

HILL-COUNTRY DOCTOR:
THE EARLY LIFE AND CAREER OF SUPREME COURT JUSTICE
SAMUEL F. MILLER IN KENTUCKY, 1816-1849

Michael A. Ross

Most legal scholars agree that Samuel Freeman Miller was one of the most important justices on the United States Supreme Court during Reconstruction and the Gilded Age.¹ Serving on the bench for twenty-eight years (1862-1890), he wrote more opinions than any other justice before him. Specializing in constitutional issues, Miller "left his most enduring mark . . . through his reading of the Fourteenth Amendment."² His opinion in the *Slaughter-House Cases*, for example, continues to intrigue and confound scholars.³ For historians of the Supreme Court, Miller remains a man and a mind to be reckoned with.

MICHAEL A. ROSS, J.D., is a PhD candidate at the University of North Carolina at Chapel Hill. This article is based on a portion of his dissertation "Field and Miller: Lincoln's Legacy on the Supreme Court."

1 See G. Edward White, *The American Judicial Tradition: Profiles of Leading Justices* (New York: Oxford University Press, 1988), 86; Lawrence M. Friedman, *A History of American Law* (New York: Simon & Schuster, 1973), 331; Leon Friedman and Fred Israel, eds., *The Justices of the United States Supreme Court 1789-1969* (New York: R.R. Bowker, 1969), 1023.

2 Robert J. Cottrol, "Samuel Freeman Miller" in Kermit Hall, ed., *The Oxford Companion to the Supreme Court of the United States* (New York: Oxford University Press, 1992), 547-48.

3 *Slaughter-House Cases*, 16 Wall. 36 (1873). For the continued debates surrounding Miller's opinion in this case, see: Richard L. Aynes, "Constricting the Law of Freedom: Justice Miller, the Fourteenth Amendment, and the Slaughter-House Cases," 70 *Chicago-Kent Law Review* 627 (1994); Sanford Levinson, "Some Reflections on the Rehabilitation of the Privileges or Immunities Clause of the Fourteenth Amendment," 12 *Harvard Journal of Law & Public Policy* 71, 73 (1989); Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1984), 529-31, 533-34; Robert C. Palmer, "The Parameters of Constitutional Reconstruction: *Slaughter-House*, *Cruikshank*, and the Fourteenth Amendment," *University of Illinois Law Review* (1984): 739-70; Michael Conant, "Antimonopoly Tradition Under the Ninth and Fourteenth Amendments: *Slaughter-House Cases* Re-examined," 31 *Emory Law Journal* 785 (1982); William E. Nelson, *The Fourteenth Amendment: From Political Principle to Judicial Doctrine*

Most often associated with his adopted home state of Iowa, Miller actually spent the first thirty-three years of his life in Kentucky. During most of these early years, moreover, he worked as a doctor rather than a lawyer. The existing biographies of Miller offer only brief treatments of this period in his life.⁴ The purpose of this article is to supplement those biographies with a fuller discussion of his decisions to switch from medicine to law and to move West. In so doing, it is also possible to use Miller's life in Kentucky as a window to an age. During his three decades in Kentucky, Miller grappled with many of the same issues, and had many of the same hopes and disappointments, as other citizens of the state. Thus his early story is worth telling, not only as a supplement to judicial biography but as a way of trying to recreate antebellum life in southeastern Kentucky during a period of tremendous change.

Samuel Freeman Miller spent most of the 1830s and 1840s in the tiny town of Barbourville in the Kentucky hill country. Although the town's boosters expected that it would grow into the "Athens of the Kentucky Highlands," it was a village with high hopes and little future.⁵ Once a key trading point on the old Wilderness Road, the steamboat and the railroad by 1850 made winding inland roads archaic and small roadside trading towns like Barbourville obsolete. Increasingly isolated economically, Barbourville became politically isolated as well. As political power concentrated in Kentucky's river and railroad cities and in the slaveholding tobacco regions, Whiggish, pro-emancipation Barbourville disappeared from the political map. For an ambitious man like Samuel Miller, Barbourville became a dead end. Nevertheless, his early life and career cannot be understood

(Cambridge: Harvard University Press, 1988).

4 Charles Fairman's otherwise excellent biography does only a surface job with this period in Miller's life. Charles Fairman, *Mr. Justice Miller and the Supreme Court 1862-1890* (Cambridge: Harvard University Press, 1939), 3-17. See also, Charles Noble Gregory, *Samuel Freeman Miller* (Iowa City: State Historical Society of Iowa, 1907).

5 The quote that Barbourville was considered the "Athens of the Kentucky Highlands" was taken from an article on Miller in *The Green Bag* IX (1897): 310.

without considering his experiences there. For better or worse, Miller's young adulthood was inextricably intertwined with the brief economic rise and swift demise of this nineteenth-century Kentucky hill town.

Miller spent his childhood ninety miles to the north of Barbourville in Richmond in the fertile, Bluegrass county of Madison.⁶ His path to Barbourville began when, at age fourteen, he rejected the hard farming life of his parents. While Richmond farmers were generally prosperous, farming life in the 1830s was still arduous for all involved. Farming, unlike other areas of the national economy, had yet to be transformed by technology. Most farming techniques had not changed in two hundred years. The virgin lands of America were cleared with fire and ax, as in the middle ages. Homesteaders still dug drainage ditches with spades and drew ploughs with horses and oxen.⁷ For men, farm life meant rising at dawn, toiling in the fields, and returning, exhausted, to a candlelit house at dusk. For women, farm life consisted of an endless routine filled with drudgery and childbearing.⁸ "Men's hands hardened from gripping plow handles, their legs bowed from tramping over the clods turned up by the plowshare," writes historian John Mack Faragher, and "Women's hands cracked, bled, and developed corns from the hard water of the family wash, their knees grew knobby from years of kneeling to grit corn or scrub puncheon floors."⁹ As a result, Miller's youth was "surrounded by hardships and in the midst of toil."¹⁰ Farm life,

6 Tom W. Campbell, *Four Score Forgotten Men: Sketches of the Justices of the United States Supreme Court* (Little Rock, 1950), 212.

7 Eric Hobsbawn, *The Age of Capital 1848-1875* (New York: Mentor, 1979), 197.

8 Besides bearing and caring for the children and preparing three meals a day, women raised crops, spun cloth, tailored garments, tended flocks of chicken and geese, slaughtered animals, milked and fed cows, churned butter, made cheese, produced clothes, towels, blankets, quilts, pickles, soap, candles, and nearly everything else that made a difference between a hovel and a home. John Mack Faragher, *Sugar Creek: Life on the Illinois Prairie* (New Haven: Yale University Press, 1986), 99.

9 *Ibid.*

10 The quote is from an anonymous handwritten biography of Miller found in the files of the Knickerbocker Publishing Company (1906), State Historical Society of Iowa,

moreover, made his education a continual struggle.¹¹ During the winter months he attended school at the Richmond Academy and excelled in grammar and mathematics.¹² But during the rest of the year his parents dragooned him into labor on the family farm. It was a life of toil for which Miller was not suited.

Six feet tall, over two hundred pounds, with a massive head and square jaw, Miller had the look and build of an ox-driving farmer but not the inclination. He was, in fact, never known for a dogged work ethic. Later in life, Miller only half jokingly claimed his motto to be: "Never walk when you can ride, never sit when you can lie down." He quipped that it was fortunate he was born poor, as otherwise he would never have worked.¹³ Miller's dislike for farm life increased as he took on many of his father's responsibilities. The oldest of ten children, Miller was called upon by his mother Patsy to fill the shoes of his father Frederick. Whether because of Frederick's indolence, alcoholism, or sheer incompetence, Patsy counted on Samuel to help raise her enormous family. "Owing to my father's habits," Miller later said of his mother, "I was at a very early age taken into her confidence as a substitute, and the care of my younger sisters and brothers were {sic} a joint affair."¹⁴ In order to help provide for the family, Miller quit school at age fourteen and went to work in a local drugstore owned by a Dr. Leverill, a friend of his mother.¹⁵

With the guidance of Dr. Leverill, Miller recognized that there were careers outside of farming. During his six years working at the pharmacy, he spent long hours poring over Leverill's medical texts. Leverill successfully urged him to embark on a career in medicine.

Iowa City (hereafter SHSI).

11 "The Life of Justice Miller," *Keokuk Gate City*, 14 October 1890.

12 Interview with Miller by T.C. Crawford, *New York World*, 12 December 1886 (hereafter Crawford interview).

13 Fairman, *Mr. Justice Miller*, 5.

14 Miller to William Pitt Ballinger, 24 October 1872, Samuel Freeman Miller Papers, Library of Congress (hereafter LC), box 1, folder 9.

15 James A. Soring, "Judicial Opinions of Mr. Justice Miller," (MA Thesis, University of Iowa, 1954), 2.

In the autumn of 1835, at age eighteen, Miller entered medical school at Transylvania University in Lexington. Admission to Transylvania was something of a coup for the son of a farm family. The school, one of the few outposts of medicine in the West, had a national reputation.¹⁶

Miller chose to move to Barbourville while he was still a twenty-year-old medical student. During an age of great migrations, Miller's medical-school instructors urged students to pick a location, establish a practice, and then stay put. "When you have made a choice of a place of residence it should not be given up without good cause," Professor Lunsford P. Yandell told Miller's class. He went on to observe that, "Frequent changes are eminently prejudicial to the character of the young practitioner. They evidence a want of stability and perseverance, one of the most unfortunate of deficiencies. Guard against this. Be judicious in the choice of home, and there plant yourselves."¹⁷ Miller canvassed the state and decided on Barbourville. The town's appeal lay in its seeming economic prosperity and lack of other doctors. By getting there first, he hoped to hold a "monopoly of the practice for a wide region of country."¹⁸

Located on the western side of the Cumberland Gap, Barbourville served as a trading point for emigrants traveling on the old Wilderness Road. The road carried traffic from Virginia to the West through the gap in the Cumberland and Pine mountains. Although Barbourville never had more than a few hundred inhabitants, the constant influx of travelers and a thriving merchant community gave the town a

16 John C. Greene, *American Science in the Age of Jefferson* (Ames: Iowa State University Press, 1984), 120-23; Robert Peter, *The History of the Medical Department of Transylvania University* (1st publication series, no. 20; Louisville: The Filson Club Historical Society, 1905), 159-61. During the 1830s, Transylvania was just past the peak of its prominence. By 1840 rival medical schools established themselves in Kentucky, and Transylvania's importance and influence waned.

17 Lunsford P. Yandell, *A Lecture on The Duties of Physicians Delivered Before The Medical Class of Transylvania University*, 4 February 1837, Yandell Family Papers, record group 188, Rare Books & Manuscripts, Kornhauser Health Sciences Library, University of Louisville, Louisville, Kentucky.

18 Crawford interview.

cosmopolitan feel.¹⁹ Barbourville's boosters hoped it might grow into a major city, a "great western gate" to the frontier.²⁰ By successfully defeating their nearest economic competitor (a town saddled with the unfortunate name of Flat Lick on Stinking Creek), the town's merchants gained a monopoly on the emigrant trade. For a decade or so, Barbourville was a lively commercial community. While it had no newspaper or wholesalers, and only one bank, busy retail merchants lined its short main street. In the drier seasons, wagons, stagecoaches, horses, and mules clogged the town's roads. Cattlemen drove herds of cows and pigs through Barbourville on their way eastward through the Cumberland Gap to markets in Baltimore and Philadelphia. Trade continued during the rainy season, although at a reduced pace, with emigrants' wagons "creaking and rolling through bogs and chuckholes."²¹

In 1836, between his first and second years of medical school, Miller moved to Barbourville. Fast action allowed him to beat other practitioners to the doctorless town. His choice paid immediate professional and social dividends. Even while returning to Lexington for semesters of school, he developed a solid in-town and country practice. Upon graduation, he quickly became one of the town's most socially prominent citizens. In 1842, Miller married Lucy Ballinger, the daughter of Mr. and Mrs. James Ballinger, two of the town's founding settlers.²² Lucy's father and his brothers were lawyers who dominated the town's legal community. He was the clerk of the county court, and his brother Franklin was the most important judge. Lucy's brother, William Pitt Ballinger, was a lawyer as well. Together, the

19 In 1850, Barbourville still only had one hundred and eighty-four residents and twenty-one dwelling houses. *1850 Knox County Census*.

20 K.S. Sol Warren, *A History of Knox County* (Barbourville: Knox County Historical Society, 1976), 2.

21 Robert L. Kincaid, *The Wilderness Road* (Harrogate, Tennessee, 1955), 210. See also Harriet Simpson Arnow, *Flowering of the Cumberland* (New York: Macmillan, 1963), 373 and James McCague, *The Cumberland* (New York: Holt, Rhinehart & Winston, 1973), 191.

22 Autobiographical sketch by Miller, 7 June 1882, Caleb Forbes Davis Collection, microfilm, reel 2, book 5, p. 11. SHSI.

Ballingers held public positions and developed an active private practice in writs, warrants, and land titles.²³

The Ballingers were also some of Knox County's largest slaveowners. Unlike most of the state, slavery had limited economic utility in southeastern Kentucky, a region where the hilly land and thin soil made plantation farming impossible. A lack of access to markets compounded this fact. Even if Barbourville's countryside had shared the rich soil and gentle topography of the central part of the state, the lack of suitable transportation inhibited the growth of commercial agriculture. Thus, the farmers who lived around Barbourville were not slaveowners.²⁴ Most of Knox County's slaves lived in and around towns. By 1850, Barbourville had thirty male and forty-two female slaves.²⁵ Although he moved to a largely slaveless region, his marriage to Lucy linked him to slavery. In 1829, James Ballinger had given Lucy five slaves. Under the property laws of the time, these slaves became Samuel's when he married her. Miller also accepted mortgages on slave "property" to secure debts owed him for medical services.²⁶ Although he soon became an active emancipationist, Miller spent his mid twenties firmly attached to the "peculiar institution." As he walked the muddy main street of Barbourville in the 1840s, Miller, fresh from medical school, had become a man of standing. A doctor with a prosperous practice, married to the daughter of a prominent family, he was also (much to his later regret) a slaveowner.

23 Elmer Decker, "History of Knox County and Eastern Kentucky," 34, 95, copy in the library of The Filson Club Historical Society, Louisville, Kentucky (hereafter FCHS); Charles Fairman, *Mr. Justice Miller*, 16.

24 This fact helps explain why at the Kentucky Constitutional Convention of 1849, Knox County sent the only delegate in the entire state who favored emancipation. Foreword by Sherman Oxendine in Michael C. Mills, *Barbourville, Kentucky* (Barbourville: Barbourville Historical Society, 1977), 6.

25 *1850 Knox County Census*.

26 In 1842, for example, George McCallister gave Miller a lien/mortgage on three black children in order to secure a debt of \$67.50. Decker, "History of Knox County," 185-86; Irving Richman, *Iowa to Iowa: The Genesis of a Corn and Bible Commonwealth* (Iowa City: Iowa, 1931), 353.

Miller's early career success would soon be undermined, however, by Barbourville's declining economic prospects. Despite an appearance of economic health, Barbourville's economy had some profound structural weaknesses. Although located on the Cumberland River, Barbourville sat well above the "falls line" at a point not suitable for commercial navigation.²⁷ Lacking a cost-efficient connection to outside markets and cursed with poor soil, the farms around the town were not suited for cash crops. Instead, the region's farmers settled in southeastern Kentucky more by chance than by choice. "They had stopped because a wagon broke down, some member of the family had got sick and was not able to go on, or the forest had lured them aside because of good hunting," writes historian Robert Kincaid. "The main migratory stream swept by" while "they scratched out a living on thin soil . . . and were content with their lot."²⁸ Their farms had few improvements. They had no pastures for cattle, hogs, or sheep. Instead, farmers allowed livestock to roam and forage in the mountain forests. Farm families wore homespun clothing and only occasionally traded a few surplus crops or furs to Barbourville's merchants in return for cloth. Otherwise, "families were self-sufficient and had little need to come to town except to pay their taxes or have a deed recorded."²⁹ This disconnectedness between town and country did not bode well for Barbourville's future.³⁰ Economically, Barbourville had no hinterland. If the emigrant trade dried up, so would the town.

27 Barbourville was located at the intersection of Richland Creek and the Cumberland River. The Cumberland winds its way through Kentucky and was a major route of antebellum commerce. By the time it reached Tennessee, ferries, landings, boatyards, and towns that processed farm products, pig iron, and lumber lined the Cumberland. Commercial navigation, however, ended at Smith Shoals, Kentucky, a point below the falls line and miles from Barbourville. William Lynwood Montell, *Upper Cumberland Country* (Jackson: University of Mississippi Press, 1993), 7-8; McCague, *The Cumberland*, 189-93. See generally Arnow, *Flowering of the Cumberland* and William Lynwood Montell, *Don't Go Up Kettle Creek: Verbal Legacy of the Upper Cumberland* (Knoxville: University of Tennessee Press, 1983).

28 Kincaid, *Wilderness Road*, 215-16.

29 Foreword by Oxendine in Mills, *Barbourville, Kentucky*, 6.

Barbourville's over-reliance on the emigrant trade spelled its doom. Beginning in 1835, the old Wilderness Road began facing stiff competition from the newly built National Road along the Ohio River that provided a more direct route east. And as steamboats began to ply the Ohio River regularly, emigrants to and from Kentucky increasingly traveled by boat. Louisville, far to the northwest, became Kentucky's commercial center. Moreover, the market for Kentucky's cattle and hogs shifted to Pittsburgh and Cincinnati. As a result, travel overland through the Cumberland Gap to eastern markets became prohibitively costly. Towns like Barbourville without river access fell behind. And if the steamboat provided a stiff body blow to Barbourville's economy, the railroads landed the knock-out punch. More reliable, direct, and speedy, the railroads made the old plank roads obsolete. As traffic on the Wilderness Road decreased, Barbourville became increasingly isolated from the modern world. At a time when railroads made the trip from Louisville to Cincinnati in a few hours, traveling from Barbourville to neighboring Flat Lick still consumed a full day. While Lexington and Louisville boomed, Barbourville slipped into economic and historical obscurity. As a result, Samuel Miller's adopted hometown plunged into what one historian called its "dark ages." As it became increasingly remote, Barbourville's development halted. The Wilderness Road deteriorated. Decades later, it was still "a muddy, boulder strewn morass."³¹

For a short time, however, Barbourville was a flicker of economic light in the shadow of the Cumberland range. Convinced of the town's bright prospects, Samuel's brother, William Miller, followed him to

30 Decker, "History of Knox County," 104, 106, 108; Kincaid, *Wilderness Road*, 215.

31 Decker, "History of Knox County," 101, 178; Timothy Mahoney, *River Towns in the Great West: The Structure of Provincial Urbanization in the American Midwest, 1820-1870* (New York: Cambridge University Press, 1990), 38; Foreword by Oxendine in Mills, *Barbourville, Kentucky*, 6. See also Lewis Collins, *History of Kentucky* (2 vols.; Frankfort: Kentucky Historical Society, 1966; first published in 1874), 2: 455-56; McCague, *Cumberland*, 190-91.

Barbourville and embarked on a career in law.³² During the 1830s and early 1840s, Samuel, William, and the town's other leading citizens had yet to detect the looming economic disaster. Instead, they continued to believe that Whiggish boosterism would lead to development and growth. As a forum to express these views, Samuel and the town's other professional men organized the Barbourville Debating Society.³³

The debating society met at the courthouse at early candlelight every Saturday night during the summers of 1837, 1838, and 1839. In a town without a newspaper or a theater, the debating society's meetings provided both information and entertainment to the men and women who filled the gallery. Miller, a rousing debater, took center stage in these events. During their discussions of the political and social issues of the day, Miller positioned himself with a Whiggish coalition that argued for increased government involvement in southeastern Kentucky's economy. Over the course of the three years, he repeatedly spoke and voted in favor of banks, internal improvements, and railroads. At the end of each debate, the society's members voted on the issue discussed.

The development-minded members of the society clearly favored government measures that spurred growth. On issues such as the National Bank, Miller joined in resounding twelve-to-one pro-Bank majorities.³⁴ Because of the scarcity of labor in America, he resisted the nativist sentiments of the debating society's majority and opposed a ban on foreign immigration. At this point in his life, Miller had an optimistic view of American capitalism. When asked if the economic system unfairly favored the wealthy, Miller argued that it did not. He also believed that talent was more important than wealth in achieving

32 "He was a forceful and ready speaker," Elmer Decker writes of William, "and was then considered the equal in ability of his brother, but much less studious." Decker, "History of Knox County," 109.

33 An edited version of these minutes was published by Charles Fairman in "Justice Samuel F. Miller and the Barbourville Debating Society," *Mississippi Valley Historical Review*, XVII (June 1930 — March 1931): 595-601.

34 *Ibid.*, 597, 601.

success.³⁵ He recognized, however, that even talented men sometimes failed through no fault of their own and, as such, opposed imprisonment for debt.

Not all the topics debated were economic. Many involved social and ethical issues. Questions included "Is the mind of man more capacious than that of woman?" (three members voted "yes," four "no") and "Should women be equally educated with men?" (two voted "yes," three voted "no").³⁶ While we do not know how Miller voted on these two questions, he did take liberal positions on many others. When debaters were asked, "Would it be politick in the Genl Govt to wholly exterminate the Seminole Indians, if they continue their depredations upon the citizens of the United States?," Miller voted "no" (three debaters voted "yes," Miller and four others voted "no").³⁷ Miller also voted "no" to the question, "Is there a moral justification for capital punishment?"³⁸ Also, he strongly opposed any property restriction on the right to vote.

Also creeping into the debating society's forums were issues from the growing sectional conflict. During the mid 1830s, abolitionist groups in the North began sending their congressional representatives anti-slavery petitions to be read on the floors of the Senate and House. Southerners in Congress, led by South Carolina's ferocious John C. Calhoun, successfully argued that these documents were insulting and incendiary and should not be allowed. The infamous "Gag Rule" that banned the reading of anti-slavery petitions deeply offended many northerners who believed that a conspiratorial "slave power" had

35 Miller argued in the negative to the following questions: "Has wealth more influence than talent?" and "Will wealth enable a man to pass through the world with greater honor to himself than education?," *ibid.*, 600.

36 *Ibid.* Sometimes the minutes listed who voted which way on questions, but other times they did not. On these questions we do not know how Miller voted.

37 *Ibid.*, 598. Another question posed was, "Apart from Revelation and Human Tradition have we any evidence of the existence of Deity?" Miller, a freethinker on religious issues who later became president of the National Unitarian Conference, voted no.

38 Later during his judicial career he again argued against capital punishment. See, for example, *United States v. Gleason*, 1 Woolworth 128 (1867).

curtailed their right to free speech.³⁹ In 1837, the members of the Barbourville Debating Society weighed in on the issue in response to the question, "Should congress refuse the reception of abolition documents as contended by the Southern delegation?" Miller, although a slaveholder, led the fight against the "Gag Rule." The members of the society, while citizens of a slaveholding state, followed Miller and voted twelve to two against the rule.

Later in his life, Miller remembered the debating society as one of his most important formative experiences. It was the first time that he truly felt intellectually challenged. He claimed that he had heard "as able discussions in the debating society . . . in Barbourville as at any other time or place, not even excepting the Supreme Court of the United States." More importantly, it had left Miller thirsting for something more than the largely anonymous life of a small-town doctor. "It had drawn the mind of a country doctor in a mountain hamlet into the current of national thought," one historian noted, "and afforded him a means of relating himself to the great public questions of the day."⁴⁰ "What gave the turn of [my] mind toward law," Miller later told a reporter, "was developed in [the] debating society."⁴¹

During the 1840s Miller became a follower of pro-emancipation politician Cassius M. Clay.⁴² A slaveholder like Miller, Clay also questioned the hold slavery had over the state. He believed that in order to prosper Kentucky needed a mixed economy with manufacturing and diversified farming.⁴³ Clay believed that slavery

39 William W. Freehling, *The Road To Disunion: Secessionists at Bay 1776-1854* (New York: Oxford University Press, 1990), 308-36.

40 *Lexington Herald*, 3 August 1913. For the quote, see Fairman, *Mr. Justice Miller*, 15.

41 Crawford interview.

42 Mac Swinford, "Mr. Justice Samuel Freeman Miller (1816-1873)," *Filson Club History Quarterly* 34 (1960): 37 (hereafter *Quarterly*).

43 Richard D. Sears, *The Day Of Small Things: Abolitionism In the Midst of Slavery* (New York: New York University Press, 1986), 30-31; William Henry Townsend, *The Lion of Whitehall* (Dunwoody, Georgia: N.S. Berg, 1967); Roberta Baughman Carl'ee, *The Last Gladiator: Cassius M. Clay* (Berea, Ky.: Kentucke Imprints, 1979); Horace Greeley, ed., *The Writings of Cassius Marcellus Clay (including Speeches and*

in Kentucky degraded labor and that the tobacco monoculture of the aristocratic slaveholders stifled the more dynamic growth then occurring in the North.

Clay shaped his views during a tour of New England that left him wide-eyed and awestruck over that region's manufacturing and wealth. "I . . . saw a people living *there* luxuriously," he told a Kentucky audience, "on a soil which *here* would have been deemed the high road to famine and the almshouse."⁴⁴ By using its abundant water to power mills, New England created wealth out of the seeming adversity of its cold climate and rocky soil.⁴⁵ So began Clay's lifelong love affair with industry. When he returned to Kentucky, he promoted manufactures with evangelical zeal. What Kentucky needed, he argued, was a smaller version of his cousin Henry Clay's famed "American System." Under Cassius's "Kentucky System," slavery would end; tobacco plantations would grow foodstuffs which would be sold to workers in the mills and factories Clay hoped would develop. And where would these mills and factories be built? They would be built in towns in southeastern Kentucky like Barbourville.

When Clay looked to Kentucky's mountain region, he saw a mineral- and water-rich environment similar to industrial New England. He hoped that with free labor, Kentuckians could turn it into an "American Switzerland" dotted with industries.⁴⁶ For the development-minded boosters of Barbourville, Clay's message must have been intoxicating. The idea of workers filling mills sprouting along the Cumberland River would be a cure-all for Barbourville's ills. Not surprisingly, Miller joined this crusade, and by the mid 1840s he was an enthusiastic disciple of Clay.

Addresses (New York, 1848); H. Edward Richardson, *Cassius Marcellus Clay: Firebrand of Freedom* (Lexington: University Press of Kentucky, 1976); Jeffrey Brooke Allen, "The Debate Over Slavery and Race In Antebellum Kentucky: 1792-1850" (PhD dissertation, Ann Arbor: University Microfilms, 1973).

⁴⁴ Clay quoted in David L. Smiley, *Lion Of White Hall: The Life of Cassius M. Clay* (Madison: University of Wisconsin Press, 1962), 22.

⁴⁵ *Ibid.*, 26, 29-30.

⁴⁶ Clay quoted in *ibid.*, 29-30.

The most controversial portion of Clay's program was, of course, his call for emancipation. He vehemently believed that slavery discouraged manufactures, industry, and progress. "Give us free labor, and we will manufacture much more than now," he exhorted, asserting that, "Slaves would not manufacture if they could; and could not if they would!"⁴⁷ "Negro slavery," he added, "degrades the mechanic, ruins the manufacturer, lays waste and depopulates the country."⁴⁸ To prove his point, he argued that one needed only to compare the South to the North. The North, Clay exclaimed, "was radiant with railroads, the channels of her untold commerce, whilst the South hobbles on at an immeasurable distance behind."⁴⁹ Slavery was "merely the watchword for a southern system inimical to industrial prosperity."⁵⁰

Initially, at least, Clay's ideas received enthusiastic support from many development-minded Kentuckians. He targeted his message at the state's non-slaveholding majority and called on it to curtail the aristocratic and backward slave system. He said he was fighting for the "six hundred thousand free white laborers of Kentucky! . . . against whose every vital interest slavery wages eternal and implacable war!"⁵¹ Using a platform of aggressive support for banks, railroads, and turnpikes, and fierce opposition to further importation of slaves into the state, Clay ran successfully for the Kentucky legislature in 1840 as the representative from Madison County.⁵²

As national abolitionist fervor grew during the 1840s, however, Kentucky slaveholders had increasing success in branding emancipationists as wild-eyed fanatics. Clay, they argued, was merely

47 Ibid., 46-47.

48 Ibid. Clay's views on the detrimental effects of slavery on free laborers and the economy were shared by free-soilers in other sections of the country as well. See Eric Foner, *Free Labor, Free Soil, Free Men: The Ideology of the Republican Party Before the Civil War* (New York: Oxford University Press, 1970).

49 Smiley, *Lion of Whitehall*, 50.

50 Ibid., 46-47.

51 Ibid., 53.

52 Ibid., 46-47.

a disguised emissary of radical Boston abolitionist William Lloyd Garrison. After 1846 Clay's message faced stiff resistance in the slave-dominated hemp and tobacco regions. In response, Clay focused his attentions on southeastern Kentucky. "I turned my eyes toward the mountains eastward," Clay remembered, "where few slaves were held." To the mountain towns Clay made "an increasingly vigorous appeal."⁵³ Few of Kentucky's 31,000 slaveholders lived in that region and of those fewer still were unconditionally wedded to the system.⁵⁴ Men like Miller were not planters and did not depend solely upon slavery for their livelihood. Thus Clay's arguments could even persuade the small band of slaveholders around Barbourville. The promised prosperity that would come with industry served as a greater lure than profits from a few dozen slaves. By canvassing the region, speaking, and distributing his newspaper *The True American*, Clay reached Miller and other prominent men.

Clay also made it clear that his motives were economic rather than humanitarian. "If we are for emancipation, it is that Kentucky may be virtuous and prosperous," he said, "If we seek liberty for blacks, it is . . . that the white laborers of the state may be men and build us all up by their power and energy."⁵⁵ Clay, in fact, had an unflattering opinion of blacks. A slaveholder, Cassius feared that his family was being poisoned by his slaves.⁵⁶ Moreover, he felt that free blacks were lazy and did not fit within his "Kentucky System." "I have studied the Negro character," he said, and, "They lack self-reliance — we can make nothing out of them. God has made them for the sun and the banana!"⁵⁷

53 Ibid., 83, 108.

54 By 1850, slaves equaled the number of whites in several tobacco counties in the Bluegrass region. In the mountains along the eastern border, however, slaves were only two or three percent of the population. Asa Earl Martin, *The Anti-Slavery Movement In Kentucky Prior to 1850* (1st publication series, no. 29; Louisville: The Filson Club Historical Society, 1918), 7.

55 Ibid., 56-57.

56 Sears, *Day of Small Things*, 28.

57 Smiley, *Lion of White Hall*, 56.

Clay's negrophobic sentiments played well in Barbourville which also had a history of rigid race relations. While the town had few slaves, it was no haven of social equality. Whites were fined "for playing cards with a Negro" or "for playing cards with a free person of color." Lynchings occurred on occasion, and slaves accused of committing crimes received swift and brutal treatment. In 1836, for example, the sheriff ordered Bob George, a slave caught stealing, to be taken "within two miles of Barbourville" and hung "by the neck until he be dead, dead, dead." George's body was then left for display in a tree.⁵⁸

On racial issues, Miller was a product of his time and community. While he came to favor emancipation, he opposed Garrisonian abolitionism. "An abolitionist has been my abhorrence all my life," he later wrote.⁵⁹ He opposed slavery but never condemned the slaveholders themselves. Miller told a crowd in 1856 that slaveholders were:

not the object of my patriotic rage . . . nor have I ever said anything of the kind. Nearly all the blood relations I have living, and the warmest personal friends and purest men I know on earth are slaveholders . . . I feel too much compassion for the slaveholder to indulge in any rage against him.⁶⁰

While he lacked the convictions of a true abolitionist, Miller did recognize the humanity of slaves, their right to the fruits of their labor, and the cruelty of the slave system. He could recall his horror during childhood upon seeing his black "mammy" being whipped.⁶¹ As an adult, Miller began to question the moral, social, and economic foundations of slavery. Beginning around 1846 when he was convinced that slavery was an evil and an impediment to progress, he freed his slaves at the rate of one a year.⁶²

58 Decker, "History of Knox County," 167.

59 Miller to William Pitt Ballinger, 19 March 1854, Miller Papers, LC, box 1, folder 1.

60 Quoted in Richman, *Ioway to Iowa*, 353.

61 Fairman, *Mr. Justice Miller*, 17. See also Aynes, "Constricting the Law of Freedom," 658 (1994).

Slaveholding was not the only part of Miller's life that he began to question in the 1840s. He was also deeply dissatisfied with his chosen profession. A number of factors made him grow tired of the role of small-town doctor. He resented the backward attitude of many of his patients in the countryside. He complained that they would not even allow him to perform a simple autopsy. "In consequence of the superstition greatly prevalent among the people with whom I practice," he wrote in 1838, "I have never been able to obtain an opportunity of making a post-obituary examination of a subject."⁶³ He also found Barbourville to be an almost overwhelming cauldron of disease. "The Village of Barbourville is situated on a low, level piece of ground in the fork formed by the juncture of Richland Creek with the Cumberland," he wrote in his dissertation, "and is remarkable as being the most unhealthy place in the mountains or probably in Kentucky, in proportion to its population."⁶⁴

The severe limitations of antebellum medicine also quickly became apparent to him. In the late 1830s technology was dramatically reshaping many aspects of American society. The telegraph was invented in 1837, and the steam engine had transformed life along American rivers.⁶⁵ But modern technology had not yet been thoroughly applied to the field of medicine. Instead, improvements in transportation simply sped the transmission of disease, while medical science unsuccessfully struggled to keep up.⁶⁶

The most feared disease of the antebellum period was cholera. While other diseases may have claimed more lives, cholera's swift, brutal, and deadly effects left those who survived an outbreak

62 Campbell, *Four Score Forgotten Men*, 213.

63 Samuel Freeman Miller, *An Inaugural Dissertation On Cholera Infantum Submitted To The Examination Of The Trustees and Medical Professors of Transylvania University for the Degree of Doctor of Medicine* (1838), 9 (Transylvania University Archives, Lexington, Kentucky).

64 *Ibid.*, 15.

65 George Rogers Taylor, *The Transportation Revolution, 1815-1860* (New York, 1951), 56-73.

66 Charles Rosenberg, *The Cholera Years* (Chicago: University of Chicago Press, 1962), 2.

permanently shaken. It came on with little or no warning. Victims could leave their houses perfectly healthy in the morning and be dead before nightfall.⁶⁷ During an outbreak, it was not uncommon to see a person drop to the street in a fit of spasmodic vomiting and diarrhea and then be dead within hours. Because it was most often spread by contaminated water, cholera was devastatingly concentrated in its attacks. Whole families or whole factory crews could be wiped out in a matter of days.⁶⁸

Cholera cast a dark shadow over Miller's brief medical career. It arrived in the United States for the first time in 1817, with the first epidemic occurring in 1832. Initially confined to the dirty and crowded streets of east-coast cities, it soon spread westward.⁶⁹ It struck in Kentucky with devastating results. Louisville and Lexington were hit first. Over five hundred residents died in a three-month period in Lexington in 1833. At its peak, as many as fifty persons were dying a day in a population of a little over six thousand.⁷⁰ Panicked by the outbreak, thousands of city dwellers fled into the countryside, making Lexington a veritable ghost town. "The cholera had proved more malignant, fatal and indiscriminate in the selection of its victims in Lexington," lamented one doctor, "than in any other town of the Union—perhaps the world."⁷¹ Panic and death followed cholera to other Kentucky towns. The main street in Carlisle,

67 "To see individuals well in the morning & buried before night," wrote one observer in 1832, "retiring apparently well & dead in the morning is something which is appalling to the boldest heart." Quoted in *ibid.*, 3.

68 John Esten Cooke, "Remarks on Cholera, As It Appeared in Lexington in June 1833," *Transylvania Journal of Medicine and the Associate Sciences* 6 (July 1833): 17.

69 Rosenberg, *Cholera Years*, 4-16; Nancy D. Baird, "Asiatic Cholera's First visit to Kentucky: A Study in Panic and Fear," *Quarterly* 48 (1974): 228-40.

70 Peter, *History of the Medical Department of Transylvania University*, 67.

71 John Esten Cooke quoted in Frederick Eberson, "A Great Purging—Cholera or Calomel?," *Quarterly* 50 (1976): 32. These scenes of panic would repeat themselves all over Kentucky throughout the century. In 1849, for example, cholera struck Lexington again. Elisa Marshall wrote her father that schools closed, the hotels were empty, and "that 800 people had left town." Elisa Marshall to her Father, 21 June 1849, Marshall Family Papers, Manuscript Department, FCHS (hereafter MD, FCHS).

reported a local clergyman, became "overgrown with grass & weeds," empty:

save by a person now and then coming in haste for a Doctor; or the passing of the Cart, with a rude box, in which was borne to the grave some neighbor that had just died. . . . For the first time, that terrible & mysterious disease—the Asiatic Cholera—that fearful scourge of nations, that walketh in darkness & wastes at noon-day, swept over Kentucky like a tornado.

To escape this pestilence people were "flying in every direction to seek refuge from the fell destroyer."⁷²

Some antebellum medical experts believed that rural areas like Miller's Barbourville would be spared. Most believed that cholera struck only imprudent or slovenly lower-class city dwellers. Cholera, noted one New York observer, plagued "the very scum of the city" and was "almost exclusively confined to the lower classes of intemperate, dissolute & filthy people huddled together like swine in their habitations."⁷³ Many believed that blacks and Irish were cholera's most likely targets.⁷⁴ While the poor did bear a disproportionate brunt because of poor sanitation and crowded conditions (not habits), cholera struck all classes.

Rather than a haven, rural Barbourville was, in fact, a likely target. Visited by thousands of emigrants, it was continuously exposed to possible carriers. Moreover, emigrants and townspeople alike relied on a common source, the Cumberland River, for their drinking water. And the frequent floods that plagued Barbourville, floods that carried contaminated water throughout the village, aided the spread of the disease.⁷⁵ Miller quickly realized that his town was

72 John Rogers Clarke, "Journal and Notes of Rev. John Rogers Clarke of Carlisle, Kentucky," 247-48, Southern Historical Collection, University of North Carolina, Chapel Hill, North Carolina.

73 Observations of John Pintard quoted in Rosenberg, *Cholera Years*, 42.

74 *Ibid.*, 59. See also Charles Rosenberg, "The Cause of Cholera: Aspects of Etiological Thought in 19th-Century America," in Judith W. Leavitt and Ronald L. Numbers, eds., *Sickness and Health in America* (Madison: University of Wisconsin Press, 1978), 257-72.

75 Miller wrote in his dissertation: "The whole bottom of the town is frequently

not immune to the epidemic. In his dissertation he took issue with those who said cholera would not strike "any where else than cities." He pointed out that Barbourville was "certainly as unlike the confined filthiness of a city, as anything can be."⁷⁶ Nonetheless, Miller noted in 1838, "the affliction . . . has for years been very fatal, destroying probably one fourth of the juvenile population."⁷⁷

At medical school, Miller specialized in the treatment of cholera. He wrote his dissertation on its diagnosis and cure. Sadly, doctors did not yet know what caused the disease and the state-of-the-art treatments in 1838 were not only ineffective, they were often fatal. "The best physicians," noted John Rogers Clarke, "who have had most to do with it . . . know little or nothing about its cause, or causes, or—its cure."⁷⁸ Some Kentucky doctors attributed cholera to "the free use of vegetables, of an indigestible nature."⁷⁹ Miller disagreed. He recognized that the disease had some connection with water, noting that around Barbourville it was "not confined to the town alone" but was "to be found along the course of the Cumberland, and on every realm which pays its tribute to that river."⁸⁰ Unfamiliar with germ theory, however, Miller and many other doctors blamed cholera on the inhalation of swamp gas or "marsh effluvium." Miller believed that marshy areas near the Cumberland produced "putrid exhalations from decomposed vegetable matter" that created an unhealthy "marsh miasmata."⁸¹ It would be another fifty years before scientists first isolated the bacterium that causes cholera.⁸²

Ignorant as to cholera's cause, antebellum doctors also did not have a cure. Most Kentucky doctors believed that using calomel and

inundated and even the town itself is occasionally completely submersed." Miller, *An Inaugural Dissertation on Cholera Infantum*, 15.

76 *Ibid.*, 14.

77 *Ibid.*, 16.

78 John Rogers Clarke, "Journal and Notes," 248.

79 Hardin M. Weatherford, *A Treatise On Cholera, Symptoms, Mode of Prevention and Cure on a New and Successful Plane* (Louisville, 1833), 11.

80 Miller, *Inaugural Dissertation*, 16.

81 *Ibid.*, 16.

82 Rosenberg, *Cholera Years*, 3.

other purgatives to *increase* the amount of vomiting and diarrhea helped clear the disease from the victim's system. Miller's professors at the Transylvania Medical Department shared this view. Transylvania's most noted professor, John Esten Cooke, taught students that most ailments could be cured by increasing the secretion of the liver through blood-letting and purgatives like calomel.⁸³ Cooke became famous during the cholera outbreak of 1833 because of his tireless efforts in Lexington dashing from patient to patient administering large doses of calomel.⁸⁴ At Transylvania, Cooke's theories found many followers. "Because of its simplicity and its apparently logical basis," one student remembered, "the system of Doctor Cooke was very attractive to students of medicine."⁸⁵ Unfortunately for all involved, Cooke's theories were wrong. We now know that cholera victims need a rapid injection of fluids, not the reverse.

In his medical-school dissertation, Miller concurred with Cooke's theories. He recommended that cholera victims be given "a full dose of calomel, especially if the attack is violent" for its "proper purgative action." This, in turn, would "establish the secretion from the Liver" and "relieve internal congestion."⁸⁶ He also administered doses of turpentine and opium and recommended the blistering of a victim's stomach and temple and "the local extraction of blood from that portion of the head [the temple]."⁸⁷ When the patient's extremities turned cold from dehydration, Miller suggested putting "cayenne pepper in the socks."⁸⁸ Already practicing while at medical school, Miller put these dangerous remedies to work in Barbourville.

The treatments advocated by Miller were widely accepted by other doctors and remained the preferred remedies for years.⁸⁹ Needless

83 Peter, *History of the Medical Department of Transylvania University*, 64-65.

84 *Ibid.*, 66.

85 *Ibid.*, 76.

86 Miller, *Inaugural Dissertation*, 21.

87 *Ibid.*, 16.

88 *Ibid.*, 21.

89 Kentucky emigrants on the Overland Trail in 1849 carried a recipe for a cholera

to say, those stricken with cholera were better off without the care of a physician. Aided by the dangerous medications administered by doctors, cholera killed roughly half of those who contracted it during the nineteenth century.⁹⁰ Miller's medical-school professors tried to prepare their students for the often grim results of a doctor's labors. They warned them not to be daunted by "a fatal termination of a case of disease, although all may have been done that the art affords." Students needed to recognize just "how often is the physician doomed to suffer such unkindness."⁹¹ In the 1830s and 1840s, cholera was far from being a vanquished foe. "The disease is still marching through the land," one Louisville doctor glumly concluded, "bidding defiance to medical skill and ingenuity."⁹²

Miller quickly became dissatisfied with his life of "riding from cabin to cabin on horseback, with his pillbags strapped behind his saddle" dispensing questionable (if not deadly) remedies to superstitious, subsistence farmers in Kentucky's sleepy backcountry.⁹³ After only a few years, the medical profession was "becoming distasteful."⁹⁴ He later said that he simply could not bear to see his patients suffer in cases he could not cure.⁹⁵ Miller, a man of ambition, must also have recognized the low status of antebellum physicians. "American medicine was provincial," Charles Rosenberg writes, and, "The average physician, ill-paid and poorly trained, struggled constantly to retain . . . dignity and prestige."⁹⁶ The lack of success in treating cholera only compounded the low station of doctors. As a result, Miller did not last long in the profession. "After some three or four years practice I determined to abandon it," he later

cure that included doses of laudanum, peppermint, and opium as well as giving "20 grains of calomel." "Recpt [sic] for Cholera," MD, FCHS.

90 Rosenberg, *Cholera Years*, 1-5.

91 Yandell, *Lecture on The Duties of Physicians*, 20.

92 Weatherford, *A Treatise On Cholera*, 8.

93 Quote taken from Campbell, *Four Score Forgotten Men*, 212.

94 Biography of Miller (1906), SHSI.

95 Fairman, *Mr. Justice Miller*, 13-14.

96 Rosenberg, *Cholera Years*, 65.

wrote, "and studied law while practicing medicine which was my only means of support."⁹⁷ In 1871, long after he had left the profession, Miller remarked that if Kentucky doctors had kept pace with scientific improvements, "They have changed very much since I was one of their number."⁹⁸

Miller's stimulating experience in the debating society verbally sparring with the town's lawyers led him to consider a career at the bar. Surrounded in his daily life by lawyers, Samuel had plenty of mentors and role models. He and Lucy lived in a room in the large house of his father-in-law James Ballinger, and he shared his doctor's office with lawyer Silas Woodson.⁹⁹ Much as he did with the medical texts in Dr. Leverill's pharmacy, Miller pored over Woodson's law books after long days of practicing medicine. Some of Miller's friends tried to discourage him from attempting a risky career change "being then a married man with two children."¹⁰⁰ But Miller plowed ahead. "After two years study," he remembered, "I commenced the practice of law."¹⁰¹

His name first appears in legal records as a witness to a will. Then in 1844, the townspeople elected Miller a justice of the peace. Admitted to the bar in 1846, he became Woodson's law partner.¹⁰² In 1847, the county court appointed Miller to the crucial position of supervisor of the toll roads in Knox County. In this capacity he supervised the collection of tolls from Warriors' Path, Boone Trace, and the Wilderness Road over which the emigrants traveled. His task was to supervise the proper collection of toll receipts.¹⁰³ As a result

97 Miller to Charles Lanman, 16 April 1869, MD, FCHS.

98 Miller to William Pitt Ballinger, 9 April 1871, Miller Papers, LC, box 1, folder 8.

99 Truman S. Stevens, "Miller and Henderson," *The Iowa Magazine*, 18 October 1923, p. 671, SHSI, Des Moines.

100 Quote taken from Miller's letter to Charles Lanman, 16 April 1869. Miller recalled that his friends cautioned him against changing careers in Crawford interview.

101 Miller to Lanman, 16 April 1869, MD, FCHS.

102 Together they made a historically formidable pair. Woodson later became the Republican governor of Missouri (1873-74) and Miller reached the United States Supreme Court.

103 Decker, "History of Knox County," 63.

of this appointment, he received firsthand knowledge of the way in which the new National Road, the steamboats, and the railroad had cut into the emigrant trade through the Cumberland Gap. The message was clear: Barbourville's economy was doomed. Within two years of this appointment, Miller was exploring the possibility of leaving Kentucky and moving west.

In the early autumn of 1849, Miller took a research trip west to the Mississippi to explore possible places to move his family.¹⁰⁴ Although he had not completely given up on Barbourville, what he saw in the frontier boomtown of Keokuk, Iowa, was dazzling. While Barbourville's fortunes declined, Keokuk boomed. In the era of the steamboat, Keokuk's location on the Mississippi gave it access to the great corridor of western commerce.

Located below a notorious stretch of river rapids, Keokuk also had a stunning geographical advantage. Because the treacherous waters petrified cautious steamboat captains, they unloaded their goods and passengers at Keokuk and had them "lightered" over the rapids. "Lightering" involved putting the cargo on smaller boats that could operate in shallow water. In the drier seasons when the river was low, even "lightering" was not practiced. Instead, freight and passengers had to be moved on land for the ten or eleven miles north to Montrose, Iowa. Thus, the town had the advantage of being a commercial necessity. The rapids alone provided employment for hundreds of boat pilots, stevedores, longshoremen, and associated workers. All traffic headed north from New Orleans or St. Louis had to pass through Keokuk.¹⁰⁵

For Keokuk's booming economy, the "lightering" trade was only part of its success. Because of its river access, the town's hinterland

104 Autobiographical Sketch of Samuel Miller, Caleb Forbes Davis Collection, microfilm, reel 2, book 5, p.11, SHSI.

105 Mahoney, *River Towns in the Great West*, 79; Robert Conner, "A River History of Keokuk," unpublished paper, 1850, SHSI; Faye Erma Harris, "A Frontier Community: The Economic, Social and Political Development of Keokuk, Iowa from 1820 to 1866" (PhD dissertation, University of Iowa, 1965), 85.

had filled with industrious, pro-market farmers wedded to commercial agriculture. It was a stark contrast to the sleepy, subsistence farms that surrounded Barbourville. Raising corn, wheat, and hogs for sale to eastern and world markets, these prosperous men and women depended on Keokuk as their entrepot.¹⁰⁶ Middlemen flocked to the Keokuk levee to buy the farmers' crops for resale in St. Louis and New Orleans. In 1850 buyers purchased over \$1,000,000 in Iowa pork, lard, beef, wheat, flour, corn, oats, and hay at Keokuk.¹⁰⁷ Wagons crammed with farmers and crops from the countryside clogged Keokuk's streets. In the summer months, steamboats and unloaded cargoes jammed the town's wharf. In 1847 it was not unusual to see twenty or thirty wagons from the country jockeying for space on the town's wharf at the same time.¹⁰⁸ To service the farmers, Keokuk's sprawling business district had scores of merchants, hotels, warehouses, and other service providers with new buildings seeming to appear each day.

Keokuk also flourished as a processing center for farm products. Mills ground flour; distilleries turned wheat into whiskey, and tanners processed cattle hides into leather goods. In the winter, a time when Barbourville slipped into a deep economic slumber, Keokuk packed meat, and lots of it. In the winter of 1848, Keokuk slaughterhouses processed 15,000 hogs, packing them in Mississippi River ice to be shipped with the first thaw. In 1849 that number had risen to 34,000. Observers noted that the streets seemed "alive with pigs" and that Keokuk was "one universal squeal."¹⁰⁹ "Keokuk is becoming one of the largest shipping points on the upper Mississippi" reported the *St. Louis Republican* in 1848, "eight steamers have arrived from that

106 Mahoney, *River Towns in the Great West*, 108, 248. "The fertile valley of the Des Moines of which Keokuk was the depot and entrepot," writes Faye Erma Harris, "contained more than half the population and agricultural wealth of Iowa. Keokuk possessed the entire trade of that populous region . . . The trade in 1852 amounted to over \$5,000,000." Harris, "A Frontier Community," 185.

107 Harris, "A Frontier Community," 185.

108 *Keokuk Dispatch*, 27 May 1847.

109 Harris, "A Frontier Community," 94; Irving Richman, *Ioway to Iowa*, 275.

point during the past forty-eight hours, bringing down over 2000 tons of produce, consisting of pork, beef, lard, flour, wheat, whiskey, corn, oats, and other products."¹¹⁰

In 1849 Keokuk also served as a major passageway for overland emigrants. Settlers headed to the California gold rush and Mormons fleeing to the Salt Lake traveled through and traded in Keokuk. This trade led boosters to give Keokuk the nickname of the "Gate City" to the West.¹¹¹ Many emigrants, entranced by Keokuk's boomtown atmosphere, simply stopped and stayed. Brick and wood frame houses and tent cities sprouted everywhere. "I am acquainted with no other town on the Mississippi River growing more rapidly than Keokuk," noted a reporter for the *Davenport Gazette*, "The people are actually crowding each other and going on the principle that no family has a right to keep vacant a single room."¹¹²

Keokuk's astounding growth led some prognosticators to predict that it would become one of the great cities of the West, a rival of St. Louis or Chicago.¹¹³ Because of its rapid development, such predictions were not entirely far-fetched. As late as 1840 the main portion of Keokuk was still a dense forest. A dozen cabins along the banks of the Mississippi constituted all its improvements.¹¹⁴ A decade later, promoters correctly labeled it "the commercial metropolis of Iowa" and predicted "future wealth and grandeur that may hereafter rival many of the great cities of ancient and modern

110 *St. Louis Republican*, 5 December 1848.

111 *The History of Lee County, Iowa* (Chicago, 1879), 619; Harris, "A Frontier Community," 98.

112 *Davenport Gazette*, quoted in the *Keokuk Register*, 20 July 1848.

113 In 1850, Keokuk had 2,478 residents (about twenty-four times more than Barbourville) and that number did not nearly reflect the tens of thousands who traded or passed through the town during the year. In addition, the surrounding countryside was packed with prosperous farmers. In 1850 Keokuk's Lee County had 20,360 residents. Keokuk was the entrepot not just for Lee County but for the entire Des Moines River Valley which had half the population and agricultural wealth of Iowa. Census figures quoted in "Keokuk History 1820 to 1906," Special edition of the *Keokuk Constitution-Democrat* (1906), pp. 5-6, SHSI.

114 *Edward's Descriptive Gazetteer and Commercial Directory of the Mississippi River* (St. Louis, 1866), 432.

times."¹¹⁵ "There was widespread opinion shared by the most eminent commercial and business men in the country that this would be a great city," recalled a Keokuk editor.¹¹⁶

The town quickly became a magnet for ambitious young professional men, particularly lawyers. The bustling commercial life of the town ensured many legal disputes. In addition, squabbles over land titles in Keokuk's "Half-breed Tract" promised an abundance of litigation.¹¹⁷ Better still was the possibility that the town might grow into a major city. Lawyers who established a practice early would position themselves to reap the benefits of unrestrained growth. "Just as a great company of strong young men go to any prosperous young territory not for what it is but because of what they hope it and they may be," wrote the editor of the *Keokuk Gate City*, "so Keokuk drew to itself the youth and strength of young lawyers who came not to the population that was but to the hundreds of thousands that were expected."¹¹⁸ In 1847 Keokuk had "several" lawyers. By September 1849, it had twenty-two.¹¹⁹ As he had done in Barboursville thirteen years earlier, Miller must have realized that if he was going to move his career and family to Keokuk, he needed to act fast.¹²⁰

Miller let his decision of whether or not to move west rest upon the outcome of the Kentucky Constitutional Convention of 1849. Because of the large amount of anti-slavery agitation sweeping Kentucky and the country in the 1840s, Kentucky called this

115 "Inaugural Address of Mayor Curits," printed in Orion Clemens, *City of Keokuk in 1856* (Keokuk, 1856), 3-4.

116 Recollection of early settler printed in *Keokuk Gate City*, 18 October 1890.

117 The "Half-Breed Tract" adjacent to Keokuk was land that the territorial government initially set aside for the children of mixed white/Native-American couples. Questions quickly arose, however, of who actually was a "half-breed" and because the "half-breeds" were limited in number, squatters also moved onto the land. The result was a quagmire of conflicting land titles. While this was a headache for those with land claims, for lawyers it was a potential gold mine. Carl Knoepfler, "The Half-Breed Tract," p. 37, unpublished manuscript, SHSI.

118 *Keokuk Gate City*, 18 October 1890.

119 *Keokuk Register*, 2 September 1847; 6 September 1849.

120 Unfortunately, we do not know how Samuel's wife Lucy felt about Keokuk or moving from Barboursville. If Lucy kept a diary or wrote letters, they have not survived.

convention in order to settle the slavery question once and for all. The convention would be asked to either leave the constitution's current protections of slavery in place or to provide for gradual emancipation. If the convention added the proposed emancipation amendment to the new constitution, there was a chance Miller might stay. The end of slavery could mean that Cassius Clay's "Kentucky System" might actually be implemented and that the resulting industrialization might save Barbourville from its precipitous economic decline. But if slavery remained firmly protected under the new constitution, Clay's plan to create an "American Switzerland" in the Kentucky mountains seemed doomed. Woodson, Miller's law partner, publicly vowed that if the new constitution permanently protected slavery he would leave the state.¹²¹ The outcome of the convention would depend upon whom each of Kentucky's counties elected as delegates. Both Miller and Woodson declared themselves candidates for the position of delegate to the convention from Knox County.

Miller was no stranger to politics. Throughout the late 1840s, he played "an active part in politics as a member of the Whig Party."¹²² But unlike most Kentucky Whigs who supported Henry Clay, Miller remained a staunch follower of cousin Cassius. In the 1848 election, Cassius campaigned for Zachary Taylor, who had beaten out Henry for the Whig presidential nomination. He did so in order to embarrass the "Henry Clay Whigs" who had closed ranks behind the slaveholders.¹²³ Following Cassius' lead, Miller stumped for Taylor as well.¹²⁴

Miller's declared candidacy for the delegate position would have been his first campaign for public office. Woodson and Miller, however, soon recognized that only one of them could fill Knox County's seat at the convention. As a result, Samuel pulled out of the race on the condition that Woodson "stand openly in favor of

121 Foreword by Oxendine in Mills, *Barbourville, Kentucky*, 7.

122 Miller to Lanman, 16 April 1869, MD, FCHS.

123 Smiley, *Lion of Whitehall*, 132.

124 Biography of Miller, 1906, SHSI.

emancipation."¹²⁵ "When the proposition to amend the Constitution of Kentucky was [announced] and delegates were to be elected . . . I was ardently in favor of incorporating into the new constitution a provision for the emancipation of slaves and gradual abolition of slavery," Miller recalled, saying, "I told [Woodson] who was elected from Knox County that unless he would come out in favor of emancipation, I should be a candidate. He did so promise."¹²⁶ After withdrawing from the race, Miller actively stumped for Woodson and other like-minded candidates.

Although the vast majority of Kentuckians were not slaveholders, the campaign quickly turned sour for the emancipationists. Many Kentucky whites continued to associate emancipationists with the despised abolitionists. They feared that immediate abolition of slavery would lead to social chaos. In response, Cassius Clay tried desperately to distance both himself and other gradual emancipationists from abolitionist Garrisonians. He condemned abolitionists as "a horde of fanatical incendiaries rising up in the North."¹²⁷ A violent incident on the campaign trail, however, undermined his efforts. Stumping in Madison County, Clay got into a fierce confrontation with Cyrus Turner, a pro-slavery candidate. Angry words soon led to a physical altercation. In the course of the fight, both men wounded each other badly. Turner later died of his injuries. Although it was not clear who started the brawl, many Kentuckians blamed Clay and made him a symbol of abolitionist violence. The incident turned many voters against the emancipationists.¹²⁸

The emancipationists faced other obstacles as well. Many Kentuckians worried that no feasible scheme for emancipation had been offered. Clay's plan was simply to expel freed slaves from the state, except those "we shall absolutely need."¹²⁹ In addition, both

125 Fairman, *Mr. Justice Miller*, 16.

126 Miller to Lanman, 16 April 1869, MD, FCHS.

127 Richard Sears, *Day of Small Things*, 33.

128 *Ibid.*

the mainstream Whigs and Democrats campaigned against the emancipationists. "Appeals were made by the newspaper organs of both of the old political parties to oppose the emancipation ticket," the *Louisville Examiner* noted after the campaign:

Indeed, opposition to that ticket was made a test of orthodoxy in both political parties. Both parties feared the effect of the mad dog cry of abolitionism throughout the State, and the leaders of both for weeks before the election cautioned and besought their friends not to show any respect for emancipation.¹³⁰

Furthermore, many non-slaveholders were economically tied to the slave system and defended the institution as if they held slaves themselves.¹³¹ Combined, these factors all but destroyed the emancipationists' chances for victory.

In the end, the election went very badly for the anti-slavery forces. Although they received 10,000 votes statewide, they commanded a majority only in Knox County. Thus Woodson was the only emancipationist delegate elected to the convention.¹³² As a result, the convention was a disaster for the anti-slavery forces. The new constitution kept all the old pro-slavery clauses plus new ones that banned free blacks from entering the state and allowed emancipation of slaves only if they were then immediately exiled from Kentucky. In addition, the new constitution included a clause stipulating that, "The right of property is before and higher than any constitutional sanction; and the right of the owner of a slave and its increase, is the same and is as inviolable as the right of the owner of any property whatever."¹³³ When the voters of Kentucky ratified this new, ultra-pro-slavery

129 Martin, *Anti-Slavery Movement in Kentucky*, 134; Sears, *Day of Small Things*, 33.

130 *Louisville Examiner*, 11 August 1849, quoted in Fairman, *Mr. Justice Miller*, 17.

131 Sears, *Day of Small Things*, 31.

132 Martin, *Anti-Slavery Movement in Kentucky*, 134; Miller to Lanman, 16 April 1869, MD, FCHS; Mills, *Barbourville, Kentucky*, 6.

133 Constitution of Kentucky, 1850, article 10, sections 1, 2, 3, quoted in Martin, *Antislavery Movement in Kentucky*, 134-35.

constitution, Miller made up his mind to leave for free-soil Iowa. "The new constitution of Kentucky framed by this convention, and *adopted* by the people, fixed slavery more firmly than ever in the state; and left no reason to suppose that any policy eradicating slavery would ever be adopted in my life time."¹³⁴ Having determined that slavery "would never be voluntarily abolished in a Slave state, he decided to leave Kentucky."¹³⁵

Miller was not alone in his decision to abandon Barbourville. By 1849 the importance of the railroad and the steamboat in the new economic order was apparent to all. Barbourville, unfortunately, had access to neither. Furthermore, the possibility of state-promoted industrialization around Barbourville died with Clay's "Kentucky System" at the constitutional convention. A desperate and fanciful proposal to link southeastern Kentucky to eastern markets by building a canal through the Cumberland mountains also died quickly, squelched by the railroad forces in the state legislature.¹³⁶ In the end, Barbourville's professional men faced a clear choice: stay put and settle for a declining standard of living in an increasingly remote mountain town or move to gold-rush California or one of the new boomtowns on the frontier. After 1849, both pro-slavery and anti-slavery men began to leave Barbourville in droves. One ill-fated group of Barbourville families set out for the gold fields of California. Cholera struck the group around St. Louis, killing seven of the twenty-seven-member party.¹³⁷ Silas Woodson moved to Missouri where he later became the Republican governor. William Pitt Ballinger, Miller's brother-in-law, moved his family and his slaves to Galveston, Texas. Miller's brother William also migrated to Texas. Even Miller's father-in-law, James Ballinger, a thirty-two-year resident of Barbourville and one of its original settlers, left for the

134 Miller to Lanman, 16 April 1869, MD, FCHS.

135 Autobiographical Sketch of Samuel Miller, 15.

136 Kincaid, *Wilderness Road*, 211-12.

137 The party finally arrived in California after an arduous six-month journey. Decker, "History of Knox County," 169.

West. Miller headed for Keokuk in the free state of Iowa. He and Lucy and their two children arrived in the "Gate City" on 7 May 1850.¹³⁸

In terms of his ambition, Miller certainly made the right decision. In Keokuk, he later wrote:

I was fortunate in settling at once into a very heavy practice of a very pecuniary character. Land litigation was rife then about titles derived from grants & the old deeds of the half-breed Indians. It lasted many years and [required] much knowledge of the laws concerning real estate.¹³⁹

He quickly became one of Keokuk's most successful attorneys.¹⁴⁰ During the mid 1850s he also became active in Iowa's Republican Party. In 1862 Iowa's Republican congressional delegation convinced Abraham Lincoln to appoint Miller to the Supreme Court.¹⁴¹

Left behind in a rapidly changing America, Barbourville's economy collapsed. Most emigrants stopped coming on the old Wilderness Road. The professional class and merchants left for greener pastures in the West. For those who stayed, writes historian Elmer Decker, "Communication with the outside world practically ceased. Until the building of the railroad to Barbourville in 1888, which helped some[,] . . . Knox County was practically isolated."¹⁴²

138 Ibid., 109, 206; *Keokuk Gate City*, 16 July 1856. James Ballinger followed Samuel and his daughter Lucy to Keokuk. James had been a slaveholder. Because Iowa was a free state, Ballinger "disposed" of his slaves by allowing them to go to masters of their own choosing in Barbourville. Miller freed his slaves upon moving to Iowa. See Fairman, *Mr. Justice Miller*, 16, n. 28.

139 Miller to Lanman, 16 April 1869, MD, FCHS.

140 Keokuk, like Barbourville, never became the giant city that its boosters predicted. The financial Panic of 1857 dealt a severe blow to Keokuk's economy as the eastern capital that had driven the town's growth dried up. By that time, however, Miller's name was known statewide, and he had already secured the social and political prominence that led to his appointment to the Supreme Court.

141 For the best discussion of Lincoln's Supreme Court appointments and how they were made, see David M. Silver, *Lincoln's Supreme Court* (Urbana: University of Illinois Press, 1956). Also see Henry J. Abraham, *Justices and Presidents: A Political History of Appointments to the Supreme Court* (New York: Oxford University Press, 1992), 109.

142 Decker, "History of Knox County," 101. The Louisville & Nashville Railroad

While some outside contact and capital returned with the advent of commercial coal mining in the region toward the end of the nineteenth century, Barbourville's days as an aspiring entrepot and "Athens of the West" were never to return. Well into the twentieth century, the town still "had mud holes for streets . . . no electric lights or water works, and only a few hundred inhabitants."¹⁴³ The visitor to Barbourville today will find a more modern town but little trace of the Millers, Woodsons, and Ballingers. Even their ghosts, it seems, haunt other towns farther west.

was the first to run a line to Barbourville.

¹⁴³ Foreword by Oxendine in Mills, *Barbourville, Kentucky*, 6.