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FULL LENGTH MANUSCRIPT

Two Diametrically Opposed Jurists: The Jurisprudence of Chief Justices Roger B. Taney and Salmon P. Chase

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The role of the United States Supreme Court in the Antebellum and Civil War eras often fades into the background of history, overshadowed by the roles of both the executive and legislative branches of the United States through pre-war conflict, military strategy, and Reconstruction efforts. Historian Herman Belz argued that in the Civil War era, "The issues that lay at the core of the controversy were political in nature and rightly belonged to the political branches to decide. And with one major exception, the judicial branch generally respected this limitation."[1] The infamous exception Belz alluded to, *Dred Scott* v. *Sandford* (1857), overshadows the impactful judicial history of the era, comprised of key cases such as *Groves* v. *Slaughter* (1841), *Prigg* v. *Pennsylvania* (1842), *Jones* v. *Van Zandt* (1847), *Shortridge* v. *Macon* (1867), *Mississippi* v. *Johnson* (1867), and *Texas* v. *White* (1869). Although a valuable observation, the judicial branch played a larger role than Belz granted credit because of the efforts of two chief justices: Roger B. Taney and Salmon P. Chase. Both men served as diametrically opposed jurists in terms of jurisprudence, legal strategy, and personal and political beliefs, yet both chiefs pushed the limits of the judicial branch to further their individual beliefs on slavery. Nonetheless, each chief justice left a distinct mark on Civil War, slavery, and Reconstruction case law by incorporating both legal and political arguments into their opinions through judicial activism.

Chief Justice Taney and Chief Justice Chase sat at center seat at two antipodal time periods wedged apart by the Civil War: 1836 to 1864, and 1864 to 1873, respectively. Taney's death and Chase's appointment occurred amid critical points between 1863 and 1864. Major turning points on the battlefield occurred, such as the battles of Gettysburg and Vicksburg, as well as the fall of Atlanta. The Emancipation Proclamation delivered by President Abraham Lincoln and the decisive election of 1864 further determined the fate of the Union, shifting the debate surrounding slavery to amending the Constitution. This transition between chiefs serves as a backdrop to both jurists' judicial methods, political beliefs, and case law legacy, as well as each jurists' individual impact on political controversies. Born thirty-one years apart, raised in contrasting geographical regions of the United States, and appointed by two vastly different presidents, both chiefs left a distinct, albeit significant mark on Antebellum and Civil War era legal history.

TANEY'S EARLY LIFE: SOUTHERN LIFSETYLE, PROSLAVERY POLITICS, AND JACKSONIAN PRINCIPLES

Descended from two lines of prominent families, Taney grew up a product of wealth and privilege on a southern tobacco plantation in Calvert County Maryland. Born in 1777, Taney lived surrounded by wealth generated through slavery his entire life, considering that his father, Michael Taney, "by the eve of the Revolution . . . was one of the wealthiest men in the country."[2] Significant quantities of slaves and land "created the wealth that sent Taney to college in Pennsylvania and supported him as he began his legal career," and later maintained his wealth upon inheritance. In fact, "in the course of his life, slaves served his family in households in Frederick, Baltimore, and Washington, D.C. Eventually he . . . inherit[ed] more land and slaves from his father," and gained even more when his wife brought some to the marriage in 1806.[3]

Taney lived in a slave economy and society for his entire life, except for the three years he lived in the free state of Pennsylvania to attend Dickinson College at the age of fifteen. After his stay in Pennsylvania, he never again lived with "people who were not southerners and slave owners," residing in the "narrow cultural milieu of the slaveholding Chesapeake, living in Maryland and

[1] Herman Belz, "The Supreme Court and Constitutional Responsibility," *The Supreme Court and the Civil War* (1996): 7.

[2] Paul Finkelman, *Supreme Injustice: Slavery in the Nation's Highest Court,* 177-178.
[3] Ibid., 179.

Washington, D.C."[4] Taney's social environment and upbringing constructed his viewpoint on slavery, serving as the root of his staunch proslavery stance.

Originally aligned with the Federalist Party, in 1799 Taney won a seat in the Maryland House of Delegates.[5] He first disconnected from the Maryland Federalists through supporting the War of 1812, and by the time the Federalist Party had fully dissolved, Taney had shifted his support to the Jacksonian Democrats.[6] As a result of his shifting political allegiances, in 1816 Taney won election to the Maryland state senate, where he served until 1821. Foundations of his political views on slavery began to emerge in this position, and historians and scholars have long debated Taney's actions and motives in this period of his life. In attempts to defend Taney and his beliefs, scholars often point to Taney's support for legislation that prevented the kidnapping of freed slaves and the manumission of some of his own slaves.

Indeed, in this period, Taney defended the free speech rights of Reverend Jacob Gruber, a white Methodist from Pennsylvania who condemned slavery in an 1818 speech. Taney defended Gruber against a charge of inciting slaves to revolt, portraying Taney as a protector of antislavery rhetoric.[7] Although a welcomed victory for abolitionists, Taney's action revealed little more than his dedication to his client, his skillful use of First Amendment protections, and Taney's ability as a lawyer. All these actions can be reduced to "charitable *noblesse oblige*" consistent with Taney's "Federalist politics, and his moderate position as a slaveholder, colonizationist, and a supporter of the rule of law."[8]

Despite these antislavery performances, Gruber is the last time Taney said anything in public that was remotely hostile to slavery.[9] Defenders of Taney often forget that he "quickly emerged as a politician who zealously protected slavery and was unalterably opposed to the rights of free blacks."[10] In addition, while in the Maryland senate, he also "supported a resolution to prevent Maryland slaves from escaping into Pennsylvania," further protecting slave owners in Maryland.[11] Even before Taney exercised his judicial power on the Supreme Court to preserve slavery, Taney worked in his early life to maintain and promote slavery.

In 1831 President Jackson appointed Taney as the United States Attorney General, and in 1832, Taney provided strong evidence of his view on slavery and African Americans in an unpublished opinion.[12] Taney insisted that:

> The African race in the United States even when free, are every where a degraded class, and exercise no political influence. The privileges they are allowed to enjoy, are accorded to them as a matter of kindness and benevolence rather than of right. They are the only class of persons who can be held as mere property, as slaves. And where they are nominally admitted by law to the privileges of citizenship, they have no effectual power to defend them, and are permitted to be citizens by the sufferance of the white population and hold whatever rights they enjoy at their mercy. They were never regarded as a constituent portion of the sovereignty of any state. But as separate and degraded people to whom the sovereignty of each state might accord or withhold such privileges as they deemed proper.[13]

He later argued a long-winded version of this statement in *Dred Scott,* establishing one of the most recognized yet most egregious opinions in Supreme Court history. This particular statement demonstrated not only Taney's position on slavery, but also that "he held these views a quarter of a century before *Dred Scott.* Taney never published this opinion, and therefore it did not affect public debate. But it certainly bolstered Jackson's hands-off policy toward Southern regulations of free blacks."[14] Taney never retreated from these beliefs; he soon became a leading advocate for not only Jacksonian economic policies, but Jacksonian views on slavery. Taney's beliefs and actions prior to his chief justiceship differ from Chase's pre-chief years in that Chase dedicated his life to preventing the spread and eliminating the existence of slavery, while Taney maintained and promoted his proslavery beliefs.

Taney played a significant role as attorney general in the second Bank of the United States controversy, "helping to

[4] Ibid., 178.
[5] Earl M. Maltz, *Dred Scott and the Politics of Slavery.* (Lawrence: University Press of Kansas, 2007), 77.
[6] David G. Savage, *Guide to the U.S. Supreme Court,* 5th ed. (Washington D.C.: CQ Press, 2010), 1090.
[7] Paul Finkelman, *Supreme Injustice: Slavery in the Nation's Highest Court,* 180.
[8] Ibid., 180.
[9] Ibid., 181-182.
[10] Ibid., 182.
[11] Ibid., 180.
[12] David G. Savage, *Guide to the U.S. Supreme Court,* 5th ed., 1090-1091.
[13] Unpublished Opinion of Attorney General Taney as cited in Carl B. Swisher, *Roger B. Taney.* (Hamden: Archon Books, 1961), 154.
[14] Paul Finkelman, "'Hooted Down the Page of History': Reconsidering the Greatness of Chief Justice Taney," *Journal of Supreme Court History* 1994 (1994): 90-91.

write Jackson's message in 1832 vetoing the bank's recharter."[15] He even stepped in to preside over the new system of pet banks for nine months when Jackson dismissed his own Treasury Secretary, William Duane. However, Congress soon learned of Taney's informal appointment and promptly rejected his nomination. Jackson had a better plan for Taney in mind, and appointed Taney to replace Associate Justice Gabriel Duvall.[16] As a result of a close Senate vote to confirm Taney's nomination, Congress postponed Taney's nomination indefinitely; the postponement provided Jackson with an opportune moment. Much "to the horror of the Whigs, who considered [Taney] much too radical," Jackson appointed Taney to center seat upon Chief Justice John Marshall's death in 1835. The Senate confirmed Taney's nomination on March 15, 1836, where Chief Justice Taney began his long twenty-eight years of service on the High Court.[17] Taney's ascendency to the chief justiceship not only represented the overbearing slave power of the South in all three branches of government but foreshadowed the Supreme Court's role in upholding proslavery doctrine before the outbreak of the Civil War.

A SLAVEHOLDER AND PROSLAVERY ADVOCATE AT CENTER SEAT

Aside from *Dred Scott*, two other Supreme Court cases reveal Taney's views on slavery, both *Groves* v. *Slaughter* and *Prigg* v. *Pennsylvania.* In *Groves,* the Court examined a Mississippi state constitutional provision that banned the importation and sale of slaves and whether it violated the Commerce Clause found in Article I Section 8 of the United States Constitution. The Court decided in favor of Slaughter, the individual who sold the slaves, explaining that the Mississippi state constitutional provision was not enacted at the time of the sale, therefore, rendering the contract valid and affording Slaughter the right to recover on promissory notes from the buyer.[18]

As only one of the fourteen separate opinions Taney wrote throughout his tenure, his concurring opinion proved "Indicative of what would be his highly partisan approach to slavery throughout his career."[19] The Court did not reach the issue of the power of Congress to regulate the trafficking of slaves. However, Taney himself admitted that he would use this opportunity to address an issue that "is not involved in the case before us. But as my brother [Justice] McLean has stated his opinion upon it, I am not willing, by remaining silent, to leave any doubt as to mine." In addressing this issue, Taney stepped outside of his judicial power granted to him, substituting a discussion of the controversy at hand for an argument supporting his own political beliefs.

He continued on, explaining that the "power over this subject is exclusively with the several states, and each of them has a right to decide for itself whether it will or will not allow persons of this description to be brought within its limits, from another state, either for sale, or for any other purpose."[20] His opinion read as an admonition directed at northern politicians, insisting that the "federal government had no power over slavery," despite the fact that neither petitioner nor respondent brought that issue to the Court. This opinion held a clear proslavery stance, favoring states' rights to regulate interstate slave trade. Taney safeguarded his position on this case by leaving no question as to what views he held; he clearly "did not want to leave any implication that under the Commerce Clause Congress might regulate slavery."[21] Although his concurring opinion held no binding power on the law, Taney's proslavery sentiment expressed through his position on the Supreme Court further promoted the proslavery cause, and bolstered political proslavery arguments.

Taney again demonstrated his explicit views on slavery only one year later in his opinion concurring in part and dissenting in part in *Prigg.* *Prigg* proved to be a significant case for a variety of reasons, namely that it served as the "first fugitive slave case to arrive before the Supreme Court."[22] Taney strategically assigned the opinion of this case to Associate Justice Joseph Story; "likely he chose Story because it would be advantageous to have a northern justice issue an opinion that many contemporaries would consider proslavery . . . Likely, it had been clear at the time of the opinion's assigning that all the justices agreed that Pennsylvania's law should be struck down as unconstitutional."[23] The majority in *Prigg* examined a Pennsylvania law that prohibited the extradition of African Americans for the purposes of slavery under Article IV, Section 2 of the Constitution, as

[15] David G. Savage, *Guide to the U.S. Supreme Court,* 5th ed., 1091.
[16] Ibid., 1091.
[17] Ibid., 1091.
[18] *Groves* v. *Slaughter,* 40 U.S. 449 (1841).

[19] Paul Finkelman, "'Hooted Down the Page of History': Reconsidering the Greatness of Chief Justice Taney," 91.

[20] Concurring opinion of Chief Justice Taney, *Groves* v. *Slaughter,* 40 U.S. 449 (1841)..
[21] Paul Finkelman, "'Hooted Down the Page of History': Reconsidering the Greatness of Chief Justice Taney," 91.
[22] Robert H. Baker, *Prigg v. Pennsylvania: Slavery, the Supreme Court, and the Ambivalent Constitution.* (Lawrence: University Press of Kansas, 2012), 129.
[23] Ibid., 139.

well as the Fugitive Slave Law of 1793. Story, writing for the majority struck down the Pennsylvania law, upheld the federal fugitive slave law of 1793, and further declared that slaveowners had a Constitutional right to seize their slaves anywhere they found them. His opinion served as a sweeping victory for slavery, "which shakes to the core his antislavery reputation."[24]

However, true to his nationalist beliefs, Story twisted his opinion to support what concerned him the most: "securing the high ground for congressional power to legislate."[25] Story explained that "The right to seize and retake fugitive slaves, and the duty to deliver them up, in whatever State of the Union they may be found is, under the Constitution recognized as an absolute positive right and duty pervading the whole Union with an equal and supreme force uncontrolled and uncontrollable by state sovereignty or state legislation." Story continued, securing his nationalist view in his argument by illustrating that the fugitive slave clause created

> A new and positive right . . . The natural inference deducible from this consideration certainly is . . . that it belongs to the legislative department of the national government . . . It would be a strange anomaly, and forced construction, to suppose that the national government meant to rely for the due fulfillment of its own proper duties and rights which it intended to secure, upon state legislation; and not upon that of the Union.[26]

Story injected his own political viewpoint into the case, and considering Story's nationalist analysis, it is evident that "Taney would come to regret assigning Story to the opinion."[27]

In another one of his separate opinions, Taney disagreed, arguing that the states possess the power to pass laws that aided the return of fugitive slaves. Taney ignored his own previous departure from the question presented to the Court in *Groves,* criticizing Story, claiming that he does not "consider this question [of exclusivity] as necessarily involved in the case before us."[28] This dismissal of his own actions in favor of slavery revealed Taney's dedication to preserving slavery from the bench. Taney's opinion once again held no binding power over the law, but only contributed to the proslavery movement and to the culmination of judicial discourse that led to the *Dred Scott* decision.

Clearly protecting southern states' interests and reinforcing the compact theory of the Union, Taney argued that the words in the law "seem evidently designed to impose it as a duty upon the people of several states to pass laws to carry into execution, in good faith, the compact into which they solemnly entered with each other." He then asked, "why must not a state protect a right of property, acknowledged by its own paramount law?" Taney then drew a comparison between slaves and other forms of property, demonstrating that "the laws of different states, in all other cases, constantly protect the citizens of other states in their rights of property, when it is found within their respective termitories [sic]; and no one doubts their power to do so."[29] In addition to his dismissal of his own departure from the constitutional question in *Groves,* Taney's slavery jurisprudence served as a contradiction in and of itself. *Prigg* demonstrated that "When it came to slavery, Taney supported state power for the southern states, while rejecting the right of the free states to protect the rights of free African-Americans."[30] These logical discrepancies and Taney's tendency to pick and choose when to apply certain constitutional provisions when it came to slavery demonstrated Taney's explicit interest in preserving slavery through law and the judiciary.

Overall, although a victory for the South, *Prigg* served as a landmark case in the general scheme of Antebellum case law. The Taney Court's decision in *Prigg* resulted in far-reaching consequences; "it convinced many abolitionists that the Constitution was the problem, not the solution, to slavery."[31] In stark contrast to Chase's political and constitutional strategy at the height of his career, the Taney Court suggested a bleak future for abolitionists and antislavery politicians alike. In 1842 when the Court handed down *Prigg,* both groups could not have imagined nor predicted the impending devastation of *Dred Scott.*

Compared to his previous jurisprudence on race and slavery, in the 1850s, Taney unleashed his most violent views of slavery and "abandoned all pretense of neutrality in sectional issues. 'Behind his mask of judicial propriety, the Chief Justice had become privately a bitter

[24] Paul Finkelman, "'Hooted Down the Page of History': Reconsidering the Greatness of Chief Justice Taney," 92.
[25] Robert H. Baker, *Prigg v. Pennsylvania: Slavery, the Supreme Court, and the Ambivalent Constitution,* 141.
[26] Justice Story's majority opinion in *Prigg* v. *Pennsylvania,* 41 U.S. 539 (1842).
[27] Robert H. Baker, *Prigg v. Pennsylvania: Slavery, the Supreme Court, and the Ambivalent Constitution,* 139.
[28] Justice Taney's separate opinion in *Prigg* v. *Pennsylvania,* 41 U.S. 539 (1842).
[29] Justice Taney's separate opinion in *Prigg* v. *Pennsylvania,* 41 U.S. 539 (1842).
[30] Paul Finkelman, "'Hooted Down the Page of History': Reconsidering the Greatness of Chief Justice Taney," 92.
[31] Robert H. Baker, *Prigg v. Pennsylvania: Slavery, the Supreme Court, and the Ambivalent Constitution,* 7.

sectionalist, seething with anger at Northern insult and Northern aggression.'"[32] Assigning the majority opinion to himself, Taney used *Dred Scott* to his advantage; he seized this moment to perform, in his opinion, service to the public by resolving an intense constitutional issue that was dividing the nation.[33] At this point in the national debate over slavery and in his career, Taney understood that he served as "in some ways, the Confederacy's greatest ally in Washington."[34] Compared to the other "lilliputian nonentities" leading the nation at the time such as President Franklin Pierce and President James Buchanan, "Chief Justice Taney seemed to be the only leader in any branch of government," and Taney recognized that himself.[35]

Tension between northerners and southerners on Capitol Hill proved ever growing in the late 1850s, providing Taney with an ideal setting. Except for Associate Justice Robert Grier, "all of the other justices took the opportunity to express separate opinions" on at least some of the issues in the case, yet Taney did not stand alone on his Court. In the end, "seven justices concluded that the Scotts remained slaves, while two believed that Dred Scott and the other members of his family were legally entitled to their freedom."[36]

Taney began his opinion by settling the issue of jurisdiction, turning to the question of citizenship.[37] Harkening back to his 1832 unpublished opinion as attorney general, Taney reasoned that "because free blacks lacked fundamental rights at the time the Constitution was adopted, they were not considered citizens at that time," and further concluded that the "descendants of slaves could not become citizens of the United States," and, therefore, could not possess standing to sue in federal court.[38] As a result, Taney concluded that the Court did not hold proper jurisdiction.

At this point in his argument, Taney could have ended his opinion from a purely legal perspective.[39] The beginning of the opinion proved a great victory for the South and proslavery supporters. However, Taney again abandoned the central legal question presented, addressing the issue of race, the place of African Americans in United States society, and other issues pertaining to slavery in the new territories. His opinion struck down the Missouri Compromise of 1820, categorized slaves as property under the Fifth Amendment, and decided that any law depriving a slave owner of that property violated the Constitution.[40]

Of course, Taney's constitutional argument in *Dred Scott* appeared unpersuasive and reaching, but aside from the case's obvious disgrace, other lasting implications emanate from the case: "[Taney] did not practice judicial self-restraint, he was the first Chief Justice to persuade the Court to invalidate a major national policy enacted by Congress, and he was the first jurist to appreciate the full potential of the Supreme Court as a legislative body."[41] Although a controversial decision in the context of the 1857 Court and the Court of today, Taney, "At one stroke . . . significantly enlarged the scope of judicial power by finding a standard in the Constitution of substantive fairness."[42] The defining case of Taney's career provided not only a irreparable harm to the United States, to African Americans, and to the Supreme Court, but altered the Supreme Court's power and its legacy.

Other scholars and historians have argued that *Dred Scott* served as an unusual mistake for Taney, referring to his opinion as an aberration that diverged from his usual jurisprudence. Although *Dred Scott* served as the greatest mistake of Taney's career and perhaps of the entire history of the Supreme Court, scholars must not "reduc[e] his slavery jurisprudence to just one case" and then dismiss the case as a single mistake. By doing so, "scholars misunder[stand] the depth of Taney's support for slavery and his hostility to African-American rights."[43] Taney's views on slavery proved well developed before he sat on the High Court, and well before he wrote his infamous decision. As a result, "far from aberration, *Dred Scott* can," and should, "be seen as the culmination of Taney's ideas on race and slavery."[44] Taney's early life and career, as well as the line of cases

[32] Paul Finkelman, "'Hooted Down the Page of History': Reconsidering the Greatness of Chief Justice Taney," 87.
[33] James F. Simon, "Lincoln and Chief Justice Taney," *Journal of Supreme Court History* 35 (2010): 231-233.
[34] Paul Finkelman, "'Hooted Down the Page of History': Reconsidering the Greatness of Chief Justice Taney," 98.
[35] Ibid., 85.
[36] Earl M. Maltz, *Dred Scott and the Politics of Slavery,* 118.
[37] *Dred Scott* v. *Sandford,* 60 U.S. 393 (1857).
[38] Earl M. Maltz, *Dred Scott and the Politics of Slavery,* 119-120.
[39] Ibid., 120.
[40] *Dred Scott* v. *Sandford,* 60 U.S. 393 (1857).
[41] *Great Justices of the U.S. Supreme Court: Ratings and Case Studies.* Edited by William D. Pederson and Norman W. Provizer. (New York: Peter Lang Publishing, Inc., 1994), 75.
[42] Ibid., 85.
[43] Paul Finkelman, "'Hooted Down the Page of History': Reconsidering the Greatness of Chief Justice Taney," 86.
[44] Ibid., 90.

from *Groves* and *Prigg*, demonstrate that Taney pursued the measured goal of reinforcing proslavery case law throughout his tenure; in Taney's mind, *Dred Scott* served as the ultimate achievement of that goal, one that decelerated and opposed the life work of Chief Justice Chase.

CHASE'S EARLY LIFE: FROM "ATTORNEY GENERAL OF FUGITIVE SLAVES" TO CONSTITUTIONAL ABOLISTIONIST

Born into the free state of New Hampshire on January 13, 1808, Chase came from a prominent family dating back to the 1640s in the United States. At age twelve, Chase traveled to live with his uncle, a Protestant Episcopal Bishop. His devotion to his Episcopalian faith became instilled in him while living with his uncle, further inspiring Chase's antislavery views. He graduated from Dartmouth College in 1826, and then studied law under Attorney General William Wirt. After passing the bar in 1829, Chase moved west to practice law in Cincinnati, Ohio.[45]

In time, Chase became known as the "attorney general for fugitive slaves." He joined the antislavery movement early, recognizing the tremendous power slaveholders gained from fugitive slave laws, and dedicated his early career to defending runaway slaves.[46] In 1837 Chase defended a runaway slave named Matilda; the argument he used in this case later became one of his most notorious defenses of fugitive slaves. Chase challenged the Fugitive Slave Act of 1793, crafting a multifaceted argument that claimed that the Act granted no enforcement power to Congress.[47]

In the end, Chase failed to convince the local judge, who remanded Matilda back to the slave catchers. Although Chase's efforts fell short at the local level, Chase's argument "in the *Matilda* case was published as a pamphlet and distributed widely throughout the country where it elevated his visibility and provided the legal basis for other challenges to the constitutionality of the Fugitive Slave Act."[48] The pamphlet, titled *Speech of Salmon P. Chase, in the Case of the Colored Woman, Matilda,* brought Chase's argument to the national level, serving as a valuable step forward in the antislavery movement while amplifying Chase's antislavery ideas.

Chase built on this argument and used the *Matilda* case to develop a stronger claim for another fugitive slave case presented to the Supreme Court in *Jones* v. *Van Zandt*. In addition to the structural objection of the Fugitive Slave Act, Chase added a Fifth Amendment due process argument, contending that "Now, unless it can be shewn [sic] that no process of law at all, is the same thing as due process of law, it must be admitted that the act which authorizes seizures without process, is repugnant to the constitution."[49] Chase bolstered his argument through referencing the intention of the framers, "appealing to what he called the 'plain import' of the text."[50]

Unfortunately, the Taney Court dismissed *Van Zandt* on the pleadings, and Chase never appeared to argue before the Court because of a rule Taney implemented that "denied oral argument on matters that had already been adjudicated."[51] However, as in *Matilda*, Chase's constitutional arguments in *Van Zandt* gained national attention through a published pamphlet, even appearing in the *Western Law Journal*.[52] The impact of *Van Zandt* and Chase's argument better served the antislavery cause than the Taney Court's decision on the issue, which upheld the Fugitive Slave Law as constitutional.[53]

After Chase's fugitive slave arguments gained national attention, Chase used his constitutional arguments to begin his political career in the 1840s. In 1840 he helped form the Liberty Party and became a leading member.[54] In 1848, however, Chase stepped away from the Liberty Party and helped form the Free Soil Party. The party's platform adopted Chase's contention that the "founders

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[45] David G. Savage, *Guide to the U.S. Supreme Court,* 5th ed., 1104.

[46] Michael E. Woods, "'Tell Us Something About State Rights:' Northern Republicans, States' Rights, and the Coming of the Civil War," *Journal of the Civil War Era* 7 (2017): 248.

[47] Randy E. Barnett, "From Antislavery Lawyer to Chief Justice: The Remarkable but Forgotten Career of Salmon P. Chase," *Case Western Reserve Law Review* 63 (2013): 661.

[48] Ibid., 662.

[49] Salmon P. Chase, "An Argument for the Defendant, submitted to the Supreme Court of the United States, at the December Term, 1846, in the case of *Jones* v. *Van Zandt,*" as cited in Randy E. Barnett, "From Antislavery Lawyer to Chief Justice: The Remarkable but Forgotten Career of Salmon P. Chase," 663.

[50] Randy E. Barnett, "From Antislavery Lawyer to Chief Justice: The Remarkable but Forgotten Career of Salmon P. Chase," 665.

[51] Ibid., 667.

[52] Salmon P. Chase, "March 3, 1847," in *The Salmon P. Chase Papers: Volume I Journals, 1829-1872,* ed. John Niven (Kent: The Kent State University Press, 1993), 186.

[53] *Jones* v. *Van Zandt*, 46 U.S. 215 (1847).

[54] Randy E. Barnett, "From Antislavery Lawyer to Chief Justice: The Remarkable but Forgotten Career of Salmon P. Chase," 668.

had intended to make slavery a local institution, and that the federal government was barred by the Fifth Amendment from creating the condition of bondage anywhere in its jurisdiction."[55] He served as a United States Senator from the Free Soil Party from 1849 to 1855, until he left the Senate to serve as the Governor of Ohio from 1855 to 1859.[56] Chase officially aligned with the Republican Party when he left the Senate, playing a major role in the party's establishment. As in the Free Soil platform, the Republicans supported Chase's claim that Congress lacked the authority to recognize or create slavery anywhere in its jurisdiction, and adopted this argument in its 1856 and 1860 platforms.[57]

The constitutional arguments Chase made in *Matilda* and *Van Zandt* served as only the beginning of Chase's antislavery political career; he and other Republicans employed these arguments to convince "thousands of northerners that anti-slavery was the intended policy of the founders of the nation."[58] Chase established the rallying cry of "freedom national" for the Senate Republicans, declaring in the Senate: "'Freedom is national; slavery only is local and sectional'"[59] In terms of Chase's legacy, his "constitutional abolitionism" proved his most valuable political contribution to the antislavery movement.[60] As opposed to Taney, who used his early political career to promote the continuation of slavery through proslavery laws and sentiment, Chase developed, promoted, and spread the concept of constitutional abolitionism, a unique approach to the tumultuous political debate surrounding slavery.

Although his arguments proved politically persuasive, "no federal court adopted Chase's constitutional interpretation in the ante-bellum years."[61] However, Chase's legal and "constitutional arguments are remarkably persuasive compared to those advanced by the Supreme Court in cases such as *Dred Scott.*"[62] In addition, his arguments strengthened the power of the Republican Party, and "help[ed] explain why Lincoln's victory in 1860 provoked the Southern states to secede."[63] While firm in his beliefs and goals, Chase can be characterized as a radical who twisted anti-slavery arguments into widely popular political charges, which necessarily required concession in order to rally widespread political support. Chase's argument for constitutionality served as essential and better defined the parameters of anti-slavery for northerners and those in the Republican Party who wavered between opinions on slavery. Chase's creative interpretation of the Constitution and his talent as a legal mind caught the attention of President Lincoln, who appointed Chase to his cabinet as Secretary of the Treasury in 1861.[64]

Lincoln and Chase often disagreed, and Chase's cabinet position intensified their conflict. Disagreements ranged from economic issues to war resources, but slavery and Reconstruction served as the most contested issue between the two. In fact, Chase "allowed himself to become the focus of an anti-Lincoln group within the Republican Party."[65] Chase privately criticized Lincoln for being so dilatory on slavery, and later railed against Lincoln's pocket veto of the Wade-Davis bill.[66] Chase went as far as accusing "Lincoln and his advisors . . . of a Reconstruction plan that would leave slavery in place."[67] Chase admitted in his journal on July 6, 1864 that Senator Samuel C. Pomeroy, "cannot support Lincoln, but wont [sic] desert his principles," then confessed that "I [share] much of the same sentiments; though not willing now to decide what duty may demand next fall."[68]

Disagreements between the two and other political ambitions pushed Chase to resign from the cabinet only seven days after that journal entry in July of 1864, where

[55] Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War* (New York: Oxford University Press, 1995), 83.
[56] David G. Savage, *Guide to the U.S. Supreme Court,* 5th ed., 1104-1105.
[57] Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War,* 83.
[58] Ibid., 73.
[59] Ibid., 83.
[60] Randy E. Barnett, "From Antislavery Lawyer to Chief Justice: The Remarkable but Forgotten Career of Salmon P. Chase," 655.
[61] Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War,* 83.
[62] Randy E. Barnett, "From Antislavery Lawyer to Chief Justice: The Remarkable but Forgotten Career of Salmon P. Chase," 655.
[63] Ibid., 671.
[64] David G. Savage, *Guide to the U.S. Supreme Court,* 5th ed., 1105.
[65] Ibid., 1105.
[66] Randy E. Barnett, "From Antislavery Lawyer to Chief Justice: The Remarkable but Forgotten Career of Salmon P. Chase," 674.
[67] John Niven, *Salmon P. Chase: A Biography.* (New York: Oxford University Press, 1995), 369.
[68] Salmon P. Chase, "July 6, 1864" in *The Salmon P. Chase Papers: Volume I Journals, 1829-1872,* ed. John Niven (Kent: The Kent State University Press, 1993), 477.

he writes "today I leave Washington a private citizen."[69] Throughout his career, Chase would never quite suppress his fierce desire for the presidency. Chase attempted to gain the Republican nomination for president as early as 1856, and for every presidential election thereafter. Despite failure to attain his most sought-after position, Chase signaled interest in a judicial post to round out his career. Often after experiencing frustration with his political ambitions, "he yearned for what he supposed was the relative peace and quiet of the Supreme Court." He reasoned that a judicial post "could also be a useful base for his presidential ambitions," still refusing to retire his dream.[70]

Regardless of his political aspirations, Chase's accomplishments proved best achieved through legal strategy and reasoning. Lincoln recognized Chase's adept legal mind despite the discord between the two, and upon Chase's resignation from the cabinet, Lincoln accepted the resignation with relief. Lincoln reassured irritated Chase supporters at the time of Chase's resignation that "'if I have the opportunity, I will make him Chief Justice of the United States.'"[71] Lincoln and the "Republicans knew that the courts would be crucial in establishing a new, free, constitutional order once the war was over . . . Chase was not only one of the preeminent Republican political leaders, but he had been among the leading legal and constitutional spokesmen of the antislavery movement."[72] The Civil War itself proved to be an unprecedented event; Lincoln and Congress realized early on that Reconstruction would serve as an even more strenuous legal feat.

Volumes of legislation flowed from both the legislative and executive branches, enhancing the "role of the federal judiciary, and the Supreme Court's role in defining what [this legislation] meant."[73] In December of 1864, the Supreme Court underwent a revolutionary shift. The Supreme Court that had previously consisted of southerners and southern sympathizers during the Antebellum and Civil War years welcomed new leadership in 1864; the proslavery, slave owning author of *Dred Scott* was succeeded as Chief Justice by the attorney general for fugitive slaves, marking a radical shift in the judicial branch's case law on slavery.

AN ANTISLAVERY CHAMPION AS CHIEF JUSTICE: THE CHASE COURT'S RECONSTRUCTION CASE LAW

By the time Taney died and Chase took center seat, the Court composed of an "essentially new complement of Justices. Of those who had sat more than a few years with Chief Justice Roger Taney, only Samuel Nelson and Robert Grier were to remain for a significant time." Lincoln appointed four new justices during his presidency in addition to Chase, including Noah H. Swayne, Samuel F. Miller, David Davis, and Stephen J. Field.[74] The Chase Court signified a new era of the role of the Court, considering in the Reconstruction years alone "the Chase court struck down eight federal statutes" and "35 state laws as unconstitutionally restrictive of the rights of blacks," compared to the two federal statutes struck down in the entire history of the Supreme Court. Through the lens of his constitutional abolitionist outlook, Chase did not hesitate to strike down laws in violation of the Constitution that proved antithetical to the antislavery cause. Even following Lincoln's death and the uncertainty of Reconstruction, "Chase steadfastly assured the Radical Republicans in Congress a free hand to continue with the Reconstruction programs in the South without judicial review or interference."[75]

Justices still practiced circuit riding at the time of Chase's tenure, and the Judiciary Act of 1866 readjusted the circuit boundaries. Mindful of the disproportionate power granted to the southern states through circuit boundaries and of the "expanding territorial reach of the American continent and the growing amount of litigation," Congress rearranged five of the nine circuits that consisted of slave states alone.[76] Chase presided over Taney's old circuit that encompassed Maryland, North Carolina, and Virginia. Perhaps out of a desire to enforce and uphold Reconstruction efforts at a local level, "Chase found circuit court duties more to his taste. For there he was

[69] Salmon P. Chase, "July 13, 1864" in *The Salmon P. Chase Papers: Volume I Journals, 1829-1872,* ed. John Niven (Kent: The Kent State University Press, 1993), 479.
[70] John Niven, *Salmon P. Chase: A Biography*, 372.
[71] Randy E. Barnett, "From Antislavery Lawyer to Chief Justice: The Remarkable but Forgotten Career of Salmon P. Chase," 675.
[72] Michael Les Benedict, "Reconstruction: The Civil War Amendments," *The Supreme Court and the Civil War* (1996): 89.
[73] Ibid., 89.
[74] David P. Currie, "The Constitution in the Supreme Court: Civil War and Reconstruction, 1865-1873," *The University of Chicago Law Review* 51 (1984): 131.
[75] "Among the Chief Justices of the United States, Salmon P. Chase Stands out as a Dedicated Protector of the Rights of African Americans," *The Journal of Blacks in Higher Education* 2003 (2003): 50.
[76] G. Edward White, "Salmon Portland Chase and the Judicial Culture of the Supreme Court in the Civil War Era," *The Supreme Court and the Civil War* (1996): 38-39.

very much his own man and most of his decisions had immediate, direct impact."[77]

Chase addressed secession and rebellion in *Shortridge* v. *Macon*. Macon, the defendant, claimed that the existence of the Confederacy and certain laws passed under that government confiscated a debt owed to the plaintiff. The Court, however, affirmed the continuity of federal sovereignty over the Confederacy during the war. As a result, federal sovereignty maintained the right of northern creditors to collect debts from the South incurred prior to secession and war.[78]

Chase addressed the issue at hand with ease, deciding that "War, therefore, levied against the United States by citizens of the Republic, under the pretended authority of the new state government of North Carolina, or of the so-called Confederate government which assumed the title of the 'Confederate States,' was treason against the United States." Relying on international law principles throughout his decision, Chase argued that "on no occasion, however, and by no act, have the United States ever renounced their constitutional jurisdiction over the whole territory . . . or conceded to citizens in arms against their country the character of alien enemies, or admitted the existence of any government *de facto,* hostile to itself within the boundaries of the Union."

Chase then administered a warning, explaining that "Those who engage in rebellion must consider the consequences. If they succeed, rebellion becomes revolution . . . if they fail, all their acts hostile to the rightful government are violations of law, and originate no rights which can be recognized by the courts."[79] In the end, Chase concluded that "Legal rights could neither be originated nor defeated by the action of the central authorities of the late rebellion," and therefore, Macon must fulfill payment of his debt. Overall, Chase decided that secession did not serve as a valid defense to treason.[80] In a letter to Horace Greeley in June of 1867, Chase explained his reasoning in *Shortridge:*

> I saw no ground on which the rebel acts of sequestration could be set aside, if the *de facto* character of the rebel government were admitted; for it is the universal rule that the acts of a defacto government done during its existence as such, are valid. And there is no middle ground between a defacto government, and a treasonable combination of rebels in arms, every exercise of whose pretended authority against the government is treason.[81]

Harkening back to his days in the Senate and cabinet, Chase relied on the outcome of the war, reinforcing the Republican ideal that the Confederacy had to pay for the consequences of its actions through Reconstruction.

Outside of the Fourth Circuit, the Chase Court decided *Mississippi* v. *Johnson* (1867) and *Texas* v. *White* (1869), two significant Reconstruction era cases. Decided only two months before *Shortridge*, the Court in *Johnson* "unanimously held it had 'no jurisdiction of a bill to enjoin the President in the performance of his official duties.'"[82] Relying heavily on Chief Justice John Marshall's argument in *Marbury* v. *Madison* (1803), Chase outlined a distinction between the ministerial and discretionary responsibilities of the president. Chase defined a ministerial duty as "a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law." In contrast, Chase explained that the duty brought by the Reconstruction Acts to President Andrew Johnson "is in no just sense ministerial. It is purely executive and political," and it would be, in the words of Marshall, "an absurd and excessive extravagance" if the Court could weigh in on the performance of the executive branch.

Through making a separation of powers argument, Chase concluded that "neither [branch] can be restrained in its action by the judicial department; though the acts of both, when performed, are, in proper cases, subject to its cognizance."[83] Through this decision, Chase preserved the right of the president to enforce the first and second Reconstruction Acts, although alleged to be unconstitutional by several southern states. The Chase Court received political support from Republicans in Congress upon hearing the decision in this case; Chase documented this support in a letter to Associate Justice David Davis, recounting that "Almost all were glad that we decided the Mississippi and Georgia cases, and decided them as we did."[84]

Chase "finally succeeded in writing most of the Radical philosophy of Reconstruction into the Constitution" in the

[77] John Niven, *Salmon P. Chase: A Biography*, 434.
[78] *Shortridge* v. *Macon,* 22 F. Cas. 20 (1867).

[79] Ibid.
[80] Cynthia Nicoletti, "Chief Justice Salmon P. Chase and the Permanency of the Union," *Journal of Supreme Court History* 44 (2019): 163.
[81] Salmon P. Chase, "Letter to Horace Greeley, June 25, 1867," in *The Salmon P. Chase Papers: Volume 5 Correspondence 1865-1873*, ed. John Niven (Kent: The Kent State University Press, 1993), 159-160.
[82] David P. Currie, "The Constitution in the Supreme Court: Civil War and Reconstruction, 1865-1873," 147.
[83] *Mississippi* v. *Johnson,* 71 U.S. 475 (1867).
[84] Salmon P. Chase, "Letter to David Davis, June 24, 1867," in *The Salmon P. Chase Papers: Volume 5 Correspondence 1865-1873*, ed. John Niven (Kent: The Kent State University Press, 1993), 157-158.

most significant Reconstruction case brought to the Supreme Court, *Texas* v. *White*.[85] He secured and established the permanency of the Union, further enshrining the idea that "Union victory had rested on a firm legal foundation."[86] The Court addressed the questions of whether Texas possessed the right to bring suit and whether Texas could constitutionally reclaim Confederate bonds.[87]

Chase began his majority opinion by addressing the major threshold problem: "the Supreme Court had jurisdiction only if the suit was between 'a State and Citizens of another State,' and Texas had purported to secede from the Union. Thus, the Chief Justice found it necessary to hold that secession was unconstitutional."[88] Reusing the secession argument from Lincoln's first inaugural, Chase disposed of the secession argument in only a paragraph:

> The Union of the States never was a purely artificial and arbitrary relation. It began among the Colonies, and grew out of a common origin, mutual sympathies, kindred principles, similar interests, and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form, and character, and sanction from the Articles of Confederation. By these the Union was solemnly declared to "be perpetual." And when these Articles were found to be inadequate to the exigencies of the country, the Constitution was ordained to "form a more perfect Union." It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be indissoluble if a perpetual Union, made more perfect, is not?

He concluded that the "Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States." Since Texas joined the Union under the presumption that it joined an indissoluble relationship, the secession of Texas, and of all the other states which seceded, violated the Constitution. Texas retained its status as a state of the Union; therefore, Texas possessed the right to bring suit.

Chase addressed the second question by arguing that the law passed in 1862 by the rebellious Texas government that repealed an 1851 law requiring endorsement of the governor to issue state bonds did not serve as a valid law; therefore, the rebellious Texas government "cannot be regarded in the courts of the United States, as a lawful legislature, or its acts as lawful acts."[89] As a result, the Court rendered the act repealing the 1851 law null and void, deeming the Confederate bonds worthless. It is true that Chase and the majority engaged in a one-sided contradiction, where the Court "accepted without supporting argument the standard Radical view of . . . secession: the Southern states had annihilated their rights but not their obligations."[90] Nonetheless, the Court deemed the rebellious Texas government as invalid, all while maintaining that Texas remained a state throughout the conflict.

A DIRECT COMPARISON OF TANEY AND CHASE

In terms of career milestones, Taney and Chase lived similar lives. Although Chase's true dedication and ambition rested in politics, both jurists started out as young attorneys, served in some legislative capacity, and served in the executive branch. The length of Taney's tenure more than doubles Chase's time on the Court, providing Taney with more time to enshrine his proslavery sentiment in Antebellum case law. Both men served in a political setting for a similar length of time; Chase however, used his time more effectively, promoting his antislavery beliefs through significant political action and legislation. As with many people from this period, the most fundamental belief separating Taney and Chase proved in step with the nation in the Civil War era: Taney's proslavery sentiment and Chase's antislavery commitment.

Evident in each of their early lives, Chase's genuine antislavery actions further separate Taney and Chase. Compared to Taney, Chase supported his expressed beliefs on fugitive slaves in court through his antislavery actions, applying his beliefs to real political advocacy. Chase served the interests of his client as Taney did, except Chase's beliefs on slavery never faltered throughout his career, and certainly never changed to support the opposing side. Stemming from his deep religious and moral views, Chase dedicated his entire career to the antislavery cause, shaping the Constitution into an antislavery document to persuade his colleagues. His sympathy in the antislavery cause proved genuine; Chase recounted in his journal reading *Uncle Tom's Cabin* and weeping, as well as the horror story of a fugitive slave named Rosetta who Chase represented, and

[85] David P. Currie, "The Constitution in the Supreme Court: Civil War and Reconstruction, 1865-1873," 186.
[86] Cynthia Nicoletti, "Chief Justice Salmon P. Chase and the Permanency of the Union," 154.
[87] *Texas* v. *White*, 74 U.S. 700 (1869).
[88] David P. Currie, "The Constitution in the Supreme Court: Civil War and Reconstruction, 1865-1873," 163.
[89] *Texas* v. *White*, 74 U.S. 700 (1869).
[90] David P. Currie, "The Constitution in the Supreme Court: Civil War and Reconstruction, 1865-1873," 166.

the sorrow he felt toward her and the abuses she endured.[91] Chase made his true beliefs regarding slavery available rather than hiding behind his duties as a lawyer.

Later in life, Taney did the same as attorney general, revealing his vehement support for slavery. Just as Chase's inspiration for his beliefs surrounding slavery stemmed from his religious devotion, Taney's slaveholding status, regional bias, and dedication to a slave society inspired his proslavery beliefs. Evidenced by Taney's passionate judicial opinions throughout his chief justiceship, Taney held proslavery views from the beginning until the end of his life, a product of his heritage and predisposition to slavery as a slave owner.

CONCLUSION

Despite opposing views, both jurists used the cases brought to the Court to advance their own agendas regarding slavery. Although Taney tended to stray away from the question presented to the Court to a greater extent than Chase, both jurists practiced judicial activism in attempting to write political arguments into the law. For Taney, the most obvious example of this practice is in *Dred Scott*, where Taney believed he settled the question of slavery once and for all. Chase's judicial activism proved more subtle in his opinions; he artfully intertwined legal reasoning with his political agenda as he practiced all throughout his career. However, through private correspondence, blatant Republican ideals, and legal opinions, Chase promoted his antislavery agenda from the bench. Although the executive and legislative branches settled much of the debate surrounding slavery through legislation, war, and constitutional amendments, the judicial branch, through Chief Justices Taney and Chase, pushed, pulled, and altered the discussion of slavery, further inspiring the other two branches on both sides of the controversy. Both jurists left a distinct mark on Civil War era case law, shaping the role of the Supreme Court in Civil War and Reconstruction history and its judicial review functions for decades to come.

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[91] Salmon P. Chase, "January 9, 1853" and "March 24, 1855" in *The Salmon P. Chase Papers: Volume I Journals, 1829-1872,* ed. John Niven (Kent: The Kent State University Press, 1993), 233, 244-245.

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