, "Colonel, if they carry out their project of paving the streets as they are doing now, I will have to sell my house and move away because I will be unable to pay the cost of the benefits." . . . One of the finest establishments in Montgomery is today under a mortgage which the young men owning it are laboring day after day simply to pay the interest and it will finally be swept from them. Another young man has a house which he inherited from his father, and he has said: "You can take my house for the pavements and the supposed benefit." These are facts. Your bankers have moved from Montgomery. Men who owned houses on the prominent streets have gone to the country, gentlemen of fortune, have built outside the city. . . . Today a man said to me, "For God's sake don't let them continue this system of government. We rely upon you and our other friends to prevent that." . . . They say we are choking municipalities to death. Who are the municipalities? Are they not the people? . . . We are protecting the people against these grasping municipalities and you will hear our voices before this Convention adjourns in more forms than one.<sup>252</sup>

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<sup>252</sup> *Id.* at II:1531-1532.

The delegates saw a strong legislature as a bulwark of protection for property owners, large and small, against abusive taxation and regulation by either the federal government or local governments. For this reason, they limited the authority of local governments to tax and regulate without the permission of the legislature. On these questions Thomas Goode Jones seems to have been a moderate. He shared the concerns about local and federal abuse, but he thought it unwise to limit local governments too much.<sup>253</sup>

### **Jones and Race Relations**

As a conservative, Thomas Goode Jones seems to have accepted institutions as they existed. Growing up in a slave-holding family amid a slave-holding society, he never seems to have questioned the institution of slavery while he was growing up or while he served the Confederacy. And yet, as previously noted, his family treated their slaves well.

After the War, most white Southerners believed the white and black races should be separated, with the white race in the dominant position politically. Jones does not seem to have questioned this view; in fact, his editorials in the *Daily Picayune* affirmed it. And yet, within the context of those values he favored fair treatment for all persons.

While Jones was serving as reporter for the Alabama Supreme Court at the time when it was dominated by Reconstruction Republicans, the Justices agreed to march in a 4<sup>th</sup> of July procession of “carpetbaggers” and blacks, and Jones agreed to ride with them. Twenty years later, this was used against him in his race for Governor; but DuBose says:

He accepted because he was brave enough to challenge the mind of every Democrat in the state. He was unable to admit that a celebration of the “Sabbath day of freedom,” by any congregation of men whatsoever, should debar a Democrat of

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<sup>253</sup> *Id.* at II:1579-1581, IV:4821-4824.



Alabama, in her travail, form giving official countenance to the occasion.<sup>254</sup>

We have noted his opposition, as Governor, to the practice of leasing out convicts to various industries, and his fury toward an industry representative who callously insisted upon leasing a black convict despite the risk of measles in his facility. We have observed that he favored the death penalty but insisted that it be administered fairly.

At the 1901 Convention, the issue of race relations arose several times, and on each occasion Jones emerged as the spokesman for moderation. On the seventh day of the Convention, the delegates were informed that a group of twenty-four black leaders, led by Booker T. Washington, had drafted a statement which they desired to be read to the Convention delegates. When one delegate noted that the hour was past the

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<sup>254</sup> DuBose, *supra* n. 73, at 14-15.

time set for adjournment by the rules, Jones moved to suspend the rules so the statement could be read.<sup>255</sup>

The next issue concerned militia service. The Standing Committee on Militia had presented a report in which they defined the militia as "All able bodied white male inhabitants of the State, between the ages of eighteen years and forty-five years."<sup>256</sup> Jones urged that the word "white" should be eliminated from the definition, noting that he had served on that committee but that the report had been drafted in his absence. He argued, first, that federal law defined the militia as "[e]very

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<sup>255</sup> *Proceedings, supra* n. 236, at I:188. The statement of Booker T. Washington and the other black leaders was read to the Convention. The statement was eloquent, and its tone was moderate and conciliatory. It noted that blacks numbered 800,000 in the State of Alabama, that they had not come to America voluntarily to force themselves upon the population but rather were brought to America against their will, yet had become hard-working, tax-paying, law-abiding citizens: "We have gotten habits of industry, the English language, and the Christian religion, and at the same time, we have tried in a humble way to render valuable service to the white men in clearing the forests, building the railroads, cultivating the lands, working in the mines, as well as in many forms of domestic service and other activities. Our fathers and mothers have helped nurse you and your children, and when the male members of the family were away from home fighting in war that might have meant our continued enslavement, we remained at home, working your farms, supporting and protecting your helpless wives and daughters. When we have been called to perform any duty of citizenship, whether fighting a foreign foe, working the public roads, or any other duty, we have tried to do our best." They note that "Immediately after the war, we made mistakes just as would have been true of any people placed in the same position, but we have learned our lesson from those mistakes and they are not likely to be repeated." They declare that "[t]he changes wrought by time and the providence of God, it seems to us, place your body in a particularly responsible position. . . . There are those among your petitioners who have persistently urged the negro to learn to trust his future with his Southern white neighbor and that when the supreme test came he would receive justice at his hands. This is a crucial hour for those who have thus advised our race, but we do not believe that our faith in you will be misplaced. . . . It seems to us on the whole, that the relations of the two races in this State are reasonably satisfactory, and we tremble with fear lest something will be done to disturb these relations and to bring discouragement and demoralization to our race. . . . The negro is not seeking to rule the white man. In this State, the negro holds not a single elective office. Whenever he votes, he usually votes for some white man and is learning more and more to vote for the best white man. There is in the last analysis a feeling of tenderness, good will and sympathy existing between the two races in this State, which the outside world can hardly understand or appreciate. We pray that this relation may not be disturbed." The statement further urged that blacks not be deprived of citizenship, education, and economic opportunities, that black youths be given "some incentive for right and useful living," and that the black man have "some humble share in choosing who shall rule over him" (*Id.* at I:189-191).

<sup>256</sup> *Id.* at IV:4435.

able-bodied male citizen" between the ages of eighteen and forty-five, and that under the Supremacy Clause (Article VI, Section 2) of the United States Constitution, an Alabama provision that conflicted with the federal definition would be unconstitutional.<sup>257</sup> Second, he noted that the federal government provides financial support to the state militias, and the amount of that appropriation for a particular state is based upon the number of able-bodied citizens available for militia service in that state. By eliminating blacks from the militia, Jones, said, Alabama might lose a considerable portion of that appropriation.<sup>258</sup> Furthermore, Jones continued, the State may wish to utilize blacks in its militia:

I remember well, Mr. President, in the dark days, when the sun of the Confederacy was setting around us, while our own troops were in the trenches at Petersburg in 1865, that the Confederate Congress, under the inspiration of Robert E. Lee, passed an act authorizing the employment of negroes in the Confederate army. The time may come in the future when we may desire to employ the negro in the defense of this State. . . . We all remember, that in the Spanish war, when, for some reason, there seemed to be difficulty getting the requisite quota from Alabama, 1,000 negroes volunteered, which saved 1,000 white men from going. . . . We now have only one company of negroes in the Alabama State troops. They were organized, I think, some twenty years ago. They have never been disbanded. They have been remarkably obedient.<sup>259</sup>

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<sup>257</sup> *Id.* at IV:4437. Militia service was commonly considered to be one of the privileges and responsibilities of citizenship. In the famous Dred Scott decision of 1856, *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856), Chief Justice Taney cited a 1792 federal statute that limited militia service to whites, as evidence that blacks were not considered to be citizens.

<sup>258</sup> *Id.* at IV:4437-4438.

<sup>259</sup> *Id.* at IV:4438.

As the debate continued, William Oates noted that when he was Governor he had organized two companies of blacks in the State troops, and that "at the battle of San Juan Hill, one of the most remarkable fights of that war, they displayed much gallantry."<sup>260</sup> He also recalled a physical fight in the state legislature in which a black man gave a white "carpetbagger" a well-deserved beating.<sup>261</sup> The following exchange ensued:

MR. BURNS -- I want to ask the distinguished gentleman if he said the negro gave a white man a deserved beating?

MR. OATES -- Yes, sir.

MR. BURNS -- Do you take the position that there is any circumstance when a negro ought to whip a white man?

MR. OATES -- Yes, and he did right. Strobach was in favor of social equality, and the negro was a long ways the better man of the two, and everybody will testify to that, who knew both of them.

MR. BURNS -- That is Bostonian doctrine.

MR. OATES -- Where were you making Bostonian doctrines during the war, when I was at the front, in twenty-seen battles, and have six scars on my body, made by Yankee bullets? I reckon my devotion to the South is as great as that of any other man.<sup>262</sup>

Shortly thereafter Jones took the floor again and declared:

[S]ome of our friends on this floor seem to imagine that they possess all the patriotism and pride of race represented on the floor of this Convention, and that those of us who advocate

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<sup>260</sup> *Id.* at IV:4440.

<sup>261</sup> *Id.* at IV:4441.

<sup>262</sup> *Id.*

different views are unmindful of what we owe to our race. I may therefore be pardoned for saying that from the time I was a little over 16 years of age until Appomattox, where I surrendered, I was risking my life, and baring my body to wounds, suffering and disease, in defense of the white people of Alabama. I have risked my life as often as any man of this floor since the close of the war, in upholding law and white supremacy, and in battling against the hordes which at times threatened to overthrow our civilization.

. . . I recall an instance when there was an insurrection among the black people in Lowndes and Crenshaw counties owing to the mobbing of a negro in jail at Hanesville. I was sent down there with the troops by Governor Seay. . . . While I was in the Governor's office, an officer of the negro company here came in, and told the Governor he came to report to him, as he had heard there was trouble. Governor Seay asked him if he could be counted on to fight his own people if they continued to resist the law. The negro replied: "Yes, sir, there is not a man in my company who will not uphold the laws of Alabama. You have treated us as soldiers, we are under your orders, and if you send us down there we will do good service." I have never known an instance in the Alabama State troops, or National Guards, as afterwards called, where there was the slightest disturbance, impropriety or indecency on the part of the negro companies which formed part of the State Troops . . .

Mr. President, on one occasion I had the honor to command the escort of President Jefferson Davis in his last tour through Alabama and Georgia. We came to the little town of Albany in Georgia. While we were there, a negro captain of a negro

company came up and asked to have the privilege of escorting the carriage of Mr. Davis. I said to him that I would refer his request to Mr. Davis, and I did so. Mr. Davis said he would be glad to have him, "he was glad to see that spirit exhibited on their part towards him and the whites, and he wanted to encourage it." If Jefferson Davis could take that position, surely it is not a matter of reproach to myself or William C. Oates that we are of the same opinion.<sup>263</sup>

Jones, Oates and others agreed to accept an amendment by Thomas W. Coleman that "[t]he Legislature shall have power to declare who shall constitute the militia;" this amendment passed and is now Section 271 of the Alabama Constitution.<sup>264</sup>

The delegates also confronted the question of taxation for education. A minority report from the Committee on Education recommended that blacks and whites be in separate school districts, and that black taxpayers would finance only black schools and white taxpayers would finance only white schools. J. Thomas Heflin argued for the minority report, that it was simply a question of "giving the white man the right to use his own taxes and the black man the right to use his:"<sup>265</sup>

[T]he sons of those men who fought and fell for four years, and who came home and found their property swept from under them; who started out fighting the battles of life, with but little of the advantage afforded by letters; who fought their way and support their mothers and sisters. I ask them if it is right to tax them to educate the negroes of Alabama. . . . The negroes are being educated very rapidly, and I say in the light of all the history of the past, some day when the two separate and distinct races are thrown together,

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<sup>263</sup> *Id.* at IV:4452-4453.

<sup>264</sup> *Id.* at IV:4445, 4453, 4456; 1901 Ala. Const. § 271.

<sup>265</sup> *Proceedings* at IV:4302.

some day the clash will come and the survival of the fittest, and I do not believe it is incumbent upon us to lift him up and educate him and put him on an equal footing that he may be armed and equipped when the combat comes. I favor the minority report and will so vote.<sup>266</sup>

Jones disagreed:

Mr. President, I find myself unable to concur in the proposition embodied in the minority report, for two reasons. One is that after a thorough investigation, I find the plan is plainly, and palpably, and manifestly unconstitutional; but I do not rest my opposition on that ground only. I remember seeing it related somewhere of Robert E. Lee, when he was asked why he took so much interest in a worthless soldier, and why he seemed to have a solicitude for his welfare, that that grand old man answered, "Because he is under me." The negro race is under us. He is in our power. We are his custodians. In furtherance of what this Convention believes to be justice to him and justice to ourselves, we have shorn him of a political power, which is as much to his interest as to ours that he should not now have. In return for that, we should extend to him, as far as possible, all the civil rights that will fit him to be a decent and self-respecting, law-abiding and intelligent citizen of this State. We are dealing not merely with conditions of today, nor for ourselves alone, because in a few years at most, most of us will have passed away. We are dealing with conditions which are to affect our children, and our children's children. This race is here. It cannot be transplanted. It cannot be deported. He

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<sup>266</sup> *Id.* at IV:4302-4303.

is a part of our economic system. We come in contact with him everywhere. If we do not lift them up, they will drag us down.

Many years ago, having occasion to speak in another place on this same subject, I met a great man, a citizen of this county, who has long since gone to his reward, a Scotchman, a man of the intellect, but of violent prejudices. He reproached me somewhat for taking the position I now advocate. I said to him, "Colonel Gilchrist, has the negro a soul?" He threw up his hands, and in his impulsive way, said, "That ends it; that settles it; he has a soul." We ought to teach the negro at least enough to enable him to read his Bible, to understand the laws that he is to obey, and to understand the contract he signs.

I hope for better things in the time to come in the relation between these two races. It was, perhaps, unavoidable that distrust, passion and race hatred should arise in the last thirty years, when the negro was launched out by the victor as a citizen and given power over his former master; but we have passed through the worst stages of conditions arising from his sudden emancipation and the ignorance and viciousness of many who led him. Let us not repeal him. Let us make him feel that while we intend to rule this land, yet at the same time we intend to be just to him, to be his friend, and that he ought to rely on us. Let us take hold of him in his schools and elsewhere, and teach him what he ought to learn, and that while he can not rule us, that his interests, his prosperity and his happiness are things for which we care. Let us make him feel that we are too great to legislate on the lines of race hatred, or unworthy race passions. When he is convinced of this, a condition of things will come about which will make a



contented race which will be glad to be with us. But let him once be convinced that the white man hates him and intends as far as possible to oppress him, and let the idea grow with him for generations that the power of the white man is to be exerted not merely to govern the land but to cast the negro down as far as possible, and bar him of opportunity to improve, and his condition will grow worse and worse. Where he can, he will leave us. Such a policy on our part will bequeath a legacy to our children of perpetual discord, race hatred, and it may be, here and there, race conflict. Why not hope and plan for better things?<sup>267</sup>

By a vote of 90 to 31 the minority report was tabled and in effect defeated.<sup>268</sup>

The report of the Committee on Suffrage and Elections probably caused more debate and division than any other. The Committee recommended that the legislature be authorized to establish stringent character, education and property requirements for voting as well as poll taxes, but to exempt from these requirements those who had served in the military during war and the descendents of such war veterans. Supporters believed these requirements were necessary to clear up the corruption and multiple voting that had characterized recent elections, ensure an informed electorate composed of those who were stable members of the community and who had a stake in the outcome of elections, and to honor and reward those who had fought and died in war, noting that the proposed requirements were similar to those of Massachusetts and other states.<sup>269</sup> Thomas Goode Jones took the floor to speak in opposition:

I never spoke with a profounder sense of the responsibility which rests upon me than now. . . . We are speaking here of questions, and deciding

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<sup>267</sup> *Id.* at IV:4303-4304.

<sup>268</sup> *Id.* at IV:4309-4310.

<sup>269</sup> *Id.* at I:12-13.

questions, which may return to vex our children, and our children's children for a hundred years to come. . . . This is a solemn juncture in the history, not only of Alabama, but of this country, Mississippi has acted, Louisiana has acted, South Carolina has acted, North Carolina has acted, Virginia is acting, Alabama is acting. The eyes of the world are upon us. It should warn us then, Mr. President, to go slowly and deliberately . . . There is not a man within the sound of my voice who will not answer in his own mind, if not to the world, if you ask him the question, what is your purpose in this plan of suffrage -- that it is my purpose, as far as I can constitutionally, to strike down the suffrage of the black race, and uphold the suffrage of the white race. They have this purpose because they believe it the wisest and best, not only for the country, but for both races. There comes another division. Some gentlemen have said upon this floor that the Constitution of the United States, so far as they were concerned, should not shackle or bind their action; that they wished to put the defiant declaration in the [Alabama] Constitution that no negro should vote; that they wanted to lock horns with the 15th Amendment [which prohibits racial discrimination in voting] and trample it down forever. Now I take it that no serious minded delegate, no delegate devoted to the welfare of his country, no delegate who wishes to be guided, if he knows it, solely by the dictates of his conscience, wants to support any plan which deliberately wars on the supreme law, and support one which he believes is in violation of the Constitution of the United States. My words and arguments are not for those who would intentionally violate the [United States] Constitution. There is a wide difference of opinion among conservative members of this Convention whether or not the plan proposed is constitutional,

whither it infringes the Constitution of the United States or not. Making the best use I can of the faculties God has given me, and from the application of what I believe to be the principles of the law, that if we leave in this plan the descendent [of military ancestors] clause, we make our whole plan void, and it may embark our people in untold trouble.<sup>270</sup>

Jones cited the Supreme Court case of *Kow v. Nunan*,<sup>271</sup> which involved a San Francisco law providing that any prisoner in the jail who did not pay his fine was to have his hair cropped. While the law did not mention it, many Oriental men wear a queue, or braid of hair, which has religious significance and which affects the repose of his soul after death. Jones quoted Chief Justice Field as saying in that case:

When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men; and where an ordinance, though general in its terms, only operates upon a special race, sect or class, it being universally understood that it is to be enforced only against that race, sect or class, we may justly conclude that it was the intention of the body adopting it that it should only have such operation and treat it accordingly. . . . If this were not so, the most important provisions of the Constitution, intended for the security of personal rights, would, by the general terms of an enactment, often be evaded and practically annulled.<sup>272</sup>

Since the stringent requirements would disqualify the majority of blacks, and since most whites but few blacks would qualify for the military exemption, the practical effect of the

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<sup>270</sup> *Id.* at III:2886-2887.

<sup>271</sup> *Kow v. Nunan*, 12 Fed. Cases 252, (C.C. Cal. 1879).

<sup>272</sup> *Proceedings*, *supra* n. 236 at III:2889 (Thomas Goode Jones quoting *Kow*).

proposal, Jones argued, was to enfranchise whites and disenfranchise blacks; and based on the rationale of *Kow v. Nunan*, the federal courts would probably strike the provision down as unconstitutional. He added:

I am not here to say that the law demands absolute equality in the number of citizens of the different races who are admitted to citizenship on account of the "qualifications" which the state imposes as conditions for the privilege of suffrage. For instance, if you had a property qualification, it would be no legal objection that it let in more of one race than another, because the qualification applies alike to each and every man, no matter what is his race and all can attain to it, but when you go to make "qualifications" that can be attained by men of each race, not qualifications to which one race only may attain.<sup>273</sup>

One delegate then asked:

MR. deGRAFFENREID -- Suppose, for instance, the State of North Dakota has no negroes in it, and no one but white people there; would it be lawful for the State of North Dakota to adopt in its Constitution the provision contained in the temporary plan that you have just reached?

MR. JONES -- I think it would be a practical abstraction, as the Court would say no negroes were there to be operated upon. It would be perfectly apparent from the natural operation of the statute that they had no intention or design by such laws to exclude people from suffrage who were not there to be affected by it, on account of race, etc. I think it depends largely upon the character of the population.

MR. deGRAFFENREID -- The State of North Dakota then, can do things, if it has no negroes, that Alabama cannot do?

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<sup>273</sup> *Id.* at III:2890.

MR. JONES -- Exactly, because it depends upon the state of facts existing, whether laws are designated to unlawfully strike down a race and whether your laws will operate fairly to disfranchise people of one race and enfranchise people of another. I am very glad my friend asked me the question, because it illustrates the point the Supreme Court of the United States has made repeatedly, that it is not the language of the statute, but it is the ordinary and natural operation, which is the test. Of course it would be an abstract question where there were no negroes. There would be nobody to be affected, and the Supreme Court would say it is manifest that it is not directed at any race, because there is only one race there, and upon that one it bears fairly on all -- on each citizen of the United States.<sup>274</sup>

At the close of the day Jones took the floor once again and declared:

I remember coming into this hall, in 1861, when a mere lad, William M. Brooks was where the chairman now is, and William L. Yancey had thrilled this hall, as no other living man had ever thrilled it by his eloquence. The pulses of the people were hot; revolution was in the air. Yet there were gentlemen, grave men, "wise in their day and generation," who, when the people begged them to pause and wait, when they were told that Virginia was trying to call a convention of the States, and asked to delay that other States might lose, answered triumphantly and confidently that they would "drink all the blood that was shed in the war." It was not ninety days after that when the gun boomed out at Sumter, and two nations rose on this continent, and the most terrible war

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<sup>274</sup> *Id.* at III:2891-2892.

known to modern times devastated our dear land, and we were prostrate in the dust. To this day we have not fully recovered from some of its effects, because we are here discussing the aftermath of that great war, in the conditions which confront us today, which constitute the chief motive and reason which called this Convention. Gentlemen on the other side are as confident now as they were that no harm would come to the Republic then.

There is not a man, I think, in this convention who loves the Confederate soldier more than I. When I was a lad I became one, and when they stacked arms at Appomattox, I took my parole there; but with all my love for them, I do not believe we should, even if it were not unconstitutional, introduce into the jurisprudence of our country the doctrine that a man's son ought to vote because his father made a good soldier. I fear, Mr. President, when we do that, we put it in the power of Congress to say that we do not have a republican form of government; and they are the judges, and the sole judges, of the evil and the remedy. What it may bring forth in the future, I will not prophecy.<sup>275</sup>

This time the oratory of Thomas Goode Jones did not carry the day. The provision Jones fought against was adopted and became Section 180 of the 1901 Alabama Constitution.<sup>276</sup>

Like almost nothing else, the practice of lynching aroused Jones's deepest passions. Not only was lynching a tragic violation of the rights of the individual, it violated the basic concept of due process of law itself. And county sheriffs had a duty to resist lynchings with all due force, even if it meant risking their lives; the possibility that a sheriff might be killed in

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<sup>275</sup> *Id.* at III:2895.

<sup>276</sup> Ala. Const. § 180 (1901). The provision was subsequently invalidated by court decisions.

the line of duty was no excuse for cowardice in the eyes of an old combat veteran like Jones. He fought unsuccessfully for a provision giving the Governor power to remove a sheriff who did not properly defend a prisoner from being lynched,<sup>277</sup> but he did secure the enactment of a provision that gave the Supreme Court the power to impeach sheriffs for such dereliction. Some delegates may have considered this a minor issue, but to Jones it went to the heart of the very concept of the rule of law:

The principles which gave birth to this section had as well be met squarely. The transcendent issue they present can not be evaded by objection to details, or appeals for "people's rule." There is a great principle -- a vital principle involved. It will not down. It must be met and faced. It concerns all alike. In its enforcement civilization, religion and good government are alike promoted. Without it all languish and wither.

Let us be frank with ourselves. Every time a citizen rises up and appeals for the law, some man says some negro has committed an unmentionable crime, and, therefore, the sacredness of all law must be cast to the wind.

People in Alabama who have not taken the trouble to keep pace with events, will be startled to be told that in the last ten years over one hundred citizens of Alabama have been taken by mobs from sheriffs and jails and murdered. Yet such is the case. Such is our bloody record. And yet over two-thirds of those people were not guilty of a crime which I will not mention, because of fair listeners in the gallery.

Some years ago down in Butler County, a tax collector was murdered. A mob went to the jail

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<sup>277</sup> *Proceedings, supra* n. 236, at IV:4084-4088.

and took two white men and in flagrant contempt of law and the court hung them up in front of the Court House door that the judge of an Alabama court, when he went to deal out its justice, must be informed by the swinging bodies, how little people recked of law or courts.

We all recognize what I might call "justifiable humanity," where a criminal is caught red handed in the act, with the screams of his victim still vibrating in the air, that wise and good men may be moved to acts of lawless vengeance. But when a prisoner is once in the hands of the law, it should be taught all men that the prisoner, like the ark of the covenant, is sacred, and that the profane hand which touches either, will be palsied [a reference to II Chronicles 26:16-23].

Why is it of all men on earth, who are entrusted with the keeping of others, that a standard of honor must be made for officers different from all others, and that he should take no risk? Mr. President, the minister of the gospel who would fail to see the veriest [sic] stranger, much less one of his congregation, who is stricken with a deadly disease, because of personal fear, would be outlawed and scourged for all time. There are locomotive engineers every day standing by the throttle and risking their lives to save their passengers. We have seen captains of ships standing on the bridge, that the women and children might be saved, and going down to death in the waters. What policeman would be allowed to wear his uniform five minutes if he refused to make an arrest, at the risk of loss of life? What man would have respect for the Alabama State troops, no matter what the odds, if they allowed a mob to take a prisoner from them? Such a standard as is claimed for sheriffs has no



recognition in any laws of honor. It is a false standard of duty; if I may be pardoned for saying it, a cowardly standard of duty . . .

Let us not deceive ourselves. Two-thirds of the executions of prisoners by mobs are due to one of two things, either the cowardice of the sheriff -- and I don't think there have been many cases of cowardice -- or to a willingness for the mob to succeed, from the false conviction that a Sheriff in fighting for them is fighting not for the law but for some worthless prisoner. . . . We owe it to ourselves, we owe it to our children, we owe it to our God, to put a stop to this base indifference to murder, and making excuse for men who will not risk anything for the preservation of human life and the honor of the State. We have laws enough. Let us put a provision in the Constitution that will execute them . . .

These mob executions are brutalizing our children, blunting our religion, and undermining our civilization. Can anyone in the sound of my voice, rise up and say this is not so? We are undermining all noble ideals of duty and manhood. When we surrender to any local public opinion, which dominates in some places, that a Sheriff is not bound to take any risks, even to loss of life and limb, in defense of a prisoner, we abdicate all our past and bow down and worship false and base standards of duty. Why should not the Sheriff die at his post as well as the locomotive engineer, or the priest, or the doctor, or the soldier? [Applause]. We are setting a baleful example to our young sons, who are coming up around us, if we teach that when a prisoner is given to an officer, that officer is free to desert his post of duty, because there may be danger in it. It is not like Alabama or the South to tolerate such a

doctrine. Let us declare our faith as to this in our fundamental law. [Applause].

I do earnestly trust that this last Article framed by this Executive Department will not be touched in a line, but that it will go out from these halls that the law shall be executed, that we despise mob violence, and we intend that that human life shall be regarded as sacred, and be taken only by law. [Applause].<sup>278</sup>

The provision was adopted and is embodied in Sections 138 and 174 of the 1901 Constitution.

On race relations, then, Jones may be described as a moderate conservative. He tended to accept the values and institutions that he lived with, but within them he worked for fairness and justice and, at times, improvement.

Before the War, he never seems to have questioned the institution of slavery, but after the War he never seems to have lamented its abolition. Throughout his life he believed that segregation of the races, with the white race in the dominant position, was in the best interest of society as a whole, at least in the South, and at least at that time.

For the white race, being in the dominant position involved responsibilities. Like General Lee, who was concerned for the welfare of the worthless soldier because that soldier was "under me," the white race, by assuming the dominant position, assumed responsibilities toward the black race, to educate them and provide for their welfare and improvement.

He took pride in the achievements of the Anglo-Saxon race and wanted to preserve its culture. But that pride does not seem to have involved hostility toward the black race, any more than pride in things American implies hostility toward all things foreign. At no time, so far as this author can determine, did Jones ever speak derogatorily of the black race, nor did he at any time ever personally mistreat a black person.

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<sup>278</sup> *Id.* at I:887-891.

And when he spoke of the dominant position of the white race, he often couched it in terms like “now” or “at present.” He believed that at that time, most blacks were not sufficiently educated or experienced to assume an equal place with whites in government and society. But he also spoke of improvement in the future. An interesting mixture of the hardheaded realist and the farsighted idealist, Jones may have foreseen the possibility that one day the black and white races might truly meet on the basis of equality.

And above all, everything must be done with due regard for the rule of law.

### **Yet First and Always a Man of God**

Thomas Goode Jones’s Christian upbringing and Christian influence at Virginia Military Institute and in the Confederate camp, have already been noted. It is not surprising, then, that in 1865, shortly after returning home from the War, Jones confirmed his membership in St. John’s Episcopal Church in Montgomery.<sup>279</sup>

Like his father, Jones served as a trustee for the Hamner Hall School for Girls, an Episcopal institution.<sup>280</sup> He also was a trustee of the Bishop’s Fund for the Protestant Episcopal Diocese of Alabama.<sup>281</sup> DuBose says he “had a reverent mind, had no vices, never used intoxicants and never used profane language.”<sup>282</sup>

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<sup>279</sup> DuBose, *supra* n. 73, at 24.

<sup>280</sup> Owen, *supra* n. 96, at 275; Wood, *supra* n. 26, at 98.

<sup>281</sup> Owen, *The Story of Alabama: A History of the State* at 275; WB Jones, *Burgwin-Jones*, *supra* n. 1, at 114.

<sup>282</sup> DuBose, *supra* n. 73, at 24.

On the wall in the hall outside the sanctuary of St. John's is a plaque which reads:

To the Glory of God  
And in Loving Memory  
of  
Thomas Goode Jones  
1844-1914  
And his wife  
Georgena Bird Jones  
1846-1921

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Blessed are the Pure in Heart<sup>283</sup>

When this plaque was placed in St. John's, on May 13, 1923, the Senior Warden of the Parish read a moving and revealing tribute to Jones' wife, Georgena Bird Jones:

Here in this sacred edifice as a young girl she came for confirmation. Here at this sacred altar she became the wife of Thomas G. Jones. And here, in the after years, she brought her children and grandchildren to take their part in the work of the church. She was singularly unswerving in her devotion to her church principles. Always in her pew at every service, she took a keen and intelligent interest in things spiritual. To her, there was reality and comfort in the message of the sanctuary and in its blessed worship. She was jealous of any deviation from the gospel of the Son of God which had been her stay through so many sorrows and trials. Here for many years she taught a class of young men in the church school, and here for nearly seventy years she labored well and faithfully for the upbuilding of the church. And here, to this holy place when she had passed

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<sup>283</sup> Personal observation of this author, St. John's Episcopal Church, Montgomery, Alabama, May 2001.

sweetly and without a struggle into the peace of God which passeth all understanding, friends tenderly bore her body, as a few years before they had borne the body of her life companion, and laid it reverently before this altar for the last services of the church she loved and served so well.

Mrs. Jones was a woman of marked distinction and unusual personality. She was a sweet type of the true gentlewoman of the old school, gracious and kind in manner, always self-contained and courteous and gentle in disposition. About her personality hovered the delicate aroma of a courtly age long past, the ineffaceable stamp of birth and breeding, the unmistakable mark of a daughter of the Old South. When she entered a room, it seemed as if another candle had been lighted.

As a daughter she was obedient and dutiful; as a wife she was faithful and devoted; as a mother she was loving and sacrificing; as a friend and neighbor she was gentle, generous and kind.

In our poor, mistaken way, we speak of Mrs. Jones as dead. But she is not, only her tired and worn body has returned to the dust -- her pure white spirit dwells in a fairer land. Her gentle memory abides and will always abide in our hearts, a sweet and gracious blessing. Surely, it is not death to live in the hearts we love.

“Peace and death’s beauty to her heart today,  
Who is not dead, but only gone away,  
To sleep a little, as a child who goes,

When twilight folds the petals of the rose."<sup>284</sup>

On July 30, 1921, the *Montgomery Advertiser* printed a death announcement for Georgena Bird Jones which provides further insight into her character, personality, community service and religious devotion:

During the trying times of the 60's, all of Mrs. Jones' people were Secessionists. As a young girl of fifteen, she witnessed the inauguration of President Jefferson Davis and from that hour was one of the most faithful workers for the Confederacy, laboring night and day over the cutting tables, making everything needful for the soldiers in the camp and field. Later when a war hospital for the wounded Confederates was established in the famous Concert and Estelle Hills, in Montgomery, she nursed there with other devoted women under the leadership of her grandmother, Mrs. Eliza Inglis Moore.

Mrs. Jones always took a deep interest in the welfare of the Confederate Veterans and was a loyal member of the Sophie Bibb Chapter, United Daughters of the Confederacy. During the World War she was a member of the Montgomery Chapter of the American Red Cross and a devoted worker for the comfort of the soldiers. Mrs. Jones had lived in Ward Four for more than seventy years. She was loved and esteemed by all her neighbors for her acts of kindness and her tender ministrations. She seemed happiest when serving others. Among her close friends she was affectionately known as "Miss Gena," and she was always ready to serve them. She was a kind and

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<sup>284</sup> Tribute to Georgena Bird Jones (St. John's Episcopal Church, Montgomery, AL, May 13, 1923) (quoted by Mrs. J.M. De Cottes, *Wives of the Governors of Alabama: Georgena B. Jones, 1846-1821, Wife of Governor Thomas Goode Jones*; reprinted in *In Memoriam*, *supra* n. 65, at 6-7).

generous neighbor and one who loved her friends. Their joys were her joys, and when they sorrowed she sorrowed with them. She will be sorely missed by them.

Next to her home and family, Mrs. Jones's chief object of interest was her church. She became a member of St. John's Protestant Episcopal Church by baptism, and as a little girl was confirmed. She was a devoted and consistent communicant. Her interest and loyalty in the work of the church never flagged. For years she taught a class of young men in the Sunday School, and for many years she was president of St. John's Guild. At the time of her death, Mrs. Jones had probably been a communicant of the church longer than any other member. The last time she left her home was to attend the children's Easter celebration at the church with her little grandchildren.

During the terrible yellow fever epidemic in the late 90's when her husband, Governor Jones, was chairman of the Citizens Relief Committee, Mrs. Jones courageously remained with him and refused to leave the stricken city. She worked bravely for the relief of the sick and distressed. Many homes and sufferers, particularly among the poor, were blessed by her gentle care and sympathetic ministrations.

Mrs. Jones' interest in the Alabama State Troops, which were commanded by Colonel Jones for over a quarter of a century, was related yesterday by a friend. She regularly attended all the encampments with the Colonel and with a maternal care that won the hearts of all the soldiers. Shortly before Governor Jones's inauguration, Mrs. Jones discovered that while plans were on foot for an elaborate inaugural ball in honor of the incoming

governor and his wife, no plans had been made to entertain the State Troops, of which Governor Jones was the idol, and who were coming to Montgomery to take part in the inauguration of their beloved commander. Mrs. Jones immediately cancelled the inaugural ball and directed that the funds be used to feed and entertain the troops instead.<sup>285</sup>

Mrs. J.M. De Cottes offered a physical description of Georgena Bird Jones:

Mrs. Jones's features were aristocratic and her thoughtful, oval-shaped face was impressive. She bore herself with grace and dignity. She was tall, a little over six feet in height, of slender build, erect and straight in carriage. Her eyes dark brown, almost black, were tender and fringed with dark lashes. Her hair was dark brown in color, remaining so all through life, and even to the day of her death, in the seventy-fifth year of her age, there was no tinge of gray in it.<sup>286</sup>

The portrait that emerges of Thomas and Georgena Jones, then, is of a couple who are aristocratic, thoughtful, and immersed in Christian and civic service, busy people, but not too busy to reflect upon that which is truly important. As DuBose wrote:

Judge and Mrs. Jones lived in their own home in Montgomery, comfortably but not extravagantly. They were the parents of 13 children, sons and daughters.

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<sup>285</sup> *Death Notice for Georgena Bird Jones*, Montgomery Advertiser (July 30, 1921) (quoted by De Cottes, *supra* n. 284; reprinted in *In Memoriam*, *supra* n. 65, at 5-6).

<sup>286</sup> *Id.*



In 1865, soon after his return from the army, Major Jones was confirmed in the Episcopal Church. He had a reverent mind, had no vices, never used intoxicants and never used profane language. There is a large tree in his yard, under which the family was wont to assemble on summer nights. As the father took his seat one bright night, the stars aglow in a cloudless sky, he exclaimed: 'The heavens in their glory above, the green earth below answer the scoffer. There is a God!'"<sup>287</sup>

### JURIST

When the 1901 Alabama Constitutional Convention ended on September 2, 1901, Thomas Goode Jones was fifty-six years old. Already he had engaged in more careers of public service than most people do in a lifetime: Confederate Army Major, Colonel of the Alabama State Troops, farmer, lawyer, newspaper editor, city alderman, state legislator, Speaker of the Alabama House of Representatives, President of the Alabama State Bar Association, author of the Bar's Code of Ethics, Governor, leading delegate to the Constitutional Convention. After a career like this, many would be looking toward retirement. Instead, Jones was about to embark on the next, and possibly highest, phase of his life of public service -- that of a distinguished federal jurist.

Jones was a lifelong Democrat, but throughout his political career, he had demonstrated an ability to work with Republicans. And on some issues, he agreed with Republican policies, particularly at the federal level. It is not surprising, then, that on October 7, 1901, when it came time for Republican President Theodore Roosevelt to appoint a federal judge for the Middle and Northern Districts of Alabama, he chose Thomas Goode Jones. According to Walter B. Jones, Gov. Jones' name was first suggested to President Roosevelt by Ex-president Grover Cleveland, and when it became known that the President was considering his name, Senators Morgan and Pettus, Gen.

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<sup>287</sup> DuBose, *supra* n. 73, at 24.

Stewart L. Woodford ex-Minister to Spain, Justice John M. Harlan, Gen. John B. Gordon, and Booker T. Washington, the great negro educator, heartily urged the appointment.

Gov. Jones was not an applicant for the appointment and did not know that it was contemplated until a close personal friend of the President enquired whether he would accept the appointment if tendered. This was President Roosevelt's first appointment of consequence and was widely favorably commented upon both in the United States and in England. The appointment met with universal approval and the President was showered with congratulatory telegrams from all over the State. The Alabama Congressional Delegation, leading Republicans, the Governor of Alabama, the Secretary of the Navy, Hilary A. Herbert, the entire bar of the State, State judges and officials were delighted with the selection and the press of the State and Nation, without exception, praised it. The *Charleston Post* remarked editorially that "President Roosevelt has probably interpreted the will of the people as closely as if he had submitted the choice to a plebiscite" and the *Norfolk Landmark* said: "When Roosevelt appointed Judge Jones to that federal judgeship in Alabama he showed himself to be a real President."<sup>288</sup>

Freyer and Dixon argue that local factors influenced Roosevelt's appointment of Jones. Jones' predecessor on the District Court, Judge John Bruce, who served from 1875-1901, was a Reconstruction Republican from Iowa. The appointment of Jones was, in the view of Freyer and Dixon, Roosevelt's attempt at reconciliation with the South:

The significance of local factors was seen in Theodore Roosevelt's appointment of powerful south Alabama conservative Democrat and former governor, Thomas Jones. By 1900, Republicans such as Shelby and Hundley continued to be electable locally, yet Roosevelt nominated Jones. Part of the explanation was that Jones was one of

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<sup>288</sup> WB Jones, *Burgwin-Jones*, *supra* n. 1, at 112-113.

the foremost members of Alabama's bar. He authored the state's code of legal ethics that the American Bar Association adopted as its own provision. In addition, although he helped to draft the 1901 constitution that established racial segregation, he urged that the law otherwise be administered as fairly as possible toward African Americans. This proviso was enough to win the support of Tuskegee's Booker T. Washington, who wrote Roosevelt a letter favoring Jones' nomination. Also, to Alabama's legal profession, the appointment of Jones as Bruce's successor became a symbol of post-Reconstruction reconciliation.<sup>289</sup>

At the time, Jones took office as a federal judge, legal thought across the nation was undergoing substantial change. The legal positivism of Dean Langdell at Harvard was gaining acceptance in the legal community. A disciple of Langdell, Oliver Wendell Holmes, Jr., was Chief Justice of the Supreme Court of Massachusetts; he would serve as an Associate Justice of the U.S. Supreme Court from 1902-1932. Rather than the traditional formalism of previous legal thought, which insisted that justice should be administered according to the strict application of the law without regard to its consequences, Holmes believed in sociological jurisprudence and legal realism. Sociological jurisprudence was the belief that law should reflect the sociological realities of the world around us rather than simply the application of rules and precedents. Legal realism was the belief that judges generally decide cases according to their own personal desires and prejudices, rather than strictly following the law in an objective manner.

Holmes' view of law had not gained much acceptance in Alabama. As Freyer and Dixon wrote:

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<sup>289</sup> Tony Freyer & Timothy Dixon, *Democracy and Judicial Independence: A History of the Federal Courts of Alabama, 1820-1994* 68 (Brooklyn: Carlson Publishing Inc. 1995) [hereinafter Freyer & Dixon, *Democracy and Judicial Independence*].

The state's mainstream legal culture adhered to the dominant formalism. Federal judges, such as Jones and Clayton, shared with fellow members of the State Bar a fundamental conservatism consistent with formalistic legal thought. At the same time, however, both the Bar Association and its members who were federal judges advocated certain limited reforms consistent with sociological jurisprudence and legal realism.<sup>290</sup>

Freyer and Dixon described the legal philosophy of Jones and other federal judges in Alabama as "conservative activism."<sup>291</sup> They believed the law should be conservative, hesitant to impose radical changes, but that law must also take cognizance of social realities and make some accommodation for them.<sup>292</sup> Jones himself had always combined idealism and realism. His speeches and *Daily Picayune* editorials show a passionate devotion to the ideals of the Confederacy; but he tempered those ideals with the sober realization that the Confederacy had lost the war. He therefore determined to work for the welfare of the South through the framework of the U.S. Constitution and the realities of the federal/state relationship.

### **The Railroad Cases**

One major controversy that came to Jones' court concerned the authority of the State of Alabama and its subsidiaries to regulate railroads. Jones was well-qualified to preside over this controversy because of his extensive experience on both sides. On the one hand, his father, Samuel Goode Jones, had been a railroad entrepreneur most of his life, and railroads were one of Jones' major clients while he was practicing law. On the other hand, as an alderman, legislator, and governor, he had extensive experience in state government.

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<sup>290</sup> *Id.* at 90.

<sup>291</sup> *Id.*

<sup>292</sup> *Id.* at 90-92.

In *Interstate Commerce Commission v. Alabama Midland Railway Co.*,<sup>293</sup> the Supreme Court had ruled 8 to 1 that the federal statute establishing the Interstate Commerce Commission did not give the ICC power to regulate railroad rates. Many Alabamians believed the state should regulate railroad rates, since the federal agency could not do so, and in 1906, Braxton Bragg Comer was elected governor on a platform that called for such regulation. This precipitated a struggle between Governor Comer and Milton H. Smith of the Louisville and Nashville Railroad Company, who vigorously resisted both state and federal regulation. Smith turned to the federal courts for protection against confiscatory regulation. He declared that "people having a democratic government, with a majority rule, create commissions . . . with power to confiscate – to . . . destroy the value of the property to the owner."<sup>294</sup> When this happens, and when the "people have gotten a taste of blood," the railroad had little choice but "to enter politics -- become parties to the dirty work . . . [in order] to protect their property from injurious, destructive, and confiscatory legislation."<sup>295</sup>

A major struggle was in the making. Governor Comer secured passage of legislation giving the state's commission greater power over railroad rates. Smith challenged the legislation and chose the federal courts as his field of battle. The case fell squarely into the lap of Judge Thomas Goode Jones.

In a series of decisions, Jones ruled in favor of the railroads. While admitting that the State of Alabama possessed a police power to regulate on behalf of the health, safety, welfare, and morals of the people of Alabama, he ruled that rate restrictions violated the Due Process Clause of the Fourteenth Amendment, which provides that "nor shall any State deprive any person of life, liberty, or property, without due process of law," if they unreasonably interfere with the right of the railroad to earn a reasonable return on its investment. In *Western Railway of Alabama v. Railroad Commission of Alabama et.*

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<sup>293</sup> 168 U.S. 144 (1897).

<sup>294</sup> Freyer & Dixon, *supra* n. 289, at 112 (quoting Milton H. Smith).

<sup>295</sup> *Id.*

*al.*,<sup>296</sup> he held that “a rate statute is obnoxious to the fourteenth amendment if its operation prevents the earning of just remuneration on the value of the property devoted to the service, although it yields some profit.” As to what constitutes a reasonable return, Jones wrote that this depends upon many factors: amount of risk, locality, rate of return on other investments of a similar nature, to name only a few. The rates imposed by the State of Alabama were, in this instance, confiscatory:

[T]he Constitution does not guarantee any profit to a carrier under any and all circumstances, but it does protect the carrier against legislative interference, which prevents the earning, if it can be done, of a fair remuneration upon the value of the property devoted to the service, so long as its charges are just and reasonable, and it serves the public without unjust discrimination, under the conditions existing at the time the charge is made.<sup>297</sup>

Jones went on to say:

The carrier certainly has the right, if rates have been fixed too low, in the past, to meet changed conditions by increasing them, if the increase be reasonable; and the statute in denying the carrier this right, and forcing them to continue in operation confiscatory rates, violates the Constitution and is void.<sup>298</sup>

The Alabama rate restrictions also violated the Equal Protection Clause of the Fourteenth Amendment, which provides that “nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.” The Equal

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<sup>296</sup> 197 F. 954 (1912).

<sup>297</sup> *Id.* at 971.

<sup>298</sup> *Id.* at 972.

Protection Clause requires states to treat all members of the same class in the same way, unless there is a rational basis for treating them differently. In this case, railroads which had contested the Commission's authority were denied the right to raise their rates, while those who had accepted the Commission's authority had been allowed some rate increases. Jones noted:

Every railroad which was willing to forego its constitutional right to test the validity of the rates in the courts thereupon received a promotion or the right to charge a higher rate. The only railroads which were not authorized by subsequent acts and orders of the railroads which were not authorized by subsequent acts and orders of the Commission to charge higher rates than those originally prescribed were those which insisted on the prosecution of their rights under the Constitution in the federal court.<sup>299</sup>

In what appears to be a rejection of sociological jurisprudence, Jones closed his opinion by declaring that whatever the political or social or economic consequences may be, the "Constitution of the Fathers" must be upheld. He quoted Lord Mansfield as saying:

The Constitution does not allow reasons of state to influence our judgments. God forbid it should! We must not regard political consequences, howsoever formidable they might be; if rebellion was the certain consequence, we are bound to say, "Fiat justitia, ruat coelum." We are to say what we take the law to be; if we do not speak our real opinions, we prevaricate with God, and our own consciences.<sup>300</sup>

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<sup>299</sup> *Id.* at 978.

<sup>300</sup> *Id.* at 981.

He reached a similar conclusion in *Louisville & Nashville Railroad Company et. al. v. Railroad Commission of Alabama et. al.*<sup>301</sup> In another case involving the same parties, *Louisville & Nashville Railroad Company v. Railroad Commission of Alabama et. al.*,<sup>302</sup> he held that an order of the Railroad Commission of Alabama requiring the railroad to stop all of its passenger trains at a certain depot in Mobile involved substantial expense for the railroad and constituted a deprivation of property in violation of the Due Process Clause of the Fourteenth Amendment.<sup>303</sup> In all of these cases he carefully supported his conclusions with ample legal authority. However, the next year, the Supreme Court used a different rationale in *The Minnesota Rate Case*,<sup>304</sup> and Judge Jones' decisions thus did not become landmark precedents.

In reaching his conclusions, Judge Jones probably was influenced by his opposition to state regulation of business, coupled with his long-stated belief, inherited from his father, that railroads were essential to the development of Alabama. These decisions aroused considerable controversy throughout the State, and the cases were commonly perceived as a power struggle between Governor Comer and Judge Jones. As the *Cullman Democrat* editorialized:

The followers of Comer are blackguarding Judge Thos. G. Jones, of the United States court, for his decisions in upholding the rights of corporations to be heard in court. It is Comer's custom to denounce everyone who does not blindly follow his lead in all matters, but it appears that the present criticism is, to say the least, premature.

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<sup>301</sup> 196 F. 800 (1912). In this case the plaintiffs also challenged the Commission's rate restriction as a violation of the Interstate Commerce Clause of Article I, Section 8, Clause 3 of the U.S. Constitution. Judge Jones ruled that it was not necessary that he decide that issue, since he had already ruled the Alabama rate restriction unconstitutional on two other grounds and since the U.S. Supreme Court was currently considering the interstate commerce issue in another case.

<sup>302</sup> 191 F. 757 (1911).

<sup>303</sup> *Id.* at 767.

<sup>304</sup> 230 U.S. 352 (1913).



Judge Jones was as gallant a Confederate as ever drew sword for the South. The late Gen. Gordon recited a daring exploit of Judge Jones, in which the young soldier was severely wounded, but returned to headquarters with valuable information, leaving a trail of blood to mark his tracks. In peace, his services have been as notable, as honorable as those of any citizen Alabama has ever produced.

Today Judge Jones is standing between the people and socialism. His present services, in preventing Comer and the socialists in the Legislature, from wrecking the State, are more laudable than his services in the Civil war; in the halls of the Legislature or in the office of the chief executive. The blind demon of hate controls the present Governor, and, unless there be some restraining power, wreck and ruin will follow his spite legislation.<sup>305</sup>

The *Andulusian News* was more succinct: “[n]o purer, stronger man ever graced a Federal bench than Judge Jones of Montgomery. When the press association of Alabama, or Alabama newspapers, indulge in unkind criticism of this able jurist, they bring reproach upon the craft. Cut it out.”<sup>306</sup>

### The Peonage Cases

The institution of peonage is unfamiliar to most Americans today. But in the early 1900's, it was a legally established institution in Alabama and certain other parts of the country. The legality of peonage, and the constitutionality of federal statutes attempting to abolish it, were the subjects of extensive litigation in the court of Judge Thomas Goode Jones. In 1903, a federal grand jury considered issuing indictments for

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<sup>305</sup> *Judge Jones*, The Cullman Democrat (July 25, 1907).

<sup>306</sup> *Judge Jones*, Andulusian News (August 1, 1907).

peonage and propounded questions to Judge Jones concerning peonage and involuntary servitude. Jones began his advisory opinion by explaining peonage:

At the time of the passage of the act of Congress to which your attention will presently be called, a system of service popularly called "peonage" existed in New Mexico, though not so termed in the laws of the territory, which spoke of the relation as that of master and servant. It derived the institution from Mexico, which, in turn, inherited it from Spain. Peonage was not slavery, as it formerly existed in this country. The peon was not a slave. He was a freeman, with political as well as civil rights. He entered into the relation from choice, as a result of mutual contract. The relation was not confined to any race. The child of a peon did not become a peon, and the father could not contract away the services of his minor child, except in rare cases. The peon, male or female, agreed with the master upon the nature of the service, the length of its duration and compensation. The peon then became bound to the master "for an indebtedness founded upon an advancement in consideration of service." In the earlier stages of the institution there, the person agreeing to perform service could put an end to the relation by paying whatever he owed to the employer, at any time. If the peon wished to change masters or service, he could find a new employer who would advance enough to pay the peon's debts to his then master, and peon would then become bound in the new employer's service. So also the master could sell the services of the peon, for the term, to any one who would pay his debts and assume the duties and obligations of the master.<sup>307</sup>

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<sup>307</sup> *Peonage Cases*, 123 F. 671, 673-674 (1903).

Freyer and Dixon further explain that the peonage system commonly involved employers who paid cash advances to poor black workers, and sometimes poor whites and migrants, in return for which the worker agreed to perform services at a set wage for a specified period of time.<sup>308</sup> The purpose of the law, ostensibly at least, was to prevent workers from walking off the job, leaving the employer with no practical means of recovering the cash advance. However, critics charged that in practice, peonage was little more than slavery. According to U.S. District Attorney Warren S. Reese, Jr., a network of employers, judge and law enforcement officials cooperated to make the peonage system oppressive. Frequently, they would “accuse the Negro of some petty offense, and then require him, in order to escape conviction, to enter into an agreement to pay his accusers so much money, and sign a contract, under the terms of which his bondmen can hire him out until he pays a certain sum.”<sup>309</sup> Reese charged that workers were “locked up at nights in a cell, worked under guard during the day from 3 o’clock in the morning until 7 or 8 o’clock at night, whipped in a most cruel manner . . . [and] insufficiently fed and clad. . . . When the time of a good working Negro is nearing an end, he is rearrested on some trumped up charge and carried before some bribed justice and resented to an additional time.”<sup>310</sup>

An 1875 Alabama statute partially enforced peonage by making it a criminal crime for a worker to enter into a contract for labor for a cash advance with the intent of leaving the job before the contract was paid in full. But under this statute, the state had to prove that the employee intended to defraud the employer at the time the contract was made. In 1903, the legislature revised the statute to modify the requirement of fraudulent intent. Under the 1903 statute, leaving one’s employment before the contract was paid off was by itself “prima facie evidence of the intent to injure or defraud his employer.”<sup>311</sup> Booker T. Washington said the statute meant “that

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<sup>308</sup> Freyer & Dixon, *supra* n. 289, at 117.

<sup>309</sup> *Id.* at 118-119 (quoting Warren S. Reese, Jr.).

<sup>310</sup> *Id.* at 119.

<sup>311</sup> *Id.* at 120.

any white man, who cares to charge that a Colored man has promised to work for him and has not done so, or who has gotten money from him and not paid it back, can have the Colored man sent to the chain gang.”<sup>312</sup> Alabama law also made it a criminal offense for a worker who had entered into a peonage agreement to accept employment from another employer before the first peonage agreement had been paid off, without telling the new employer about the peonage agreement. The law also made it a crime for the new employer to hire the worker without the consent of the former employer, if the new employer had knowledge of the previous unsatisfied peonage contract.<sup>313</sup> By way of contrast, the federal Peonage Statute of 1867 prohibited certain forms of involuntary servitude that involved debt and coercion.<sup>314</sup> But it was uncertain whether that statute prohibited the type of peonage which existed in Alabama, and even if it did, it was unclear whether that federal statute was authorized by the U.S. Constitution.

In 1903, a young lawyer, Erastus J. Parsons, grandson of Governor Gordon Parsons, brought a petition for writ of habeas corpus in Coosa County to seek the release of a black man who had been jailed on a charge of violating the peonage laws. Failing in the courts of Alabama, he brought the matter to the attention of U.S. District Attorney, Warren S. Reese, Jr. As a result, grand juries were convened in Birmingham and Montgomery, and the grand jury propounded questions to Judge Thomas Goode Jones.<sup>315</sup>

Jones disliked the peonage system. He considered it unfair, demeaning, and a violation of “one of the most valuable liberties of man,” the right “to work where he pleases, and to quit one employment and go to another.”<sup>316</sup> As a member of the conservative white establishment, he also believed peonage was not in the interest of his own class, because among blacks, it

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<sup>312</sup> *Id.* (quoting Booker T. Washington).

<sup>313</sup> *Peonage Cases*, 123 F. 671, 684-685 (1903).

<sup>314</sup> Freyer & Dixon, *supra* n. 289, at 117.

<sup>315</sup> *Id.* at 118-119.

<sup>316</sup> *Id.* at 119 (quoting Thomas Goode Jones).

undermined the respect for law upon which harmonious race relations depended.<sup>317</sup>

Judge Jones held that the Peonage Statute of 1867 did prohibit the peonage system that existed in Alabama. The statute declared that:

[T]he system known as peonage is abolished and forever prohibited in the territory of New Mexico, or in any other territory or state of the United States,” and that it declared “null and void” any “acts, laws, resolutions, orders, regulations, or usages” in New Mexico or any other territory or state made to “establish, maintain, or enforce, directly or indirectly the voluntary or involuntary service or labor of any persons or peons, in liquidation of any debt or obligation . . .”<sup>318</sup>

In answer to the contention that those who entered peonage contracts did so voluntarily, Jones wrote that the Peonage Statute of 1867 prohibits both voluntary and involuntary service under the peonage system, because “[t]he law delights in the liberty and happiness of the citizen.”<sup>319</sup> Furthermore, he wrote, “[i]f the agreement, under the sweeping provision of the statute, can ever be said to be voluntary, it certainly becomes involuntary the moment the person desires to withdraw, and then is coerced to remain and perform service against his will.”<sup>320</sup>

Jones concluded that the Peonage Statute of 1867 was constitutional. The Thirteenth Amendment prohibits “slavery” and “involuntary servitude,” and further provides that “Congress shall have power to enforce this article by appropriate legislation.” Therefore, Congress, under the authority vested in it by the Thirteenth Amendment, had power not only to strike down and annul laws which supported the system of peonage in New Mexico, but, by direct and primary legislation of its own, to punish criminally individuals who, in any part of the United

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<sup>317</sup> *Id.* at 118.

<sup>318</sup> *Peonage Cases*, *supra* n. 307, at 675 (quoting the Peonage Statute of 1867).

<sup>319</sup> *Id.* at 680, 676.

<sup>320</sup> *Id.* at 680.

States, violate the rights of citizens of the United States in this regard, by lawlessly subjecting them to the results and evils, "the condition," of the forbidden system.<sup>321</sup>

Furthermore, Jones held that the peonage system was aimed at the poor classes of Alabama society. It therefore violated the concept of equal protection and the guarantee of Article I, Section 1 of the 1901 Alabama Constitution: "That all men are equally free and independent; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness."<sup>322</sup>

Jones cited Justice Thomas Cooley, whom he calls the "most eminent of all the writers on constitutional law," for the proposition that:

Every one has the right to demand that he be governed by general rules, and a special statute, which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but such an arbitrary mandate as is not within the province of free government. Those who make the laws are to govern by promulgated established rules, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite and court and countryman at plow. This is a maxim of constitutional law, and by it we test the authority and binding force of legislative enactment.<sup>323</sup>

What, then, of the argument that employers need these peonage contracts, and the laws which support them, to enforce the collection of debts against persons who would abscond with the money their employers had advanced them and leave the employers unable to collect the debts? That question, Jones suggests, goes to the very heart of the problem: The peonage

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<sup>321</sup> *Id.* at 676.

<sup>322</sup> *Id.* at 688 (quoting Ala. Const. art. I, § 1 (1901)).

<sup>323</sup> *Id.* at 688-689 (quoting Thomas Cooley, *Constitutional Law* Sec. 391, 393).

system enables employers to use the criminal justice system to enforce a civil obligation. The employer's proper remedy is not to file criminal charges, but to go through the process of a civil lawsuit to collect the debt:

What is this but declaring, if a man breaks his contract with his creditor without just excuse, he shall not work at his accustomed vocation for others without permission of the creditor? What is this but a coercive weapon placed by the law in the hands of the employer to compel the debtor to pay a debt, to perform the contract? Under the Constitution of Alabama there can be no imprisonment for debt, nor can it be treated, directly or indirectly, as a crime. The only constitutional method of enforcing a contract for personal service is to get judgment and execution, and have compensation for the broken contract by seizure and sale of the defendant's property.<sup>324</sup>

Later in the opinion Judge Jones declared emphatically: ". . . in all free governments the good sense of mankind, since the days when imprisonment for debt was abolished, has condemned and frowned upon any attempt to coerce the performance of civil obligations by criminal penalties."<sup>325</sup>

Judge Jones then advised the grand jury that federal law makes it a crime to: 1) induce an employee to enter into a peonage contract; 2) falsely represent to someone that he has been accused of a crime, and offer to satisfy the prosecutor if the person enters into a peonage contract; or 3) bring someone before a magistrate and inform the magistrate that the person has been accused of a crime, thereby inducing the person to enter

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<sup>324</sup> *Id.* at 685. Jones ignored the likely possibility that the employee/debtor may have no assets to seize and may leave the area, making collection practically impossible. He also ignored the possibility that the abolition of peonage may make it difficult or impossible for employees to obtain cash advances from their employers, since employers may no longer be willing to assume those risks.

<sup>325</sup> *Id.* at 691.

into a peonage contract.<sup>326</sup> He further advised the grand jury that a judge or magistrate has not committed a crime if he has mistakenly caused a person to be held in a state of peonage, but he is criminally responsible if he has intentionally done so.<sup>327</sup>

Jones then described three circumstances in which criminal prosecution of employee/debtors could be constitutional: 1) When a defendant has been convicted of a misdemeanor, and an employer offers to pay his fine for him in return for the defendant agreeing to work for him for an established period of time, this does not constitute a violation of the Peonage Act of 1867. However, the employment contract cannot extend beyond the payment of the fine and costs.<sup>328</sup> While Jones does not explain the reason for this distinction, the probable reason is that the Thirteenth Amendment prohibits slavery and involuntary servitude "except as punishment for crime whereof the party shall have been duly convicted."<sup>329</sup> 2) When a defendant quits his job without giving reasonable notice and thus creates a dangerous condition, this act can constitute a crime.

Doubtless, it is competent for legislation to make it a criminal offense for an employee, without giving reasonable notice, to suddenly quit duties the continued performance of which, for the time being, under the conditions of the particular calling, is necessary to prevent the endangering of life, health, or limb, or inflicting other grievous inconvenience or sacrifice upon the public. Surely a train dispatcher, indicted for suddenly leaving the service without giving orders necessary to prevent the clash of opposing trains upon a railroad, could not successfully plead, when destruction of life and property were brought about by his sudden [act], did not more than breach a contract of service. In these and like cases, the criminal law would be exerted not to compel performance, or to prevent quitting the service in a reasonable way, but because, by abandoning it in an unreasonable way, the employee has created a condition of affairs, the natural, direct, and known result of

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<sup>326</sup> *Id.* at 682-683.

<sup>327</sup> *Id.* at 683-684.

<sup>328</sup> *Id.* at 683.

<sup>329</sup> U.S. Const. Amend. XIII.



which is to endanger life, health, or limb, or to inflict grievous public injury.<sup>330</sup> 3) Finally, if an employee/debtor enters into a peonage contract intending at the time to defraud the employer by not working the requisite amount of time, this may be made a criminal offense. In fact, Jones wrote, this was the meaning and effect of the original statute, prior to the 1903 amendments.<sup>331</sup>

Judge Jones, then, led the way to reforming a corrupt and oppressive institution of peonage. But he did so using established legal institutions, following the rule of law and time-honored principles of jurisprudence.

### The Lynching Cases

Judge Jones' decisions in cases involving the lynching of blacks probably attracted more national attention than any others in his judicial career.

Lynching was particularly onerous to Judge Jones, not only because of its obvious cruelty and injustice, but also because of its disregard for lawful authority and legal process. At the 1901 Constitutional Convention, Jones had argued unsuccessfully for a constitutional provision which would give the governor power to remove any sheriff who failed to perform his duty to protect a prisoner against a lynch mob, even if the sheriff had to risk his own life in doing so. The question which confronted Judge Jones was, "is there constitutional authority for a federal statute that makes lynching from a county jail a federal crime?"

A black man named Horace Maples was arrested on a charge of murder and placed in the Madison County jail. On September 7, 1904, while Maples was awaiting trial, a mob of white persons lynched Maples and hanged him until he was dead. Thomas M. Riggins, who was allegedly part of the lynch mob, was arrested and charged with violating Sections 5508 and 5509 of the Revised Statutes of the United States, which made it a crime to engage in a conspiracy to violate the civil rights of a citizen of the United States and to act in furtherance of that

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<sup>330</sup> *Peonage Cases*, *supra* n. 307, at 685-686.

<sup>331</sup> *Id.* at 690-691.

conspiracy. Riggins filed a petition for a writ of habeas corpus, on the ground that Sections 5508 and 5509, insofar as they applied to his actions, were not authorized by the United States Constitution.

The question presented to Judge Jones, then, was whether the Constitution authorizes Congress to enact legislation making it a crime to lynch a person from a county jail.

Jones noted that the Fourteenth Amendment Section 1 provided in part that, "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."<sup>332</sup>

Section 5 of the Fourteenth Amendment provided that "[t]he Congress shall have power to enforce, by appropriate legislation, the provisions of this article."<sup>333</sup> What is due process of law? Jones wrote:

The phrase "due process" has had a well-defined meaning for ages. It had been previously employed in the Fifth Amendment. Putting it in the Fourteenth Amendment not only granted, but directly defined, certain specific rights which inure to the benefit of every person, alien as well as citizen, and are "derived from, dependent upon, or secured by the Constitution of the United states." The right thus created and defined, in a case like this, involving life and liberty, is the right to enjoy the benefits of all proceedings which constitute a trial according to "the law of the land." But it cuts deeper than this. The law of the land, applying to all persons impartially, might not afford some of the rights which this clause of the Constitution grants and secures to the citizen and compels the state to afford. If, for instance, the state should deprive a person of the benefit of counsel, it would not be due process of law. If it allowed a private

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<sup>332</sup> U.S. Const. Amend. XIV § 1.

<sup>333</sup> U.S. Const. Amend. XIV § 5.

person to pass judgment on him for a crime, it would not be due process. Within certain limits, the state may change its remedies at pleasure, but it must be "with due regard to the landmarks established for the protection of the citizen." It must not exercise "arbitrary power, or depart from the principles of private right and distributive justice." As declared by the Supreme Court, the Fourteenth Amendment, in its requisition concerning due process, "is not too vague and indefinite to operate as a practical restraint." *Hurtado v. California*, 110 U.S. 516, 4 Sup. Ct. 111, 28 L.Ed. 232. As there declared, "due process must, in the language of Mr. Webster, be, according to his familiar definition, the general law, or law which hears before it condemns, and which proceeds upon inquiry and renders judgment."<sup>334</sup>

In a case like this, then, due process means Maples had the right to a trial before he is punished for a crime. And the Fourteenth Amendment Due Process Clause imposes this requirement on the states:

The very words of this clause, by their own unaided force, inevitably utter a command that the state shall afford due process to the citizen. It is therefore a right, privilege or immunity of a citizen of the United States to have the state afford him due process of law. It is a universal rule of law, and common sense as well, that the grant of a right or privilege carries with it every right or privilege necessary to the enjoyment of the right granted, unless withheld by the terms of the grant. The grant here makes no such exception. The constitutional right of the citizen cannot bear fruit, or ripen into the enjoyment of due process at the

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<sup>334</sup> *Ex Parte Riggins*, 134 F. 404, 418 (1904).

hands of the state, if lawless outsiders prevent state officers from performing their duty concerning it.<sup>335</sup>

It follows, Jones held, that when the state arrested Maples and charged him with a crime, the state had a duty to protect him while in state custody to ensure that he did in fact have the opportunity to exercise his right to a trial. And, Jones held, “[t]he right to protect the officer in discharge of the duty involves the power to punish private individuals who assail the officer to prevent his performing it.”<sup>336</sup>

Riggins argued, however, that the Fourteenth Amendment applied to states, not to private individuals. If the sheriff or his deputies had committed the lynching themselves, or if they had assisted or encouraged others in doing so, or had they even been negligent in trying to protect Maples from the lynching, state action might be involved and the Fourteenth Amendment might apply. But in this case, all parties agreed that the sheriff had not assisted or encouraged the lynching, had tried to prevent it, and had even summoned a detachment of the Alabama National Guard to help protect Maples. The lynching, then, was private action, not state action; and while state laws may have been violated, the Fourteenth Amendment did not authorize federal statutes or federal prosecution for purely private action. In response to this argument Jones wrote:

It is said, of the counts based on violations of rights or privileges claimed under the Fourteenth Amendment, that no complaint is made of the laws of the state, or of the modes of enforcing them, but that, on the contrary, it is shown the state was without fault, and that its civil and military power was overwhelmed while the state was endeavoring to protect Maples from the mob, in order to afford him a trial by due process of law; and, this being so, it is insisted that case is presented in which the

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<sup>335</sup> *Id.* at 412-413.

<sup>336</sup> *Id.* at 411.

United States has no power to legislate for the punishment of the offenders in any aspect in which the matter may be viewed. The fact that the state was without fault and endeavoring to do its duty, however, does not take away all power of Congress to legislate under that amendment, and is material only in determining the channels in which that power may be exercised. The duty of affording due process of law to all persons was an original duty of the state, and, prior to the Fourteenth Amendment, was not a matter of concern to the general government. That amendment made the performance of the duty by the state a matter of national concern, and, if need be, of national supervision.<sup>337</sup>

Here Jones made a distinction between the Equal Protection and Due Process Clauses of the Fourteenth Amendment:

The equal protection clause makes but one demand upon the state, and gives the citizen a single right only. It is that the state must make and execute its laws fairly and impartially. It must not grant rights to one which, under similar circumstances, it denies to another. The command is fully obeyed when the state passes impartial laws, and provides proper officers to execute them, and they endeavor to do so. . . . The state may grant what it pleases and withhold what it pleases . . . for this clause neither commands the state to give any particular right, nor forbids it to withhold any particular right. Whatever is actually given is a gift of the state, in no wise secured by or dependent upon the Constitution of the United States. Whether these

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<sup>337</sup> *Id.* at 408, *Cf.* at 406. While Judge Jones accepts the contention that the state was without fault and had endeavored to prevent the lynching, this writer suspects that the Guard detachment would not have been overwhelmed by the mob if Colonel Jones had been in command.

laws are obeyed or resisted by private individuals, it amounts to nothing more than loyalty or disloyalty to state authority.<sup>338</sup>

For this reason, purely private actions that deny persons the equal protection of the laws do not come within the ambit of the Equal Protection Clause of the Fourteenth Amendment.

But the Due Process Clause is different, Jones wrote. When the state has incarcerated a person while awaiting trial, the state assumes certain obligations toward that person:

When the state seeks to punish the citizen for crime, it must not only give the accused a right to appear before a lawful tribunal, but it must afford the opportunity as well. Having put the accused in jail, it must keep him safely and bring him before that tribunal . . .

Is it not clear that private individuals who overpower state officers, when they are endeavoring to protect a prisoner accused of crime, whom they have confined to the end that both he and the state may exercise their respective functions and rights before a judicial tribunal, and wrest the prisoner from their custody, and, then murder him to punish him for the crime, do, in the constitutional sense, as well as in every other sense, deprive the prisoner of the enjoyment of due process at the hands of the state, and prevent the state from affording it? No one can deny that, under the Constitution, it is the prisoner's right to enjoy the workings of such due process, and that it is the duty of the state, under the Fourteenth Amendment, to dispense such justice to him. These rights cannot be enjoyed, or the duty enjoined upon the state discharged, except from the undisturbed working of the machinery of

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<sup>338</sup> *Id.* at 416.

justice after its power has once been put in motion, until the period arrives in the particular case where it may rightly stop. Until it has done its perfect work, the administration of due process, which in a case like this cannot be enjoyed except by the regular and orderly working of judicial procedure, is not afforded by the state. It may be true the state was not at fault; but that does not obliterate the fact that it was prevented from causing to be done the physical and mental acts which alone constitute the discharge of the duty in this case, and that by means of lawless violence, directed at the state and the prisoner alike, the prisoner has been prevented from enjoying the right to have the state do or cause to be done the physical or mental tasks which alone can afford him due process of law.<sup>339</sup>

The difference, then is that the state's duty under the Equal Protection Clause is fulfilled when it grants rights or privileges in an impartial manner, while its duty under the Due Process Clause is to follow through from the beginning to the end of the proceedings to ensure that the procedural rights of the accused are protected. Under the Equal Protection Clause, the state's duties are purely negative -- to refrain from enforcing laws in a discriminatory manner. Under the Due Process Clause, the state's duties are more positive -- to actively ensure that the accused has the opportunity to exercise his right to a fair trial. "Undoubtedly, then, private persons may defeat enjoyment, in the constitutional sense, of the right, privilege, or immunity of the citizen to have the state afford him due process of law in many cases."<sup>340</sup>

The Fourteenth Amendment not only guarantees due process; it also provides that "[t]he Congress shall have power to enforce, by appropriate legislation, the provisions of this article." Jones asked rhetorically:

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<sup>339</sup> *Id.* at 417.

<sup>340</sup> *Id.* at 419.

The power given Congress to see that the state performs the duty, naturally includes power to protect the right, and remove obstacles which prevent the state's performing the duty. Has it no power to do so? Must the spirit of the amendment be sacrificed to the letter? What is the spirit of the amendment? It goes to this extent at least: that the citizen, when the state undertakes to enforce rights of individuals or society against him, shall have actual enjoyment of the benefits of due process of law at its hands. Lawless acts by private individuals, which snatch such benefits from the citizen, certainly defy and frustrate the purposes of the amendment. Why has not Congress, which is given power "to enforce" the amendment, power to punish such lawlessness, which directly and inevitably defeats the purpose of the amendment?<sup>341</sup>

Judge Jones therefore concluded that Sections 5508 and 5509 of the United States Code, which made it a federal crime to conspire to violate the civil rights of a citizen of the United States and to act in furtherance of that conspiracy, were appropriate legislation to enforce the Due Process Clause of the Fourteenth Amendment. Riggins' petition for a writ of habeas corpus was therefore denied.<sup>342</sup>

Riggins appealed Judge Jones' ruling to the U.S. Supreme Court. The Court declined to reverse Jones' decision on the narrow ground that a writ of habeas corpus was not the proper means for testing the sufficiency of an indictment, but the Court did not rule on the merits of Judge Jones' holding that the Fourteenth Amendment Due Process Clause authorizes Congress to criminalize purely private action such as that of a lynch mob when the state is doing its duty to protect a prisoner.<sup>343</sup>

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<sup>341</sup> *Id.*

<sup>342</sup> *Id.* at 423.

<sup>343</sup> *Riggins v. United States*, 199 U.S. 547, 26 S.Ct. 147, 50 L.Ed. 303 (1905).



In the following year, 1906, the Supreme Court decided *Hodges v. United States*.<sup>344</sup> In this case the Court struck down as unconstitutional a federal law making it a criminal offense to compel blacks, by intimidation and force, to desist from performing their contracts of employment. The Court held that the Fourteenth Amendment did not apply because no state action was involved, and that such action did not create slavery or involuntary servitude under the Thirteenth Amendment, because that amendment applied only to those private acts which created a "state of entire subjection of one person to the will of another,"<sup>345</sup> and "[n]o mere personal assault or trespass or appropriation operates to reduce the individual to a condition of slavery."<sup>346</sup>

The following year Judge Jones considered the case of *United States v. Powell*.<sup>347</sup> Powell allegedly had been part of the same mob as Riggins, the mob that lynched Horace Maples. Like Riggins, he had been indicted by a federal grand jury under Revised Statutes 5508 and 5509. Powell entered a demurrer, claiming that the indictment did not state an offense which Congress was authorized to make criminal under the Fourteenth Amendment. Buttressed by the *Hodges* decision, Powell pressed his demurrer in Judge Jones' court. The United States resisted the demurrer, arguing that the Supreme Court's language concerning the Fourteenth Amendment was only dicta and not a binding holding, because the United States had admitted in the *Hodges* case that Hodges' actions were cognizable only under the Thirteenth Amendment rather than the Fourteenth.<sup>348</sup>

Jones' decision in *Powell* showed a remarkable combination of judicial courage and judicial restraint. The majority of his opinion, pages 650-662, was a defense of his ruling in *Riggins* and veiled criticism of the Supreme Court's ruling in *Hodges*. But then, on pages 662-664, he acknowledged that the *Hodges* decision indicated that the Supreme Court was not likely to accept his view that the Fourteenth Amendment Due

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<sup>344</sup> *Hodges v. United States*, 203 U.S. 1, 27 S.Ct. 6, 51 L.Ed. 65 (1906).

<sup>345</sup> *Id.* at 17.

<sup>346</sup> *Id.* at 18.

<sup>347</sup> *United States v. Powell*, 151 F. 648 (1907).

<sup>348</sup> *Id.*

Process Clause can justify federal laws that criminalize purely private action. He acknowledged that since the *Hodges* language concerning the Fourteenth Amendment was dicta rather than holding, it was possible that the Court had not intended that language to constitute a binding precedent. But he said:

It would be hazardous for this court, in view of the circumstances to hold that these remarks were made without consideration of their effect upon other cases of the kind. If they were not inadvertently made, and the court intended to bind itself on this point, it is the duty of this court to follow unhesitatingly. While there may be doubt as to what it intended, the Supreme Court is the only court which can properly solve that doubt. If this court solves its own doubts as to the meaning of the Supreme Court against the defendant, and puts him to trial, it will inflict needless hardship upon the defendant, and put the government to much useless expense. On the other hand, if the court errs in solving its doubts against the government, it has a speedy remedy on writ of error from the Supreme Court under a recent act of Congress. . . . It must therefore take the *Hodges* Case as a binding authority that no right, privilege, or immunity in respect of due process, at any stage in the duty of affording it, arises under the Fourteenth Amendment, unless there be denial of the right by the state or its officers, and that no immunity whatever is secured under the Constitution or laws, in a case like this, against lawlessness of private individuals which frustrates the state's efforts to perform its constitutional duty, although thereby all enjoyment of the benefits of due process be prevented.<sup>349</sup>

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<sup>349</sup> *Id.* at 663-664.

With obvious reluctance and distaste, then, Judge Jones sustained Powell's demurrer and dismissed the indictment. His view of due process was well in advance of that of the U.S. Supreme Court, though he gave no hint of accepting the doctrine of incorporation. Nevertheless, he recognized that imposing his own will and opinion against that of the Supreme Court would only cause prolonged expense and inconvenience to all parties involved, and consequently a judge has a duty to follow the precedents established by the Supreme Court unless there is a reasonable possibility that the Supreme Court can be persuaded to depart from those precedents. He also considered it his duty to endeavor to persuade the Court that its likely course of conduct was wrong.<sup>350</sup>

So what sort of Judge was Thomas Goode Jones? Walter Jones relates that during World War I, he was a law clerk for Judge Henry D. Clayton. On one occasion, he accompanied Judge Clayton to New York City, where he worked with several other federal judges. One of them, Judge William H. Hunt of California, said to Walter Jones:

[L]et me tell you something which I think you will like to know. At the request of President Roosevelt, I was one of the group of old friends who were with him his last night as President in the White House. We sat around an open fire and our talk covered everything that had happened during the years he was President. Along toward midnight, the fire died down. The President reached for a poker to stir the fire. Looking up, he said to us, "You know which appointment I made as President, which gave me the greatest satisfaction of them all?" [Members of the group suggested some of the appointments he had made.] "No," replied the President, "You have not named

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<sup>350</sup> The Supreme Court affirmed Jones' dismissal of the indictment in *United States v. Powell*, 212 U.S. 564, 29 S.Ct. 690, 53 L.Ed. 653 (1909). Judge Jones' view finally prevailed in 1968 when the Supreme Court overruled the *Hodges* decision in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed. 1189. That this last-mentioned case involved a Jones as a party is ironic but coincidental.

the appointment I have in mind -- it was that of a Confederate veteran, former Governor Thomas Goode Jones, to be a Federal Judge in Alabama. Appointing him, and the courageous way in which he conducted himself, has given me more satisfaction than any other Presidential appointment I have made."<sup>351</sup>

Freyer's and Dixon's description of Judge Jones as a conservative activist is essentially accurate, but it must be tempered by the recognition that he led the way toward reform in several key areas of individual rights and equal treatment under the law. His reference to Justice Thomas Cooley as the "most eminent of all the writers on constitutional law"<sup>352</sup> is revealing, for Cooley was a strict constructionist who believed in individual freedom and limited government.<sup>353</sup> Nor was this an isolated citation. Jones frequently cited great jurists of the classical tradition like Justice Cooley,<sup>354</sup> Justice Joseph Story,<sup>355</sup> Simon Greenleaf,<sup>356</sup> Chancellor James Kent,<sup>357</sup> Sir William Blackstone,<sup>358</sup> Sir Edward Coke,<sup>359</sup> *The Federalist*,<sup>360</sup> and others.

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<sup>351</sup> *In Memoriam*, *supra* n. 65, at 24-25 (quoted by WB Jones, *Anecdotes About Governor Thomas G. Jones of Alabama*).

<sup>352</sup> *Peonage Cases*, *supra* n. 307, at 688-689.

<sup>353</sup> Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America*, 1880; reprinted 2001 by American Foundation Publishers, Bridgewater, VA; Foreword by John Eidsmoe. Like Jones, Cooley had engaged in farming, newspaper writing, and politics. Like Jones, he "read for the law" rather than attending law school. And like Jones, Cooley has a law school named after him, the Thomas M. Cooley School of Law in Michigan. Cooley (1824-1898) was older than Jones (1844-1914), but their lives overlapped. So far as this writer can determine, they never met.

<sup>354</sup> *Ex Parte N.K. Fairbank Co.*, 194 F. 978, 999 (M.D. Ala., 1912); *Central of Georgia Railway Co. v. Railroad Commission of Alabama*, 161 F. 925 (C.C.M.D. Ala., 1908); *Peonage Cases*, 123 F. 671, 688-689 (M.D. Ala., 1903).

<sup>355</sup> *Ex Parte Steele*, 162 F. 694, 705 (N.D. Ala., 1908); *Central of Georgia Railway Co. v. Railroad Commission of Alabama*, 161 F. 925, 1003 (C.C.M.D. Ala., 1907); *Louisville & N.R. Co. v. Railroad Commission of Alabama*, 157 F. 944, 959 (C.C.M.D. Ala., 1907); *Montgomery County v. Cochran*, 116 F. 985, 993 (C.C.M.D. Ala., 1902).

<sup>356</sup> *Louisville & N.R. Co. v. Railroad Commission of Alabama*, 196 F. 800, 817 (N.D. Ala., 1912).

<sup>357</sup> *Ex Parte McLeod*, 120 F. 130, 132 (N.D. Ala., 1903); *Ex Parte N.K. Fairbank Co.*, 194 F. 978, 995 (M.D. Ala., 1912).

Like the authorities cited above, Judge Jones was strongly committed to individual freedom and limited government. As he wrote in *Central of Georgia Railway Co. v. Railroad Commission of Alabama*.<sup>361</sup>

Every well-informed layman is aware that the great purpose of all civilized government is to protect life, liberty, and property. The protection of rights of property is next in importance only to protection of life and liberty. Indeed, there is little real liberty where rights of property are not respected and enforced. All enlightened governments seek to secure these rights from impairment by arbitrary acts of government as well as from invasion by private individuals.<sup>362</sup>

And like the authorities cited above, he did not hesitate to invoke the higher law of God. In *Ex Parte McLeod*,<sup>363</sup> he declared, “[i]n Divine and human laws the effective means relied on to restrain the acts of men is to hold up before their eyes the consequences which may result from their acts.”<sup>364</sup> And in *Ex Parte Reaves*,<sup>365</sup> he quoted the Supreme Court of Pennsylvania to support parental rights, “[w]e must take the law as we find it, and regard the claim which the law of God, of nature, of the state, and of the United States gives the father to the services of his child.”<sup>366</sup>

Some readers may be surprised that a passionate Confederate officer and crusading anti-Reconstruction editor would lead the way toward granting liberty and political equality

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<sup>358</sup> *Ex Parte McLeod*, 120 F. 130, 133, 135 (N.D. Ala., 1903); *Ex Parte Reaves*, 121 F. 848, 858 (C.C.M.D. Ala., 1903); *In re Home Discount Co.*, 147 F. 538, 556 (N.D. Ala., 1906).

<sup>359</sup> *Ex Parte Reaves*, 121 F. 848, 851 (C.C.M.D. Ala., 1903); *Peonage Cases*, 123 F. 671, 676 (M.D. Ala., 1903).

<sup>360</sup> *Montgomery County v. Cochran*, 116 F. 985, 991 (C.C.M.D. Ala., 1902).

<sup>361</sup> 161 F. 925 (C.C. Ala. 1908).

<sup>362</sup> *Id.* at 961.

<sup>363</sup> 120 F. 130 (D.C. Ala 1903).

<sup>364</sup> *Id.* at 131.

<sup>365</sup> 121 F. 848 (C.C. Ala 1903) (quoting *Commonwealth v. Fox*, 7 Pa. 339).

<sup>366</sup> *Id.* at 860.

for blacks. Certainly Jones' thinking developed and matured during the half century after the War Between the States. But this author would suggest that his basic thought did not change over the years as much as it might seem at first glance.

Throughout his life, a central theme of Jones' philosophy was a commitment to working within the established order to achieve liberty and justice. He and his fellow Confederates fought for secession, both because they believed their respective states had a legal and constitutional right to secede, and because they believed the Union had become oppressive and unjust. They fought against Reconstruction because they believed the Federal Government, working with local carpetbaggers and scalawags, were oppressing the people of the South. Some might see an inconsistency between secession and working within the established order. We must remember, however, that as they saw it, their respective state governments were the established order, and the power of secession was nowhere in the Constitution delegated to the federal government and was therefore reserved to the states by the Tenth Amendment.<sup>367</sup>

Many do not realize that during the War Between the States and its aftermath, Northerners and Southerners both spoke incessantly of liberty and individual rights in their songs, their speeches, and their poetry. But to each side, the terms had different meanings. Southerners fought for the constitutional concept of limited government and separation of powers, believing those constitutional limits were necessary to prevent the national government from usurping power and trampling upon the liberties of the people, in some instances oblivious to the fact that these liberties did not apply to the slave population. Northerners fought for the preservation of the Union and the emancipation of slaves, in some instances oblivious to the possibility that the expanded national government they were creating might ultimately be injurious to personal liberty.

As his career progressed from youthful Confederate officer to newspaper editor to lawyer to legislator to governor to

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<sup>367</sup> As an example of Southern constitutional thought, *See Union and Liberty: The Political Philosophy of John C. Calhoun* 170-182 (Ross M. Lence ed., Indianapolis: Liberty Fund, 1992).

federal judge, Jones' concept of freedom and the best way to secure and preserve it undoubtedly matured. But his core values remained essentially the same.

Thomas Goode Jones led Alabama into the cold realities of the twentieth century, without losing sight of the romantic ideals and enduring values of the past.

### IN CLOSING

As is fitting for a man who lived an active and strenuous life, Thomas Goode Jones was blessed with excellent and vigorous health until a few months before he died. Even then, he continued his duties on the federal bench. As the *Mobile Register* wrote, "Inured to war and turmoil long ago his remarkable powers of endurance served him to the very last, and he never gave up until his strong constitution gave way under the strain."<sup>368</sup>

After a long illness with Bright's disease, the *Mobile Register* wrote:

Tenacious to the last, Judge Jones lingered day after day when it seemed that it was only a matter of a few hours. About two weeks ago reports from his bedside were that his condition was critical. He rallied, though it was slight, and while during the last week or ten days he was dangerously ill, still some hope was held out. Early Monday he began to sink rapidly.<sup>369</sup>

And on Tuesday afternoon, April 28, 1914, surrounded by family at his home, Thomas Goode Jones died at the age of 69.

The Governor of Alabama, Emmet O'Neal, issued a proclamation declaring:

When the scroll which contains the names of the great men of Alabama is unrolled, there will be

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<sup>368</sup> *Ermine Is Laid Aside Forever by Judge Jones*, *Mobile Register* (April 29, 1914).

<sup>369</sup> *Id.*

none that will occupy a higher or nobler place than Thomas Goode Jones. The one grand tendency of his noble life and character has been to elevate the whole tone of the public mind, and to inspire a deeper sense of patriotism and a loftier conception of the duties of citizenship.

Therefore, in honor of his memory, I, Emmet O'Neal, Governor of Alabama, do issue this, my proclamation, and order that the flag of the State be placed at half-mast upon the Capitol, that the building be draped in mourning for thirty days and that the offices at the Capitol be closed on the day of the funeral.<sup>370</sup>

The following day the *Montgomery Advertiser* editorialized that:

[F]or thirteen years he tempered justice with mercy, and administered his duties with consideration, learning and ability. He feared nothing except to do wrong. . . . A leader has fallen. Our people were richer for his life, and are poorer now for his death.<sup>371</sup>

The same day the *Birmingham News* editorialized that:

Mentally Judge Jones has not had a superior in Alabama in many years. He had a distinctly logical mind, and with an unusual power of expression, he was always capable of presenting the most abstruse question in the most forceful language, which at the same time was clear and convincing. Many of his legal briefs and State papers will be studied years hence for their light

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<sup>370</sup> *In Memoriam*, *supra* n. 65, at 29 (Proclamation by Governor Emmett O'Neal, April 28, 1914).

<sup>371</sup> *Id.* at 39 (*Thomas Goode Jones*, *Montgomery Advertiser* (April 29, 1914)).



upon the struggles of his day. . . . In all relations of life he was a true man -- a devoted son, an indulgent brother, an ideal husband, a fond father, a most loyal friend. Alabama has reared few like unto him. He has left a history that may be treasured and an example that may be followed.<sup>372</sup>

W.E. Vasser of Athens, Alabama, composed a poem titled "On the Death of Thomas Goode Jones:"

The measured roll of muffled drums  
and martial dirge of pipe and horn  
His hearse should herald, when it comes  
By steeds in sable colors drawn.  
For he whose form returns to dust  
In battles waged for home and right,  
With heart whose faith a king might trust,  
Won Honor's badge in thickest fight.  
His courage like a votive flame  
Upon a sacred altar shone,  
Not kindled vain reward to claim,  
But wafting incense toward the throne,  
In battle's shock and riot's raid  
Unflickering that flame appeared,  
A soldier-statesman's homage paid,  
The State he served, the God he feared.  
And with the mourners gathered round  
The solemn obsequies today  
High jurists clad in wigs, and gowned,  
Should mourn the jurist passed away  
For all the majesty of law  
In his majestic mien and mind  
More clearly shone, with less of flaws,  
Than in the vellumed codes combined.  
For his life portrayed the codes of men --

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<sup>372</sup> *Id.* at 14-15 (*A Great Man Has Gone*, Birmingham News (April 29, 1914). These are typical of numerous editorials and statements concerning Jones at the time of his death.

The world could read his record there --  
And handed upward -- Heavenward -- then  
The angels blessed a page so fair.  
O! honest judge! O! upright man!  
Of law his conduct grandly spoke,  
Conforming to the Lord's own plan  
Promulged 'mid Sinai's fire and smoke.  
Then let the muffled drums be rolled,  
And let the mournful clarions play;  
In ermined pall his form enfold --  
A soldier-jurist passed away.  
His duty toward his fellow men,  
And duty to his God are done;  
And his is peace and gladness when  
His spirit's loftiest goals are won.<sup>373</sup>

A colleague on the federal bench, Judge William I. Grubb, said of Judge Jones, "[h]e was one of the ablest lawyers and judges, and one of the purest and most lovable men whom it has been my good fortune to be associated with in any of the relations of life."<sup>374</sup> Twenty-nine years later, in 1943, when a marble bust of Governor Jones was presented to the State of Alabama, John S. Tilley gave the dedicatory address and said of him, "[b]orn to the true aristocracy, the aristocracy of culture and character, he took his place in the ranks of those who 'walk with kings, nor lose the common touch.' Panoplied by nature to march in front of the crowd, there blazed ever on his shield that legend, that irresistible driving force which in the final analysis differentiates the real from the spurious aristocracy, 'Nobless oblige.'"<sup>375</sup>

The funeral took place at St. John's Episcopal Church, the church he had attended as a child and had served so faithfully throughout his adult life, on Thursday evening, April 30<sup>th</sup>. Beside his old war comrades, the long funeral procession was

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<sup>373</sup> *Id.* at 43 (quoting W.E. Vasser, *On the Death of Thomas Goode Jones*).

<sup>374</sup> *Id.* at 35 (quoted by John S. Tilley, *Thomas Goode Jones (1844-1914) -- An Appreciation* (June 23, 1943)).

<sup>375</sup> *Id.* at 31 (Tilley quoting from Rudyard Kipling, *If*).

headed by Governor O'Neal, of Alabama, and his entire staff, accompanied by a battalion of the Alabama National Guard and a regimental band. In Oakwood Cemetery, the casket, draped in the battle flag of the Confederacy and the flag of the United States, containing all that was mortal of Alabama's distinguished son, was laid away. Three volleys rang out from the military, taps sounded mournfully over the hills, and Thomas Goode Jones, warrior, statesman, and jurist, through with the conflicts of life, was left in peaceful sleep.<sup>376</sup>

The two flags, once locked in mortal combat, come together as symbols of Jones' life. Throughout his life he combined the roles of loyal Confederate and American patriot. He showed his beloved Alabama that a Southern patriot can support the United States Constitution, and respect the constitutional interpretation of Jefferson Davis and John C. Calhoun.

Oakwood Cemetery in Montgomery, Alabama is rich in history. On the crest of a hill in the western part of the cemetery stands a pavilion and a Confederate war memorial, over which flies a Confederate battle flag. On the hillside to the north and east stand row upon row of gleaming white tombstones, marking the graves of Confederate soldiers, many of them "Unknown."

Here, in 1874, Thomas Goode Jones delivered the Memorial Day oration that brought him into national prominence.

The hillside gives way to a ravine. On the hill across the ravine, in view of the Confederate graves, stands a tall Celtic Cross. The cross marks the graves of Thomas Goode Jones and members of his family. And the inscription on the grave of Thomas Goode Jones includes those hallowed words that express so well his life, legacy, and law:

THOMAS GOODE JONES  
1844-1914  
WARRIOR STATESMAN JURIST

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<sup>376</sup> Confederate Veteran, Vol. 22, 370-71 (1914).

