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"Nothing but the Law of the Land" Robert C. Grier: jacksonian unionist

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ROBERT C. GRIER: JACKSONIAN UNIONIST

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ABSTRACT

From 1846 to 1870, Robert Cooper Grier, a Pennsylvania Jacksonian Democrat, served as an Associate Justice of the United States Supreme Court and Third Circuit Court Justice. As a judge during this turbulent period, he followed a philosophy of Unionism, rooted in the heritage expressed by Andrew Jackson during the Nullification Controversy of 1832. In judicial opinions and decisions and in personal and political correspondence, he expressed an unyielding commitment to the preservation of the Union.

In response to the passage of the Fugitive Slave Act of 1850, Justice Grier revealed his views on the most explosive national political issue of the ante-bellum period--slavery. In the fugitive slave cases of Ex Parte Garnett (1850), Ex Parte Jenkins (1853), Van Metre v. Mitchell (1853), and Oliver et al. v. Kauffman et al. (1853), he expressed his opinions concerning the controversial legislation. He gained national prominence for his participation in the United States v. Hanway (1851), the famous treason trial which followed the Christiana Riot. In his crucial charge to the jury, the Justice rejected a plea by the Whig prosecution to convict a number of Christiana residents of treason against the United States; however, he emphasized that the Constitution bound the conscience and conduct of every individual. Subsequently, in a Supreme Court majority opinion, Moore v. Illinois, he rejected personal liberty laws passed by many state legislatures.

When the threat of disunion became a reality, Grier broke with the Buchanan administration, which he supported in the Dred Scott case, and proceeded to advocate the policies of President Lincoln. In the United States v. William Smith, he refused to recognize the Confederacy as a sovereign power, and regarded the rebels as traitors. The Prize Cases, his most important Supreme Court majority opinion, upheld Lincoln's blockade of the Southern ports. His decision carried through the determination he had shown in the past decade to preserve the Union.

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TABLE OF CONTENTS

Page

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His career was not chequered by the vicissitudes of political fortune, nor will his name be handed down to posterity as the battle cry of by-gone parties.

American Law Review
1871

CHAPTER I

A JACKSONIAN UNIONIST

Despite the relative insignificance assigned to the life of Supreme Court Justice Robert Cooper Grier, both by his contemporaries and historians, there is an important reason for an inquiry into his judicial career. A Pennsylvania Democrat, appointed by President James K. Polk in 1846, he served on the nation's highest tribunal for twenty-three years, during the ante-bellum period, the Civil War, and Reconstruction, until his resignation in 1870. Grier's term as an Associate Justice extended through the Taney and Chase Courts, and spanned the Presidencies of Polk, Taylor, Fillmore, Pierce, Buchanan, Lincoln, Johnson, and Grant; a period of crisis in which numerous important sectional issues were considered by the federal judiciary. Included in this category are Dred Scott v. Sanford and the Prize Cases in which the crucial vote and opinion of Grier could be misinterpreted by historians, unless an adequate investigation of Grier's prior judicial record concerning the questions of slavery, the Negro, and the Union is made.

Studying Robert Grier will lead not only to a clearer comprehension of his role in these two court cases, but in addition will

significantly add to an understanding of the Northern Democrats' struggle with the institution of slavery as a moral, constitutional, and sectional issue. It can be shown that Grier's thoughts are indicative of the ideas expressed by men of similar sectional and partisan affiliations, despite the independence afforded him by the tenure of the bench. As an Associate Justice, his behavior was not atypical of other Northern Democrats regarding the most important, divisive issue of the day—slavery and the Negro. Grier's important slavery opinions, therefore, most clearly elucidate why he, as a Northern Democrat, voted in 1857 with the Court majority in Dred Scott v. Sanford, yet voted in 1863 in favor of Lincoln's blocade of Southern Ports in the Prize Cases. His loyalties had not shifted, nor had the logic of his decisions changed. Rather, Grier's judicial behavior was an expression of his political flexibility which was characteristic of the Jacksonian Democrats. In a coalition of Northerners and Southerners who followed Andrew Jackson, men like Grier were prominent in carrying out a well-defined tradition. And, although they expressed many different conceptions of the meaning of the Union during their lengthy assertion of power, all Jacksonians deeply committed themselves to it.

The Jacksonian Democrats first articulated the importance and meaning of Unionism in the Nullification Controversy, which began shortly after the election of Andrew Jackson to the Presidency and John C. Calhoun to the Vice-Presidency. Congressional enactment of the "Tariff of Abominations" in 1828 had stirred resentment by the people of South Carolina, and in particular, Calhoun. He, therefore,

began a systematic challenge to the tariff policy of the federal government, which resulted in a complete explanation of the theory of nullification by 1831 in a secret draft for a state legislative committee called "South Carolina Exposition and Protest."[1] In his arguments, Calhoun interpreted the Union as a partnership of many sovereign states, and the government as merely a functionary to achieve narrowly defined constitutional ends.[2] He claimed that a state convention rather than the United States Supreme Court had final jurisdiction over Constitutional questions involving a dispute between the sovereign state and the federal government, because those who consent to a Constitution in a democracy reign supreme over a governmental agent.[3]

During Jackson's first term as President Calhoun's argument for nullification was not very effective, and a majority of Unionists in the North and South did not support the plan he secretly advocated. Evidence of this fact was Congressional passage of a new tariff in 1832 providing for additional protective duties. Angered by this Congressional action, leaders of the nullification movement in South Carolina convinced a two-thirds majority of voters to call a Nullification Convention in October 1832. The Convention acted quickly, proclaimed the

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[1]Charles Sellers, ed., Andrew Jackson, Nullification, and the States Rights Tradition (Chicago: Rand, McNally and Company, 1963), pp. 4-6.

[2]Major L. Wilson, " 'Liberty and Union': An Analysis of Three Concepts Involved in the Nullification Controversy," Journal of Southern History, XXXIII (1967), 332.

[3]William W. Freehling, ed., The Nullification Era: A Documentary Record (New York: Harper and Row, 1967), p. xii.

tariffs of 1828 and 1832 void, and warned that any attempt to forcefully collect the duties would cause immediate disunion.[4]

Although President Jackson was conciliatory on the tariff question, he firmly opposed nullification, and by 1832, he had responded to the crisis by sending troops to suppress any attempted nullification of federal laws. His military response to the threat of disunion parallels President Lincoln's decision in 1861 to bloc the Southern ports when the South intended to secede. The Northern Democratic Unionists responded in both cases by supporting the President. Jackson spoke for the generation of Unionists who followed him, when he delivered his famous Nullification Proclamation on December 10, 1832.[5] The national philosophy he expressed during the controversy not only supplied a basis for the compromise of 1833 which ended the crisis, but also clarified his party's national philosophy which lasted for the three following decades.

Throughout the controversy, Jackson contended that the Union was indissoluble because it rested on the will of a majority of citizens who looked to it as the giver of identity and the guarantor of the future. He agreed with the nationalist contentions of Daniel Webster and John Quincy Adams that the preservation of the Union was a necessity, but also shared Calhoun's states-rights belief that the direction of the federal government should not interfere with the activities of state governments. He advocated a consolidation of power to save the Union,

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[4]Ibid., pp. xiv - xv.

[5]Ibid., pp. 153-163.

but equally wanted to give the states a greater share of power. These two points of view incorporated in his thought seemed inconsistent, yet his equal support of the Force Bill and the new tariff adjustment exemplified his commitment to both positions. Moreover, a consistent theory was not necessary to convey his most fundamental sentiment, echoed throughout the entire Jacksonian period by Northern Democrats that "the Constitution and the laws are supreme and the Union indissoluble."[6]

During the Nullification Controversy the people expressed their desire to preserve the Union, and Jackson's concept of the Union provided the basis of saving it by peaceful means.[7] However, decades of uneasy peace followed, making it necessary for Jacksonian Democrats to constantly reemphasize and reinterpret the Unionist philosophy that Jackson expressed during the crisis, and in each case the men of the American Democracy displayed their commitment to Old Hickory's ideal. Their declared intention provided the unifying thread for what may otherwise have appeared as inconsistent, politically expedient decisions vacillating between the advocacy of nationalism and states rights. Both principles were incorporated into the thought of the Jacksonian Democratic Party modeled by Martin Van Buren, Jackson's successor to the Presidency, on the pattern of the Republican Party of Jefferson. The leaders of this party carried out the tradition of Unionism in many ways, including the appointment of men to the Supreme Court who reflected to a great extent the Jacksonian Unionist philosophy.

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[6]Proclamation, December 10, 1832 in Freehling, The Nullification Era, pp. 153-163.

[7]Wilson, " 'Liberty and Union'," 355.

Profound shifts took place in the federal Judiciary under the Jacksonian Presidents: Van Buren, Polk, Pierce, and Buchanan. A study of the pattern of selection of Justices in this period reveals a movement away from an almost complete monopoly of the high judiciary by sons of the gentry. Certainly, the appointment of Robert C. Grier, only the second son of a clergyman to be appointed to the Supreme Court, fits into this general trend. Under the Jacksonian Presidents, an increase on the percentage of Justices with rural and small town backgrounds also occurred. Grier's former environment conforms not only to this pattern, but also into the established monopoly of appointments received by men of English and Scotch-Irish origin and high social status Protestant religious affiliation since 1789. In addition, Grier, like the majority of appointees of the Jacksonian era, attended a college of high standing and studied law under a prominent lawyer.[8]

Through the study of the career of Grier as a federal jurist, an examination can be made of the thought of the dominant political party of the nation for three decades. It provides the historian with an opportunity to examine a body of well-written, well thought-out opinions of a man typical of an entire generation of politicians. Because of his position as an Associate Justice of the Supreme Court, Grier had a deep commitment to the Union, yet was removed from the heated executive and legislative political battleground. In Grier's writings, one can locate an articulate expression of the Unionist philosophy to which all

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[8]See John R. Schmidhauser, "The Justices of the Supreme Court: A Collective Portrait," Midwest Journal of Politics, III (1959), 2-49 for the statistical tables from which these conclusions have been drawn.

the leading Jacksonian Democrats adhered. Although he was never a party leader like Van Buren or a Congressional spokesman like Stephen A. Douglas, Grier's voice clearly echoed the thoughts, if not the words, of the great Unionists of the ante-bellum period.

Despite a lack of detailed biographical information on Grier, some light can be shed on the years preceding his appointment to the Supreme Court. Born in Cumberland County, Pennsylvania on March 5, 1794, the eldest of eleven children of Isaac Grier and Elizabeth Cooper, his father and his maternal grandfather, Robert Cooper, were both Presbyterian ministers. Soon after his birth the family moved to Lycoming County, where his father farmed, operated a grammar school, and preached to three congregations. After Grier's eighth birthday, his father accepted a position to take charge of an academy at Northumberland, Pennsylvania; the elder Grier, a superior Latin and Greek scholar, directed the school and received a charter for it as a college. Since Isaac Grier cherished the classics, he exposed his son to Latin at six years of age; and at only twelve the bright youngster had mastered both Latin and Greek. Grier continued his studies under his father's direction until 1811 when he was admitted to Dickinson College with junior standing. At Dickinson, his knowledge of the classics and excellence in chemistry surpassed all his classmates, and within one year he graduated. The following year he remained at Dickinson as an instructor, before returning to Northumberland to aid his father at the academy. Upon his father's death in 1815, Robert succeeded him as Principal; lectured on Chemistry, Astronomy, and Mathematics; and taught the

classics. While successfully attending these duties at Northumberland, Grier devoted his leisure hours to studying law under the guidance of a local lawyer, Charles Hall, of Sunbury, and was admitted to the bar in 1817; he opened an office in Bloomsburg, Columbia County, where he remained for only one year. The following year Grier moved to Danville, where he developed a successful and extensive practice in the next decade. During this period he supported his mother and provided a liberal education for each of his brothers and sisters, and married Isabella Rose, daughter of a wealthy and influential Scotish immigrant, John Rose, which brought affluence and property to Grier, including an estate near Williamsport where he later rested between sessions of the court.[9]

The early social and educational background of Grier conformed to the pattern of men appointed to the Supreme Court prior to the Civil War. Yet, it could only have been the right political associations and party affiliation of Grier combined with favorable political conditions that elevated the successful, but relatively unknown, small-town lawyer to the nation's highest court in a relatively short period of time. His rise to power began in the 1830's, years of transition in the Pennsylvania judiciary in which numerous changes were made in the state court system. From one alteration, the Act of April 8, 1833, came the creation

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[9]This background information is an amalgamation of a number of sources. Since a biography of Grier has never been written, I have attempted to compile my information from the available sources listed in the bibliography of this paper under the title "Sketches and Biographical Information." All of the facts appearing in this paragraph are duplicated in two or more of the sources cited.

of the District Court of Allegheny County; this court, consisting of one judge, had been given the same jurisdiction as a Common Pleas court, except it was limited to cases where the controversial sum exceeded one hundred dollars.[10]

In appointing a judge to the new court, Governor George Wolf sought a competent jurist from outside of Allegheny County who would bring impartiality and fairness to the new court. With this goal in mind, he chose Robert Grier, a highly successful lawyer from Danville whose private practice had earned a great deal of respect among the members of the Pennsylvania bar and in his local community. Many Allegheny County lawyers had been considered, including some Whigs, but Wolf found Grier to be the best choice, not only because of his prior judicial record as a private lawyer and his remoteness from county politics, but because the politics of party patronage demanded the appointment of a Jacksonian Democrat. Although many political observers thought Grier did not desire the judgeship, the young lawyer, anxious for public service, promptly accepted the position, surprising everyone including the Governor. It has been suggested that the offer had been made by Wolf to Grier with the assumption that he would turn it down, thus opening the door for other politicians, but no substantial evidence supports this contention.[11]

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[10]J. W. F. White, "The Judiciary of Allegheny County," Pennsylvania Magazine of History and Biography, VII (1883), 174.

[11]See Frank Otto Gatell, "Robert C. Grier," in The Justices of the United States Supreme Court, Vol. II, ed. by Leon Friedman and Fred Israel, (New York: Bowker, 1969), p. 874.

At first, Judge Grier was seen as a "carpetbagger" by the firmly entrenched members of the Allegheny bar who were dismayed with his acceptance of the appointment. This never changed, despite the passage of time and Grier's conscientious execution of his duties. His overbearing personality left little room in the courtroom for opinions that conflicted with his own. His numerous attempts to dominate the courtroom leads one to seriously question contentions later made that as an Associate Justice of the Supreme Court he was "of soft and rosy nature" and a docile tool of the "Slave Power" who succumbed easily to pressure.[12] More accurately, a description by J. W. F. White, a student of the Allegheny County Judiciary, labeled Grier as a "most able jurist, but rather abrupt and brusque in his manners. He was a man of quick perceptions, decided convictions, and positive opinions, and...inclined to be arbitrary and dictatorial...His contempt for hypocracy and cant, his love of the right and hatred of the wrong, with his stern, decided character, made him sometimes appear on the District bench despotic."[13] White also claimed that when Grier saw an attempted injustice, he so emphatically charged his jury that he would frequently argue the case like an advocate. On one occasion, according to White, when the jury brought in a verdict contrary to his charge, Grier remarked that it took thirteen men to steal a man's farm, and he set aside the verdict. The following anecdote, supplied by White, provides an indication of

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[12]These contentions were made in 1856 and 1857 by Horace Greely in the New York Tribune and are cited by Gatell, "Robert C. Grier," p. 879.

[13]White, "The Judiciary of Allegheny County," 175.

Grier's conduct on the Allegheny County bench:

> One Saturday morning, in 1840, in Judge Grier's court, there came up for argument a case in which the great showman, P. T. Barnum, was a party. Barnum and one Lindsay had been partners in the show business, but quarrelled and separated. Lindsay had got a negro boy, which he called "Master Diamond," and represented him as a perfect prodigy in dancing and singing. He had posted up flaming hand-bills through the country, describing his prodigy and announcing the evenings for his performances. Barnum got a smart white boy, blacked him, and went along Lindsay's route a few days in advance, exhibiting the "genuine" Master Diamond, thus reaping the fruits of Lindsay's labors, without any expense for advertising. Lindsay met him in Pittsburgh, sued him for ten thousand dollars damages, and had him arrested on a capias, and thrown into jail. The argument before Judge Grier was on the rule for his discharge from prison on common bail. John D. Mahon was attorney for Lindsay, and George F. Gilmore for Barnum. After Gilmore had read the plaintiff's affidavit, and was proceeding to read that of the defendant, the Judge exclaimed, "Stop, I've heard enough! Such a case! What does it amount to? One vagabond gets a live bear" (drawling out the word), "goes about the country gathering all the idlers and gaping idiots to pay their money to see a bear dance. Another vagabond procures a bear's skin, stuffs it with straw, and tramps about exhibiting it. Vagabond No. 1 says to vagabond No. 2, 'you have no right to do that, the harvest is mine, for I was first in the field to gather all the fools' money!' And because vagabond No. 2 got the money, vagabond No. 1 sues him for ten thousand dollars' damages! Rule absolute; prisoner discharged; cryer, adjourn the Court!" And as the Judge walked down the steps, he remarked to Mr. Darlington, "Did you ever hear of such a case? I'll teach Mahon not to bring such a suit in 'my' Court."[14]

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[14] Ibid., 175-76.

Grier adequately served the Allegheny County Court, but only distinguished himself by the dictatorial manner in which he conducted the courtroom. He became a well-known local figure, but was relatively unknown in state and national politics. Then, beginning in 1843 a chain of events changed Robert Grier's life. While he remained a judge in Allegheny County, from 1843 to 1845, three vacancies occurred on the United States Supreme Court as the result of the death of two Associate Justices, Smith Nelson and Henry Baldwin, and the resignation of a third, Justice Joseph Story. Senate rejections plagued President John Tyler, who successfully filled only one seat. When James Polk took office in March 1845, the Baldwin and Story seats remained unfilled, and the new President desired men "who would be less likely to relapse into Broad Federal doctrines of Judge Marshall and Judge Story."[15] With this criteria in mind, he appointed Levi Woodbury to the Story seat, leaving only the traditional Pennsylvania seat of Baldwin to be filled.

When Justice Baldwin died in April, 1844, President Tyler offered the place to Senator James Buchanan, who declined the offer, and became Secretary of State in the Polk administration.[16] In September, 1845, however, Buchanan indicated to the President his anxiety to be immediately appointed to the position he earlier declined, but Polk insisted that his services were needed in the executive branch.[17] Buchanan's

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[15]Milo M. Quaife, Diary of James K. Polk, Vol. I (Chicago: A. C. McElway and Co., 1910), pp. 39-47.

[16]Philip Klein, President James Buchanan (University Park: Pennsylvania University Press: 1962), p. 169.

[17]Allan Nevins, ed., Polk: The Diary of a President: 1845-1849 (New York: Longmans, Green, and Co., 1929), pp. 125-26.

friends, like Ben Brewster who wrote to him "For God's sake, stay where you are,"[18] raised opposition to Buchanan's acceptance of the post; they feared George Dallas's wing of the party intended to remove him from the national political picture.[19] The Secretary of State accepted this reasoning and decided to permanently remain in the cabinet. In doing so, he recommended John M. Read of Philadelphia to President Polk, who claimed that Read was not acceptable because of his former affiliation with the Federalists.[20] Without the advice of either Buchanan or Senator Simon Cameron of Pennsylvania, he rejected Read and instead nominated George Woodward, the candidate of Dallas. Cameron, angered at Polk, managed to maneuver a coalition of six Democrats and the entire Whig membership in the Senate to defeat Woodward's nomination. Afterwards, Buchanan's name was again mentioned for the seat, but Polk and the Secretary of State were quarreling about a number of matters, and the President merely decided to let the matter rest for a while.[21]

Dallas, creator of the "Family Party," faction of the Pennsylvania Democratic Party, was a friend of Robert Grier. In 1824 he broke with Calhoun, and became a supporter of Andrew Jackson.[22] In

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[18]Brewster to Buchanan, November 7, 1845, James Buchanan Papers, Pennsylvania Historical Society, Philadelphia, Pa.

[19]Klein, President James Buchanan, pp. 169-71.

[20]Quaife, Diary of James K. Polk, Vol. I, 137.

[21]Klein, President James Buchanan, pp. 169-71.

[22]Ibid., pp. 45-48, 79-80.

the early 1830's political necessity allied him with Governor Wolf, who appointed Grier to the Allegheny County bench. Insufficient evidence exists to assert absolutely that both the appointments of Grier to the state judiciary and federal bench were a result of the political influence of Dallas. Yet, it can reasonably be assumed that Dallas played a major role in the appointments of Grier, especially in his elevation to the Supreme Court, for Polk desired to please him in the appointment of a Justice to fill Baldwin's vacant seat.[23]

With the encouragement of Dallas, the President wrote a letter to Grier in Pittsburgh on August 3, 1846.[24] The impersonal and official nature of this Presidential correspondence indicates that Polk was not personally acquainted with the Allegheny County Judge. Rather, the appointment was made to satisfy patronage demands. Confirmed the next day by the Senate (August 4, 1846) Grier's tenure began with the conception that he was the "Pennsylvania Justice," and the choice of the Southern and Western interests in the Democratic Party with whom Dallas was closely allied.

In 1848 Grier moved to Philadelphia, where he spent the rest of his life[25] as both Associate Justice of the Supreme Court, and the presiding Justice of the Third Circuit Court. His devotion to his

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[23]Eugene McCormac, James K. Polk: A Political Biography (New York: Russell and Russell, Inc., 1965), pp. 337-38.

[24]Polk to Grier, August 3, 1846, "Special Collections" of the Morris Room, Dickinson College, Morris Room.

[25]The Philadelphia City Directories of the 1850's and 1860's list his address as 1528 Spruce Street.

profession left little time for outside interests, and the record of his "high judicial service"[26] is contained in over two hundred written majority and dissenting opinions, in addition to a vast number of uncollected Circuit Court cases.[27] Many of the cases on which Grier wrote Supreme Court opinions did not involve broad constitutional questions, yet all were of great enough significance to reach the nation's highest tribunal. He excelled in the law of real property, trusts, and probates,[28] and the great number of cases concerning these issues assigned to him by Chief Justices Taney and Chase indicates their respect for his competent judgment on these questions. Grier's contemporaries recognized his thorough knowledge of the principles of jurisprudence and his other outstanding judicial qualities. In a personal letter, Chief Justice Salmon P. Chase, shortly after the resignation of Grier in January, 1870, praised the "eminent services" of Grier as an Associate Justice. This letter, signed by the Associate Justices, clearly expressed admiration and affection for Grier, and recognized the almost quarter of a century in which the Pennsylvanian labored on the Court. Chase stated that "with an almost intuitive perception of the right; with an energetic detestation of wrong; with a positive enthusiasm for justice; with a broad and comprehensive understanding

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[26]Francis R. Jones, "Robert Cooper Grier," The Green Bag, XVI, (1904), 221-224.

[27]Appendix I of this thesis contains a complete listing of citations for Justice Grier's written majority opinions and his dissenting opinions on the Supreme Court.

[28]Jones, "Robert Cooper Grier," 223.

of legal and equitable principles," Grier contributed his "full share to the discussion and settlement of the numerous and often perplexing questions" which the Supreme Court investigated and determined under his direction.[29] Chase personally liked Grier, and in a letter of September 30, 1869, he indicated that he wanted Grier to remain on the Supreme Court, despite rumors of his ill-health. The Chief Justice argued that "in the present circumstances of the country you cannot be spared from the bench."[30] Most important, Chase wanted Grier to know that despite the fact that they did not always agree, that he did "love and honor" him.[31]

In accepting the resignation of Grier on December 15, 1869, President Grant offered commendation of his judicial service to the country. He characterized Grier's career as "long and honorable." Although the President did not personally know the judge, Grant cited Grier's greatest achievement as upholding the just powers of the government, and vindication of "the right of the nation under the Constitution to maintain its own existence." Grant, therefore, recognized the real significance of the career of Robert Grier when he expressed appreciation to Grier for the "vigor and patriotic firmness" which characterized his

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[29]Salmon P. Chase, Chief Justice; Samuel Nelson, Nathan Clifford, N. H. Swayne, Sam. F. Miller, David Davis, Stephen J. Field, Associate Justices to Hon. R. C. Grier, January 31, 1870, "Special Collection," Dickinson College, Morris Room.

[30]Ibid.

[31]Ibid.

service to the country in the "darkest hours of her history."[32]

While a member of the Taney Court his average number of written majority opinions per session was 9.0; under the Chase Court it was 6.8. His incidence of dissent, on the other hand, rose from an average of 1.8 each year under the leadership of the former to 4.2 under the latter's direction. Although the scope of this study does not entail a comparison of these figures to those of other justices, they do indicate the closer harmony of Grier's legal philosophy to the Taney Court than to the philosophy of the Chase Court.[33]

During the exercise of his duties as a federal judge, Grier encountered extraordinary problems of a growing polarization in the nation. His first years were troubled by Northern anti-slavery agitation and the problems arising from a growth in the economy and population. The middle period brought the troublesome issues of the Civil War, and the last years the questions of Reconstruction. Charges were made by later historians that during this period he was a pro-Southern justice. A recent scalogram study by Schmidhauser scored Grier in the category titled "moderate pro-Southern."[34] These charges, also frequently made by Grier's contemporaries, were answered by David Brown, who wrote at the time of the Dred Scott Case, that the official post

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[32]U. S. Grant to Robert Grier, December 15, 1869, "Special Collections" of the Morris Room, Dickinson College.

[33]See Appendix II: "Number of Written Majority Opinions and Dissenting Opinions, by years."

[34]John R. Schmidhauser, "Judicial Behavior and the Sectional Crisis of 1837-60," Journal of Politics, XXIII (1961), 615-640.

imperatively compelled him to run counter to the liberal policy of the State.[35]

Both analyses miss the point, however. Grier was not pro-Southern, pro-slavery, nor was he out of tune with the "philosophy" of his native state. Rather, he was a Jacksonian Unionist. His thought paralleled the thinking of the leading Democrats of the era, and his reaction to threats to the Union in the ante-bellum period must be interpreted with this in mind. As the nation progressed from the Nullification Controversy to the outbreak of the Civil War, the positions of the Democrats changed. In Grier's writings there is ample evidence to show how Grier approached each sectional issue that arose as an individual problem, yet with the flexibility characteristic of Jackson and the Democrats who followed him.

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[35]David Paul Brown, The Forum or Forty Years Full Practice at the Philadelphia Bar, Vol. II, (Philadelphia: Robert A. Small, Law Bookseller, 1856), p. 100.

I will give every man his rights here, with regard to nothing but the law of the land; and I will, if in my power, enforce it against all opposition.

Robert Grier
Ex Parte Garnett

CHAPTER II

PLEDGES OF ALLEGIANCE

For over a century, all Supreme Court Justices had to perform a number of circuit court duties, which became more and more burdensome as the nation expanded. Partial modifications of the judicial system before the Civil War lessened these responsibilities, but not until 1869 did any effective improvement take place.[1] Circuit courts had original and appellate jurisdiction, making it possible for a Supreme Court Justice to participate in a decision on the high tribunal which he had ruled on as a circuit judge.[2] Congress determined where and when the circuit courts would meet, and in the period from 1844 to 1869, which includes the entire federal judicial career of Grier, the law required that a duty of Supreme Court Justices was to attend one term of the circuit court within any district of the circuit in any one year.[3] Associate Justice Grier faithfully met this provision,

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[1]David M. Silver, Lincoln's Supreme Court (Urbana: University of Illinois Press, 1957), p. 167 and John C. Rose, Jurisdiction and Procedure of the Federal Courts (Urbana: University of Illinois Press, 1931), p. 94.

[2]Grier was assigned majority opinions for the court on a number of cases from his lower circuit, all of which are cited in Appendix I of this thesis.

[3]5 Stat, 676. (1844).

displaying his greatest energy on the bench of the Third Circuit Court, and delivering a large number of important opinions there.[4] The Circuit included the states of Pennsylvania, Maryland, Virginia, and New Jersey; its Court sessions were held in Philadelphia, Pittsburgh, Trenton, and Williamsburg. The close geographical proximity of these cities to Washington, in addition to Grier's genuine interest especially in the cases involving Pennsylvania citizens, contributed to his participation much beyond the normal call of duty. When the sectional problems of slavery began to trouble the nation's judiciary, the Third Circuit Court served as a testing ground of ideas for Grier. Despite the conciliatory nature of the Compromise of 1850, it carried with it the Fugitive Slave Act which particularly bothered many Pennsylvania citizens, who resisted its enforcement. In an atmosphere of active and vehement enmity, Justice Grier presided over a number of cases which were intently watched by a deeply concerned nation. In the fugitive cases of three abolitionists, Henry Garnett, William Thomas and Caster Hanway, Grier rose to national prominence for the decisive role he played.

The Fugitive Slave Act of 1850, much more rigorous than its predecessor, attempted to amend and supplement the Fugitive Slave Law of 1793. Its most significant feature shifted the responsibility for enforcement from the state governments to the federal government. Advancing the rights of fugitives, the law struck down the right of a slaveholder to seize an alleged slave first and later make a claim in court, by setting up specific procedures of apprehension. In general,

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[4]Silver, Lincoln's Supreme Court, p. 175.

however, it greatly strengthened the hand of the slaveholders. United States officers, invested with responsibility for delivery of fugitive slaves to claimants in their home states, had to more stringently enforce the new code, for severe penalties resulted when fugitives escaped from their custody. The national government threatened harsh disciplinary action upon persons who obstructed the federal attempts at apprehension, rescued fugitives from lawful custody, and harbored or concealed slaves. Even more stringent, a section of the law prescribed a conviction of treason for bystanders who refused to help United States officials apprehend suspected fugitives. The law made inadmissible any evidence offered by alleged slaves in their own behalf, and denied to them the legal safeguards of habeas corpus, a jury trial, or even a judicial hearing.

The Fugitive Slave Act of 1850 encouraged many Southern slaveholders to attempt to reclaim their lost chattel in the North, especially in Pennsylvania border communities. Informers and agents assisted them in their pursuit.[5] The predictable response of the Abolitionists included intensified and multiform opposition to the new law. A number of state legislatures adopted "personal liberty" laws, with far reaching provisions, making apprehension and transportation of slaves to the South extremely difficult. The formation of secret vigilance committees thwarted enforcement of the new law; and riots, like the famous Christiana Riot in Lancaster, Pennsylvania, halted efforts of federal marshals

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[5] Leon Litwack, North of Slavery (Chicago: University of Chicago Press, 1961), p. 248.

to enforce it. Forceful rescues saved many captured fugitives, and mass rallies spread the idea of resistance. In addition, the "Underground Railroad," assisted thousands of Negroes, including many of the leading figures of the Pennsylvania Negro community, to escape the risk of consignment to southern bondage by fleeing to Canada.[6]

Despite local and even state opposition to the unpopular Act, the federal government remained determined to strictly enforce the provisions of the legislation. Enforcement of the law concerned many members of the judiciary, including Robert Grier; local areas of opposition, well known to all of the respective Circuit Court Judges, presented particularly ticklish problems. Fearing the worst in his Circuit, Grier took the initiative on October 17, 1850, in a letter written in his own handwriting to Commodore George Read, Commander of the United States Marines at the Navy Yard in Philadelphia. This began a series of federal communication which eventually ended up on the desk of the newly elected President, Millard Fillmore. In a letter to Read, Grier expressed his apprehension over the ability of federal officers to enforce the law, and inquired whether forces in Philadelphia would be able to aid in the enforcement of the law. Specifically, he wanted to know the probable number of the available forces and the manner in which they could be summoned to ensure a prompt and effective response from the Naval Yard.[7]

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[6]Ibid., p. 249.

[7]R. C. Grier and John K. Kane to Commodore George C. Read, October 17, 1850, Records of the United States Circuit Court for the Eastern District of Pennsylvania, National Records Center, Suitland, Maryland.

The absence of a prompt answer from Read disturbed Grier, who feared that a collapse of governmental authority could occur without military backing to enforce the law. Therefore, he wrote to Fillmore one week later, complaining first of the general inefficiency of fugitive slave laws and secondly of the heavy expense of employing them that had to be paid by the United States government. Grier's knowledge of actual resistance to the new law and his anticipation of future community opposition to its enforcement led him to request a general order from the President stating that on the appropriate certificate of a judge or commissioner, the officers in command of troops would be bound to lend assistance to the enforcement of the law. The publication of such an order, claimed Grier, might do much to prevent the necessity of appeals to force in support of the Constitution and laws, and insure him that the law would be upheld. The Justice opposed the law, but regarded it as essential to be prepared to enforce it at all costs.[8]

President Fillmore finally responded to Grier's correspondence on October 30 through a letter written by his Secretary of War, William A. Graham. He enclosed a copy of his orders to Commodore Read concerning the matter which Grier brought to their attention. The orders revealed considerably less concern at the Naval Yard and in Washington over the problem of resistance to the new Fugitive Slave Law. Graham had informed Read that the President would regret any necessity for calling on the military force of the United States to aid civil officers

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[8]R. C. Grier and John K. Kane to Commodore George C. Read, October 22, 1850, Records of the United States Circuit Court for the Eastern District of Pennsylvania.

in the execution of their proper functions. He told the Marine leader that the President believed that patriotism of the people of Pennsylvania would enable the civil officers to command sufficient assistance from the citizenry to effect any warrant. But, because of his constitutional obligation to faithfully execute the law, the Chief Executive issued the following directive: If a marshal or any of his deputies should be unable to raise the necessary force to make a capture or rescue by virtue of his authority to summon citizens to his aid, and if he should call for the assistance of the Marines, military forces could be promptly ordered to accompany him in the performance of his duty. The officer in command of the supporting troops had to receive his orders from the United States marshal, and act only in strict obedience to him. However, only when the officer could prove that the execution of the process in question had been actually resisted or that combinations too powerful to overcome had been formed, could this assistance be given. Fillmore's message emphasized that all parties concerned must use extreme caution. He did not want to risk any unnecessary confrontations of the United States military and the citizens of a state of the Union over matters which could be resolved by civil authorities.[9]

By the middle of October, 1850, one month after the passage of the law, cases arising from it began to appear in the Third Circuit Court. Justice Grier, deeply concerned that the law be fully enforced

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[9]William A. Graham to Hon. Robert C. Grier, October 30, 1850, Records of the United States Circuit Court for the Eastern District of Pennsylvania.

by the executive and fairly interpreted by the judiciary, was in the middle of his frustrating correspondence, when this duty became imminent. Although in the dark as to whether the President would comply with his request for authorization of the military to assist in the enforcement of the law, he, nevertheless, began to turn his attention to the cases which were quickly accumulating before his court. The first case, which involved an alleged fugitive slave named Henry Garnett,[10] began a series of lawsuits heard by Grier that took up much of his time in the next half decade and resulted in his most important fugitive slave decision in the case of the United States v. Hanway.

Ex Parte Garnett[11] came before the Circuit Court in the district of Maryland on October 18, 1850 when Garnett was brought into court before Justice Grier. A warrant had been issued and executed on behalf of Thomas Price Jones of Cecil County, Maryland, and an affidavit had been set forth that Price, the claimant, was the executor and "residuary legatee" of Benedict Jones. The claimant argued that Garnett belonged to the estate which he had inherited, but that he had run away as early as 1842. A federal marshal, after apprehending Garnett, brought him into court on the afternoon of the preceding day, when on the motion of his lawyers, the hearing was postponed until the following day. His defense counsel included four prominent Abolitionist lawyers, determined to win his freedom by working the judicial process. Their efforts in

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[10]Henry Garnett, an alleged Maryland fugitive slave, should not be confused with Rev. Henry Highland Garnet, a New York Negro leader during this period.

[11]Ex Parte Garnett, 10 Fed. Cas. pp.6, 7. (1850.)

this particular instance met unusual success, when compared to the next six years in which the arrest of more than two hundred alleged fugitives took place, approximately six of whom successfully defended their claim to freedom.[12]

The warrant for the arrest of Garnett had been issued by the court on an affidavit of the alleged owner, Thomas Price. The claimant, however, had completely neglected to make a proper identification of a slave, failing to list the name, age, size and other characteristics of the person before some Court or Judge in Maryland as prescribed in the Fugitive Slave Act of 1850. Not having availed himself of this privilege, Grier decided not to be bound in the case to the provision of the new Act that disallowed testimony from an alleged fugitive in the trial; instead, he ruled that the court would be bound by the common law rules of evidence, as in other cases where title to a property had to be established before a court. He also refused to receive wills and other documents of title unless properly proved. Arguing in favor of the application of the rules of common law to this case in a widely-quoted passage of a letter to Charles Gibbons, a Philadelphia attorney, Grier stated that without common law the tribunal would be without rule, "governed only by caprice, or undefined discretion, which would be the exercise of a tyrannical, not a judicial power."[13] He opposed an interpretation of the new Congressional Act that would prohibit testimony

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[12]Litwack, North of Slavery, 249.

[13]R. C. Grier to Charles Gibbons, Records for the United States Circuit Court for the Eastern District of Pennsylvania.

from a captured Negro. If evidence were heard on only one side, he claimed, gross oppression and wrong would flow from it. He noted the possibility that Pennsylvania citizens might be kidnapped into bondage under the forms of "law," and by the action of a legal tribunal sworn to do equal and exact justice to all men. This unfair action would not be allowed by the Justice who contended that "this much maligned law...takes away from the prisoner no right which he would have enjoyed before this act of Congress was passed."[14]

In Ex Parte Garnett, Justice Grier considered the fugitive slave issue as strictly a legal question concerning the slave as property. In his address to the counsel for Thomas Jones, Grier proclaimed that the request for the return of Garnett could be granted if it could be shown that the plaintiff actually possessed the slave. He narrowly defined the problem as one of property ownership; he did not consider the question of the constitutionality of the new Fugitive Slave Act a legitimate issue for his court to decide. Rather, he only wanted to resolve whether the benefactor of a will had claim to a piece of property. Grier stated that the plaintiff had to show that his possession of Garnett as a slave was common knowledge in the community. If it could be proven without a doubt that the alleged fugitive was the property of the claimant, then Grier claimed he would be satisfied.[15]

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[14] Fugitive Slave Bill: Its History and Unconstitutionality (New York: William Harned, 1850), p. 35.

[15] 10 Fed. Cas. 6, 9.

If Grier's attitude toward slavery as a problem of property ownership at this point in his judicial career seems fairly evident, his attitude toward the free Negro and his rights should not be misunderstood. In a later exchange in Ex Parte Garnett between Grier and David Paul Brown, a counsel for the defense, Grier stated his sensitivity to the protection of the rights of Garnett, if it could not be proven that the claimant owned him. Garnett, according to Grier, had constitutionally protected rights under the assumption that he was a free man until proven otherwise. The core of the Grier argument was as follows:

> ...when he (Garnett) is brought before us, and we are able to investigate the question of property as well as identity, we have two parties before us with their rights. It is like two persons claiming the same goods; this man (Garnett) is his own goods, if I may be allowed the expression, and stands here upon his rights. The same rules will govern us here, and we will receive the same evidence as we would if the question were of a cow or a horse instead of a human being.[16]

Grier decided that Jones failed to make the necessary proof; therefore, Garnett, the prisoner, had a right to be discharged. He contended that a difference exists between an "interest" and a "title" to property. Since Thomas Jones was unable to prove possession of Garnett as executor of Benedict Jones' will, he did not have a valid claim, and Garnett was granted his freedom. Grier refused to allow the plaintiff an additional day to bolster his claim, because, in his opinion, Garnett "must have some rights, and...the laws of Pennsylvania

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[16] 10 Fed. Cas. 6, 10.

deny us the privilege of holding this man in custody."[17]

The most interesting aspect of the case of Ex Parte Garnett, which appears again in the more important case of the United States v. Hanway, is that in both instances Grier's consideration of the pro-slavery position presented by the plaintiff throughout the case is favorable. Yet, his final judgment favors the defense, providing rare instances of victory for anti-slavery advocates, who otherwise had become accustomed in the early 1850's to losing fugitive slave cases. In the Garnett case, Grier insisted that he knew the excitement that the arrest of Garnett would cause; and he pledged his determination to carry out the requirements of the law "at all expense" if the claimant could make a good case.[18] On the other hand, his final decision and his letter to Charles Gibbons proved to anti-slavery forces that he was a principled man who did not favor depriving any citizen of his rights. An anti-slavery pamphlet published shortly after the case claimed that Grier's view of the bill was a "fortunate circumstance" and lauded his good intentions.[19] However, the Justice did not favor the Abolitionists, and denounced their activities frequently in his court opinions beginning in the Garnett case, where he suggested that "he had reason to believe there were emissaries abroad attempting to get persons to resist the laws."[20] Overall, Grier's record suggests

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[17] Ibid., 11.

[18] Ibid., 9.

[19] Fugitive Slave Bill: Its History and Unconstitutionality, pp. 35-36.

[20] 10 Fed. Cas. 6, 10.

fairness and impartiality, despite the number of attacks waged against him by both slavery and anti-slavery advocates in the ante-bellum period.

One case which resulted in attacks by the advocates of states-rights on Grier was Ex Parte Jenkins,[21] heard in the Third Circuit Court two years after Ex Parte Garnett. Jenkins and three other marshals, in their attempt to execute a warrant in Wilkes-Barre to arrest a Negro boy, William Thomas, encountered a violent and bloody struggle. During the fight, the officers did not handle the alleged fugitive roughly, and it did not appear that they proceeded with more force than necessary for his capture. In the course of the fight, however, a white man shot a Negro, and this incident was reported before a county justice of the peace to procure a warrant for assault and battery, with intent to kill against the federal marshals. The county justice issued and delivered such a warrant to the constable of the borough, who arrested the deputy-marshals and put them in jail. On a petition from the prisoners, a writ of "habeas corpus" was issued from the Circuit Court to bring them up. In the interim, the alleged fugitive, Thomas, escaped from the country.

The Jenkins case created a tumult throughout Luzerne County and the task of settling the unfortunate dispute rested with Justice Grier. Abolitionists groups, represented by David Paul Brown, appeared to argue against the granting of "habeas corpus" by the federal court. Brown contended that the prisoners were in jail under legal process from a state magistrate, and he wanted them to face state prosecution for the charge of intent to kill. The State of Pennsylvania did not recognize

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[21] 13 Fed. Cas. 445. (1853).

the federal writ, and therefore did not give the Circuit Court any notice of its wish to be heard in the case. The United States government, represented by District Attorney J. W. Ashmead, argued for the discharge of the officers under an 1833 law which granted to district court judges the power to grant writs of "habeas corpus" in all cases of prisoners in confinement because of acts committed in pursuance of a law of the United States.

Grier refused to succumb to local or state pressure, and ruled that his court could issue a "habeas corpus" to bring before it one of its deputy marshals, arrested under state process for his conduct in executing a writ issued under the fugitive slave law; the court could inquire into the cause of commitment, and, if illegal, order a complete discharge. And, in the case of an arrest of a United States officer for an alleged abuse of his power, Grier claimed that his court would not only hear evidence to disprove the truth of the affidavits upon which the state authorities proceeded, but would, independently of such proof, consider those affidavits. If, in his judgment, those affidavits did not contain a prima facie ground for arrest, the federal officer would be discharged without hearing any counter-evidence. If officers of the United States, in this case Jenkins and his deputies, deny through a petition an indictment found by a state court for riot, assault and battery, and intent to kill, the federal court, according to the Justice, may go outside the indictment and hear evidence to show the truth of the facts set forth by the officer. Finally, in a case against a marshal seeking the capture of an alleged fugitive, the district court will

dismiss the charges against him unless there is "positive oath of merits" from a plaintiff, or "a sworn detail of circumstances from others to supply its place."[21a] Consequently, Grier ordered the release of the federal officers held in the Wilkes-Barre incident.

Immediately following this opinion came a burst of criticism. The Philadelphia Sun announced that the Jenkins opinion invaded the states-rights of Pennsylvania, and stated that the citizens of the state were jealous of any invasion of its rights by the general government. Boldly objecting to the "tone, manner, and language" of the opinion of the Justice, the Sun warned that Grier was treading on "most delicate ground." The editors expressed a particular objection to threats made by Grier during the trial to have indictments brought against any persons who applied for a writ charging any United States officer under the sovereign power of the Commonwealth, against anyone who assisted in the application, against any lawyer who defended it, and against any constable who served it. These tactics may have been permissible on the Allegheny County Court bench, where Grier had earned a reputation as a dictatorial judge, but the observers of this Circuit Court proceeding found his behavior totally unacceptable. Therefore, the Sun denounced his "advances towards despotism," and predicted that they would never be tolerated in Pennsylvania while virtues enough remained to defend "Liberty and Independence."[22]

[21a] Ex Parte Jenkins, 13 Fed. Cas. 445. (1853).

[22] Reprinted from the Philadelphia Sun in the Pittsburgh Gazette, October 21, 1853.

Compared to the Pittsburgh Gazette, the Sun treated Grier leniently. In an article which began by stating that "Judge Grier appears to be on his high horse, again," the Gazette branded his threat to punish anyone who brought state charges against a federal officer as "idle bravado." The newspaper further charged that Grier's deep devotion was "to the business of slavecatching and manhunting," and that "his blood hotly boiled whenever the manhunters were foiled of their prey." According to the editors, Grier had allowed his excited feelings to carry him much beyond the line of propriety in making threats, even though they seriously doubted that he would ever make the effort to carry them into execution; and, even if he attempted, they forecasted that it would be a bigger job than he anticipated. "United States officers," the Gazette said, "have no immunity from arrest for offences against state laws. If they violate Pennsylvania statutes they are liable to the penalties, which in this case involves a law which makes it a penal offense to create a disturbance of the peace in arresting a fugitive slave."[23] The deputy marshals in Wilkes-Barre committed a "palpable and outrageous" violation of the peace, and clearly in the eyes of this newspaper came under the provision of this law. They objected to Judge Grier's meddling and his threats, and proposed the following thoughts:

> What is the use of all the prattle we hear about State Rights and State sovereignty, when a United States judge can thus step in and set our laws and its officers at deference? If Judge Grier be right, there is no such thing as state sovereignty. We are mere appendages of the General government,

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[23]Pittsburgh Gazette, October 13, 1853.

> and powerless to execute our laws upon our own soil. Oh! If we had an administration that would vindicate the state in such an emergency as this, this outrage would be promptly met. But we have not, and Judge Grier knows it.[24]

The whipping that Justice Grier took from the press soon became a common occurrence. His encouragement of strong federal enforcement of the Fugitive Slave Act as part of the Compromise of 1850 was not well received by many elements of the Pennsylvania constituency. Also, the Gazette correctly pointed out the fact that President Fillmore did not share Grier's desire for a vigorous national policy of fair enforcement of the law. Grier's intentions, however, were misunderstood, for his only commitment was to the law. Grier did not favor slavery; but the problem of fugitive slaves had to be dealt with in the circuit courts of the United States, and Grier saw his duty in terms of a much greater allegiance—to the United States Constitution. For the Union to survive, men like himself would have to apply the laws of the nation in a fair and reasonable manner. In light of the intense atmosphere of an increasingly bitter intrasectional and intersectional struggle in the nation, this became more difficult during the 1850's. Between the hearing of Ex Parte Garnett and Ex Parte Jenkins came three crucial cases heard in Circuit Court which clearly reveal not only this phenomenon, but also how one man, devoted to his country, maneuvered to try to accommodate the many social and political forces that were beginning to tear the nation apart.

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[24]Ibid.

...the public eye is fixed upon us, and demands at our hands the unprejudiced and impartial performance of the solemn duties which we have been called to execute.

Robert Grier
United States v. Hanway

CHAPTER III

CHRISTIANA: THE TRIAL OF A JUDGE

The case of the United States v. Hanway, commonly known as the Christiana Riot and Treason Trial of 1851, ended in the Circuit Court for the Eastern District of Pennsylvania on December 11, 1851. The Court found Caster Hanway, a white resident of Lancaster County, innocent of the charges of wicked and traitorous intention to levy war against the United States by a "combination to oppose, resist and prevent the execution of the fugitive slave laws of 1793 and 1850."[1] The serious accusation that had been levied against him by the United States Government grew out of a series of events which began on September 9, 1851 when Edward Gorsuch, a prosperous farmer of Baltimore County, Maryland, obtained warrants under the new law to arrest Nelson Ford and three other fugitive slaves. Between the two decrees, the fugitive warrant and the innocent verdict of the jury, one of the great dramas of the sectional conflict of the 1850's took place. In the streets of a small town near Lancaster, Pennsylvania and in a federal courtroom in

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[1]James J. Robbins, Report of the Trial of Caster Hanway for Treason in Resistance to the Fugitive Slave Law of September 1850 (Philadelphia, privately printed, 1852), p. 18.

Philadelphia, concrete meaning was given to the abstract issues of the sanctity of property, the role of the Northern citizen in the capture of fugitive slaves, and the right of a slave to his freedom. In the three months following the death of Gorsuch, who was brutally murdered in his attempt to execute the warrants, the nation eagerly watched for an indication of the future of the Union. Associate Justice of the Supreme Court, Robert C. Grier, provided the answer which they sought.

The activities which took place at the house of William Parker, a white Abolitionist who sheltered fugitive slaves in Christiana, Lancaster County, are remarkably clear. On September 9, 1851, at daybreak, an armed conflict took place between a group of Negroes and the posse of Edward Gorsuch, led by Deputy Marshal Henry H. Kline. The hostilities began when the Negroes inside Parker's house refused to allow Kline to serve a warrant for the arrest of the fugitive slaves, who Gorsuch recognized as belonging to him; the blacks violently reacted by throwing an axe at him, and by firing a shot at the slave owner. When a horn sounded, the activity quickly shifted from inside to outside of the house where a white man, Caster Hanway, approached. A gang of Negroes arrived from many directions at the same time as Hanway; opening gunfire, they proceeded to kill Gorsuch and severely wound the other members of his party, ending the lawful attempt of the federal officer to execute the fugitive slave warrant.[2]

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[2]The source of the majority of this sketch is from United States v. Hanway, 26 Fed. Cas. 105,110-111, where a summary of the events precedes the case. It is complemented by a number of other sources, including all the major accounts of the trial, for the facts of this case were not in dispute. A more complete discussion of all the intricate

This victory for the abolitionists quickly ended. By the evening of September 11, Parker and most of the Negroes present that day had started their journey to Canada, leaving behind Caster Hanway who voluntarily turned himself in. Two days later a force of United States Marines, sent by Commodore Read, took a number of additional prisoners,[3] and the national administration, under the guidance of Attorney General John J. Crittenden and Secretary of State Daniel Webster, decided to prosecute Hanway for treason. Both concluded "that even if a conviction were not obtained, the effect of the trial would be salutary in checking Northern opposition to the enforcement of the Fugitive Slave Act."[4] The national public outrage forced into action the hand of the executive branch of government, which had previously refrained from a vigorous enforcement policy. Aware that Justice Grier, under whose jurisdiction the case would fall, had previously favored strong enforcement of the Act, the administration felt certain that in his courtroom the outrageous actions which took place in Christiana at Parker's house would receive the vindication that the public demanded.

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[2](continued) details, too cumbersome and not within the scope of this chapter, are best found in Nash, Hensel, and Robbins, listed in the bibliography. The "History of the Christiana Tragedy," originally published in the Baltimore Sun on September 18, 1851 was written by J. S. Gorsuch, another son of Edward Gorsuch, and was reprinted in The Keystone on September 23, 1851. It also presents essentially the same facts.

[3]Roderick W. Nash, "The Christiana Riot: An Evaluation of Its National Significance," Journal of the Lancaster County Historical Society LXV (1961), 70-71.

[4]William U. Hensel, The Christiana Riot and Treason Trials of 1851 (Lancaster: New Era Printing Company, 1911), p. 62.

Immediately, in Pennsylvania, violent political warfare erupted concerning the Riot, as the Democrats attempted to exploit the issue against the vulnerable state Whig administration of Governor William J. Johnston, who was seeking reelection. Confident that the majority of citizens opposed Abolitionist activities and the particular Riot that took place on September 9, they attacked the conduct of the "Abolition Whig Governor absenting himself from the seat of government ...instead of being at his post to enforce the utmost rigor of the law against the white and black murders."[5] The editors of the Keystone, a Democratic organ published in Harrisburg, spoke of "the evident reluctance with which Governor Johnston discharged his official duty to effect the arrest and punishment of the actors in this terrible tragedy."[6] The Keystone and many other Democratic newspapers published an open letter to the Governor by the martyred farmer's son, who asked for governmental action to revenge his father's death. A second letter addressed to Johnston came from a committee of Philadelphia Democrats, including John Caldwallader, John Swift, John W. Forney, R. Simpson, and Charles Ingersoll.

The Whigs, shaken by these Democratic charges, began a wave of counterattacks from a number of sources, describing the commitment of the Governor and the party to enforcement of the law. The Whig Examiner and Herald, like the Democratic Intelligencer which had denounced "the particulars of the horrible Negro riot and murder," called the Riot "one

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[5]Hensel, Christiana, pp. 47-48.

[6]The Keystone, September 23, 1851.

of the most horrid murders ever perpetrated in this country or state."[7] The Governor, himself, was quick to respond to the demands made by the Democrats, and in an open letter he offered a one thousand dollar reward for the capture of the murderers. On the day of the preliminary indictment by the federal government of Hanway and eleven others for treason, the Whig State Journal declared that the Whigs would enforce the laws of the land "at all hazards."[8] Yet, despite this attempt, it is generally believed that Democratic agitation over the Christiana issue brought about the defeat of Johnston in the October election.[9]

Both the national administration and the Whig newspaper editors must have fully sensed the implications after Johnston's defeat, which clearly indicated the indignation of the voters of at least one major Northern state. Fearing the trend of public opinion, the National Administration pressed harder in an attempt to refute the abolitionist image implied by the Democrats. The Pennsylvania Whig State Journal assured its readers that, "with very few exceptions the Whig presses and people of Pennsylvania, and the whole Union, cordially sustain the Administration of our patriotic Whig President, Millard Fillmore...." The editors insisted that the Abolitionism which had clung to the Whig party, threatening death to it, had to be sloughed off. Only after party purification could the Whigs adhere to the principle of acquiescence in the Compromise, and unite with the Union men of the South, who

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[7]Hensel, Christiana, pp. 47-48.

[8]Whig State Journal, September 23, 1851.

[9]Charles Sellers, James K. Polk, Vol. II (Princeton: Princeton University Press, 1957-66), pp. 216-17.

were warring against Secessionists, as the Union men of the North had to war against Abolitionists.[10] Sensing a possible national disaster if the Whigs did not totally disassociate their party from the Abolitionists, immediately after the Riot and defeat of Johnston, they launched a campaign to accomplish this purpose.

The defeat of Johnston, on the other hand, pleased Pennsylvania Democrats, especially the Buchanan wing of the party. Buchanan himself declared that the Riot issue had decided the fate of the last election. He argued that

> the maintenance and faithful execution of the Fugitive Slave Law; the repeal of our unjust and unconstitutional obstruction law; and the suppression of all further agitation on the question of slavery were everywhere proclaimed as essential principles of Democracy. We 'paltered on a double sense' with none of the isms with which out State is infested. The victory has, therefore, been glorious...I trust that in our State we shall have no further serious difficulty with the free soil question.[11]

Pleased with the political aftermath of the Riot, which proved to be an enormous resource, the Democrats who successfully exploited the issue of law and order now eagerly anticipated the treason trial. They had been successful in forcing the task of prosecution upon the Whigs, who could be blamed if a conviction was not reached. On the other hand, if a treason conviction could be attained, the presiding justices, both Democrats, would be applauded.

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[10] Whig State Journal, November 25, 1851.

[11] Buchanan Papers, November 25, 1851, Pennsylvania Historical Society.

The Grand Jury was charged on November 18, 1850 by District Judge John Kane, who argued that the indictment made by the prosecution, led by U.S. Attorney John W. Ashmead, was sufficient to establish treason, if proved. However, since treason could not be tried in a district court, Kane stated that Associate Justice Robert Grier would preside over the trial. Ashmead knew about Grier's unsympathetic attitude towards offenders of the Fugitive Slave Act; knowing the reputation of Grier's conduct of a trial, he thought this could become a favorable asset to the government's case. An offer of assistance from J. R. Ludlow, a prominent Philadelphia attorney; R. J. Brent, the Attorney General of Maryland; and James Cooper, Whig Senator from Pennsylvania, further delighted him. The appearance of Thaddeus Stevens, the anti-slavery congressman from Lancaster County, for the defense provided the only definite adverse political condition for the Whig prosecution at the commencement of the trial.

A jury impanelled, the case started, and lasted nineteen days. It became clearly evident early in the trial that the prosecution could not prove the charge of treason from the evidence presented.[12] From that point forward, the logic of the defense increasingly impressed Justice Grier. Hanway's counsel argued that the Negroes at Christiana had procured arms to protect themselves against "kidnappers," men who illegally captured Negroes in Lancaster County and sold them into bondage. Despite objections by the prosecution, Grier allowed the defense to present this argument, stating that he thought that it would be

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[12]Nash, "The Christiana Riot," 72.

proper if the defendant could show that "kidnappers" had been in the neighborhood. He used the following analogy to clarify his point:

> Suppose the sheriff came to my door, and I fired at him out of my window and killed him; under such circumstances you might infer I did it with the intention to murder an officer of the law. But suppose I could show, that a few nights, or even months, ago, a person had broken into my house, and committed a robbery, would not you infer from the fact, that my mind was bent upon something else, and far from any intention to murder the sheriff?[13]

The prosecution could not prove that treason was committed at Christiana, and the defense had clearly convinced the judge that their case had particular merit. Grier gave subtle indications of this happening during the trial, but not until his charge to the jury did he fully explain his feelings.

On December 11, Grier began his charge to the jury. Disillusioned by the prosecution's inept case, he completely rejected its major contention that the activities of Caster Hanway were treasonous. In elaborating upon the "special sensitivity" that a court must have to a treason trial, Grier stated that the Hanway case would serve as a precedent for similar cases. He did not want men like Hanway to be used as scapegoats for political purposes, especially those of Crittenden or Webster, Whigs who were willing to convict an innocent man to set an example. He argued that the case involved the issue of life and death, explaining to the jury that they could not permit the atrocity that took place at Christiana to allow themselves to ignore the rights of the

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[13] United States v. Hanway, 26 Fed. Cas. 105, 122 (1851).

defendant. He stated that a jury of Pennsylvania citizens should properly desire vindication if the laws of their country had been insulted, but that they must not convict a man of such a serious crime without satisfactory proof of his guilt. He summarized his feelings by pleading for an "unprejudiced and impartial performance" of the courts' duties, and noted the great public interest which the case had aroused.

The time had come for Grier's silence on the slavery issue to end. Seizing the opportunity to use his privileged position to command the audience of a whole nation, he expounded his views. He told the jury that before proceeding to the particular questions of law, he wanted to take the privilege of speaking of some matters, "which... having passed before our eyes...may have a tendency to create in our minds some bias on this subject, but which should not be permitted to affect your verdict..."[14] The charge then opened with an admission that the testimony in the Hanway case clearly established that "a most horrible outrage upon the laws of the country" had been committed. He cited the fundamental problem as a matter of the violation of constitutional rights guaranteed to "a citizen of a neighboring state...foully murdered by an armed mob of Negroes." The shooting down, beating, and wounding of others and the repulsion of an officer of the law by force further aggravated him. The Justice condemned the behavior of the Christiana citizens and found that as "good citizens" they should have supported the execution of the laws, and at least should not have

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[14] Ibid., 122.

interfered or opposed them. He stated that "if they did not directly encourage or participate in the outrage, (they) looked carelessly and coldly on." His conclusion that it was the duty, either of the state of Pennsylvania, or of the United States, or of both, to punish "those who have committed this flagrant outrage on the peace and dignity" revealed the hard line he had drawn against the offenders.[15] It left no doubt in the minds of observers that despite Justice Grier's opposition to a treason conviction, he did not want those responsible for the Riot to go unpunished.

Paralleling Grier's demand for the punishment of the responsible criminals, a number of newspapers argued similarly. The Whig State Journal pleaded that "the blood of Mr. Gorsuch cries for the vengeance of the law," pointing out that the majesty of the Federal Government had been defied by an armed body of rioters.[16] Echoing these sentiments, the more influential national newspapers, further stressed the point. The Washington Daily National Intelligencer insisted that these horrible outrages "caused the most intense feeling...and...the outrage perpetrated...cannot, of course, but be deeply felt."[17] Although limited to Negro and Abolitionist publications, a minority of publications took an opposite viewpoint. In particular, The National Era, claimed that the real "outrage upon the dignity of the nation" were not the events that took place at Christiana, but were rather the indictments

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[15] Ibid., 122.

[16] Whig State Journal, October 14, 1851.

[17] Washington Daily National Intelligencer, September 15, 1851.

of treason made by the government.[18] This view, however, represented only a small number of people, later condemned by Grier and a majority of Northerners.

Grier, himself, deplored the activities of the Abolitionists, because they differed from his definition of the responsibilities of the American people and its democratic system of government. He claimed that the American nation had obtained "immeasurable superiority" over other nations of the world, a tribute to the morality, virtue, and religious nature of its people. Converse to the Calhoun doctrine, he persuaded the jury that the guarantee of American democracy could be fulfilled only when the minority upheld the constitutions and laws imposed by the majority. Other attempts at this form of government, he noted, had been marred by "pronunciamentos, rebellions, and civil wars, caused by the lust of power, by the ignorance of faction or fanaticism."[19] He extended his argument to the people of Pennsylvania stating that they had "loyalty, fidelity, and love to this Union." This provided a rationale not only for his upcoming condemnation of the Abolitionists, but for his final argument which pronounced Hanway's innocence.

Abolitionism received a crushing verbal assault from Grier in his charge to the jury in the Hanway case. The judge attacked the Abolitionists who provoked the Christiana Riot as "a few individuals of perverted intelligence."[20] The tragedy, according to Grier, resulted from

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[18]The National Era, November 27, 1851.

[19]26 Fed. Cas. 105, 122.

[20]Ibid., 122.

the teaching of advocates of the "higher law"--fanatics who looked beyond constitutions for their rule of action and who took the promptings of an inflamed zeal as the evidences of an infallible conscience. He accused them of organizing meetings all over the country and advising Negroes to commit various crimes, including murder. Blaming the effects of their counsel for the scenes at Christiana, Grier firmly expressed his outrage at their agitation over the Fugitive Slave Law of 1850. He stated:

> ...The guilt of this foul murder rests not alone on the deluded individuals who were its immediate perpetrators, but the blood taints with even deeper dye the skirts of those who promulgate doctrines subversive of all morality and government.[21]

He interpreted their activities as harmful to the nation—illegal, morally wrong, and destructive. Grier feared the atmosphere of other towns might become "tainted and poisoned by male and female vagrant lecturers and conventions," but found comfort in the fact that both the Whig and the Democratic parties viewed the tragedy with abhorrence.

A fresh wave of negative public opinion concerning Abolitionism began shortly after the Christiana Riot. Major publications expressed similar sentiments to those expressed by Grier. Designed to exploit unpopular activities of the Abolitionists following the incident, newspaper men continuously repeated their argument to the public. The major city newspapers, including the Washington Daily Intelligencer, the Boston Courier, the Philadelphia Evening Bulletin, and the Philadelphia Public Ledger all stated their disapproval of the advocates of a "higher law."

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[21] Ibid., 122-123.

The Courier, in particular, indicated a reversal of attitude towards the anti-slavery zelots, arguing that the Riot had to give a most serious and alarming turn to the thoughts of every man who had heretofore been in the habit of looking with forbearance upon the doings of the Abolitionist agitators. Like Grier, the editions did not blame the "ignorant and deluded blacks," but rather the "fanatics of the 'higher law' creed."[22] This expression of severe condemnation, which appeared in national publications still did not call for outright legal punishment for Abolitionist activities. However, state and local newspapers, the Whig State Journal included, advocated such measures. The Journal remarked that for the good of the country, "Abolitionism must be taught that the laws of the United States are 'supreme' in this country."[23] The newspaper responses, although varying slightly in language and attitude, in almost all instances denounced the Christiana Riot and linked its tragic consequences to the work of the Abolitionists. A better scapegoat could not be found for a Union that had begun to fall apart.

Recognizing the sectional implications of the Riot and Treason Trial, Grier desperately did not want his intentions misunderstood. He knew that if the government's indictment of treason was not upheld, the South would not be pleased. For this reason, he attempted to explain his interpretation of the duties and obligations of Northern citizens

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[22]Reprinted from the Boston Courier in the Washington Daily Intelligencer, September 15, 1851.

[23]Whig State Journal, September 23, 1851.

under the Constitution. He argued that the supreme law of the land bound not only the respective states, but also the conscience and conduct of every individual citizen of the United States. He asserted that the South would never have entered into the Union without Article IV, Section 3 of the Constitution.[24] This argument, designed as an appeal to emotions of Northerners and Southerners who Grier thought might be displeased with the final verdict of the case, does not drastically differ from the Associate Justices's later thoughts concerning the concept of Unionism. He proposed in the Hanway case that if contrary to good faith, either individuals or state legislatures in the North succeeded in thwarting and obstructing the execution of the Article, thereby taking away rights guaranteed to the South, the South could treat the Constitution as "virtually annulled" by the consent of the North, and seek secession from any alliance with the "open and avowed covenant breakers." In the words of Grier, "every compact must have mutuality; it must bind in all its parts and all its parties, or it binds none."[25] Grier's rejection of this crucial tenet to his philosophy of Unionism a decade later in the Prize Cases reveals the flexibility of his rhetoric. His stated willingness to allow the South to secede in the Hanway case must not be interpreted as a serious proposal

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[24]Article IV, Section 3 of the Constitution reads in part that "no person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to who such service or labor may be due."

[25]26 Fed. Cas.105, 123.

to the South. Rather, the Justice perceptively sensed the implications of the growing sectionalism which began immediately following the passage of the Fugitive Slave Act of 1850. When the South attempted secession, Grier firmly opposed this action; he would have stood with Jackson in the 1830's and he eagerly supported Lincoln in the 1860's when the South tried to leave the Union. Above all, Robert Grier rejected the concept of dissollution of the nation, and every effort to accomplish this met with his resistance.

The passage of personal-liberty laws by Northern States, including Pennsylvania, disturbed Grier, who like other Jacksonian Democrats was committed to not interfering with the operation of the Southern institution. He questioned if the laws would not threaten the Union, and used the platform of the Trial to express his opinions. These laws allowed aid for alleged fugitive slaves, guaranteed a jury trial after a hearing, refused the use of state jails, and enjoined state officers from assisting the claimants.[26] Of these laws, Grier wrote that those states of the North whose legislation made it a penal offense for the execution of Article IV, Section 3 of the Constitution, compelled the disregard of the solemn oath taken by judicial and executive officers. These laws proceeded further, according to Grier, than any Southern state had in the path of nullification and secession.[27] Therefore, he rejected an earlier Supreme Court decision, Prigg v.

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[26]See Litwack, North of Slavery, and Russel Nye, Fettered Freedom, Civil Liberties and the Slavery Controversy, 1830-1860 (East Lansing: Michigan State College Press, 1949).

[27]26 Fed. Cas. 105-123.

Pennsylvania (1842), which allowed their passage, but did not have the opportunity to fully express his opinion until the issue again reached the highest tribunal in the case of Moore v. Illinois.

The 1842 Supreme Court decision that Grier rejected, Prigg v. Pennsylvania,[28] held that despite the constitutionality of Fugitive Slave Laws, states did not have to enforce them, because this was a function of the federal government. Justice Story, speaking for the majority, held that the states had a right to refuse to allow their judges to preside in fugitive slave cases. This specific case resulted when Edward Prigg, a slave catcher from Maryland, forcibly captured and returned an alleged fugitive to Maryland. The overriding issue, however, concerned the laws passed during the 1820's and 1830's by Northern state legislatures similar to the Pennsylvania law which made it almost an impossibility to remove a Negro from the state. Following the decision, many Northern legislatures further prohibited their officials from enforcing the Fugitive Slave Law of 1793, which for all practical purposes made it void. These actions provided the main reason for the passage of the Fugitive Slave Act of 1850 to correct the situation.

In the 1851 Hanway case, Grier found the Personal Liberty Laws a tangential issue. In his charge to the jury, he denied that the Prigg doctrine of 1842 justified state legislation prohibiting the execution of Article IV, Section 3 of the Constitution. And, he

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[28] Prigg v. Pennsylvania, 16 Peters 539. (1842).

quoted a part of the Prigg decision to prove his point, stating

> That the master of a fugitive, having a right, under the Constitution, to arrest his slave without writ, and take him away, any state legislation which interfered with or obstructed that right, and punished the master or his agent as a kidnapper was void.[29]

In fact, he found the 1850 Fugitive Slave Act an adequate correction of the earlier statute, and saw no reason for resistance to it by the Northern states. He stated that the real reason for opposition to the new law was not because of its unconstitutionality. Rather, the fact that the act could be executed, preserving the constitutional rights of the master, most disturbed the Abolitionists.[30]

In 1852, Grier's majority opinion for the Supreme Court delineated between state and federal authority regarding fugitive slave acts in the case of Moore v. Illinois; at issue was an Illinois law which made harboring slaves a criminal offense.[31] The bill of indictment charged that Richard Eels secreted a Negro slave who owed service to an owner in Missouri, contrary to the Illinois statute. Eels had been indicted in 1842, and a lower Illinois state court found him guilty

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[29]26 Fed. Cas. 105-123.

[30]Ibid. 123.

[31]The statute was contained in the 149th section of the Criminal Code, and read as follows: "If any person shall harbor or secret any slave or servant owing service or labor to any other persons...or shall in any wise hinder or prevent the lawful owner or owners of such slaves or servants from retaking them, in a lawful manner, every such person so offending shall be deemed guilty of a misdemeanor, and fined not exceeding five hundred dollars, or imprisoned not exceeding six months."

and imposed a fine of four hundred dollars. The Supreme Court of Illinois affirmed the judgment. At this time, it was appealed to the United States Supreme Court by the executor of Eels' estate, Thomas Moore. Salmon Chase, who represented Moore, argued that the Fugitive Slave Act of 1793 was constitutional, and that the power of legislating upon the subject of fugitive slaves should be vested in Congress. If the power belonged entirely to Congress, Chase said, the exercise of that authority superseded all state legislation. The act of 1793 and the law of Illinois conflicted with each other; therefore, since two laws legislating over the same offense could not exist at the same time, the Illinois statute had to give way.[32] Simply stated, the passage of the fugitive slave law by Congress made the authority to capture slaves entirely within the federal domain, thereby rendering the state laws unconstitutional.

The major argument of Chase centered on Justice Story's majority opinion in the Prigg case. He claimed that the Supreme Court had already decided in the case that "all state legislation upon the subject of fugitive slaves, was void, whether professing to be in aid of the legislation of Congress, or independent of it." This argument was not accepted by the Court, and Grier rejected it in the majority opinion claiming that a concurrence of rendition power could exist between the federal and state governments. He argued that the Court did not find a conflict between the Illinois statute and the Constitution or any Congressional legislation concerning fugitives, for a number of reasons.

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[32] Moore v. The People of the State of Illinois, 14 How 14. (1852).

The Illinois law neither interfered in any manner with the owner or claimant in the exercise of his rights to arrest and recapture his slave, nor interrupted, delayed, or impeded the right of the master to immediate possession. The statute gave no immunity or protection to the fugitive against the master, and acted neither on the rights of the master nor on the remedy available to the slave. Rather, Grier claimed that the law was "but the exercise of the power which every State is admitted to possess, of defining offenses and punishing offenders against its laws." He concluded that the states never surrendered the power to make regulations "for the restraint and punishment of crime, for the preservation of the health and morals of her citizens, and of the public peace."[33]

In the Moore case, Grier based his argument on the right of states to exercise police powers. He insisted that under this authority, they had a right to make it a crime to introduce paupers, criminals, or fugitive slaves, within their borders, and punish those who thwarted this policy by "harboring, concealing, or secreting such persons." Some of the states, he noted, found it necessary "to protect themselves against the influx either of liberated or fugitive slaves, and to repel from their soil a population likely to become burdensome and injurious, either as paupers or criminals." Also he included as a rationale for exercise of this power by the states the argument that experience proved that the type of conduct prohibited by the statute in question demoralized the citizenry, destroyed harmony and kind

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[33] Ibid., 14-18.

feelings between citizens of the Union, created border feuds, and caused breaches of the peace, violent assaults, riots, and murder.[34]

This could only have been a reference to the Christiana trial of less than a year before. In the Hanway case, Grier made it clear that he saw the Abolitionists in open disregard of the Constitution; he condemned their actions as destructive to the tranquility of the Union.[35] In the Moore case, Grier recognized the right of a State to defend itself against evils of such magnitude, and punish those who perversely persisted in conduct which promoted them.[36] This, was an illusion to the fact that in Pennsylvania no state laws existed to enable what Grier considered proper vindication for the Christiana affair, a horrible tragedy which had not escaped his thoughts. He claimed that those persons responsible for the Riot should have been liable to punishment. Grier did not doubt that both the federal government and the state could punish an offender, for the one act committed at Christiana resulted in two offenses, both "justly" punishable.[37]

Grier's attitude falsely gave the impression to many people that his biases were pro-Southern. In particular, the Conscience Whigs, articulating their views in the Pennsylvania Telegraph, claimed that the Justice seemed anxious throughout the Hanway case "to hang someone

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[34] Ibid., 18.

[35] 26 Fed. Cas. 105, passim.

[36] 14 How 14, 18.

[37] Ibid., 20.

to appease the South."[38] The accusations of these critics proved that they entirely misinterpreted his intentions. In his final instructions to the jury, Grier revealed that his commitment was to adjudicating a law, and he concluded that the question of its constitutionality could not be settled by juries or by conventions of laymen. He then proceeded in a fair interpretation of the law, finding that although Hanway might have been guilty of riot, robbery, murder, or any other felony, he could not be found guilty under the bill of indictment charging him with treason, unless he intended to levy war against the United States. He proposed the analogy that other criminals, like smugglers, opposed laws that did not please them; however, they were felons and not traitors. He declared that in cases involving fugitive slaves, "their insurrection, their violence, however great their numbers may be...cannot be called levying war...the political distinction will remain between war and robbery. One is public and national, the other private and personal."[39]

Convinced, therefore, that riot and murder, offenses against the State Government, had been committed, but that it would be a dangerous precedent to extend the crime of treason to a doubtful case, Grier, in his "shrill and piping voice" concluded his charge in the Hanway case. The final verdict of not guilty, a direct result of his influence, was "savagely resented...even by those who were satisfied with his legal

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[38] Pennsylvania Telegraph, December 17, 1851.

[39] 26 Fed. Cas. 105, 126.

conclusion."[40] The case had been decided in a manner typical in Grier's courtroom.

Grier's charge and the verdict of the jury pleased the anti-slavery people. Shortly after the culmination of the Hanway case, the Pennsylvania Anti-Slavery Society held a large convention in Philadelphia which was addressed by J. R. Giddings and William Furness. The delegates passed the following resolution:

> Resolved, that we heartily congratulate one another, and the friends of liberty throughout the land, upon the auspicious result of the recent trial of Caster Hanway; and that the efforts to revive in this country the obsolete and infamous doctrine of constructive treason, and to paralyze, by the terrors of dungeon and the scaffold, not merely the fugitive's cherished hope of maintaining his freedom, but even the liberty of the press and freedom of speech on the subject of slavery, have so signally failed; and that in the general rejoicing of the people, in view of this result, we see an evidence of the progress of our cause, and a sign of its future triumph.[41]

Many segments of the North and South resented the outcome of the case; most outraged, Attorney General Brent of Maryland, wrote Governor Lowe of the "egregious errors of law committed by Judge Grier."[42] His personal involvement, however, was neither shared by the Whigs, who did not wish to revitalize the issue, nor by the Democrats, who had nothing to gain by a direct attack upon Grier.

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[40] Hensel, Christiana, pp. 87-90.

[41] Washington Daily Intelligencer, December 23, 1851.

[42] Maryland State Documents, December 22, 1851.

In the United States v. Hanway, Grier learned a great deal about the divisive issue of slavery. The task of resolving the problems that arose due to it provided a difficult task to which he devoted himself. His position as an Associate Justice of the Supreme Court and a Circuit Court Justice demanded this devotion, not only to duty, but also to the Constitution and laws of the United States. In performing his role, Grier wanted, above all, to maintain an orderly and harmonious Union; in 1851, he believed that a majority of citizens agreed with him. Correct in this belief, Grier attempted to fairly interpret the Fugitive Slave Act of 1850 in the Hanway case, and despite bitter sectional animosity and statewide political hostility, he succeeded in reaching a fair conclusion. He did not favor the South, and his opinion of Hanway's innocence displeased many people of that section. A man of moderation, Grier did not desire to unfairly punish a man who was not guilty, nor did he want to set a radical precedent in an important case. He understood that elements of society did not agree with the institution of slavery, but was convinced that most people of both Pennsylvania and the United States would support any Constitutional law. Throughout the decade, Grier would rest his case upon commitment to the nation's law. In the Hanway case, affected by many adverse conditions, Grier, again pledging his allegiance to the Union, did not succumb to the persuasions of less committed men.

No theories or opinions which you or we may entertain with regard to liberty and human rights, or the policy or justice of a system of domestic slavery, can have a place on the bench or in the jury box.

Robert Grier
Van Metre v. Mitchell
and Oliver v. Kauffman

CHAPTER IV

"HARBOURING AND CONCEALING"

Occasionally, Judge Grier was summoned to Allegheny County, where he had previously sat on the bench, to preside over important cases arising in the Western District of the Third Circuit in Pittsburgh. In October, 1853, a controversial fugitive slave case, Van Metre v. Mitchell, demanded his presence. Seven years after his resignation from the Allegheny County Court, Grier now came to Pittsburgh with the stature of an Associate Justice of the Supreme Court, and, more important, with a definite point of view on the divisive issue of slavery.

The Pittsburgh Case arose from the flight of two Negro slaves in April 1845, from Virginia to Indiana, Pennsylvania. Their journey brought them to the house of a man identified as "Mitchell," the defendant in the case, who was charged with "harbouring and concealing" them. Although never proven, it was common knowledge that Mitchell was an active participant in an organized abolitionist group that resided in the area. John William Wallace, Jr., the court reporter, claimed that the defendant appeared to be "a Friend of the Black Man." He spoke

intemperately against Southern planters as "kidnappers, dealers in human flesh, monsters in men's form, and emissaries of hell," and, among other things, he cautioned agents to be careful how they interfered with Negroes in Indiana, for they were armed and would fight.

When the alleged slaves arrived at Indiana they were given instructions to move into a vacant house on Mitchell's farm, where they were given food, clothing, bedding, utensils, and a cow. They were employed by him on the farm, and also worked for the neighboring farmers; the money they earned was used for weapons and ammunition. They remained on the defendant's farm for four months. Mitchell was aware that they were fugitive slaves and that Van Metre, the plaintiff in the case, owned them. The townspeople also knew that the workers on the Mitchell farm were slaves, but there was no evidence that the defendant desired to "conceal" the fugitives, except that he once requested that his partner find employment for them at a saw mill some distance from the town so that "they would be out of the way."[1]

The case of Mitchell was not peculiar; many similar cases appeared in federal courtrooms throughout the country. Yet it afforded the judge, in this case Robert Grier, another opportunity to further expound his views on the Fugitive Slave Act, beginning with the basic question of extradition of alleged fugitive slaves. In his charge to the jury, the Justice stated that the extradition of criminals or slaves from one country to another had generally been considered a matter of comity and not a right. He cited this principle as coming from the Jewish Code:

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[1] Van Metre v. Mitchell, 28 Fed. Cas. 1036, 37 (1853).

"Thou shalt not deliver unto his master the servant which has escaped from his master unto thee...." (Deut. xxiii 15), and claimed that the laws of the United States were assimilated to those of the Jews. Therefore, just as the Jews forbade extradition of escapees into Judea from a foreign nation, the United States also would not deliver slaves escaping from another nation. However, above this law of conscience of the Jews, assimilated by the United States, stood the Constitution which carried with it certain obligations of citizens. According to Grier, "while we would not deliver up slaves escaping from a foreign nation, the people of these United States, as one people, united under a common government, have bound themselves by the great charter of their Union, to deliver up slaves escaping from one state to another." Grier cited Chief Justice Tilghman of Pennsylvania to substantiate his philosophy of "constitution above conscience:"

> Whatever may be our private opinions on the subject of slavery, it is well known that our Southern brethren would not have consented to become parties to a constitution, under which the United States have enjoyed so much prosperity, unless their property in slaves had been secured. This constitution has been adopted by the free consent of the people of Pennsylvania, and it is the duty of every man to give it a fair and candid construction and carry it into full force and effect.[2]

Grier rejected the defense arguments that the "whole legislation on the subject of slavery is in derogation of human liberty" and that slavery was merely a local institution. Rather, his constitutional approach led him to the conclusion that his court must rule on the

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[2] Ibid., 1038-39.

legal questions, and not judge the case on the standards of the jury's morality. He, therefore, set out to discover the meaning of "concealing" and harbouring" as expressed in the 1793 Fugitive Slave Act. (Since the alleged act occurred before 1850, the second Fugitive Slave Act did not apply in this case).

In the process of his argument, Grier denounced the Pennsylvania legislature's passage of a personal liberty law at the past session, claiming that the law encouraged mobs to rescue fugitive slaves, and encouraged resistance against the reclamation of slaves. More important, he reaffirmed his Moore doctrine, stating that for "the honor of the state" he had to assert that the aim and objective of the 1793 legislation must have been misrepresented. He claimed that one certain thing was that no possible Pennsylvania legislation could be allowed to interfere with any act of Congress. Again, Grier's argument was simply that state legislation that interfered with federal fugitive slave laws was void. Only state legislation that aided the federal law could be constitutional.

The heart of the case was the decision if Mitchell had "harbored or concealed" the slaves, after notice that they were fugitives from labor. Two major questions presented themselves: first, what was meant by "notice"; and second, what constituted "harboring." "Stare decisis" settled the first, for in Jones v. Van Zandt, a Supreme Court decision in which Justice Grier participated, "notice" was defined as "knowledge." A specific notice, either oral or written, not given by Van Metre to Mitchell in this case, was not necessary. It was enough,

claimed Grier, if the defendant knew that the person he harbored was a fugitive from labor.[3]

The second question was also, in part, decided by the Jones v. Van Zandt precedent. Grier informed the jury that the "harbouring made criminal by the 1793 law required some other ingredient besides a mere kindness, or charity rendered to the fugitive. The "intention" or "purpose" which accompanied the act had to encourage the fugitive in desertion of his master, to further his escape, or to impede and frustrate his reclamation.[4] Or, stated in the words of Justice McLean's opinion in Jones v. Van Zandt:

> The act must evince an intention to elude the vigilance of the master, and be calculated to obtain the object.[5]

When he applied these stringent standards to the actual case before him, Grier found that the facts strongly favored the plaintiff. He claimed that if the uncontested facts of the case were true, then the defendant did shelter and entertain the slaves with full knowledge that they were fugitives from labor. Mitchell's actions encouraged them to desert their master, and frustrated their arrest.

Although Grier had clearly expressed his anti-abolitionist views previously, he always made it a practice to warn the jury against biasing their opinion in cases involving them. In Van Metre v. Mitchell, Grier again attempted to safeguard the defendant's rights, while making

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[3]Jones v. Van Zandt, 5 How. 216. (1847).

[4]28 Fed. Cas. 1036, 1040

[5]Ibid., 1040.

clear his unalterable conviction that the law stood above conscience in cases involving slavery. He insisted that the "fraudulent intent" required by the Act to constitute illegal harbouring could not be measured by the religious or political notions of the accused, or by the correctness or perversion of his moral perceptions. The law, Grier argued, would not tolerate the excuse of "some men of discorded understanding or perverted conscience" who thought it "a religious duty to break the law." An individual connected with any society for the purpose of assisting fugitives to escape their master, by giving shelter and protection to them would be legally liable to the penalty of the Fugitive Slave Law. According to Grier, neither the opinions of an individual's associates, nor his conscience could be used as an excuse, for the first commitment of all citizens of the United States was to the laws of the nation. Conscience had to be subordinated to the Constitution for the good of the nation.

Grier recognized the needs for free speech and assembly, and did not reject their importance in the fugitive slave controversy. In Van Metre v. Mitchell he told the jury that "with any opinions of the defendant, you have no concern." Arguing that a man may adopt and entertain as opinions "whatever folly likes him," Grier noted that as long as they remain "opinions" a man must go unpunished. Mitchell was on trial for his acts, claimed the Justice; he had to be judged "justly, without favour of fear" by the court and jury.[6]

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[6]Ibid., 1041.

With all of the facts uncontested and all of the points of law explained by Grier in the manner exposed by his own rhetoric, the verdict was predictable. Grier, in summing up, offered the jury two alternatives. First, if there was no intention of encouraging the escape of the fugitive or impeding or frustrating his recaption or reclamation by his master, the jury was to find for the defendant. On the other hand, if "he has afforded shelter and entertainment to the fugitive to further his escape, and enabled him to elude the vigilance of his master, the jury was to find for the plaintiff the amount of five hundred dollars. A choice between the two alternatives, however, had been all but decided by the Judge, and the jury promptly chose the latter.[7]

A second fugitive slave case arose in Justice Grier's circuit shortly after the Van Metre v. Mitchell case was decided; the Pennsylvania Eastern District case of Oliver et al. v. Kauffman et al. afforded him the opportunity to reaffirm the principles expressed in the Van Metre case, to reiterate his sentiments concerning the Hanway trial, to repeat the Moore doctrine, and defend his ruling in Ex Parte Jenkins. Oliver v. Kauffman did not arouse the excitement that its predecessors did. In fact, the only complete record of the case was later found in a Scrap Book of the Circuit Court. The lack of attention the case received in 1853, however, is now made up for in its provision of a rich illumination of Grier's philosophy, expressed in an unusual atmosphere of relative calm when compared to the extraordinary

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[7]Ibid., 1042.

politically-charged atmosphere that surrounded many other fugitive slave cases.

The plaintiffs in Oliver et al. v. Kauffman et al. were the children of Shadrach S. Oliver of Maryland, who bequeathed his estate, which included twelve slaves, to them upon his death in February, 1846. Twenty months later, the slaves escaped from Maryland to Pennsylvania, and were pursued unsuccessfully by an agent. The slaves were traced through Chambersburg into Cumberland County, where, the plaintiffs claimed, they were harbored by the defendants, Daniel Kauffman, Stephen Weakley, and Philip Breckbill. The plaintiffs laid damages at twenty thousand dollars, and the defendants pleaded "not guilty."

Since Oliver v. Kauffman dealt with the same points of law as did the Van Metre case, Justice Grier reread his charge to the jury from that previous opinion. He reiterated his conviction that the law of the land stood above conscience in cases involving rights guaranteed by the Constitution. Although warning the jury against prejudice in their decision, Grier's own bias towards the groups which vehemently attacked him following the Pittsburgh case was not camouflaged. He spoke of the "odium attached to the name of 'Abolitionist' (whether justly or unjustly, it matters not)." He also pleaded with the jury not to jeopardize the rights of the Abolitionists, despite their "insolence" and disregard for Southern rights.

The original trial of the Oliver v. Kauffman case took place before the 1851 Hanway trial, and was used by the prosecution in their argument. Grier found it the "unpleasant duty of the court" to notice

this, and proceeded to discuss the part played in the Christiana Riot by Abolitionists, stating that the "outrage" was the result of "the seditious and treasonable doctrines diligently taught by a few insane fanatics...."[8]

In Oliver v. Kauffman, Grier also attempted to clarify other clouded issues that had arisen in two years since his controversial opinion in the Hanway case. He answered the personal charges that Brent had made in his widely publicized report to Maryland's Governor Lowe. He attacked Brent, stating that the trial had been conducted mostly by the Attorney General, yet the prosecution had wholly failed in proving that Hanway was guilty of the crime of treason, with which he was charged. Grier argued that sufficient evidence existed to prove that a riot and murder had been committed, but the prosecution, not the judge, failed to indict the right persons for the proper crime. Grier's main point in this discussion was that although those who interfere with slaveholder's rights must be punished, a court could not condemn an individual just to appease the South or the state of Maryland. Grier concerned himself not only with Brent's report, but with other published official statements, "offensive documents" as he called them, which he described as "neither a correct exhibition of the good sense and feelings" of the people of Maryland, nor "of the legal knowledge and capacity of its learned and eminent bar."[9]

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[8] Oliver et al. v. Kauffman et al., 18 Fed. Cas 657, 658 (1853).

[9] Ibid., 659.

Grier, like most Northern Democrats, respected the rights of Southerners guaranteed by the Constitution, but rejected outright Southern extremist demands, finding them as unreasonable as Northern Abolitionist views. Fearing radical Southern propaganda that had been circulated since the Hanway case, would have an adverse influence on the Oliver jury, he explained to the jurors that they had to treat "ignorant and malicious vituperation of fanatics and demagogues," whether from the North or South, with "utter disregard."[10]

Finally, after many indications in past decisions of his belief that the Constitution stood above conscience, Grier finally stated forthright in Oliver v. Kauffman that:

> This constitution, and these laws enforcing it, are binding on the conscience of every good citizen and honest man, so long as he continues to be a citizen of the United States or of Pennsylvania, while Pennsylvania continues to be a member of this Union. Those who are unwilling to acknowledge the obligations which the law of the land imposes upon them should migrate to Canada, or some country whose institutions they prefer, and whose institutions do not infringe upon their tender consciences.[11]

Grier, therefore, was firmly committed to upholding the law of slavery, only because it was necessary for the preservation of the Union. Certain obligations were required from its members, which could not be repudiated if its members sought the benefits of the Union. He acknowledged that the people of Pennsylvania, on the whole, opposed the

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[10] Ibid., 659.

[11] Ibid., 661.

institution of slavery, and proved their opposition through its abolition within their borders. But they had to acknowledge the right of other states to make their own institutions, he argued, for the obligation of belonging to the Union imposed upon them a necessity to uphold the "solemn compact...made with the sister states."[12]

The credibility of Grier's Unionist argument was enhanced by another theme, previously expressed in Moore v. Illinois. Most likely, he wanted to defend Pennsylvania's sovereignty because of accusations made by a leading Pennsylvania newspaper that Grier had offended the rights of states in Ex Parte Jenkins. A duplication of a major tenet of the Moore doctrine expressed his concern for the rights of the state. Grier found it "impolicy and folly" of making Pennsylvania "a city of refuge for the refuse population." He argued that Pennsylvanians resented the transportation of foreign white paupers and criminals, and that even the compact that Pennsylvania entered into with the other states did not compel the state to submit to such a grievance. This was not inconsistent, claimed Grier, with aiding the Southern states of the Union; for when Pennsylvania repelled fugitives to protect its own population against undesirable immigration, it aided the Southerner's "covenanted right of reclamation."[13] Grier thought this formula to be a satisfactory answer not only to Pennsylvania advocates who had challenged the Jenkins doctrine, but also to Southern advocates of state rights.

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[12]Ibid., 661.

[13]Ibid., 661.

The case of Oliver v. Kauffman also answered a most basic question about Justice Grier: Was he in favor of, or did he actually oppose, the institution of slavery? In his charge to the jury, he boldly stated that "the good citizens of Pennsylvania" were opposed to slavery, but they revered the Constitution and laws of their country. Since one must assume that the Justice placed himself within the category of "good citizens," he therefore, opposed slavery. But, moral judgments for Grier, could not stand in the way of the law, when the continuance of the Union was at stake. Since the North had already compromised, allowing the existence of slavery despite its actually moral opposition to the institution, it must be allowed to continue; otherwise, the compact between the states would crumble. Although Grier disliked the enslavement of men, his first obligation was to the Union. This feeling is best revealed in Grier's praise of individuals who morally opposed slavery, yet his denunciation of Abolitionists who broke the law.

Grier despised all extremists in the nation mainly because of their potential threat to the Union. He believed that it was possible that the "unfortunate subject of slavery" had "perverted the moral sentiments" of many citizens, both in the North and the South. Slavery, Grier claimed, could originate "peculiar notions" which would be "hostile to the stability of this Union." Although he saw the extremism on both sides as an increasing phenomenon, in 1853 his belief was that the "morbid epidemic" had only affected a small number of citizens.

According to Justice Grier, activity disruptive to the stability of the Union was unpatriotic, and the actions of Abolitionist groups fitted into this category. He observed that Conventions "for plotting disunion, for defiling the graves and maligning the memories of the Patriots of the Revolution, for reviling and denouncing the officers of our government" had met with little encouragement from any persons who professed to have any regard for "religion, morality, or the law of the land." If the American citizenry would follow the advice of these Conventions, Grier argued, Civil War and bloodshed would surely follow. He hoped that the "incendiary doctrines," and the apostles who madly propagated them would meet especially little success in Pennsylvania. There was a great difference between the "friend of the Negro," who Grier claimed to admire, and the Abolitionist. Associations of philanthropists and true friends of humanity, he pointed out, existed since the day of Benjamin Franklin. These groups performed useful social functions such as to protect the "colored man" from the "oppressive grasp of the kidnapper" and to "elevate his character." These "friends of religion and humanity," however, "have no connection with those unhappy agitators who infest other portions of the Union, and with mad zeal, are plotting its ruin."[14]

Concerning the major issue of the case, Justice Grier's interpretation of "harboring and concealing" in Oliver v. Kauffman went beyond that of Van Metre v. Mitchell. In the Oliver case, he broadened

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[14]Ibid., 661.

his argument to include the constitutional issue of property rights. He relied upon the historical examples of the Jewish Code and also cited cases concerning harboring of an apprentice from a master under the common law. In the latter, claimed Grier, "the law gave an action on the case to the master, because it considered it a wrong or injury to the master that his neighbor should encourage or protect his absconding apprentice, instead of sending him back to his master." The Jewish Code, he repeated, did not require that an escaped foreign slave be delivered to his master. The conclusion from these two examples was that if the states of the United States continued to be independent governments, foreign to each other, the state of Pennsylvania would not be bound to deliver a fugitive slave to another state. But, claimed Grier, one of the great objects of the Union, which all citizens were bound to support, and the Constitution, which was the supreme law of the land, was to make the people into one nation. He added that it was well known "that the Southern states would not have become parties to this Union, but for the solemn compact of the other states to protect their rights in this species of property."[15]

Since the points of law in Oliver v. Kauffman were the same as those in Van Metre v. Mitchell, the charge to the jury by Justice Grier in the latter was a repetition of the former; again, he cited Justice McLean's opinion in Jones v. Van Zandt. His final words in the Oliver case clearly expressed his confidence in the impartiality of the

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[15] Ibid., 661.

American judicial system, for Grier undoubtedly thought that the federal judiciary was the most capable branch of government to deal effectively with the problem of slavery. Although he was firmly committed to the principle that "equal and exact justice should be meted out both to master and servant, --to slaveholder and Abolitionist,"[16] Grier felt that the Union depended upon respect for the law by all members of the compart.

In the Oliver case, conflicting evidence made a decision more difficult than in the Van Metre case. The jury failed to reach unanimity, and Justice Grier discharged it. Beyond this failure, the case revealed a great deal about Robert Grier; it presented an opportunity for him to clearly express the ideal of Unionism, and helps the historian to better understand why Grier voted in favor of the Dred Scott decision. His most fundamental commitment was to national harmony, which he strongly advocated for twenty-three years as an Associate Justice. His early Third Circuit Court opinions proved that he had neither a particular bias against Negroes, or a peculiar love of the South, or a great fondness of the institution of slavery. Rather, in the years of increasing sectional conflict, Grier believed that the only possibility of keeping the Union together was for the North to respect the rights guaranteed to the South by the Constitution. Three years later, in Dred Scott v. Sanford Grier's vote reaffirmed this belief.

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[16] Ibid., 664.

A principle of the Jacksonian faith had been violated when the United States Supreme Court decided, against the original persuasions of Associate Justice Grier, to make its broad ruling in the Dred Scott Case.[17] The Court, composed of seven Democrats, five of them Southern, had gained respect and dignity in the past two decades under the leadership of Chief Justice Taney, and the Court appeared to newly elected President James Buchanan as an ideal place to dispose of the troublesome, unresolved popular sovereignty question. Although Grier disagreed at first with such an undertaking, urging judicial restraint,[18] he finally agreed with Buchanan on the national benefits of a judicial decision concerning the Missouri Compromise. The burden of his participation in the case was large, but the Pennsylvania Justice was willing to risk his own and the Court's prestige in the cause of preserving the Union. Aware that his many Northern critics would attack the Court's Southern based decision and his participation in it, Grier, nevertheless, strongly believed that the federal judiciary could mediate the issues in the case of Dred Scott v. Sanford satisfactorily. After the prompting of the President and other justices, he overcame his initial opposition to the resolving of a controversial national slave case, and was convinced that the Supreme Court could reach a successful conclusion, as he had managed in fugitive slave cases that arose in the Third Circuit Court during the early 1850's. He had weighed the alternatives carefully before agreeing

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[17]For a full comprehension of the Dred Scott Case see Vincent C. Hopkins, Dred Scott's Case (New York: Atheneum, 1967); and 19 How 469 (1856)

[18]Robert Grier to James Buchanan, February 23, 1857, Dickinson College.

to participation in the infamous decision, but overcame his reluctance when convinced of the sincerity of President-elect Buchanan's request for his needed assistance. Despite hesitations, Grier found it difficult to turn down the first request of a man of similar party and state in whom the electorate had just expressed their confidence.

Buchanan became aware of Grier's adamant attitude through his well-known correspondence with Justice Catron. The Tennessee jurist informed the President-elect that the majority of the Court was forced to decide on the Missouri Compromise question by the two dissenters, Justices McLean and Curtis. Catron was concerned that Grier should not occupy "so doubtful a ground." The Pennsylvania Justice, he claimed, had been persuaded "to take the smooth handle for the sake of repose."[19] In conference, Grier did not explain his views to the other justices, and Catron, who was attempting to maneuver the Court into a pro-Southern decision, wrote to Buchanan to urge him to inform Grier "how necessary it is--and how good the opportunity is to settle the agitation by an affirmative decision of the Supreme Court, the one way or the other."[20] Catron wanted to indirectly influence Grier to vote with the Southern justices, because he knew that Grier would not vote with the South merely to appease that section. He knew that the opinion of the President-elect would be more convincing than the arguments of the other justices.

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[19]Philip Auchampaugh, "James Buchanan, The Court and the Dred Scott Case," Tennessee Historical Magazine, IX (1926), 226.

[20]James Buchanan, Works, X, 106, in Nevins, The Emergence of Lincoln, p. 110.

Buchanan, convinced that Catron's suggestion would prove to be a mutual political benefit, wrote to Grier, urging him of the necessity of the Court's decision.[21] Although Grier had not always agreed with Buchanan in the past, he was impressed with the idea that he could play a crucial role in the diffusion of a potential political explosion. He viewed the President as the greatest unifying force in the nation, and, therefore, put aside his hesitations about ruling on the Missouri Compromise in the Dred Scott Case. He was willing to gamble his prestige and the power of the Court to alleviate the pressure which Buchanan claimed had been building in the nation. Although the Dred Scott decision would activate extremists, especially in the North, Grier finally decided that it would be a positive investment in uniting a nation that had been steadily drifting apart since the passage of the Fugitive Slave Act in 1850.

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[21]This letter has been lost, but the content can be assumed from the response of Grier to Buchanan, November 23, 1857, Buchanan Papers, Dickinson College.

They have cast their allegiance and made war on their government, and are none the less enemies because they are traitors.

Robert Grier
The Prize Cases

CHAPTER V

THE TRIUMPH OF UNIONISM

In the 1860's, Justice Grier continued to carry out his determination to uphold the Union through strong support of the federal government. During the decade of the 1850's he had come to terms with the meaning of Unionism, the threat of secession, and the definition of treason. But it was not until the beginning of the next decade that these abstract concepts took on real significance, when the outbreak of Civil War in the nation tested the principles which he had earlier expounded as a federal circuit judge and Associate Justice of the Supreme Court. Grier, who faced with the possibility of the demise of the government which he had served for almost three decades, reaffirmed his commitment to the Union by supporting the words and deeds of those men who equally shared his sense of duty.

As early as December 29, 1860, a few days after the South Carolina secession convention, Justice Grier revealed that he had become disturbed by the political affairs of the nation, for in the past four years the nation had grown farther apart during the Presidency of Buchanan. He explained that the situation in the country was getting "worse and worse," and he placed the blame for a movement towards anarchy upon

Buchanan's cabinet. Grier claimed that Buchanan was "wholly unequal to the occasion," and judged the men who surrounded the President as "enemies of the Union." In these pronouncements, he did not sound like a man who had been denounced as a prop of the Taney Court, friend of the Southern secessionists, and servant of Buchanan. Rather, he had become increasingly more vocal about his disillusionment with Buchanan's administration, which had grown from the early days of his administration. His rapport with the executive branch had been shaken through the events of the years following the Dred Scott decision. Grier had voted for the Dred Scott decision, because he believed that it would have strengthened the faltering Union. Now, he felt that despite the efforts of the judiciary to enable the continuation of the United States, the executive branch, under Buchanan's leadership, had grossly failed. "We are governed by fools and knaves," he wrote a friend, "and we have not a 'man' for the occasion." The Justice's attack upon Buchanan and his administration was bitter and personal. After dining with the President a few days after Christmas in 1860, he came to the conclusion that the Chief Executive was getting "very 'old' --very fast." Buchanan's predicament was a combination of having fallen on evil times and confiding in his enemies. John B. Floyd, Secretary of War, was singled out by Grier as a "traitor and one who has conducted his office in a manner to disgrace this administration and plunder the country."[1] Floyd, a careless and inefficient Secretary, had been

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[1]Robert C. Grier to Audrey H. Smith, December 29, 1860, "Special Collections" of the Morris Room, Dickinson College. Grier's primary purpose in writing the letter was to try to collect a debt of one

connected during his four year term with loose dealing and corruption.[2] Grier thought that through his unethical and disloyal practices, Floyd had been plotting the nation's destruction, and saw Buchanan's hesitation to dismiss the "menacing individual" as a sign of the President's weakness and lack of commitment to the Union. Grier confided that he would not be astonished, from what he heard privately, if Floyd was arrested and Buchanan impeached within the next two months. He claimed that due to a lack of leadership in the nation, the cabinet could break up within ten days, leaving the country without a government.[3]

But, Grier only partially attributed the coming national disaster to the Buchanan administration. A more fundamental cause of the nation's growing weakness appeared to him to be "extremism" in both sections of the country. Although he was unclear about who these fanatics might have been, he claimed that a conspiracy existed between "the scoundrels North and South," who were "working together to divide the Union." Disunion, he argued, would destroy the mutual benefits of the nation, and would certainly be followed by "civil war--servile war and ruin and misery to both parties." The simple solution to the problem, according to this life-long Democrat, was for the people to rise in their majority

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[1](Continued) thousand dollars owed to him by a railroad company. The reason he wanted to precipitate payment was his fear that his next quarterly salary payment would be the last he would receive from the United States Government.

[2]Roy Franklin Nichols, The Disruption of American Democracy (New York: The Free Press, 1948), p. 418.

[3]Grier to Smith, December 29, 1860.

and rebuke the extremists, or else expect everything to go to ruin.[4] His own contribution would be made through court decrees in which he would participate in the months ahead.

Grier's prophecy of disunion shortly thereafter became a reality with the outbreak of hostilities between the North and South in 1861. On October 25, six months after the bombardment of Fort Sumter and three months following the demoralization of Federal troops at the first battle of Bull Run, the case of the United States v. William Smith came before the Third District Court of the Third Circuit in Philadelphia where District Judge John Cadwalader and Circuit Justice Grier presided. This presented an ideal opportunity for Grier to express his hardened views on the indissoluble nature of the Union, a concept Andrew Jackson had promoted three decades earlier.

In the case, William Smith, a Confederate privateer, was charged with the crime of piracy, but Smith's counsel argued his innocence on the grounds that he acted lawfully under authority granted to him by the Confederacy. In his charge to the jury, Justice Grier disagreed, and he took the opportunity to state his convictions concerning interference with federal authority, upon which he rested his famous opinion in the Prize Cases two years later. In addition to setting forth points of law concerning piracy, Grier's opinion reached out to include the international legal principles of "civil war" and "rights of insurgents."

In arguing the case, Furman Sheppard, counsel for the defense, contended that, although property may be violently taken on the high

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[4]Ibid.

seas, if it is done by authority of a state in prosecution of a war against another state, the persons action under such authority are not guilty of piracy, and cannot be punished as such. The judge claimed in his charge to the jury that there was no doubt about this contention, for the definition of piracy was "depredation on or near the sea without authority from any prince or state."

Grier rejected the implication that Smith was acting for a sovereign power, the Confederacy. He argued that it did not follow that every band of conspirators who combined together for the purpose of rebellion or revolution or overturning the government of which they were citizens or subjects, became 'ipso facto' a separate and independent member of the great family of sovereign states. This statement represented a total rejection of the existence of the Confederacy as an independent, sovereign authority by the federal court and by Justice Grier, who concluded the following:

> A successful rebellion may be termed a revolution, but until it becomes such it has no claim to be recognized as a member of the family, or exercise the rights or enjoy the privileges consequent on sovereignty.[5]

In October, 1861, Grier did not feel that the southern states' attempted rebellion against the federal authority of the United States had been a successful revolution, and therefore found the Confederacy unworthy of legal recognition as a sovereign power.

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[5]United States v. William Smith, 27 Fed. Cas. 1135. (1861). This case, heard by Grier in the Third Circuit Court should not be confused with the Prize Case, a Supreme Court majority opinion he wrote two years later.

This raised the question in Grier's mind of how the courts of the United States should determine the legitimacy of the Confederacy. He answered the question by stating that when a civil war raged in a nation, and one part separated from the old government and established a distinct government, the courts of the United States had to view such a contested government as it was viewed by the legislative and executive branches of the federal government. All governments, claimed Grier, were bound by the "law of self-preservation" to suppress insurrections. Neither the number, nor the power of the insurgents who carried on a civil war against their legitimate sovereign power entitled them to be considered a state. The fact that a Civil War existed for the purpose of suppressing a rebellion was proof to Grier that the United States refused to accept the right of the Southern states to be considered sovereign. Consequently, Grier saw his Court's function as the execution of the laws of the United States, and viewed those in rebellion as traitors to their country. This was an offense which Grier had refused to apply to Abolitionists in the Hanway case a decade earlier, but one which he did not hesitate to apply to "those who plunder the property of our citizens on the high seas as pirates and robbers."[6]

The Smith case provided a preview of Grier's greatest decision as a Supreme Court Justice. He would not tolerate actual secession by the Southern States from the Union, and was willing to support an unyielding President and Congress on the crucial issue. As the situation grew worse in the next two years, Grier prepared for his most

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[6]Ibid., 1136.

important contribution to the Union. The Prize Cases, the product of Grier's genius, has been characterized as the most significant decision handed down during the Civil War.[7] In the majority opinion, he rose above partisan and sectional politics, and emphatically forced his philosophy of Unionism upon the divided nation.

The issues of the Prize Cases centered around the events following April 19, 1861, a week after the bombardment of Fort Sumter, when President Lincoln, to prevent the South from access to foreign markets, had ordered a blockade of southern ports. It was not until July 13, 1861, when Congress was in session, that approval of this action was given. During the three months, the United States government, as a result of the blockade of the entire Confederate coast line, had seized a number of ships and condemned their contents as prizes. Lincoln contended, however, that the existing conflict was an insurrection and not a war; therefore, he claimed the Confederacy could not be recognized as a belligerent state. He wanted to enjoy the advantage of international law regarding prizes, yet deny a state of war existed for other purposes such as the possible intervention of foreign powers.

The political questions presented in the Prize Cases were similar in intricacy and complexity as those which were presented in the Dred Scott decision. In both cases the executive branch made clear its stand on the issues to be decided, and in both cases, although the results were favorable to the President, the Court's decree was far from a unanimous mandate. In the Prize Cases, timing was the most crucial factor

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[7]Silver, Lincoln's Supreme Court, p. 109.

in determining the final outcome. For in 1862, when it was possible for the cases to be heard, two vacancies existed on the Taney Court. By 1863, two Lincoln appointees had been added, providing the necessary majority that upheld his blockade. It was the delaying tactics of Attorney General Edward Bates that allowed this development to occur. Until arguments before the Supreme Court began in the Prize Cases, two years had lapsed since the outbreak of hostilities between the North and South. Since there were many prize cases pending before the Court, the Court granted permission for the following four cases to be heard "en bloc": The Brig Amy Warwick, The Schooner Crenshaw, The Barque Hiawatha, and The Schooner Brillante. Argument of the cases continued for almost two weeks. Richard H. Dana, Jr., district attorney from Massachusetts brilliantly performed for the government and most likely saved the government from a catastrophic defeat.[8]

It was crucial for Dana to strike a delicate balance in his arguments to win over at least two justices in addition to Justices Noah Swayne, Samuel Miller, and David Davis, all Lincoln appointees who certainly would support the President. He set forth the government's major contention that if the power with which you are at war has interest in the transit, arrival, or existence of a ship, as to make its capture one of the fair modes of coercion, you may take it. War, according to the Massachusetts attorney general, was a "state of things," and Congress did not have to declare it. The President could exercise war powers without such a declaration, for he has the authority to "repel

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[8]Ibid., p. 109; The Prize Cases, 2 Black 635 (1863).

war with war." In doing so, the President was exercising the nation's rights as a belligerent power. These rights, however, did not apply to the Confederacy, for a sovereign nation's rights were different from those of the insurgents.[9]

Dana's forceful and logical argument won the support of two Democratic Justices, Grier and James Wayne, who had voted affirmative in the Dred Scott case. Both held similar views to the government's position. Chief Justice Taney, who disagreed with the majority, chose Justice Grier to write the majority opinion, since the three Lincoln appointees were newcomers to the Court, and Wayne was a Southerner. Grier's tenure of seventeen years as a loyal member of the Taney Court had earned for him the respect of Taney, and gave him the distinction of delivering an important written majority opinion in opposition to the Chief Justice and other justices whom he had so often concurred with on previous crucial votes. Taney absented himself from Grier's reading of the opinion, and Justice John Catron, a member of the Taney Court since a year after its inception, retired from the bench before the reading was finished.[10]

Grier's disagreement with the Chief Justice and acquiescence to the President's wishes in the Prize Cases was consistent with his actions both before and after the case. Previously, it had been the Associate Justice's policy to accept arguments which he thought to

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[9]The Prize Cases, 2 Black 635, passim (1863). Also cited in Silver, Lincoln's Supreme Court, pp. 110-11.

[10]See: New York World, March 11, 1863, and New York Tribune, March 11, 1863.

favor continuance of a harmonious union. He attempted throughout the 1850's in the fugitive slave cases to accomplish this goal, and in the Smith case demonstrated how far he was willing to bend, in the face of open warfare, to promote unity. By 1863, however, he had become thoroughly convinced that only if the federal government, which his allegiance was firmly pledged to by a lifetime of public service, was victorious could a lasting Union be cemented. Therefore, in the Prize Cases he rejected the notion that a war must be declared, and defined war as "that state in which a nation prosecutes its right by force."[11] Grier's patience had worn thin, and like the majority of Northerners, he, too, felt the time had come for a showdown of political and military force.

Before addressing himself to the particulars of the four cases appealed before the Court, he explained that two propositions of law affecting the ultimate decision on them had to be discussed and decided. They were, first, "Had the President a right to institute a blockade of ports in possession of persons in armed rebellion against the Government, on the principles of international law, as known and acknowledged among civilized States?" Second, "Was the property of persons domiciled or residing within those States a proper subject of capture...on the sea as enemies' property." His opinion of the former matter was dealt with at length, and comprised the heart of his ruling; the latter received less attention.

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[11] 2 Black 635, 666.

Grier answered the first question in the affirmative, claiming that Lincoln's action was legally correct and supported by the powers delegated by the Constitution to the President as interpreted by previous legislation. He explained:

> He has no power to initiate or declare a war either against a foreign nation or domestic State. But by the Acts of Congress of February 28th, 1795, and 3rd of March, 1807, he is authorized to call out the militia and use the military and naval forces of the United States in case of invasion by foreign nations and to suppress insurrection against the government of a State or of the United States.[12]

Grier further contended that although the President cannot initiate war, he is bound to accept the challenge without any special legislative authority. Despite the fact that the hostile party in this case was a group of states in rebellion, rather than a foreign invader, a state of war existed through a "unilateral" declaration. The duties of the Presidency bound Lincoln to meet with force the challenge to the United States "in the shape it presented itself, without waiting for Congress to baptize it with a name; and no name given to it by him or them could change the fact."

The opinion in the Prize Cases of Grier was his personal declaration of war against the South. His concern was the "de facto" existence of a civil war which began by an insurrection against the lawful authority of the Government. Therefore, in his agreement with the administration the President had the authority to institute a blockade, he also found it necessary to face squarely the fact that

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[12]Ibid., 668.

war existed. His rationale was bolder and more imaginative than his opinion in the United States v. William Smith:

> A civil war is never solemnly declared; it becomes such by its accidents — the number, power, and organization of the persons who originate and carry it on. When the party in rebellion occupy and hold in a hostile manner a certain portion of territory; have declared their independence; has cast off their allegiance; have organized armies; have commenced hostilities against their former sovereign, the world acknowledges them as belligerents, and the contest a 'war'.[13]

Grier used common law, as well as common sense, to justify his position on the existence of a civil war. He argued that when the Courts of Justice cannot be kept open and the regular course of justice is interrupted by revolt, rebellion, or insurrection, by the sages of common law, civil war exists. Concurring with this fact, Grier found that the very proclamation of a blockade was "itself official and conclusive evidence to the Court that a state of war existed which demanded and authorized a recourse to such a measure, under the circumstances peculiar to the case."

The Associate Justice also settled the question of the conflict that might have arisen as to the belligerent rights of sovereignty that the Confederacy might have had in wartime. He had denied to the administration the privilege of calling the conflict merely an insurrection, and he labeled the struggle a "war." However, he further concluded that "it is not necessary that the independence of the

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[13] Ibid., 666.

revolted province or State be acknowledged in order to constitute it a party belligerent in a war according to the laws of nations." He refused to have the Government's power's crippled by "subtle definitions and ingenious sophisms" through the "technical ignorance of the existence of war." He viewed the conflict as "the greatest civil war known in the history of the human race," and feared the human consequences resulting from it. The compassion for all of his countrymen, both North and South, is reflected in his decision, and certainly was a consideration in his mind. It was only necessary to concede to the Confederacy the belligerent right of exchanging prisoners to "mitigate the cruelties and misery produced by the scourge of war."

On the second question of "enemy property," Grier again upheld the administration's basic contention. He argued that in organizing their rebellion, the Confederate South "acted as States" and claimed sovereignty over all persons and property within their limits; this claim would be decided by the wager of battle. He regarded the territory and ports of the South as held in hostility to the "General Government," and contended that the Confederacy "is no loose, unorganized insurrection" without boundary or possessions. Rather, Grier explained that it had a boundary marked by a line of bayonets, south of which was the enemies' territory, because an "organized, hostile, and belligerent power" claimed and held the territory. Therefore, he reached the conclusion that all persons residing within this territory whose property may have been used to increase the revenues of the hostile power could be treated as that of enemies. They had cast off their allegiance and

therefore had to be considered as enemies and traitors by the United States Government. Finally, he stated that whether property be liable to capture as "enemies' property" did not depend on the personal allegiance of the owner. Rather,

> It is the illegal traffic that stamps it as 'enemies' property'. It is of no consequence whether it belongs to an ally or citizen. The owner, 'pro hac vice,' is an enemy.[14]

Having set forth the principles of law in the Prize Cases, Justice Grier simply applied them to the facts of the cases, reaching similar conclusions in all four. Since the claimants of The Amy Warwick were all Virginia residents, the contents of the ship, when seized, constituted legal prize. The Brillante, The Hiawatha, and The Crenshaw were all condemned for attempting to navigate through the blockade.

The dissenters, Taney, Catron, Clifford, and Nelson all concluded that until the act of Congress on July 13 only an insurrection existed. The dissenting opinion, written by Nelson concluded that the conflict from April to July was a "personal war" of President Lincoln, who should have waited for a declaration of war from the Congress. They argued that no citizen "can be punished in his person or property unless he has committed some offense against a law of Congress passed before the act was committed, which made it a crime, and defined the punishment."[15]

Despite the vigorous protest of the minority, the loudest and clearest voice of the Prize Cases was that of Justice Grier. His

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[14]Ibid., 674.

[15]Ibid., 690.

devotion to the Union, expressed on numerous, previous occasions was reaffirmed in the greatest judicial crisis of the Civil War. His vote and opinion played a crucial role in a decision that "reinvigorated a nation that had seen much tragedy and defeat for two long years." Silver argues that "a defeat at the hands of the Court at this time would have shattered the morale of the Union." He regards Grier and the four justices who concurred in his majority opinion as "men whose devotion to the Union succored it during this time of unparalleled challenge."[16]

Robert Grier served the nation in a difficult and troubled time, yet he never forgot his basic mission. Throughout the 1850's, as the sectional crisis continued to grow, he attempted to use his authority as an Associate Justice of the Supreme Court and Circuit Court Justice to relieve the nation of some of the frustrations it had been experiencing. The duties he performed in the Third Circuit in adjudicating issues of the fugitive slave acts were important not only in the state of Pennsylvania, but also in the nation. His greatest decision, The Prize Cases, demonstrated the commitment to which he had adhered for the previous decade. This allegiance was neither pledged to a political organization or to any one section of the country. Rather, Grier stood for the Union, as Andrew Jackson did in the 1830's. Afforded the tenure of a position in the federal judiciary, political considerations did not affect his crucial decisions; his philosophy of Unionism represented an extension of Andrew Jackson's interpretation of the concept expressed during the Nullification Controversy. In a much greater political

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[16]Silver, Lincoln's Supreme Court, pp. 110-11.

conflict, Justice Grier withstood the temptation of loyalty to only the party which he owed the fortune of his high position. Instead, he supported President Lincoln in 1863, as he had supported the fugitive slave acts during the 1850's, and the wishes of President Buchanan in 1856. He resented the attempts of any citizen who contributed to disunion—Northerner, Southerner, Abolitionist, fire-eater, or politician of either party. He personally disagreed with the institution of slavery, but subordinated his personal, moral, and political views to the constitutional obligation, which he felt bound all citizens of the indissoluble Union.

APPENDIX I

U.S. Supreme Court Written Majority Opinions - Robert Grier

Case	Citation	Year	Dissenting Justices	State of Lower Court	Affirm or Reverse
Walker v. Taylor	5 How 64	1847		Kentucky	A
Cook v. Moffat et al.	5 How 295	1847	Woodbury	New York	A
Comm. Bank of Conn. v. Buckingham's Executors	5 How 317	1847		Ohio (S.C.)	D
Stacy v. Thresher	6 How 45	1848	McLean & Wayne	Louisiana	R
Curtis et al. v. Innerarity	6 How 147			Florida (territory)	A
Bowling v. Harrison	6 How 248	1848		Mississippi	A
Sheppard et al. v. Wilson	6 How 260	1848		Iowa (terr.)	A
Bush v. Marshall et al.	6 How 284	1848		Iowa	A
Wagner et al. Baird	7 How 234	1849		Ohio	A
Norris v. City of Boston	7 How 455	1849		Mass.	R
Peck et al. v. Jenness et al.	7 How 612	1849		New Hampshire	A
Colby v. Ledden	7 How 626	1849		New Hampshire	A
Shauhan et al. v. Wherritt	7 How 627	1849		Kentucky	A

Case	Citation	Year	Dissenting Justices	State of Lower Court	Affirm or Reverse
Stearns v. Page	7 How 819	1849		Maine	A
Williams v. Benedict	8 How 107	1850		Mississippi	R
Phalen v. Virginia	8 How 163	1850		Virginia	A
Reed v. Proprietors of Locks and Canals	8 How 275	1850		Mass.	A
Sheldon et al. v. Still	8 How 441	1850		Michigan	R
Prentice v. Zane's Administrator	8 How 470	1850	McLean, Wayne, Woodbury	Virginia	A
U.S. v. Price	9 How 83	1850	McLean, Woodbury	Pennsylvania	A
Strader et al. v. Baldwin	9 How 261	1850		Ohio	D
Humphreys v. Leggett et al.	9 How 297	1850		Mississippi	R
Atkinson's Lessee v. Cummins	9 How 479	1850		Pennsylvania	A
Bayard v. Lombard et al.	9 How 530	1850		Pennsylvania	A
Hallett v. Collins	10 How 174	1850		Alabama	A
Steam Packet Co. v. Sickles et al.	10 How 419	1850		D. of Col.	R
Cotton v. U.S.	11 How 229	1850		Florida	A

Case	Citation	Year	Dissenting Justices	State of Lower Court	Affirm or Reverse
Parks v. Ross	11 How 302	1850		D. of Col.	A
Randon v. Toby	11 How 493	1850		Texas	A
Gill v. Oliver's Executors et al.	11 How 529	1850	McLean,Taney, Wayne, Woodbury	Maryland	R
Dorsey v. Packwood	12 How 127	1851			
Dundes et al. v. Hitchcock	12 How 256	1851		Alabama	R
Union Bank of Louisiana v. Stafford et al.	12 How 327	1851		Texas	R
New Orleans Canal and Banking Co. v. Stafford	12 How 343	1851		Texas	R
U.S. v. Simon	12 How 433	1851		Louisiana	R
The Richmond and c. Railroad Co. v. The Louisa Railroad Co.	13 How 71	1851	McLean, Wayne, Curtis	Virginia	A
Weems v. George	13 How 191	1851		Louisiana	A
Walsh et al. v. Rogers et al.	13 How 283	1851		Louisiana	A
Day v. Woodworth et al.	13 How 363	1851		Mass.	A
Pillow v. Roberts	13 How 472	1851		Alabama	R
Moore v. Illinois	14 How 13	1852		Illinois	A

Case	Citation	Year	Dissenting Justices	State of Lower Court	Affirm or Reverse
Rundle et al. v. Delaware and Raritan Canal Co.	14 How 80	1852		New Jersey	A
Doss et al. v. Tyack et al.	14 How 297	1852		Texas	A
Winder v. Caldwell	14 How 435	1852		Dist. of Col.	R
Phila. and Reading Railroad Co. v. Derby	14 How 468	1852		Pennsylvania	A
Doolittle's Lessee et al. v. Bryan et al.	14 How 563	1852		Ohio	A
Boyden v. Burke	14 How 575	1852		D. of Col.	R
Deacon v. Oliver	14 How 611	1852		Maryland	A
U.S. v. Ducros et al.	15 How 38	1853		Louisiana	R
Rockhill et al. v. Hanna et al.	15 How 189	1853		Indiana	R
Corning et al. v. Burden	15 How 252	1853		New York	R
Corning et al. v. The Troy Iron and Nail Factory	15 How 451	1853		Louisiana	A
Yerger v. Jones	16 How 30	1853		Alabama	A
Piquignot v. The Pennsylvania Railroad	16 How 104	1853		Pennsylvania	A
Marshall v. Band O. Railroad	16 How 314	1853		Maryland	A

Case	Citation	Year	Dissenting Justices	State of Lower Court	Affirm or Reverse
Irwin v. U.S.	16 How 513	1853		Pennsylvania	A
Barney v. Saunders et al.	16 How 535	1853		D. of Col.	R
The Propeller Monticello v. Mollison	17 How 152	1854		New York	A
Burchell v. Marsh et al.	17 How 345	1854		Illinois	R
Adams et al. v. Law	17 How 417	1854		D. of Col.	A
The City of Boston v. Lecraw	17 How 426	1854	Daniel	Rhode Island	R
Minturn v. Maynard	17 How 477	1854		California	A
Webb et al. v. Den	17 How 576	1854		Tennessee	A
Dennistown et al. v. Stewart	17 How 607	1854		Alabama	R
Lewis v. Bell	17 How 617	1854		D. of Col.	A
Graham v. Bayne	18 How 6D	1855		Illinois	R
U.S. v. Jones	18 How 92	1855	Catron & Daniel	D. of Col.	R
Guild et al. v. Frontin	18 How 135	1855		California	A
Parker et al. v. Overman	18 How 137	1855		Arkansas	R
Griffith et al. v. Bogert et al.	18 How 158	1855		Missouri	A

Case	Citation	Year	Dissenting Justices	State of Lower Court	Affirm or Reverse
Abbott et ux. v. Essex Co.	18 How 203	1855		Mass.	A
Calcote v. Stanton et al.	18 How 243	1855		Mississippi	D
Orton v. Smith	18 How 263	1855		Wisconsin	R
Ward v. Peck et al.	18 How 267	1855	Daniel	Louisiana	A
Connor v. Peugh's Lessee	18 How 394	1855		D. of Col.	D
South et al. v. State of Maryland, Use of Pottle	18 How 396	1855		Maryland	R
Arguello et al. v. The United States	18 How 539	1855	Daniel	California	A
U.S. v. Cruz Cervantes	18 How 553	1855	Daniel	California	A
U.S. v. Maca et al.	18 How 556	1855	Daniel	California	A
Pease v. Peck	18 How 595	1855	Cambell & Daniel	Michigan	A
Vandewater v. Mills	19 How 82	1856		California	A
U.S. v. Brig Neurea	19 How 92	1856		California	R
Post et al. v. Jones	19 How 150	1856		New York	R
Richardson v. City of Boston	19 How 263	1856		Mass.	R
U.S. v. Peralta et al.	19 How 343	1856	Daniel	California	A

Case	Citation	Year	Dissenting Justices	State of Lower Court	Affirm or Reverse
U.S. v. Sutherland et al.	19 How 363	1856	Daniel	California	A
Michigan Central Railroad Co. v. Michigan Southern Railroad Co. et al.	19 How 378	1856		Mich. (S.C.)	A
DRED SCOTT V. STANFORD	19 How 469	1856	(concurs with Nelson)	Missouri	R
Morgan v. Curtenius	20 How 1	1857		Illinois	A
Bacon et al. v. Howard	20 How 22	1857		Texas	A
Smith v. Corp. of Washington	20 How 135	1857		D. of Col.	A
Fisher v. Haldeman et al.	20 How 186	1857		Pennsylvania	A
Jackson et al. v. Steamboat Magnolia	20 How 296	1857	Catron,Daniel, Cambell	Alabama	R
McCormick v. Talcott	20 How 403	1857	Daniel	Illinois	A
Brown v. Wiley et al.	20 How 443	1857		Texas	A
Roberts v. Cooper	20 How 467	1857		Michigan	A
Moreland v. Page	20 How 522	1857		Iowa (S.C.)	D
McFaul v. Ramsey	20 How 523	1857		Iowa	A
Winans v. N.Y. and Erie Railroad Co.	21 How 89	1858	Daniel	New York	A

Case	Citation	Year	Dissenting Justices	State of Lower Court	Affirm or Reverse
Hill v. Smith et al.	21 How 283	1858		Indiana	R
State of New York v. Dibble	21 How 366	1858		New York	A
Martin v. Ihonsen	21 How 394	1858		Louisiana	A
Sturgis v. Clough et al.	21 How 451	1858		New York	R
Walker v. Smith	21 How 579	1858		D. of Col.	A
Cucullu v. Emmerling	22 How 83	1859		Louisiana	A
Roach et al. v. Chapman et al.	22 How 129	1859		Louisiana	A
Bondies v. Sherwood et al.	22 How 215	1859		Texas	D
Ward v. Thompson	22 How 331	1859		Michigan	A
Ogilvie et al. v. Knox Ins. Co. et al.	22 How 381	1859		Indiana	R
Thompson et al. v. Lessee of Carroll et al.	22 How 422	1859		D. of Col.	R
Dalton v. United States	22 How 436	1859		California	R
Richardson et al. v. Goddard et al.	23 How 37	1859		Mass.	R
Ogden v. Parsons et al.	23 How 167	1859		New York	A

Case	Citation	Year	Dissenting Justices	State of Lower Court	Affirm or Reverse
Phila., Wil. and Balt. R. Co. v. Phila. and Havre de grace Steam Towboat Co.	23 How 209	1859		Maryland	A
United States v. White	23 How 249	1859		California	R
Haney et al. v. Balt. Steam Packet Co.	23 How 287	1859	Taney	Pennsylvania	R
Sutton et al. v. Bancroft	23 How 320	1859		Arkansas	A
Green v. Custand	23 How 484	1859		Texas	R
Corp. of New York v. Ransom et al.	23 How 487	1859		New York	D
Morewood et al. v. Enequist	23 How 491	1859		New York	A
Luco et al. v. United States	23 How 515	1859		California	A
Palmer et al. v. United States	24 How 125	1860		California	A
Richardson v. City of Boston	24 How 189	1860		Rhode Island	A
Thompson et al. v. Roberts et al.	24 How 233	1860		Maryland	A
Greer et al. v. Mezes et al.	24 How 269	1860		California	A
Fackler v. Ford et al.	24 How 323	1860		Kansas (terr.)	R
The Board of Commissioners of Knox County v. Aspinwall et al.	24 How 377	1860		Indiana	A

Case	Citation	Year	Dissenting Justices	State of Lower Court	Affirm or Reverse
Medberry et al. v. State of Ohio	24 How 413	1860		Ohio	D
Porter et al. v. Foley	24 How 415	1860		Kentucky	A
United States v. Hensley	1 Black 35	1861		California	R
Hagg v. Ruffner	1 Black 115	1861		Indiana	R
The Island City	1 Black 121	1861		Mass.	A
Hodge v. Combs	1 Black 192	1861		D. of Col.	A
Atty General v. Federal Street Meeting-house	1 Black 262	1861		Mass.	D
U.S. v. Neleigh	1 Black 299	1861		California	R
Farni v. Tesson	1 Black 309	1861		Illinois	R
Singleton v. Touchard	1 Black 343	1861		California	A
The Ship Marcellus	1 Black 414	1861		Mass.	A
Cleveland v. Chamberlain	1 Black 419	1861		Wisconsin	D
Washington & Turner v. Ogden	1 Black 450	1861		Illinois	R
Verden v. Coleman	1 Black 472	1861		Indiana	D
The Water Witch	1 Black 494	1861		New York	A
White's Administrator v. The United States	1 Black 501	1861		California	R

Case	Citation	Year	Dissenting Justices	State of Lower Court	Affirm or Reverse
Law v. Cross	1 Black 533	1861		New York	A
Glasgow et al. v. Hortiz et al.	1 Black 595	1861		Missouri	A
King v. Ackerman	2 Black 409	1862		New York	A
Chilton v. Braiden's Administrators	2 Black 458	1862		D. of Col.	A
The Ship Potomac	2 Black 581	1862		New York	A
U.S. v. Grimes	2 Black 611	1862		California	R
THE PRIZE CASES	2 Black 635	1862	Nelson, Taney, Catron, Clifford	Southern States	A
Cross v. De Valle	1 Wallace 5	1863		Rhode Island	A
Mercer County v. Hacket	1 Wall. 83	1863		Pennsylvania	A
Sturgis v. Clough	1 Wall. 269	1863		New York	A
Seybert v. City of Pittsburgh	1 Wall. 272	1863		Pennsylvania	A
U.S. v. Johnson	1 Wall. 326	1863		California	A
Burr v. Duryee	1 Wall. 531	1863		New Jersey	A
Badger v. Badger	2 Wall. 87	1864		Mass.	A
Freedom v. Smith	2 Wall. 160	1864		Nevada Terr.	A

Case	Citation	Year	Dissenting Justices	State of Lower Court	Affirm or Reverse
Florentine v. Barton	2 Wall. 210	1864		Illinois	A
Case v. Brown	2 Wall. 320	1864		Illinois	A
U.S. v. Billing	2 Wall. 444	1864		California	A
U. S. v. Stone	2 Wall. 525	1864		Kansas	A
Sheboygan v. Parker	3 Wall. 93	1865		Wisconsin	A
The Louisiana	3 Wall. 164	1865		Louisiana	A
Newell v. Norton and Ship	3 Wall. 257	1865		Louisiana	A
The Granite State	3 Wall. 310	1865		New York	R
Minnesota Company v. National Co.	3 Wall. 332	1865		Mich. (S.C.)	A
U.S. v. Cutting	3 Wall. 441	1865		New York	R
Sturdy v. Jackaway	4 Wall. 174	1866		Arkansas	A
Evans v. Patterson	4 Wall. 224	1866		Pennsylvania	A
Semple v. Hagar	4 Wall. 431	1866		California	R
Saulet v. Shepherd	4 Wall. 503	1866		Louisiana	A
Purcell v. Miner	4 Wall. 513	1866		D. of Col.	A
Francis v. United States	5 Wall. 338	1866		Missouri	A

Case	Citation	Year	Dissenting Justices	State of Lower Court	Affirm or Reverse
Haight v. Railroad Co.	6 Wall. 15	1867		Pennsylvania	A
Wilson v. Wall	6 Wall. 83	1867		Alabama	R
League v. Atchison	6 Wall. 113	1867		Texas	R
Reichert v. Felps	6 Wall. 160	1867		Ill. (S.C.)	A
The Hypodame	6 Wall. 217	1867		New York	A
Turton v. Dufief	6 Wall. 421	1867		Maryland	A
Girard v. Philadelphia	7 Wall. 1	1868		Pennsylvania	A
Dorsheimer v. U.S.	7 Wall. 166	1868	Chase, Nelson	New York	A
Gordon v. U.S.	7 Wall. 192	1868		Florida	A
Jacobs v. Banker	7 Wall. 295	1868		Ohio	A
Tyler v. Boston	7 Wall. 327	1868		Mass.	A
Kellogg v. U.S.	7 Wall. 361	1868		D. of Col.	A
Mills v. Smith	8 Wall. 27	1868		Illinois	A
Kempner v. Churchill	8 Wall. 362	1868		Illinois	A
U.S. v. Smith	8 Wall. 587	1868		Ohio	R

U.S. Supreme Court Dissenting Opinions - Robert Grier

Case	Citation	Year	Other Dissents
U.S. v. Buchanan	8 How 106	1850	
Veazie v. Williams	8 How 162	1850	
Lytte et al. v. Arkansas	9 How 335	1850	
Woodruff v. Trapnall	10 How 209	1850	
Gayler et al. v. Wilder	10 How 509	1850	
Moore v. Brown	11 How 427	1850	
Hogg et al. v. Emerson	11 How 587	1850	Taney, Catron, Daniel
U.S. v. Phila. and New Orleans	11 How	1850	McLean, Wayne, McKinley
Darlington et al. v. The Bank of Alabama	13 How 17	1851	
Bradford et al. v. The Union Bank of Tenn.	13 How 70	1851	
Kennett et al. v. Chambers	14 How 52	1852	
Downey v. Hicks	14 How 251	1852	
Bosley et al. v. Bosley's Executrix	14 How 399	1852	
O'Reilly et al. v. Morse et al.	15 How 124	1853	Wayne, Nelson
Stuart v. Maxwell	16 How 163	1853	

Case	Citation	Year	Other Dissents
Raymond v. Tyson	17 How 69	1854	Cambell
Pa. v. Wheeling and Belmont Bridge Co.	18 How 449	1855	
Seymour et al. v. McCormick	19 How 107	1856	
Silsby et al. v. Foote	20 How 379	1857	(Written Dissent)
Williams v. Gibbes et al.	20 How 535	1857	
Irvine v. Marshall et al.	20 How 568	1857	Nelson
Taylor et al. v. Carryl	20 How 583	1857	Taney
Barreda et al. v. Silsbee	21 How 170	1858	Catron and Wayne
Allen et al. v. Newberry	21 How 248	1858	Wayne, Catron, and Daniel
Converse v. U.S.	21 How 476	1858	Catron, Cambell
White v. Vermont and Mass. Railroad Co.	21 How 575	1858	
Kock v. Emmerling	22 How 75	1859	Catron
U.S. ex. Relatione Crawford v. Addison	22 How 185	1859	Wayne
U.S. v. Vallejo	1 Black 555	1861	(Written Dissent)
Ward et al. v. Chamberlain et al.	2 Black 446	1862	(Written Dissent)
The Bridge Proprietors v. The Hoboken Co.	1 Wall 153	1863	(Written Dissent)

Case	Citation	Year	Other Dissents
Tobey v. Leonardo	2 Wall 440	1864	
The Binghamton Bridge	3 Wall 82	1865	Written Dissent-Field, Chase
Rogers v. Burlington	3 Wall 668	1865	Field, Chase, Miller
U.S. v. Circuit Judges	3 Wall 673	1865	Field and Miller
U.S. v. Dashiel	3 Wall 703	1865	Nelson and Swayne
Thompson v. Bowie	4 Wall 473	1866	
The Sea Lion	5 Wall 647	1866	Written Dissent - none
Riggs v. Johnson County	6 Wall 209	1867	Miller, Chase
U.S. v. Hartwell	6 Wall 385	1867	Miller, Field
Doe, Lessee of Poor v. Considine	6 Wall 480	1867	Clifford
Canal Co. v. Gordon	6 Wall 572	1867	Miller
Society for Savings v. Corte	6 Wall 611	1867	Miller, Chase
Provident Inst. v. Mass.	6 Wall 630	1867	Miller, Chase
Hamilton v. Mass.	6 Wall 641	1867	Miller, Chase
Gaines v. New Orleans	6 Wall 718	1867	Swayne, Miller
Gaines v. De La Crox	6 Wall 722	1867	Swayne, Miller

Case	Citation	Year	Other Dissents
The Floyd Acceptances	7 Wall 683	1868	Nelson, Clifford
Texas v. White	7 Wall 737	1868	Swayne, Miller (Written Dissent)
Seymour v. Freer	8 Wall 220	1868	Field, Nelson
Blanchard v. Putnam	8 Wall 429	1868	Swayne, Miller
Maguire v. Tyler	8 Wall 666	1868	

APPENDIX II

WRITTEN MAJORITY AND DISSENTING OPINIONS

Written Majority Opinions

Robert Grier

1847	-	3
1848	-	5
1849	-	6
1850	-	16
1851	-	10
1852	-	8
1853	-	9
1854	-	8
1855	-	15
1856	-	8
1857	-	10
1858	-	6
1859	-	14
1860	-	8
1861	-	16
1862	-	5
1863	-	6

Taney Court - Average = 9.0

1864	-	6
1865	-	7
1866	-	6
1867	-	6
1868	-	9

Chase Court - Average = 6.8

Dissenting Opinions
Robert Grier

1847	-	0
1848	-	0
1849	-	0
1850	-	8
1851	-	2
1852	-	3
1853	-	2
1854	-	1
1855	-	1
1856	-	1
1857	-	4
1858	-	4
1859	-	2
1860	-	0
1861	-	1
1862	-	1
1863	-	1

Taney Court - Average = 1.8

1864	-	1
1865	-	4
1866	-	2
1867	-	9
1868	-	5

Chase Court - Average = 6.8

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United States v. Hanway, 26 Federal Cases 105 (1851). Case No. 15,299.

United States v. Smith, 27 Federal Cases 1134 (1861). Case No. 16,318.

Van Metre v. Mitchell, 28 Federal Cases 1036 (1853). Case No. 16,865

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Mentions and Sketches

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