

BAPTISTE V. DE VOLUNBRUN 5 H. & J. 86 (Md. 1820):
THE EVENTS SURROUNDING AN EARLY NINETEENTH-CENTURY FREEDOM
PETITION BEFORE THE MARYLAND COURT OF APPEALS

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In Jean Baptiste’s 1820 freedom petition we have not only a slavery case typical of the region and period, but also a compelling and informative narrative from the beginning of the end of North America’s nearly two hundred and fifty year era of slavery. This epic has its roots in the some of the earliest African arrivals to the new world and was significantly influenced by the major trends in philosophy that immediately preceded its commencement, as well as a concurrent and burgeoning American abolitionist movement. It features questionable heroes and underhanded villains, mob riots and narrow escapes, suffering and injustice, journeys through the Caribbean, New England, Maryland and New Orleans, and ultimately, redemption.

I. SLAVERY AND THE AGE OF ENLIGHTENMENT

Before meeting the main actors and jumping into the story, we will spend some time exploring slavery in Maryland up to 1820, examining some history and relevant statutes. We will also take a brief glimpse at some of the philosophy popular throughout the world before and during these events. A little background knowledge is essential to setting the stage and will allow a deeper understanding of many of the participants’ actions and motivations.

A. *Slavery In Maryland Before 1820*

The first slaves in Britain’s North American colonies were likely the “20 and odd” originally on the Portuguese ship *San Juan Bautista* bound for Veracruz, Mexico from the slave fortress in

Luanda, Angola.¹ They were captured by British pirates on the *Treasurer* and the *White Lion*, and sold to the settlers in Jamestown in 1619.² One of the first people of at least partial African descent in Maryland, however, was Mathias De Sousa, who did not arrive as a slave but with the original colonists.³ He was one of nine indentured servants who landed on the *Ark* with Lord Baltimore's initial expedition in 1634.⁴ He was indentured to a group of Jesuits led by Father Andrew White, author of *A Briefe Relation of the Voyage Unto Maryland*.⁵ There is evidence that after he fulfilled his obligation he was a fur trader, mariner, and even a master of a ketch, something like a ship's captain.⁶ He was also eligible to vote and in 1642 attended the colony's legislative assembly of freemen.⁷ This relative freedom enjoyed by some people of African descent in the first few decades of Maryland's existence was, unfortunately, somewhat of an anomaly for much of Maryland's colonial and early post-revolutionary history.

¹ See Lisa Rein, *Mystery of Va.'s First Slaves Is Unlocked 400 Years Later*, THE WASHINGTON POST BREAKING NEWS BLOG (Sep. 3, 2006) <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/02/AR2006090201097.html>.

² See *id.*

³ See David S. Bogen, *Mathias De Sousa: Maryland's First Colonist of African Descent*, MD. HIST. MAG. Vol. 96, No. 2 69-70 (Spring 2001).

⁴ See *id.*

⁵ *A Briefe Relation of the Voyage Unto Maryland*, Archives of Maryland Online available at <http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000552/html/>.

⁶ See NANCY C. CURTIS, PH.D., *BLACK HERITAGE SITES: THE SOUTH* 155 (1996).

⁷ See *id.*

In 1664 Maryland passed *An Act Concerning Negroes and Other Slaves*, declaring that all persons of African descent in the colony were henceforth slaves *durante vita*, for life.⁸ This ended the hope of eventual freedom that had been possible for the previous thirty years. The slave trade remained active for most of the next century, and by the first official U.S. census in 1790, the slaves comprised one third of Maryland's total population.⁹ Earlier that decade, in 1783, Maryland had banned the importation of slaves into the state.¹⁰ At the time there were many philosophical and practical reasons to institute such a ban, but it was most likely a combination of economics, the slave population had become self-sustaining, and a not unfounded fear of slave rebellion. Some people, including Jean Baptiste's lawyer, later theorized that under the existing system, America's slave population would eventually outnumber the white population, and that without significant change a nationwide slave rebellion was inevitable.¹¹

Although this ban was further codified and clarified in 1796, some of the vague language allowed the possibility of multiple interpretations, which led to lax enforcement. This

⁸ *Proceedings and Acts of the General Assembly January 1637/8-September 1664*, Archives of Maryland Online available at <http://aomol.net/000001/000001/html/am1--526.html>.

⁹ See WASHINGTON GOVERNMENT PRINTING OFFICE, *HEADS OF FAMILIES AT THE FIRST CENSUS OF THE UNITED STATES TAKEN IN THE YEAR 1790: MARYLAND 8 (1907)* available at <http://www.census.gov/prod/www/abs/decennial/1790.html> (103,036 slaves in a total population of 310,728).

¹⁰ *Hanson's Laws of Maryland 1763-1784*, Vol. 203, 350 Archives of Maryland Online available at <http://aomol.net/000001/000203/html/am203--350.html>.

¹¹ Daniel Raymond, *The Missouri Question*, THE PORT FOLIO Vol. IX 238 (1820) (“...a slave population increases faster than the white population in a slave state. A most momentous and alarming proposition this! one which portends more mischief, misery, insurrection, bloodshed and desolation to our country and our race, than any the imagination can conceive, provided the present policy in the southern states in regard to their slaves is still pursued”).

perpetuated the status quo, which was the protection of slave ownership by the courts. Following is the primary statute that will be at issue when we look at the case in depth:

Md. Act of Assembly ch. 67, § 1

It shall not be lawful to import or bring into this state, by land or water, any negro, mulatto, or other slave, for sale, or to reside within this state; and any person brought into this state as a slave, contrary to this act, if a slave before, shall thereupon immediately cease to be the property of the person or persons so importing or bringing such slave within this state, and shall be free.

Also important is the stated exception for those just passing through Maryland:

Md. Act of Assembly ch. 67, § 4

And be it enacted, That nothing in this act contained shall be construed or taken to affect the right of any person or persons travelling or sojourning with any slave or slaves within this state, such slave or slaves not being sold or otherwise disposed of in this state, but carried by the owner out of this state, or attempted to be carried.¹²

The 1796 passage of this, *An ACT relating to negroes*, brings us right up to the start of Jean Baptiste and Madame Volunbrun's story, but first we will briefly examine some of the basic concepts of Enlightenment philosophy as they relate to our story.¹³

¹² *Proceedings and Acts of the General Assembly, 1796*, Vol. 105, Chpt. 67 249 Archives of Maryland Online available at <http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000105/html/am105--249.html>.

¹³ While the case record lists her last name as "De Volunbrun," *Baptiste v. De Volunbrun*, 5 H. & J. 86 (Md. 1820), the majority of original and contemporary sources do not include the "De." Her full name was either Jeanne Mathusine Droibillan Volunbrun, *see* SHANE WHITE, *STORIES OF FREEDOM IN BLACK NEW YORK* 27 (2002) or Jeanne Mathusine Droibillan de Volunbrun *see* DAVID PATRICK GEGGUS, *THE WORLD OF THE HAITIAN REVOLUTION* 272 (2009) For simplicity and continuity she will be referred to in this paper as "Madame Volunbrun," as recorded in JAMES LAKIN, *THE BALTIMORE DIRECTORY AND REGISTER FOR 1814-15* 190 (1814) Archives of Maryland Online available at http://mdhistory.net/msa_sc5923/msa_sc5923_1_1/pdf/msa_sc5923_1_1_bwocr.pdf.

B. The Age of Enlightenment

The Age of Enlightenment, also known as the Age of Reason, was a popular egalitarian philosophical movement in Europe, and later colonial and early America, from the late 1600s until the early 1800s.¹⁴ While it is not necessary for the purposes of this paper to delve in detail into the writings of philosophers such as Hobbs, Locke, Voltaire and Rousseau, a basic definition and relation of its effects will be helpful.

Although the philosophy evolved over time, a simplified and relevant explanation would include the concept that there exist natural and fundamental rights possessed by all men, including the right to protect of one's "life, health, liberty or possessions."¹⁵ It was argued that these natural rights existed and had value, even taking precedence over the concept of the biblically mandated divine right of kings to exert absolute authority over their subjects, or that of any authority or entity attempting to violate these rights.¹⁶

These ideas had dramatic and lasting repercussions throughout the world. They were a significant influence in the revolution in the American colonies and the drafting of documents such as the Declaration of Independence, as well as being a major contributor to the French and Haitian revolutions. They affected not only the white landowners and merchants who drove the American Revolution, but also made their way into the slave quarters and abolitionist meetings throughout the new world.

¹⁴ See ELLEN JUDY WILSON & PETER HANNS REILL, *ENCYCLOPEDIA OF THE ENLIGHTENMENT*, REVISED EDITION x (2004).

¹⁵ JOHN LOCKE, *TWO TREATISES ON GOVERNMENT* 191 (printed for R. Butler et al.) (1821).

¹⁶ See DAVID WOOTTON, *DIVINE RIGHT AND DEMOCRACY* 27 (1986).

An example of this philosophy in Maryland and how it applied to the slave population in early America is an article published under the pseudonym *Vox Africanorum*, or Voice of Africa, in the Maryland Gazette on May 15, 1783. This date is significant because Annapolis was, at the time, the capitol of the United States.¹⁷ The article discussed the recent American Revolution and its ideals of freedom and equality, and how they also should be applied to people of African descent, stating, “deny it not – it is our right.”¹⁸ It is this Enlightenment sentiment that drove the abolitionist movements popular mainly in New England, but quickly spreading throughout Maryland and parts of the south.

II. THE TRAVELS OF JEAN BAPTISTE AND MADAME VOLUNBRUN

This is not the story of just one person, but two groups of people: Madame Volunbrun and her relatives and slaves, and the lawyers and judges involved in *Baptiste v. De Volunbrun*. While ideally we should focus on Jean Baptiste, his status and the records available make this a practical impossibility. Instead we will follow the Volunbrun household as a whole, but where possible the focus will be on Jean Baptiste himself. In dealing with the legal players, emphasis will be placed Jean Baptiste’s lawyer, Daniel Raymond, and will include as detailed a biography of his life as time and records will allow.

¹⁷ See JANE W. MCWILLIAMS, *ANNAPOLIS, CITY ON THE SEVERN: A HISTORY* 106 (2011).

¹⁸ *Vox Africanorum*, THE MD. GAZETTE, May 15, 1783 available at <http://www.msa.md.gov/megafile/msa/speccol/sc2200/sc2221/000011/000001/pdf/d007000a.pdf>

A. *Saint-Domingue*

Saint-Domingue was the colonial name for the Caribbean island of Hispaniola, the current location of Haiti and the Dominican Republic. Jean Baptiste was probably only a few years old at the start of the slave rebellion in Saint-Domingue, later called the Haitian Revolution. After the French Revolution in 1789 and the drafting of the Enlightenment-influenced *Droits de L'Homme*, or *Rights of Man*, there was a push in France to grant the rights won in the revolution to everyone in the French Empire, including slaves.¹⁹ The conditions of the slaves on the island at the time, still essentially governed by the harsh 1685 *Le Code Noir*, or *Black Code*, were appalling and insurrection ripe.²⁰ In 1791, after foot-dragging by the governments in France and on Saint-Domingue, there was general insurrection among 10,000 to 15,000 slaves in the area of Cul-de-Sac.²¹ The town and plantations of Le Cap were burned, and in Plaine-de-Cayes nearly one hundred sugar plantations were destroyed.²² This violence continued for over ten years, with massacres and atrocities committed by both sides, prompting thousands of slave owners to flee the island.²³

In 1794 the French National Convention abolished slavery, however this decree met with considerable resistance in the colonies, especially considering the nascent ruling government at

¹⁹ See DAVID BRION DAVIS ET AL., *THE IMPACT OF THE HAITIAN REVOLUTION IN THE ATLANTIC WORLD* 82 (David Patrick Geggus ed., 2001).

²⁰ See CAROLYN FLUEHR-LOBBAN, *RACE AND RACISM: AN INTRODUCTION* 211 (2006).

²¹ See Kona Shen, *History of Haiti 1492-1805*, BROWN UNIVERSITY LIBRARY (Dec. 9, 2008) <http://library.brown.edu/haitihistory/index.html>.

²² See *id.*

²³ See *id.*

home and their somewhat tenuous hold on power.²⁴ The revolution in Saint-Domingue continued until 1804, when General Dessalines declared “Hayti” an independent republic.²⁵ In 1805 Haiti’s first constitution was ratified, abolishing slavery and limiting citizenship and land ownership to blacks only.²⁶

It was in the middle of this upheaval, in 1796, that Madame Volunbrun fled the island. This was also the Haiti to which she later told the Maryland court she wished to someday return. She brought with her some of her relatives and approximately twenty people she considered her slaves, despite the 1794 decree.²⁷ This included Jean Baptiste, still a child at the time.

B. New York

The first stop for the Volunbrun household was New York City. According to the case record in *Baptiste*, Madame Volunbrun later left New York for Baltimore because she found “the climate unfavorable to her health,” however the real explanation is not so benign.²⁸

There is no clear evidence as to what sort of business she started upon her arrival, but according to some reports she ran a brothel.²⁹ Regardless of her business activities, there is

²⁴ *Baptiste v. De Volunbrun*, 5 H. & J. 86 (Md. 1820) (In the case record the source for the decree is 1 Bain's Hist. 133, which is significant because Justice Buchanan dismisses this as “not being proved in any other way than by the book from which it was read.” The decree was repealed by Napoleon in 1802, but was in effect when Jean Baptiste left the island.).

²⁵ *See* Shen at note 21.

²⁶ *See id.*

²⁷ *See* PAUL A. GILJE, *THE ROAD TO MOBOCRACY: POPULAR DISORDER IN NEW YORK CITY, 1763-1834* 147-149 (1987).

²⁸ *See Baptiste* at note 24.

evidence that the climate to which she referred was, in actuality, the political climate of New England rather than simply the weather. Daniel Raymond later argued this very assertion before the court, stating, “the greater security of property--nay, the more profitable use of that property” was the true cause of her move to Baltimore.³⁰

Just a few years after her arrival, New York passed the Gradual Emancipation Act, freeing all children of slaves born after July 4, 1799, male slaves at age twenty-eight and female slaves at age twenty-five, with the eventual goal being complete emancipation by 1827.³¹ This was a direct statutory threat to her perceived right to ownership over most of her household. Not only would she have no claim of ownership on any of the children born to her slaves as long as she remained in New York, but her existing slaves would be automatically freed upon reaching the ages required by the statute.

New York, like most of New England at the time, was also a hotbed of abolitionist activity, and that was apparently the root cause of the discomfort she described in the veiled description of New York’s climate she gave to the Maryland court. In 1801 she attempted to ship approximately twenty slaves south to Norfolk, Virginia to be sold.³² It is not know if Jean Baptiste was among them, although it is likely because this is the same approximate number of slaves she arrived with a few years earlier and it is logical that she would want to protect all of her property, not just a part. Her action was in response to a freedom petition being raised by the

²⁹ See TIMOTHY J. GILFOYLE, CITY OF EROS: NEW YORK CITY, PROSTITUTION, AND THE COMMERCIALIZATION OF SEX 1790-1920 77 (1992).

³⁰ See *Baptiste*. at note 24.

³¹ DAVID N GELLMAN & DAVID QUIGLEY, JIM CROW NEW YORK: A DOCUMENTARY HISTORY OF RACE AND CITIZENSHIP, 1777-1877 52-55 (2003).

³² See Gilje at note 27.

Manumission Society based on the 1794 French decree discussed earlier.³³ In essence, the abolitionists claimed that all of her slaves were free before they left Saint-Domingue and they attempted to enforce this claim through the courts. This was one of the arguments later raised by Daniel Raymond in *Baptiste*. Given the general attitude towards slavery in the north, the recent New York legislation and its intent, and the French decree that pre-dated her departure, she was facing an uphill battle. This explains her attempt to move the slaves south into more ideologically friendly territory. Rumors of this attempt to circumvent the law spread, however, and some of Jean Baptiste's fellow former Saint-Domingue slaves took matters into their own hands.

On the morning of August 10, 1801 a mob of Haitian refugees, or "French negros," armed with clubs and led by a man named Marcel Sam surrounded Madame Volunbrun's Eagle Street residence³⁴ and threatened to burn the house, kill the whites, and take away the slaves.³⁵ They remained there throughout the day, and once night fell they were joined by hundreds of others.³⁶ Madame Volunbrun's neighbor, John Marie Garvaize, brought fifty watchmen back to this scene of mounting tension.³⁷ They intervened after the mob was allowed to cause some minor damage

³³ *See supra* Part II.A.

³⁴ Based on comparisons between the map in Gilje's book at note 22 and modern maps, Madame Volunbrun's Eagle Street residence was in what is today known as Manhattan's Lower East Side. Although Eagle Street no longer exists, the location would be very near to the intersection of Hester Street (which existed in 1801) and Allen Street.

³⁵ *See* Gilje at note 27.

³⁶ *See id.*

³⁷ *See id.*

to Madame Volunbrun's house.³⁸ This small allowance by the authorities to the demands of the mob was typical at the time and was designed to ensure a mostly peaceful resolution to such conflicts.³⁹ The group resisted and attempted to continue their assault, which was not traditional with mobs of the time, but was becoming increasingly more common after the turn of the century.⁴⁰ At this point it was no longer a mob action, but a full-scale riot.

The watchmen eventually prevailed and the crowd was dispersed, but twenty-three rioters were arrested and prosecuted, receiving very harsh penalties, which was also not historically common in most earlier mob actions.⁴¹

This atypical riot shocked many whites in New York, and although the Manumission Society was able to arrange a temporary release of Madame Volunbrun's slaves, they eventually dropped the case in the face of broad public opinion against their release. Many whites, including some in the Manumission Society, were concerned about further violence related to the release of more slaves like the ones involved in the riot.⁴² Having secured the return of what she considered her property, in 1802 Madame Volunbrun left her damaged house in New York and moved to Baltimore in search of a more favorable "climate."

³⁸ *See id.*

³⁹ *See* Richard Chew, *The Origins of Mob Town: Social Division and Racial Conflict in the Baltimore Riots of 1812*, MD. HIST. MAG. Vol. 104, No. 3 272-73 (Fall 2009).

⁴⁰ *See id.*

⁴¹ *See* DAVID N GELLMAN & DAVID QUIGLEY, *JIM CROW NEW YORK: A DOCUMENTARY HISTORY OF RACE AND CITIZENSHIP, 1777-1877* 52-55 (2003) (Participants in traditional mob actions rarely received jail time. If any penalties were enforced, they were usually just light fines.).

⁴² *See* PAUL A. GILJE, *THE ROAD TO MOBOCRACY: POPULAR DISORDER IN NEW YORK CITY, 1763-1834* 147-149 (1987).

C. Baltimore

Having narrowly escaped the threat to a large portion of her wealth by the New York courts, as well as the threat to her life at the hands of an armed group of hundreds of rioters, Madame Volunbrun arrived in Baltimore in relative anonymity, based on the court's lack of information about the rather dramatic events in New York.⁴³

She probably chose Baltimore due to its growing economic prosperity and pro-slavery sympathies, at least compared with New England. The move was well calculated. Baltimore had doubled its population in ten years was growing so fast that it had recently replaced Boston as the third most populated city in the United States.⁴⁴ It was also by far the largest city south of the recently surveyed Mason-Dixon line, having a 42% larger population than Charleston, the second largest city in the south and the fifth largest city in the U.S., and nearly four times the population of the third largest city in the south, Norfolk, VA.⁴⁵

It was here she hoped, as Daniel Raymond put it, to “make more profitable use of her property,” without the statutory threat of laws like New York's Gradual Emancipation Act, or the

⁴³ *Baptiste v. De Volunbrun*, 5 H. & J. 86 (Md. 1820) (The riots are never mentioned in the court record. Apart from Daniel Raymond's briefly raised suspicions about her motivations [*see supra* note 30], it is continually asserted that Madame Volunbrun's reason for leaving New York was the weather).

⁴⁴ *Compare* U.S. BUREAU OF THE CENSUS, POPULATION OF 24 URBAN PLACES: 1790 (1998) available at <http://www.census.gov/population/www/documentation/twps0027/tab02.txt>, with U.S. BUREAU OF THE CENSUS, POPULATION OF 33 URBAN PLACES: 1800 (1998) available at <http://www.census.gov/population/www/documentation/twps0027/tab03.txt> (Baltimore population 1790 = 13,503 1800 = 26,514, Boston population 1790 = 18,320 1800 = 24,937, Charleston population 1790 = 16,359 1800 = 18,824, Norfolk population 1790 = 2,959 1800 = 6,926).

⁴⁵ *Id.*

troublesome meddling of abolitionists.⁴⁶ Her hopes for finding a more favorable “climate” in Baltimore were realized for sixteen years, until 1818 when Daniel Raymond filed a freedom petition on behalf of Jean Baptiste and two other slaves from Madame Volunbrun’s household.

At some point after her arrival in 1802, but before 1810, Madame Volunbrun started a “snuff and cigar manufactory” at 35 Harrison Street in the city of Baltimore.⁴⁷ This was apparently a popular business at the time as there were quite a few similar businesses throughout the city.⁴⁸ Although there are no records pertaining to the day-to-day activities of Madame Volunbrun’s slaves during their time in Baltimore, it was likely they spent their waking hours either working at Harrison Street processing tobacco or were rented out to other merchants or nearby farms. Since they were in Baltimore in 1814, it is also probable that Jean Baptiste and the other slaves worked on building up Baltimore’s defenses against the British invasion, since General Smith’s Committee of Vigilance and Safety called for help from all “the inhabitants of the city.”⁴⁹

⁴⁶ See *Baptiste* at note 43.

⁴⁷ JOHN MULLIN ET AL., THE BALTIMORE DIRECTORY 1810 (1810) Archives of Maryland Online available at <http://archive.org/details/baltimoredirecto1810mull> (Based on comparisons between Thomas Poppleton’s map “entered according to the Act of Congress in the year 1852 by Isaac Simmons in the Clerk’s office in the District Court of Maryland,” and modern maps, this location very closely coincides with the current location of the Baltimore City Police Department at 601 East Fayette Street).

⁴⁸ See generally JAMES LAKIN, THE BALTIMORE DIRECTORY AND REGISTER FOR 1814-15 (1814) Archives of Maryland Online available at http://mdhistory.net/msa_sc5923/msa_sc5923_1_1/pdf/msa_sc5923_1_1_bwocr.pdf.

⁴⁹ William D. Hoyt Jr., *Civilian Defense in Baltimore, 1814-1815: Minutes of the Committee of Vigilance and Safety*, MD. HIST. MAG. Vol. 39 206 (1944).

By 1818 Jean Baptiste was approaching the age that would have mandated his freedom under New York law.⁵⁰ Considering his brief freedom and the involvement of the Manumission Society years before, it is likely he knew that if he could make it to New York he would be free, not just free from Madame Volunbrun's control, but free according to the laws of New York.⁵¹ He also may have been hoping to return to a now independent Haiti, although the safest route would have been via New England. With these thoughts certainly in mind, Jean Baptiste and two other slaves, John Augustine and John Joseph, attempted to run away.

There may have been an additional reason for their flight, however it is pure speculation. The living conditions at the manufactory may have been deteriorating because of the economic problems leading up to the Panic of 1819. This nationwide financial crisis may have had some preceding effects on Baltimore businesses since one of the contributing factors was centered in Maryland. Some of Baltimore's most prominent merchants, including the firm of Smith and Buchanan, had been experiencing ongoing financial difficulties which led to an indictment for conspiracy to cheat the Bank of the United States.⁵² Coincidentally, Daniel Raymond was also involved in this case.⁵³ This economic downturn, gradual at first, may have affected Madame Volunbrun's income, and in turn, Jean Baptiste's quality of life.

⁵⁰ DAVID N GELLMAN & DAVID QUIGLEY, *JIM CROW NEW YORK: A DOCUMENTARY HISTORY OF RACE AND CITIZENSHIP, 1777-1877* 52-55 (2003).

⁵¹ *See supra* Part II.B.

⁵² *The State v. Buchanan*, 5 H. & J. 317 (Md. 1821).

⁵³ *See infra* at Part III.A.

What few solid facts we have about the escape come from the case record.⁵⁴ Apparently the trio was captured and returned to Madame Volunbrun, but not before making contact with Daniel Raymond, who was not only a lawyer, but also one of the most active abolitionists in Maryland at the time. It is not known how they met, or if they had some contact prior to the escape attempt. According to city directories at the time, however, Raymond's law office was only about four hundred yards west of the cigar manufactory, so there was some long-term physical proximity.⁵⁵ As soon as the petition was filed, Madame Volunbrun again sent the slaves in question south in what Raymond called "high-handed contempt of the justice of the state."⁵⁶ This time, however, she was successful. Rather than enjoying the temporary freedom and protection of the courts they had in New York, the slaves awaited news of the outcome of their second freedom petition securely held as far as possible into pro-slavery territory without sailing back to the islands – in the city of New Orleans.

III. THE FREEDOM PETITION

We now have the majority of the facts surrounding the case, as well as some background on the social, political and economic conditions at the time. Before we move on to an analysis of

⁵⁴ *Baptiste v. De Volunbrun*, 5 H. & J. 86 (Md. 1820).

⁵⁵ JAMES LAKIN, THE BALTIMORE DIRECTORY AND REGISTER FOR 1814-15 190 (1814) Archives of Maryland Online *available at* http://mdhistory.net/msa_sc5923/msa_sc5923_1_1/pdf/msa_sc5923_1_1_bwocr.pdf (Based on comparisons between Thomas Poppleton's map "entered according to the Act of Congress in the year 1852 by Isaac Simmons in the Clerk's office in the District Court of Maryland," and modern maps, this location roughly coincides with the current location of the Clarence M. Mitchell Jr. Courthouse at 100 North Calvert Street).

⁵⁶ *See Buchanan* at note 52.

the arguments presented in the case, we will take a detailed look at a man who keeps popping up in this story: Daniel Raymond, counsel for the appellants.

A. Daniel Raymond

Daniel Raymond, while best remembered as an economist, was also a husband and father, veteran of the War of 1812, member of the Maryland bar, perennial political candidate, and one of the most active abolitionists in early nineteenth-century Maryland.

Raymond was born in New Haven, Connecticut in 1786 and studied law under Judge Tapping Reeve at the Litchfield Law School in 1810.⁵⁷ Of the school's approximately one thousand alumni over its nearly fifty year history, there were "two vice-presidents, 101 United States congressmen, twenty-eight United States senators, six cabinet members, three justices of the United States supreme court, fourteen governors and thirteen chief justices of state supreme courts," so it is safe to say he had access to a very high quality legal education.⁵⁸

Also, under Judge Reeve's tutelage, Raymond was undoubtedly introduced to the basic tenets of abolitionism. In 1781 Reeve made a successful argument in a freedom petition for two slaves named Brom and Bett.⁵⁹ Massachusetts' Supreme Judicial Court later cited this in a case that

⁵⁷ See Litchfield Historical Society, *The Ledger* (2012) available at <http://www.litchfieldhistoricalsociety.org/ledger/students/2092>.

⁵⁸ *See id.*

⁵⁹ Brom & Bett v. Ashley, Barrows Vol. 4A 55 (Mass. Inf. Ct. of Common Pleas 1781) available at <http://mumbet.com/index.php/77-articles/mumbet/50-court>.

effectually ended slavery in the state.⁶⁰ Raymond's New England upbringing and his connection to Reeve go far in explaining his abolitionist activism.

In 1814 Raymond traveled south to take up residence in Baltimore. Perhaps this border state between the ideologies of the north and the south was a perfect place to advocate abolitionism. Perhaps the economic growth of a booming Baltimore was a lure for a young lawyer, or maybe he wanted to defend his country against the British. Some combination of these reasons probably falls close to the mark. That same year he became a member of the Maryland bar and fought in the Battle of Fort McHenry, famous for inspiring Francis Scott Key's *The Star-Spangled Banner*.⁶¹ Over the succeeding years he became increasingly active in abolitionism through participation in organizations, publication, and involvement in cases like *Baptiste*.

In 1818 he unsuccessfully argued for the freedom of two slaves, Betsey and Marine, in *De Fontaine v. De Fontaine*, a case repeatedly cited in *Baptiste* due to many similarities.⁶² The court denied freedom and upheld the slave owner's rights as they existed under the French colonial system prior to the 1794 decree, essentially denying the decree and the effects of the Haitian Revolution.⁶³ Raymond must have seen enough factual differences in *Baptiste*'s story, most notably Madame Volunbrun's sixteen year residency in Baltimore, to bring another challenge right on the heels of this loss. Viewed through the lens of modern sensibilities, his choice could

⁶⁰ See Massachusetts Judicial Branch, *The Massachusetts Constitution, Judicial Review and Slavery* (last updated Jun 5 2007) http://www.mass.gov/courts/sjc/constitution_and_slavery.html.

⁶¹ See CYNTHIA CLARK, *THE AMERICAN ECONOMY: A HISTORICAL ENCYCLOPEDIA* 371 (2011), see also The University of Richmond History Engine, *Daniel Raymond and Anti-Slavery Maryland* (2008-2009) available at <http://historyengine.richmond.edu/episodes/view/4634>.

⁶² *De Fontaine v. De Fontaine*, Md. State Archives Schweniger Collection Vol. 4239-3 Doc. 79 7 (Md. 1818).

⁶³ PATRICIA ANN REID, *BETWEEN SLAVERY AND FREEDOM* 151-52 (2006).

be attributed to an over-zealous passion for securing the freedom of others. As we shall soon see, however, Raymond's reasons for involving himself in these sorts of cases were based on what he considered scientific grounds, and was not entirely devoid of self-interest.

While Raymond was very active in freedom petitions, with at least three others during the same general time period as *Baptiste* and *De Fontaine*,⁶⁴ his most famous case by far was *The State v. Buchanan*, mentioned earlier.⁶⁵ Here Raymond defended some of Maryland's most prominent businessmen involved in highly questionable financial transactions. Buchanan's business partner was General Samuel Smith, revolutionary war veteran and commander of the military forces that repelled the British in Baltimore during the War of 1812, so Raymond may have had some prior relationship with him from his earlier military career.⁶⁶ Also indicted was James McCulloch, known to every law student as the "McCulloch" from the related landmark Supreme Court case, *McCulloch v. Maryland*.⁶⁷ From this experience Raymond gained a deep and critical insight into the banking system at the time, as is evident in his pro-regulatory and anti-national bank stance found in his later economic writing.

⁶⁴ *Davis v. Jacquin & Pomerait*, 5 H&J 100 (1820), *Negro Clara v. Meagher*, 5 H&J 111 (1820), *Hughes v. Negro Milly, et al.*, 5 H&J 310 (1821) (Raymond was fighting an uphill battle bringing freedom petitions before the court at this time. The *Hughes* case was the only successful petition of the five discussed, and that argument was based on the timing of manumission in a will rather than on more high-minded and general anti-slavery arguments. It is worth noting that his opposing counsel in *Hughes* was Roger Brooke Taney, who will be discussed later in the paper.).

⁶⁵ *See supra* Part II.C.

⁶⁶ *Samuel Smith (1752-1839)*, Archives of Maryland Online (Biographical Series) available at <http://www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/002800/002827/html/2827bio.html>.

⁶⁷ *McCulloch v. Maryland*, 17 U.S. 316 (1819).

Raymond's publications fall into two categories, abolitionist and political economics, however the lines sometimes blur between the two. His most famous abolitionist pamphlet was his 1819 *The Missouri Question*, written in response to the ongoing debate that led to the Missouri Compromise of 1820. Raymond used scientific evidence, such as economics and census data, to move the debate away from the heated philosophical and humanitarian arguments that are inherent in such discussions. He argued that if left unchecked, the slave population would soon outnumber the white and rebellion would be inevitable. He advocated preventing expansion of slavery to the west and gradual emancipation elsewhere.⁶⁸ He may or may not have had a genuine passion to ease the suffering of his fellow man, but at least on paper, his actions were based on a desire to protect the supremacy of the white race in America.

He also published *Thoughts on Political Economy* in 1820 and *The Elements of Political Economy* in 1823. His economic theory, in a nutshell, is the idea that "wealth is the capacity or opportunity to acquire the necessaries and conveniences of life by labor," which was in tension with Adam Smith's laissez-faire theory because he believed government should help in developing the economic capabilities of its citizens.⁶⁹ It also included strong abolitionist sentiments.

Thoughts on a Political Economy made such an impression on Mathew Carey, publisher of the first Roman Catholic version of the bible in the United States, that in 1822 he offered five hundred dollars a year to support an economics chair at a The University of Maryland, so long as

⁶⁸ Daniel Raymond, *The Missouri Question*, THE PORT FOLIO Vol. IX 238 (1820) (Republished in this anthology one year after original publication).

⁶⁹ See Litchfield Historical Society, *The Ledger* (2012) available at <http://www.litchfieldhistoricalsociety.org/ledger/students/2092>.

Raymond held the seat.⁷⁰ Former president John Adams described his work on economics as, “a proud monument of American literature,” and later, in 1840, when his son John Quincy Adams presented a copy of Raymond’s work to the library of the House of Representatives, it caused a quite a stir.⁷¹ The representative from Alabama declared that the writing contained “doctrine and language highly exceptionable to him as a Southern man.”⁷²

While his writing may contain some ideas objectionable to some in the south at the time, his solution to free slaves then send them back to Africa, thus allowing white America prosper, free from the burden of their care, is not exactly enlightened by modern standards. That this was his solution is evident not only in his writing, but by his membership and position as secretary in the Baltimore Emigration Society, and his later involvement with the American Colonization Society.⁷³ Both of these organizations influenced the foundation of Liberia, a nation in Africa settled mainly by freed American slaves.⁷⁴ This was a fairly popular concept at the time, however, as the president of the Baltimore Emigration Society at the time was Baltimore Mayor Edward Johnson.⁷⁵ In 1825 Raymond founded and was elected president of the Maryland Anti-

⁷⁰ CHARLES PATRICK NEILL, *DANIEL RAYMOND: AN EARLY CHAPTER IN THE HISTORY OF ECONOMIC THEORY IN THE UNITED STATES 18-20* (1897).

⁷¹ *Id.* at 18.

⁷² *Id.* at 27.

⁷³ See The University of Richmond History Engine, *Daniel Raymond and Anti-Slavery Maryland* (2008-2009) available at <http://historyengine.richmond.edu/episodes/view/4634>.

⁷⁴ See Christopher T. George, *Mirage of Freedom: African Americans in the War of 1812*, MD. HIST. MAG. Vol. 91, No. 4 427 (Winter 1996).

⁷⁵ See The University of Richmond History Engine at note 73.

Slavery Society, which sponsored him in the 1825 and 1826 elections for the Maryland General Assembly on an anti-slavery platform. He lost both races.⁷⁶

In 1835 Raymond's wife Eliza Amos died, leaving him with a son and a daughter. He married Delia Matlock two years later, and in 1840 the family moved to Ohio. Raymond died in Cincinnati in 1849, the year Ohio's ban against blacks testifying in court was repealed.⁷⁷

B. Petition Denied

In *Baptiste*, Raymond made two general arguments before Justices Buchanan, Earle, Johnson and Dorsey in 1820. First, the appellants were free under Maryland law as soon as Madame Volunbrun took up residence in Baltimore. He argued this point on both textual and legislative intent grounds, as well differentiating it from the case the opposition claimed set precedent governing these facts. Second, he argued they were, in fact, "free upon higher ground" before they left Saint-Domingue based on France's 1794 decree abolishing slavery in her colonies.

According to Raymond, the appellants were free under Section 1 of the 1796 statute declaring it unlawful "to import or bring into this state" a slave "for sale or to reside," the penalty being that said slave "shall be free."⁷⁸ This section, standing alone, would have ensured their

⁷⁶ *See id.*

⁷⁷ *See* Litchfield Historical Society, *The Ledger* (2012) available at <http://www.litchfieldhistoricalsociety.org/ledger/students/2092> *see also* Ohio Memory Online Scrapbook, *African Americans in Ohio* (2004) available at <http://www.ohiohistoryhost.org/ohiomemory/wp-content/uploads/2012/03/african.pdf>.

⁷⁸ *Proceedings and Acts of the General Assembly, 1796*, Vol. 105, Chpt. 67 249 Archives of Maryland Online available at <http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000105/html/am105--249.html>.

freedom, but Section 4 reserved the rights of slave owners who were “travelling or sojourning with any slave or slaves within this state.”⁷⁹ He first examined the French word “sejour,” the basis for the English word “sojourning” in the statute. The prefix “se” refers to persons and “jour” means “day,” so literally the word implied staying someplace for just one day. Raymond conceded that the common interpretation was not limited to only a day, but implied a short period of time. He even attempted to discredit the biblical argument that the Israelites were sojourners in Egypt for four hundred and thirty years by stating this was a short time when viewed in terms of a nation, and any comparison to an individual was “absurd.” Madame Volunbrun lived in Baltimore for sixteen years before the petition was filed, and had a residence and a business. This, in Raymond’s view, did not meet the commonly accepted definition of “sojourning.”

He also argued that the intent of the legislature in enacting the 1796 law was to prevent the very thing Madame Volunbrun had done; bring her slaves from the West Indies into Maryland to reside for an indefinite period of time. He followed the related laws from 1783 to the time the petition was filed, and claimed that without such intent Section 1 would be completely toothless, allowing any similarly situated slave owner to import slaves into the state. He then differentiated *Baptiste* from *De Fontaine* by citing the numerous occasions De Fontaine attempted to leave the state, compared with Madame Volunbrun’s uninterrupted time on Harrison Street. Finally, he brought up the 1794 French decree, which also, on its face, should have ensured their freedom, but this argument again found no purchase in the Maryland courts.

Henry W. Rogers made a passionate plea in defense of Madame Volunbrun’s right to ownership over Jean Baptiste and the two other appellants. He claimed that her time in Maryland

⁷⁹ *Id.*

was casual and temporary rather than permanent, and that made her a sojourner. The reason, he claimed, was necessity, “first, to avoid being massacred by the insurgent negroes; and secondly, to avoid the fatal severity of a northern climate upon the constitution of a person, who had been born, and always had lived between the tropics, under a burning sun.” He argued that the true injustice in these cases would be inflicted on the West Indian slave owners if they were not viewed as sojourners, for “[t]o deprive them, under these circumstances, of the miserable pittance of property which they were able to collect at the moment of embarkation” would reduce these innocent refugees to “beggary.” He also urged the court to look at precedent, because “of such crying inhumanity, as well as injustice, we are happy to say, we have already been relieved by the decision of this very court in *De Fontaine vs. De Fontaine*.”

Justice Buchanan, writing the opinion of the court, accepted Rogers’ argument that Madame Volunbrun was a sojourner under the Doctrine of Necessity. He also accepted *DeFontaine* as precedential over the facts of *Baptiste*, and summarily dismissed the 1794 French decree as so many unproven words in a history book. The freedom petition was denied and Jean Baptiste, John Augustine and John Joseph remained the property of Madame Volunbrun, to do with as she wished.

C. Conclusion: The Issue of Slavery and Freedom Petitions After Baptiste

Over the next four decades there were many Marylanders who advocated for the abolition of slavery, Frederick Douglass being perhaps the best example.⁸⁰ In ranks of state and federal government and behind the closed doors of the proverbial “smoke-filled rooms,” however, Marylanders were more likely than not to be working toward the goals of their neighbors to the

⁸⁰ Frederick Douglass, *Narrative of the Life of Frederick Douglass: An American Slave* 9 (1845).

south. The prime example of this was one of Daniel Raymond's former adversaries, Roger Brooke Taney.⁸¹

Taney grew up on a plantation in Calvert County that was worked by slaves owned by his family.⁸² He rose quickly through the ranks of Maryland and then federal politics until he reached his apex as Chief Justice of the Supreme Court in 1836.⁸³ In 1857 a freedom petition came before his court bearing some similarities to *Baptiste*.⁸⁴ Their owners had moved the slave Dred Scott and his family into states that had laws granting freedom to any slave brought into the states. On its face it appeared that these laws governed the petition and Scott was free, but Taney's opinion was an end run around them. He stated that the founding fathers never intended to include slaves or former slaves as citizens; therefore they had no standing to bring freedom petitions in U.S. court. This should have settled the issue of federal freedom petitions, but the subject proved too divisive to be decided by even the highest court, and in just four years the nation was at war.

It may be an oversimplification to state that this decision directly caused the war, but more than three million Americans fought and over six hundred thousand died to finally settle the issue of slavery in the United States.⁸⁵ In 1863 Abraham Lincoln's executive order freed the

⁸¹ *See supra* note 64.

⁸² Bernard Christian Steiner, *Life of Roger Brooke Taney: Chief Justice of the United States Supreme Court* 9-10 (1922).

⁸³ *Id.* at 187.

⁸⁴ *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

⁸⁵ *Civil War Fact Sheet*, pbs.org (2002) available at <http://www.pbs.org/civilwar/war/facts.html>.

slaves in the rebelling states, but not in Maryland.⁸⁶ This happened the next year when Maryland ratified its new constitution on October 12th and 13th of 1864, effectually abolishing slavery on the 12th – the same day Roger Brooke Taney died.⁸⁷

⁸⁶ Emancipation Proclamation, January 1, 1863; Presidential Proclamations, 1791-1991; Record Group 11; General Records of the United States Government; National Archives.

⁸⁷ *See* Steiner at 520.