Roger B. Taney and the Slavery Issue: Looking beyond—and before—*Dred Scott*

Timothy S. Huebner

> [Slavery] is a blot on our national character, and every real lover of freedom, confidently hopes that it will be effectually, though it must be gradually, wiped away; and earnestly looks for the means, by which this necessary object may best be attained.
>
> —Roger B. Taney, 1819

Chief Justice Roger Brooke Taney is best remembered for his 1857 opinion in *Dred Scott v. Sandford,* in which he refused a Missouri slave's claim to freedom and denied the rights of citizenship to both slaves and free blacks. "They had for more than a century before been regarded as beings of an inferior order," the chief justice infamously intoned, "and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect." Amid the national debate over the extension of slavery, Taney took the extreme proslavery position in his opinion, guaranteeing the property rights of slave owners by holding that Congress had no power to prohibit the institution in new territories. Less well known, however, are Taney's words in defense of an abolitionist minister nearly forty years earlier in Frederick County, Maryland. While establishing his career as a lawyer and serving as a Federalist political leader, Taney had defended Rev. Jacob Gruber, who had been indicted for preaching a sermon that allegedly disturbed the peace and promoted rebellion. During that 1819 trial, Taney made impassioned statements against the peculiar institution that stand in stark contrast to those penned by the "*angry* southern gentleman" in the *Dred Scott* decision. In a speech to the jury, Taney described slavery as "a blot on our national character" and insisted that "every real lover of freedom confidently hopes that it will be effectually, though it must be gradually, wiped away." Historians have occasionally noted the incongruence between Taney's statements in 1819 and his opinion in *Dred Scott,* but no scholar has investigated the relationship between Taney's early antislavery words and his later proslavery position.[1]

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[1] *Scott v. Sandford,* 60 U.S. 393, 407 (1857). Don E. Fehrenbacher, "Roger B. Taney and the Sectional Crisis," *Journal of Southern History,* 43 (Nov. 1977), 565. Emphasis in original. Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York, 1978), 561. For Roger B. Taney's speech, see David Mar-

This essay attempts to make sense of Taney's pronouncements on slavery. Placing the Gruber case in the context of Taney's other early nineteenth-century activities and situating the late nineteenth- and early twentieth-century interpretation of the Gruber case in its context helps illuminate Taney's views on the subject. His emancipation of his slaves, his support for the colonization movement, and his votes in the Maryland Senate early in his career lend credence to the antislavery sentiments that Taney expressed at the Gruber trial. Equally crucial is the subsequent history of the Gruber episode. Beginning in the 1870s, some years after Taney's death in 1864, the chief justice's defenders used his words in the Gruber case to argue that Taney held antislavery views throughout his lifetime, even as he penned the "they have no rights" line in *Dred Scott*. Because Taney personally opposed slavery, his admirers reasoned, his controversial opinion represented a strictly legal decision that went against his own beliefs. Taking account of the immediate context and subsequent history of the Gruber trial, this essay argues that Taney's beliefs about slavery changed substantially over the decades—that he changed from a moderately antislavery lawyer into a zealous proslavery judge. Acknowledging Taney's antislavery past complicates our understanding of the nation's fifth chief justice, one of the most significant yet understudied figures in American history, and illustrates how the terms of the debate over slavery shifted over time.[2]

Roger Taney's early life gave little indication that he would become known for writing the most proslavery judicial opinion in American history. Although born in 1777 in Calvert County, Maryland, on a tobacco plantation owned by four previous generations of slaveholding ancestors, Taney never was a planter. As the second of four sons he lacked the opportunity to inherit his father's estate, and in 1792 he went north to school, enrolling at Dickinson College in Carlisle, Pennsylvania. There he studied under the direction of Dr. Charles Nisbet, a Scottish-born Presbyterian and president of the college. Taney's father had written to Nisbet, asking him to take care of his son while away at school, and Nisbet took the request seriously. Taney spent countless evenings at the president's house, where the young man heard Nisbet hold forth on a variety of topics. While the college president's conservative views on aristocracy and government help explain Taney's early association with the Federalist party, Nisbet also expressed strong opposition to slavery, of which Taney might also have taken notice. After graduating from Dickinson, Taney moved to Annapolis in 1796 to study law and three years later gained admission to the

tin, ed., *Trial of the Rev. Jacob Gruber, Minister in the Methodist Episcopal Church, At the March Term, 1819, in the Frederick county Court, For a Misdemeanor* (Fredericktown, 1819), 43. On Taney's personal attitudes and involvement regarding slavery during his early life, see Edward S. Delaplaine, "Chief Justice Roger B. Taney—His Career at the Frederick Bar," *Maryland Historical Magazine,* 13 (March 1918), 131–38; Bernard Steiner, *Life of Roger Brooke Taney, Chief Justice of the United States Supreme Court* (1922; Westport, 1970), 55–56, 72–76; Carl B. Swisher, *Roger B. Taney* (New York, 1935), 93–100; Charles W. Smith Jr., *Roger B. Taney: Jacksonian Jurist* (Chapel Hill, 1936), 141–44, 178–79; Walker Lewis, *Without Fear or Favor: A Biography of Chief Justice Roger Brooke Taney* (Boston, 1965), 76–79; Harry V. Jaffa, *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War* (Lanham, 2000), 219–21, 288–91; Patrick W. Carey, "Political Atheism: Dred Scott, Roger Brooke Taney, and Orestes A. Brownson," *Catholic Historical Review,* 88 (April 2002), 207–29; James F. Simon, *Lincoln and Chief Justice Taney: Slavery, Secession, and the President's War Powers* (New York, 2006), 9–12; and Brian McGinty, *Lincoln and the Court* (Cambridge, Mass., 2008), 15–16.

[2] On Taney's reputation, see Marvin Winitsky, "Roger B. Taney: An Historiographical Inquiry," *Maryland Historical Magazine,* 69 (Spring 1974), 1–26; Paul Finkelman, "'Hooted Down the Page of History': Reconsidering the Greatness of Chief Justice Taney," *Journal of Supreme Court History* (1994), 83–102; Timothy S. Huebner, *The Taney Court: Justices, Rulings, and Legacy* (Santa Barbara, 2003), 175–85; and Fehrenbacher, *Dred Scott Case,* 587–93. The best study of Taney remains Carl B. Swisher's *Roger B. Taney,* published in 1935. There has not been a new biography on Taney since Walker Lewis's *Without Fear or Favor,* published in 1965.

bar. To advance his career prospects after serving a brief term in the Maryland House of Delegates he moved in 1801 to Frederick, located about forty-five miles northwest of Baltimore near the Pennsylvania border.[3]

There on the "middle ground" between freedom and slavery, Taney began to build his law practice. During the first few decades of the nineteenth century, Frederick County and the surrounding counties in northwestern Maryland experienced a series of economic and demographic changes that made slavery an increasingly sensitive subject within the white community. As wheat cultivation, which did not require a year-round labor force, gradually replaced tobacco farming, the region saw a rise in manumissions and slave sales, both in and out of state. The percentage of free blacks in the total black population thus rose. At the same time, the possibility of slaves escaping into Pennsylvania and the persistent problem of Marylanders attempting to kidnap free blacks north of the border served as constant reminders of the unstable boundary between slavery and freedom. These circumstances caused most Maryland slaveholders to become particularly defensive about their peculiar institution.[4]

Married in 1806 to Anne Phoebe Charlton Key, sister of the attorney Francis Scott Key, Taney entered a circle of young, reform-minded Marylanders who sought to protect free blacks from kidnapping and alleviate the harshness of slavery. Both Taney and Francis Scott Key joined an antikidnapping society and developed reputations for their willingness to argue cases for the benefit of slaves and free blacks. A handful of examples appear in the records of Taney's law practice. In 1806 he took up the case of a former slave, apparently kidnapped in Pennsylvania and forcibly returned to Maryland, who petitioned for his freedom. Three years later, in the first case he argued before the Maryland Court of Appeals, the state's highest court, Taney unsuccessfully defended a free black man charged with the rape and criminal assault of a young white woman. In 1810, Anne Taney filed an affidavit in a freedom suit, swearing that she had known the African American in question for "fourteen or fifteen years" and that "it was always understood that he was freeborn." In 1817, moreover, Roger Taney and a protégé, Frederick A. Schley, entered into a financial transaction that allowed a black couple to remain together and gain their freedom. The free black man, Harry Peter, bound himself as a slave for ten years to Taney and Schley, who in turn bought the man's slave wife, Clarissa, from a third party. When the man completed his term of service, both he and his wife became free. Although slave cases never constituted a significant portion of his practice and the fragmentary nature of the evidence reveals little about his motives, it is clear that Taney occasionally worked to secure for African Americans the limited benefits that Maryland law afforded them.[5]

[3] On Taney's family background and early life, see Swisher, *Roger B. Taney,* 1–16; Lewis, *Without Fear or Favor,* 5–10; Smith, *Roger B. Taney,* 4–7; Steiner, *Life of Roger Brooke Taney,* 13–20; James H. Smylie, "Charles Nisbet: Second Thoughts on a Revolutionary Generation," *American Presbyterians,* 73 (Fall 1995), 150; Samuel Tyler, *Memoir of Roger Brooke Taney* (Baltimore, 1872), 38–42; and James Henry Morgan, *Dickinson College: The History One Hundred and Fifty Years, 1783–1933* (Carlisle, 1933), 111–13.

[4] Barbara Jeanne Fields, *Slavery and Freedom on the Middle Ground: Maryland during the Nineteenth Century* (New Haven, 1985), 1–39, esp. tables 1.3–1.7. Over time the legal status of free blacks deteriorated despite their growing numbers. See Max L. Grivno, "'There Slavery Cannot Dwell': Agriculture and Labor in Northern Maryland, 1790–1860" (Ph.D. diss., University of Maryland, 2007); and David Skillen Bogen, "The Maryland Context of *Dred Scott*: The Decline in the Legal Status of Maryland Free Blacks, 1776–1810," *American Journal of Legal History,* 34 (Oct. 1990), 381–411.

[5] Victor Weybright, *Spangled Banner: The Story of Francis Scott Key* (New York, 1935), 180–203; Swisher, *Roger B. Taney,* 93–94. Like Taney, Francis Scott Key manumitted his own slaves. Unlike Taney, Key delivered a number of antislavery speeches during his career. "*Negro Jim v. William Curren:* Deposition of John Scott, 1806," Inventory of the Legal Papers of Roger B. Taney, 1792, 1805–1818, MSS 87-3, -3a, -3b (Special Collections, University

More important, and telling, than his attempts to ameliorate the conditions of slaves and free blacks was Taney's emancipation of his own slaves. On July 14, 1818, before a justice of the peace in Frederick County, Taney affixed his signature in the court record book, paid the requisite transaction fees, and manumitted seven slaves. Clarissa and her infant daughter Mary Anne, as well as Polly (a "mulatto woman") and her infant daughter Elizabeth, all gained their freedom that day. Taney also provided for the eventual emancipation of Polly's three older children. Seven-year-old Mary would become free in 1836, at the age of twenty-five, while three-year-old John and five-year-old William would be free once they reached the age of thirty. Moreover, in 1820, together with his younger brother Octavius, Taney liberated two additional slaves who had been owned by their father. Over the next four years, Taney manumitted two more slaves—bringing the total number of slaves he freed to eleven. We must not underestimate these deliberate acts on behalf of freedom. While historians have lauded George Washington, for example, for liberating his slaves at his death, Taney did so at a relatively young age. Rather than keeping them in bondage or profiting from their sale, Taney chose to free all of his slaves except two, whom he later described as "too old, when they became my property, to provide for themselves." Unlike some Maryland emancipators, Taney never purchased other slaves to replace the ones he freed.[6]

Taney also actively supported the colonization of African Americans, a cause that he viewed as a step toward emancipation. Earlier in the same year that he freed seven of his slaves, Taney, Key, and others formed the Maryland branch of the American Colonization Society, in which Taney also served as an officer. The state organization aimed "to promote and execute a plan for colonizing (with their consent) the free people of colour (residing in our country) in Africa or such other place as Congress shall deem most expedient." While historians have long debated where the colonization movement fell on the continuum between proslavery and abolitionism, recent studies suggest that the motives of many colonizationists placed them more on the antislavery side of the spectrum than scholars previously believed. Indeed, the Maryland organization to which Taney belonged later declared its purpose to be "the ultimate extirpation of slavery, by proper and gradual

of Virginia Law Library, Charlottesville); *Burk v. State,* 2 H. & J. 426 (1809); "Sworn statement of Anne Taney concerning the status of Robert (Toogood) Patterson, a mulatto 1810 July 31 AD," Inventory of the Legal Papers of Taney; Frederick County Court (Land Records), JS 5, 1815–1817, f. 0850–0851, *Maryland LandRec.net,* www.mdlandrec.net. Harry Peter apparently regained his freedom in 1827; Taney and Frederick A. Schley manumitted his wife, Clarissa, in 1824. For brief discussions of this transaction, see Delaplaine, "Chief Justice Roger B. Taney," 131; Steiner, *Life of Roger Brooke Taney,* 56; and Swisher, *Roger B. Taney,* 94. Taney's legal papers are spread across a number of collections at several institutions: the Waidner-Spahr Library, Dickinson College; University of Virginia Law Library; the Maryland Historical Society, Baltimore; University of Maryland Special Collections, University of Maryland, College Park; and the Milton S. Eisenhower Library, Johns Hopkins University.

[6] Delaplaine, "Chief Justice Roger B. Taney," 131; Frederick County Court (Land Records), JS 6, 1818–1818, f. 0659. On slaves manumitted by Taney and his brother, see Frederick County Court (Land Records) JS 10, 1819–1820, f. 0617–0618; Taney manumitted a male slave in 1821 (when he was to reach the age of twenty-five in 1826) and a thirty-seven-year-old female slave, Clarissa, in October 1824. Frederick County Court (Land Records), JS 12, 1820–1821, f. 0185; and JS 21, 1824–1825, f. 0178–0179. See also "Maryland, Frederick County. On this 30th day of May, 1826 . . . Negro Clarissa . . . is the same identical Negro who was heretofore manumitted by Roger B. Taney and Frederick A. Schley by deed of manumission dated on or about the 11th Oct. 1824, and recorded among the land records of said county," Maryland Manuscripts (University of Maryland Libraries, Special Collections, College Park). For an unfavorable comparison of Thomas Jefferson with George Washington, based on Jefferson's failure to manumit the vast majority of his slaves, see Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson* (Armonk, 2001), 129–62. Roger B. Taney to Samuel Nott, Aug. 19, 1857, in *Proceedings of the Massachusetts Historical Society (1871–1873)* (Boston, 1873), 445. On emancipation in Maryland, see T. Stephen Whitman, *The Price of Freedom: Slavery and Manumission in Baltimore and Early National Maryland* (Lexington, Ky., 1997).

This 1849 oil painting of Chief Justice Roger B. Taney by Miner Kilbourne Kellogg portrays Taney as a youthful-looking, serene jurist, quill in hand, as he contemplates writing a legal opinion. In some ways, the portrait reflects Taney's reputation before the controversial 1857 *Dred Scott* decision, a time when he was nearly universally liked and respected. *Courtesy Library Company of the Baltimore Bar.*

efforts." Some within the organization surely advocated colonization for reasons of racial exclusion, but Taney's willingness to liberate his own slaves within the state of Maryland suggests that he viewed colonization as a means of implementing gradual emancipation rather than as a scheme to rid the land of blacks.[7]

[7] *Torch Light and Public Advertiser,* Feb. 10, 1818; *Maryland Gazette,* Jan. 29, 1818. The formation of the Maryland organization came a little over a year after the founding of the American Colonization Society (ACS). Although Taney was not involved in the founding of the ACS, his brother-in-law Key played an active role. Taney was elected the fourteenth vice president of the Maryland branch. See also P. J. Staudenraus, *The African Colonization Movement, 1816–1865* (New York, 1961), 25–30. On the antislavery leanings of the colonization movement, see Eric Burin, *Slavery and the Peculiar Solution: A History of the American Colonization Society* (Gainesville, 2005); William Freehling, *The Reintegration of American History: Slavery and the Civil War* (New York, 1994), 138–57; and Peter S. Onuf, "Every Generation Is an 'Independent Nation': Colonization, Miscegenation, and the Fate of Jefferson's Children," *William and Mary Quarterly,* 57 (Jan. 2000), 153–70. On colonization and antislavery, see Carl N. Degler, *The Other South: Southern Dissenters in the Nineteenth Century* (New York, 1974), 22–25. Gordon E. Finnie, "The Antislavery Movement in the Upper South before 1840," *Journal of Southern History,* 35 (Aug. 1969), 319–42. On the colonization movement in Maryland during the 1830s, at which time Taney did not appear to be involved, see

Consistent with his other actions at this time, Taney voted in favor of limiting the growth of slavery as a member of the Maryland Senate between 1816 and 1821. Restricting slavery emerged as a question of national importance in 1819 when New York congressman James Tallmadge proposed gradual abolition as a condition of admitting Missouri as a state. Tallmadge's plan, a tentative move against slavery, would have freed slaves born after statehood when they reached the age of twenty-five. Such a plan partially conformed to Taney's ideas and practices regarding liberating slaves—he freed his female slaves at age twenty-five and typically freed his male slaves at age thirty. Congress spent months debating the status of slavery in Missouri, and the matter aroused deep passions in Taney's home state. William Pinkney, a U.S. senator from Maryland and the state's leading lawyer, took a particularly vocal stance against any restrictions on slavery in Missouri. As in many states, legislators in Maryland extensively discussed the matter. In 1820 a resolution came before the state senate providing that Missouri should be allowed to enter the Union without any restrictions regarding slavery. Taney defied proslavery leaders—including a senior member of the bar—by voting against the resolution. (It passed 9–5, despite Taney's efforts.) The following year, when a resolution to repeal all Maryland laws "as prohibit the importation of slaves into this state" came before senators, Taney again stood with the minority (7–5) in opposing it. As a state senator at a time of fervent debate on the subject, Taney thus supported federal and state restrictions on the expansion of slavery.[8]

These actions—in his law practice, his private life, and his political career—help explain Taney's defense of Gruber, a white Methodist minister and presiding elder from Carlisle, Pennsylvania. In August 1818 in Washington County, Maryland (Frederick County's neighbor to the west), Gruber preached an impromptu sermon at a camp meeting organized by the Methodist Episcopal Church. During the sermon, heard by somewhere between three and five thousand whites and perhaps as many as four hundred blacks, Gruber lambasted slavery as a "national sin" that violated the principles of the scriptures as well as the Declaration of Independence. "Is it not a reproach to a man," Gruber preached, "to hold articles of liberty and independence in one hand and a bloody whip in the other, while a negro stands and trembles before him, with his back cut and bleeding?" The portion of the sermon that most offended local slaveholders was Gruber's contention that, however well masters claimed to treat their slaves, they could not ensure that future generations would do the same. "May they not tyrannize over them after you

Aaron Stopak, "The Maryland State Colonization Society: Independent State Action in the Colonization Movement," *Maryland Historical Magazine,* 63 (Fall 1968), 275–98; and Penelope Campbell, *Maryland in Africa: The Maryland State Colonization Society, 1831–1857* (Urbana, 1971).

[8] On the Missouri Compromise, see Robert Pierce Forbes, *The Missouri Compromise and Its Aftermath* (Chapel Hill, 2007); and Don E. Fehrenbacher, *The South and Three Sectional Crises* (Baton Rouge, 1980), 9–23. On William Pinkney's stance, see Jeffrey Robert Young, *Domesticating Slavery: The Master Class in Georgia and South Carolina, 1670–1837* (Chapel Hill, 1999), 165, 217–18. *Votes and Proceedings of the Senate of Maryland, December Session, 1819* (Annapolis, 1820), Jan. 19, 1820, p. 31. On Maryland and the Missouri crisis, see Glover Moore, *The Missouri Controversy, 1819–1821* (Gloucester, 1967), 224–26. On the false claim made by Swisher, and repeated by Glover Moore, that Taney only opposed the measure regarding Missouri statehood because he was concerned about a state passing a resolution pertaining to a matter over which it had no control, see Swisher, *Roger B. Taney,* 99. Moore also incorrectly implies that Taney's supposed opposition to the Missouri Compromise meant that he opposed any congressional restriction on slavery, as he ruled later in *Dred Scott.* See Moore, *Missouri Controversy,* 226. *Votes and Proceedings of the Senate of Maryland, December Session, 1820* (Annapolis, 1821), Jan. 10, 1821, p. 19. See also the abolitionist Gerrit Smith's criticism of Henry Clay, who had opposed Taney's confirmation as chief justice on the grounds that his vote on this resolution had demonstrated his antislavery leanings. Gerrit Smith, "To the Friends of the Slave in the Town of Smithfield," Special Collections Research Center, Gerrit Smith Broadside and Pamphlet Collection, Digital Edition, http://library.syr.edu/digital/collections/g/GerritSmith/427.htm (Syracuse University, N.Y.).

are dead and gone, and may they not (the slaves thus abused,) rise up and kill your children, their oppressors, and be hung for it, and all go to destruction together?" Alarmed by such preaching, prominent slaveholders at the camp meeting sought a warrant for Gruber's arrest. The warrant, later presented to two justices of the peace, charged that Gruber "did feloniously consult, conspire, . . . to raise an insurrection and rebellion in the state." About two months after the camp meeting, authorities arrested Gruber, and two weeks later grand jurors formulated a bill of indictment that charged him with "endeavour[ing] to stir up, provoke, instigate, and incite, divers negro slaves . . . to commit acts of mutiny and rebellion," to "break the peace" of the state, and to "raise insurrection and rebellion."[9]

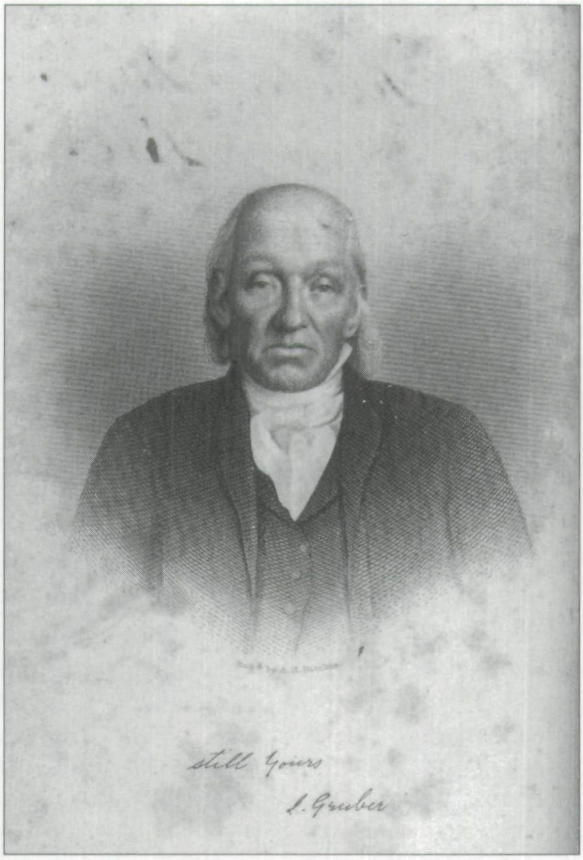
Taney took a risk in defending the outspoken minister. From the perspective of local slaveholders, Gruber was a meddling menace whose words threatened to dismantle the racial hierarchy that ordered their lives. That the trial coincided with the debate over slavery in Missouri meant that Gruber's statements—spoken by an outsider to slave society—seemed particularly offensive. Even admiring fellow Methodists thought Gruber abrasive and blunt. Described as possessing "a rough exterior" and as "severe in the denunciation of vice," Gruber made it a habit to preach boldly, regardless of the consequences. "His powers of irony, sarcasm, and ridicule were tremendous, and woe to the poor fellow who got into his hands," wrote the Reverend Henry Boehm, "he would wish himself somewhere else." Gruber's firm conviction and confrontational style undoubtedly made his words even more distasteful to the slaveholders of Washington County.[10]

Taney's involvement in the case issued from his outstanding courtroom skills and his antislavery credentials. Stephen G. Roszel, a friend of Gruber's and a fellow minister, wrote to Gruber even before his arrest: "I have seen Brother [Bene] Pigman [a Frederick County attorney] on the business and he has promised to interest on your behalf, should you be arrested, Lawyer Taney, the most influential and eminent barrister in Washington and Frederick [counties]." Given the anger of local planters, Roszel also advised Gruber to seek a change of venue to Frederick County. Upon taking the case, apparently for the large sum of two hundred dollars, Taney immediately concurred and arranged the change of venue. Some of Gruber's allies thought their case more likely to succeed in Frederick, in part because of Taney's sterling reputation. Prominent and successful (although not universally liked), Taney undoubtedly knew most of the potential jurors. If there was anywhere in Maryland where the controversial Gruber could receive a fair trial with Taney as his counsel, Frederick was the place.[11]

[9] Martin, ed., *Trial of the Rev. Jacob Gruber,* esp. iv, xvii, xix, v, 22–24. For more on the sermon and subsequent trial, see John B. Boles, "Tension in a Slave Society: The Trial of the Reverend Jacob Gruber," *Southern Studies,* 18 (Summer 1979), 180–81; Brand W. Eaton, "Jacob Gruber's 1818 Camp Meeting Sermon," *Methodist History,* 37 (July 1999), 242–52; Lewis, *Without Fear or Favor,* 76–79; and Swisher, *Roger B. Taney,* 95–98.

[10] John B. Boles notes that Jacob Gruber also made remarks against "smoking, drinking, 'sport,' gambling, and other infractions of his own severe rules of asceticism" that won him no friends among the local aristocracy. See Boles, "Tension in a Slave Society," 189. Henry Boehm, *Reminiscences, Historical and Biographical, of Sixty-Four Years in the Ministry* (New York, 1865), 112. After the trial the Baltimore Conference of the Methodist Church urged Gruber to be more cautious, but he remained unrepentant. See James Edward Armstrong, *History of the Old Baltimore Conference from the Planting of Methodism in 1773 to the Division of the Conference in 1857* (Baltimore, 1907), 384; and Martin, ed., *Trial of the Rev. Jacob Gruber,* xiii. On Gruber, see Boles, "Tension in a Slave Society," 184–94; W. P. Strickland, *The Life of Jacob Gruber* (New York, 1860); and Joseph Beaumont Wakeley, *The Heroes of Methodism: Containing Sketches of Eminent Methodist Ministers and Characteristic Anecdotes of Their Personal History* (New York, 1857), 407–68.

[11] Strickland, *Life of Jacob Gruber,* 140. John Lednum, *A History of the Rise of Methodism in America: Containing Sketches of Methodist Itinerant Preachers, From 1736 to 1785 Numbering One Hundred Sixty or Seventy* (Philadelphia, 1859), 325. Strickland, *Life of Jacob Gruber,* 257. Gruber's lawyers might have also believed they would find a more favorable jury among the German-settled Frederick County. See Boles, "Tension in a Slave Society," 193.



The Reverend Jacob Gruber, as sketched here for an 1860 biography, was known for his vocal criticism of all manner of vices: smoking, drinking, sport, gambling, and slavery. Despite being reprimanded by the Baltimore Conference of the Methodist Church, Gruber remained firm in his convictions. The Maryland attorney Roger B. Taney defended Gruber at the minister's 1819 trial for allegedly trying to incite a slave riot through one of his public sermons. Taney's legal defense of Gruber as well as the lawyer's passionate antislavery language in the courtroom played a major role in later attempts to explain Taney's infamous opinion as chief justice in *Scott v. Sandford* (1857). *Reprinted from W. P. Strickland,* The Life of Jacob Gruber *(New York: Carlton & Porter, 1860).*

Taney provided a skillful defense of his client. In his opening statement to the jury, he carefully measured Gruber's words against the charge. Taney noted first that "by the liberal and happy institutions of this state, the rights of conscience and the freedom of speech, are fully protected." For this reason, Taney noted, as the state constitution maintained, Gruber could be prosecuted only if his words "were immoral and calculated to disturb the peace and order of society." But this was not the charge against Gruber: "He is accused of an attempt to excite insubordination and insurrection among our slaves: and the intention of the preacher is the essence of the crime." Only if the prosecution proved this charge, Taney argued, was Gruber guilty of any offense. Taney then described the context and circumstances of the alleged offense. For twenty years Gruber had been a minister in the Methodist Church, which, "it is well known," advocated gradual abolition. Any slave-

holders who had been fearful of what Gruber might preach at the meeting could have elected not to attend or not to bring their slaves. "Mr. Gruber did not go to the slaves: they came to him," Taney explained. "They could not have come, if their masters had chosen to prevent them." Gruber's hour-long sermon—of which about fifteen minutes pertained to slavery—constituted the sole basis for the charge of inciting insubordination and insurrection. Whatever the jury thought of Gruber's ideas, Taney continued, it could convict Gruber only if the prosecution could prove "that these opinions were uttered, these arguments were used, and this language employed, with the criminal intention, and for the wicked purpose laid in this indictment." Taney's argument proved an impressive display of his lawyerly abilities.[12]

But Taney did much more than defend Gruber's legal right to speak freely. "I might . . . safely rest the defence on this ground," Taney noted to the jury. Instead, he pressed further and attempted to justify the arguments that Gruber had outlined in the offending sermon. In doing so, Taney echoed Gruber's sentiments but used his own words. "He [Gruber] did rebuke those masters, who, in the exercise of power, are deaf to calls of humanity; and he warned them of the evils they might bring upon themselves," Taney announced. "He did speak with abhorrence of those reptiles, who live by trading in human flesh, and enrich themselves by tearing the husband from the wife—the infant from the bosom of the mother." Taney continued: "Shall I content myself . . . with saying he had a right to say this? that there is no law to punish him? So far is he from being the object of punishment in any form of proceeding, that we are prepared to maintain the same principles, and to use, if necessary, the same language here in the temple of justice."[13] Taney was seeking not simply to win an acquittal for his client by defending him from the charges against him. He went a step further, reaffirming and validating the substance of Gruber's sermon.

Because they later served as the source of much discussion, Taney's next several sentences, the heart of his antislavery argument, are worth quoting in full:

> A hard necessity, indeed, compels us to endure the evil of slavery for a time. It was imposed upon us by another nation, while we were yet in a state of colonial vassalage. It cannot be easily, or suddenly removed. Yet while it continues, it is a blot on our national character, and every real lover of freedom, confidently hopes that it will be effectually, though it must be gradually, wiped away; and earnestly looks for the means, by which this necessary object may be best attained. And until it shall be accomplished: until the time shall come when we can point without a blush, to the language held in the [D]eclaration of [I]ndependence, every friend of humanity will seek to lighten the galling chain of slavery, and better, to the utmost of his power, the wretched condition of the slave.

Most significant were Taney's assertions that slavery constituted "a blot on our national character" and violated the spirit of the Declaration of Independence. Taney seemed confident of the soundness of those opinions. He concluded his argument by noting that "those who have complained of [Gruber] and reproached him, will not find it easy to answer him: unless complaints, reproaches, and persecution shall be considered an answer." In other words, Taney believed, Gruber's critics had responded with calumny rather than

[12] Martin, ed., *Trial of the Rev. Jacob Gruber,* 32–38, 41, esp. 33–34, 36–37, 41.
[13] *Ibid.*, 41–43.

valid debate. Although Taney's impassioned speech may not have changed minds on the slavery issue, he did succeed in convincing the jury. Acknowledging that Gruber had not intended to provoke an insurrection, jurors returned a verdict of not guilty.[14]

Taney's speech in defense of Gruber, his only public statement in opposition to slavery, showed the depth of the young lawyer's antislavery beliefs. At a time of great national debate on the subject, Taney decided to attack the institution instead of remaining within the safe and careful boundaries of the indictment. Rather than simply serving as an attorney for his client, Taney recognized the importance of the issues at stake and argued well beyond the facts of the case. After the trial, moreover, he handed over the notes from his argument to David Martin, the Methodist minister in Frederick and an opponent of slavery, who published the record of the proceedings later that year. Taney thus allowed his words to be included in what he knew would be an antislavery publication, and as a state senator he took a political risk in doing so. When viewed in the context of his public and private record on slavery during the early nineteenth century, Taney's spirited defense of Gruber revealed the seriousness of his antislavery convictions. While neither a radical nor an abolitionist, Taney strongly disliked slavery and—in word and deed—promoted gradual emancipation. In this way, he resembled others in the early nineteenth century—particularly Federalists—who similarly described slavery as an evil that needed to be eradicated.[15]

Over the next several years, Taney's speech in the Gruber trial faded from memory, and he did not utter another recorded antislavery word. In 1823, Taney left Frederick for bigger things. To enhance his career he moved to Baltimore, where he argued more cases before the state court of appeals, and in 1827 he became the state attorney general. Taney also became more politically active. With Federalists isolated and out of power in Maryland and with the national political landscape in transition, Taney became an enthusiastic supporter of the presidential aspirations of Gen. Andrew Jackson of Tennessee and benefitted after Jackson won the 1828 election. In 1831, Jackson made the loyal Taney acting secretary of war for a brief time and subsequently appointed him to the post of U.S. attorney general. Taney later served as secretary of the treasury before being appointed chief justice of the U.S. Supreme Court in 1836. Along the way, Taney faced plenty of controversy and criticism for his actions and statements as a public official—particularly for his role in carrying out Jackson's plan to kill the Second Bank of the United States—but his defense of Gruber did not resurface.[16]

On March 6, 1857, nearly forty years after the Gruber trial, Chief Justice Roger Taney rendered the most important decision of his long judicial career. Culminating a legal action first filed in Missouri in 1846, the U.S. Supreme Court decided the fate of an en-

[14] *Ibid.*, 43–44, 111.

[15] See William R. Quynn, ed., *The Diary of Jacob Engelbrecht, 1818–1878* (Frederick, 1976), 34. According to James H. Broussard, southern Federalists, who were not nearly as tied to plantation agriculture as their Democratic-Republican opponents, generally attempted "to mitigate the severities of the slave system by . . . encouraging voluntary manumission and reducing discrimination against both slaves and free Negroes." See James H. Broussard, *The Southern Federalists, 1800–1816* (Baton Rouge, 1978), 313–14. On southern Federalists who held views similar to Taney's, see Degler, *Other South,* 13–46, 75; Finkelman, *Slavery and the Founders,* 114–25; and Alice Dana Adams, *The Neglected Period of Anti-slavery in America, 1808–1831* (Boston, 1908), 17–28. For a historiographical analysis of southern antislavery, see Stanley Harrold, *The Abolitionists and the South, 1831–1861* (Lexington, Ky., 1995), 9–25.

[16] Mark H. Haller, "The Rise of the Jackson Party in Maryland, 1820–1829," *Journal of Southern History,* 28 (Aug. 1962), 307–26.

slaved Missourian, Dred Scott. More important, the Court attempted to resolve the constitutional status of slavery in federal territories and thus end years of sectional strife.[17] Scott had sought his freedom based on his temporary residence in free territory with his master, an army surgeon, but since Scott had removed his case from a state court into a federal court, his citizenship status became relevant. Only citizens of different states could sue each other in federal court. One of the issues for the Court to decide, therefore, was whether Scott was indeed a citizen. Led by the seventy-nine-year-old chief justice, the Court denied that Scott or any African American, slave or free, could claim such rights under the Constitution.

Reading the opinion of the Court with trembling hands and fading voice, Taney spoke the words for which he became known. "The legislation and histories of the times, and the language used in the Declaration of Independence show that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words in that memorable instrument," he wrote. "They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the Negro might justly and lawfully be reduced to slavery for his benefit. . . . This opinion was at that time fixed and universal in the civilized portion of the white race." More significant in the context of the debate over the extension of slavery, Taney held that Congress had no power to prohibit slavery in federal territories, thus putting the Court squarely on the side of slaveholders. Northern critics immediately raised their voices in a chorus of dissent, protesting the Court's adoption of an extreme pro-southern interpretation of the Constitution.[18]

Within two months, as a part of this barrage of criticism, the chief justice's long-forgotten words from the Gruber case came to light. On May 5, 1857, the *Philadelphia Bulletin* published a piece entitled "Taney the Chief Justice and Taney the Lawyer—His Opinions on Slavery and the Constitution in 1819." The article noted Taney's decision in *Dred Scott,* "affirming . . . that the language of the Declaration of Independence about all men being created free and equal was not meant to apply to colored people; and that in old times everybody believed these doctrines." Then, after describing Gruber's sermon and arrest, the article exposed Taney's involvement in the case: "Mr. Roger B. Taney was one of the counsel for the defense, and in a pamphlet account of the trial . . . we find Mr. Taney's view of slavery, of the rights of man, and of the Declaration of Independence, at

[17] On the sectional conflict and slavery in the territories, see David M. Potter, *The Impending Crisis, 1846–1861* (New York, 1976); Eugene Berwanger, *The Frontier against Slavery: Western Anti-Negro Prejudice and the Slavery Extension Controversy* (Urbana, 1967); Jonathan H. Earle, *Jacksonian Antislavery and the Politics of Free Soil, 1824–1854* (Chapel Hill, 2004); Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (New York, 2001); Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York, 1995); Michael F. Holt, *The Fate of Their Country: Politicians, Slavery Extension, and the Coming of the Civil War* (New York, 2004); and Eric Walther, *The Shattering of the Union: America in the 1850s* (Wilmington, 2004).

[18] *Scott v. Sandford,* 60 U.S. at 407. The literature on the *Dred Scott* case is voluminous, but see especially Fehrenbacher, *Dred Scott Case;* Walter Ehrlich, *They Have No Rights: Dred Scott's Struggle for Freedom* (Westport, 1979); Paul Finkelman, *Dred Scott v. Sandford: A Brief History with Documents* (Boston, 1997); Earl M. Maltz, *Dred Scott and the Politics of Slavery* (Lawrence, 2007); Austin Allen, *Origins of the Dred Scott Case: Jacksonian Jurisprudence and the Supreme Court, 1837–1857* (Athens, Ga., 2006); Mark A. Graber, *Dred Scott and the Problem of Constitutional Evil* (New York, 2006); and Lea VanderVelde, *Mrs. Dred Scott: A Life on Slavery's Frontier* (New York, 2009). For the Republican reaction, see Charles Warren, *The Supreme Court in United States History* (2 vols., Boston, 1928), II, 302–19; and Fehrenbacher, *Dred Scott Case,* 417–20.

that time. For the benefit of Mr. Taney's good name, and for the purpose of letting every one compare his former opinions with his recent decision, we offer a few extracts from the closing speech for the defense." The article quoted at length from Taney's speech, including his claim that slavery constituted "a blot on our national character" and contradicted the Declaration of Independence. The essay concluded on a sarcastic note: "These extracts suffice to show that Mr. Taney is, or at least was, a much better man, and a far more profound lawyer than one would suppose from reading his recent opinion in the Dred Scott case."[19]

The avalanche of criticism continued. Less than two weeks after the initial story, the *Ohio State Journal,* a Republican newspaper, picked up the piece and reprinted it, and later that year John Dixon Long, a Philadelphia Methodist minister, included it in an antislavery pamphlet. The following year, an anonymous editor published writings of two well-known eighteenth-century opponents of slavery, Anthony Benezet and John Wesley, in *Views of American Slavery Taken a Century Ago,* a volume intended to argue that the United States possessed a deep antislavery heritage, from which the nation had since distanced itself. Troubled by that development, the editor sought to recapture some of the "uncompromising zeal and vigilance" on the subject by publishing excerpts from the writings of a variety of thinkers. In addition to excerpts from Benezet and Wesley, the editor included an appendix of other antislavery statements. There, among passages from Thomas Jefferson, George Washington, the marquis de Lafayette, and others, was the *Philadelphia Bulletin*'s description of Taney's defense of the Methodist minister. After the *Dred Scott* decision, Chief Justice Taney's 1819 courtroom speech had suddenly become a powerful weapon in the antislavery arsenal.[20]

In the years following, as the country edged toward civil war, Taney's words reverberated in the national debate over slavery and the fate of the Union. At the Peace Conference, held in Washington, D.C., in February 1861, delegates hoped to forge a compromise to avert civil war. Slavery, of course, emerged as a central issue of debate. John Goodrich, a Republican delegate from Massachusetts, quoted Taney in support of the assertion that the founding generation had abhorred slavery. "Jefferson pronounced it 'an injustice and enormity,'" Goodrich proclaimed. "The present Chief Justice of the United States, Mr. Taney, . . . acted many years ago as counsel of Rev. Mr. Gruber, who was indicted in the State of Maryland for preaching a sermon on the evils of slavery," he noted and proceeded to quote the two key paragraphs from Taney's address to the jury. Although Goodrich had been speaking for nearly an hour without interruption, the mention of Taney's name elicited an immediate response from Maryland delegate Reverdy Johnson, the chief justice's close friend who had also served as the attorney for Dred Scott's owner, John A. Sanford. "Where did you get that?" Johnson abruptly asked. "I got it from a printed sermon recently preached by Dr. Orville Dewey, of Boston," Goodrich replied and continued with his oration.[21] Johnson, who had been acquainted with Taney at least since the latter's Bal-

[19] *Philadelphia Bulletin,* May 5, 1857, reprinted as "Taney the Chief Justice and Taney the Lawyer—His Opinions on Slavery and the Constitution in 1819," *Columbus Ohio State Journal,* May 13, 1857, p. 2.

[20] "Taney the Chief Justice and Taney the Lawyer," 2; John Dixon Long, *Pictures of Slavery in Church and State; Including Personal Reminiscences, Biographical Sketches, Anecdotes, etc. etc. with an Appendix, Containing the Views of John Wesley and Richard Watson on Slavery* (Philadelphia, 1857), 416–18. Anthony Benezet and John Wesley, *Views of American Slavery Taken a Century Ago* (Philadelphia, 1858), 7, 136–38. In 1860 William Peter Strickland, a Methodist minister and author, published a biography of Gruber, who had died in 1850, which included a full account of the sermon and the trial. See Strickland, *Life of Jacob Gruber,* 123–267.

[21] L. E. Chittenden, *A Report of the Debates and Proceedings in the Secret Sessions of the Conference Convention for*

timore days, probably knew of the 1819 speech, which was now proving an embarrassment to the chief justice.

Three years later, on October 12, 1864, Roger B. Taney died. By that time the bloody Civil War had been raging for three and a half years, Abraham Lincoln had issued the Emancipation Proclamation, and the tide of battle had turned decisively in favor of the Union. Freedom for 4 million slaves, moreover, appeared imminent, and within three months Congress would approve the Thirteenth Amendment. (In fact, the day after Taney's death, his own state of Maryland ratified a new state constitution that abolished slavery.) Nevertheless, criticism of the chief justice did not relent, and the comparison between the *Dred Scott* decision and Taney's defense of Gruber found expression in an anonymous pamphlet, *The Unjust Judge*. Published in 1865, during the rush of Union victory and emancipation, *The Unjust Judge* described Taney as "next to Pontius Pilate, perhaps the worst that ever occupied the seat of judgment among men."[22]

Much of the pamphlet argued that the framers had held antislavery views and that the Constitution embodied the spirit of the Declaration of Independence, particularly its claim that "all men are created equal." The author took particular satisfaction in showing that Taney viewed slavery as incompatible with the declaration early in his career, a position that he later repudiated in *Dred Scott*. "At forty, Mr. Taney had responded to the call of the Revolution, 'insisted on the principles contained in that venerated instrument,' the Declaration," the author of *The Unjust Judge* wrote. "At eighty, clothed with the power and prerogative of the most potential place in the nation, on an occasion when he might have promoted, essentially, a consummation for which the whole earth was panting, he proved false to himself, false to the hope and charities he had once cherished, false to the liberal principles he had eulogized, and to a free Constitution he had sworn to support." The pamphlet attempted to demonstrate that many African Americans, contrary to Taney's assertion in *Dred Scott,* had enjoyed the rights of citizenship at the time of the founding and that support for these rights existed among the general public. In *The Unjust Judge* Taney's defense of Gruber thus offered an example of antislavery thought in the early nineteenth century and an unparalleled opportunity to disparage the deceased chief justice and his infamous decision.[23]

During the eight years between *Dred Scott* and the end of the Civil War, antislavery advocates thus made good use of Taney's decades-old speech from his days as a small-town lawyer. Antislavery newspapers, books, sermons, speeches, and pamphlets all included Taney's words in defense of the Methodist preacher, both to support their own position and to embarrass the chief justice. All seemed to take the speech at face value—as an honest expression of his own thinking at the time. No reference to the events of 1819 claimed

proposing Amendments to the Constitution of the United States, held at Washington, D.C., in February, A.D. 1861 (New York, 1864), 236. On the Peace Conference, see Robert Gray Gunderson, *Old Gentleman's Convention: The Washington Peace Conference of 1861* (Madison, 1961). I have been unable to locate Orville Dewey's sermon.

[22] *The Unjust Judge: A Memorial of Roger Brooke Taney, Late Chief Justice of the United States* (New York, 1865), 65.

[23] For an argument that Charles Sumner was the likely author of the pamphlet, see Lewis, *Without Fear or Favor,* 477–92. David Donald disagrees. See David Donald, *Charles Sumner and the Rights of Man* (New York, 1970), 193. On the pamphlet generally and Taney's reputation, see Huebner, *Taney Court,* 177–78. For critique of Taney's record as chief justice that did not mention the Gruber episode, see "Roger Brooke Taney," *Atlantic Monthly,* 15 (Feb. 1865), 151–61. *Unjust Judge,* 47. Horace Greeley also cited Taney's defense of Gruber at around this same time. See Horace Greeley, *The American Conflict: A History of The Great Rebellion in the United States of America, 1860–1864; Its Causes, Incidents, and Results: Intended to Exhibit Especially its Moral and Political Phases with the Drift and Progress of American Opinion respecting Human Slavery From 1776 to the Close of the War for the Union* (2 vols., New York, 1864), I, 109.

that Taney had merely been speaking as a disinterested attorney who had not really meant what he said. No reference attempted to parse his words to reconcile his position in 1819 with his stance in 1857. Instead, antislavery advocates seemed to agree that Taney had, at least at one time, held antislavery views that he had since abandoned. Unfortunately, no record exists of what Taney thought of how antislavery forces interpreted his speech.

As his enemies continued to scorn his name, Taney's friends attempted to rebuild his reputation. This initially involved explaining the *Dred Scott* decision. Fellow Marylander Reverdy Johnson led the effort. The day after Taney died, a number of his fellow barristers gathered in the U.S. District Court in Baltimore to memorialize the chief justice by relating memories and offering praise of his life and character. Johnson provided such remarks, but devoted most of his eulogy to a discussion of Taney's infamous *Dred Scott* decision and attempted "to vindicate him from a gross misrepresentation of a single phrase." Referring to the "they had no rights" passage, Johnson argued that many had taken those words out of context to mean that Taney believed that Africans had no rights at the time that the Court rendered its decision. "So far is this from being a just version of the opinion, that nothing but a false view of it justifies that impression," Johnson said. "The Chief Justice was then referring to what he and a majority of the Court understood to have been the light in which the African was held by our ancestors before and at the time the Constitution was adopted." Apparently assured of the correctness of the Court's reasoning, Johnson continued, "And who can now examine that legislation, and adopt the opposite conclusions?"[24]

Some months later, in February 1865, from his seat in the U.S. Senate, Johnson again came to Taney's defense during a debate over funds for a bust in memory of the late chief justice. When Senator Charles Sumner raised objections to "an emancipated country" placing a bust of "the author of the Dred Scott decision" in the Supreme Court, Johnson vigorously challenged Sumner. This time, rather than attempting to justify Taney's reasoning, Johnson argued that a majority of the justices and many in the legal profession had concurred with the decision and that the ruling had not come from Taney alone. On the Senate floor, Johnson mostly attempted to attest to the moral character of his friend. Johnson's Republican colleagues held quite a different view of Taney, and the appropriation bill failed. Curiously, neither Sumner nor his Republican allies attempted to use Taney's words in the Gruber case against him. Johnson, who undoubtedly still viewed the defense of Gruber as an embarrassment, never mentioned it.[25]

Over the next several years, attempts to restore Taney's reputation took a different turn. Although Johnson's strategy for vindicating Taney was to discuss the details of the *Dred Scott* decision, the publication in 1872 of the *Memoir of Roger Brooke Taney,* edited by the Maryland lawyer Samuel Tyler (who had for a while practiced in Frederick), signified a more ambitious endeavor. The book contained Taney's recollections on his early life, testimonials from colleagues, and excerpts of major decisions, in addition to biographical material written by Tyler. Johnson, who had supplied Tyler with information for the book, eagerly anticipated its appearance. "It cannot fail to be read with interest, and will

[24] *Proceedings of the Bench and Bar of Baltimore upon the Occasion of the Death of the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States* (Baltimore, 1864), 19, 20–21.

[25] *Congressional Globe,* Senate, 38 Cong., 2 sess., Feb. 23, 1865, pp. 1012–17, esp. 1012. This was a spirited and at times ugly debate, but Congress eventually allocated funds for a bust of Taney in 1873. See also Finkelman, "'Hooted Down the Page of History,'" 83–102; and Huebner, *Taney Court,* 175–77.

Reverdy Johnson was a key defender of Roger B. Taney's reputation after the chief justice penned the *Dred Scott* decision. Although largely neglected by historians, Johnson figured prominently in the constitutional history of the nineteenth century. He argued the winning side in the *Dred Scott* case and opposed the Emancipation Proclamation, but he later supported ratification of the Thirteenth Amendment. He sided with Maryland's Unionists during the Civil War and supported President Abraham Lincoln's suspension of the privilege of the writ of habeas corpus. For the most part he endorsed radical policies during Reconstruction, yet he strongly opposed convicting President Andrew Johnson during his impeachment trial. *Courtesy Library of Congress, Prints and Photographs Division, LC-BH82-29A.*

I have no doubt fully vindicate him from the Calumney heaped upon him because of his judgment in the Dred Scott case," Johnson wrote to Tyler in 1871.[26]

[26] Tyler, *Memoir of Roger Brooke Taney.* The historian J. Thomas Scharf briefly mentioned the Gruber trial in an 1869 book to show that antislavery opinion had existed in Maryland at that time. See J. Thomas Scharf, *History of Maryland, From the Earliest Period to the Present Day* (1869; 3 vols., Hatboro, 1967), III, 308–9. Reverdy Johnson

Remarkably, Tyler's book brought the Gruber case out into the open and recast the episode as illustrating Taney's true beliefs on slavery. While Senator Johnson chose not to mention the incident, Tyler devoted nearly ten pages to the case. "In the March Term, 1819, in Frederick County Court," *Memoir of Roger Brooke Taney* announced, "Mr. Taney was counsel for the defence in a cause which throws light over his whole subsequent life, enabling men to form a just estimate of his conduct in regard to a matter about which the most erroneous opinions have been entertained." Tyler included nearly all of Taney's speech on behalf of Gruber, including all of the passages—"a blot on our national character" and so forth—that Taney's antislavery opponents had used against him. Tyler concluded by depicting the Gruber case "as a rare example of administrative justice against the prejudices and the fears of a community." Tyler's discussion made two implicit claims: that Taney's words at the trial, by "throw[ing] light over his whole subsequent life," captured his antislavery views and that for Taney, the fair administration of justice stood above all.[27]

Over the next several decades, these two characterizations—Taney the man who held antislavery convictions and Taney the judge who carried out his juicial duties with the utmost seriousness—defined the contours of his reputation. These images of Taney mirrored two powerful cultural forces at the turn of the century: the southern ideology of the Lost Cause and the notion of legal formalism. As the Civil War generation grew older, white southerners attempted to vindicate and glorify the Confederacy. According to David Blight, proponents of the Lost Cause accomplished this by consistently repudiating the idea that slavery had caused the war and by eagerly denying the South's responsibility for the existence of the peculiar institution. Southern apologists, in other words, absolved themselves of responsibility for slavery, usually by placing blame on the North or on the nation's Constitution and laws. At the same time, the notion of legal formalism became the dominant mode of thinking among lawyers. Believing that law was a fixed set of neutral principles, formalists viewed judging as a mechanistic act, based solely on the transparent nature of statutes and constitutions. For them, social context, personal preferences, or biography were irrelevant to judicial decision making, as judges merely "discovered" the law based on its readily apparent meaning. The interpretation of Taney, slavery, and *Dred Scott* that emerged in the early twentieth century arose from these beliefs about the South and about the law. In this framework Taney became doubly virtuous; he personally held antislavery beliefs yet scrupulously exercised his judicial duties. The *Dred Scott* decision—rather than being an example of proslavery extremism, as Republicans had described it—thus became a reasonable, accurate interpretation of the Constitution.[28]

Defenders of the South proved adamant in this view. In 1910, in *History of Frederick County Maryland,* T. J. C. Williams and Folger McKinsey reprinted Taney's entire Gruber speech to argue that the chief justice remained antislavery throughout his life. "The Dred

to Samuel Tyler, July 6, 1871, in *Maryland Historical Magazine,* 13 (1918), 169–70.

[27] Tyler, *Memoir of Roger Brooke Taney,* 123–24, 131. Many of Taney's old acquaintances died in the years soon after the publication of Tyler's book, including Reverdy Johnson in 1876 and Samuel Tyler in 1878, and with their passing the interpretation of the chief justice's views of slavery fell to others.

[28] David W. Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge, Mass., 2001), 282–83. On the Lost Cause, see Rollin G. Osterweis, *The Myth of the Lost Cause, 1865–1900* (Hamden, 1973); Gaines Foster, *Ghosts of the Confederacy: Defeat, the Lost Cause, and the Emergence of the New South, 1865–1913* (New York, 1988); and Charles Reagan Wilson, *Baptized in Blood: The Religion of the Lost Cause, 1865–1920* (Athens, Ga., 1983). On the formalist interpretation within the judiciary, see William M. Wiecek, *The Lost World of Classical Legal Thought: Law and Ideology in America, 1886–1937* (New York, 1998); and Morton J. Horwitz, *The Transformation of American Law, 1870–1960: The Crisis of Legal Orthodoxy* (New York, 1992), 9–31.

Scott decision of the Supreme Court produced among those Northern people who did not take the trouble to understand its meaning and the inexorable law under which it was made, . . . the occasion for reviling Judge Taney as a cruel and heartless upholder of the whole system of human slavery," they wrote. "But Taney was in fact never an advocate of slavery and like many of the leading Southern men of his time he would have preferred its abolition, so that it was done legally and decently. He showed this by having manumitted his own slaves and he expressed his views freely in the defense of the Rev. Jacob Gruber." The prolific Confederate apologist Judge George L. Christian expressed similar sentiments. Although apparently unaware of Taney's defense of Gruber, Christian highlighted Taney's emancipation of his slaves in a 1911 speech. Because of *Dred Scott,* Christian argued, "this great and good man and great judge, who had liberated his own slaves long before the war, was hounded and denounced by the Abolitionists of that day as few men in this country have ever been at any time in its history." Despite this criticism, the *Dred Scott* opinion remained, Christian asserted, a matter of sound law. "Notwithstanding the calumny and abuse which were heaped upon the Chief Justice because of his decision in the Dred Scott case, . . . not one statement of fact or principle of law as set forth by him in that opinion has ever been successfully controverted." This interpretation of Taney and of *Dred Scott* clearly stemmed from the Lost Cause's denial of responsibility for slavery, for it absolved Taney of any blame for the *Dred Scott* decision. According to this view, Taney himself opposed the ruling but was simply adhering to the law.[29]

Prominent legal scholars sounded a similar note. In 1914, the law professor John D. Lawson republished a transcript of the Gruber trial in *American State Trials,* a notable legal reference volume. More than a hundred years after the initial publication of the case, Lawson believed it was as important as ever. "Who was it in that County Court House on that day that denounced slavery as a blot on our national character, an evil imposed upon us by another nation . . . ? It was no less a person than Roger Brooke Taney," Lawson proudly announced in his introduction. "Today the heat and passion of the old war days having gone, the correctness of the law as Taney laid it down is being acknowledged even in the Court over which he presided," he noted. "And does not this trial which has been forgotten for nearly a century clearly show that in delivering his celebrated judgment, Chief Justice Taney was speaking as a jurist expounding the law, and not as a partisan who sought to fix his views of slavery upon the nation." Lawson's words captured the prevailing interpretation of Taney and *Dred Scott* in the early twentieth century. Before the first serious biography of Taney (Bernard Steiner's *Life of Roger Brooke Taney* in 1922), the Lost Cause and legal formalism had converged to construct the idea of a personally antislavery Taney who set aside his own views in *Dred Scott* to fulfill his obligation to interpret the law. The defense of Gruber served as the primary evidence for this claim.[30]

[29] T. J. C. Williams and Folger McKinsey, *History of Frederick County Maryland* (1910; Baltimore, 1967), 194–96. George L. Christian, *Roger Brooke Taney, Address by George L. Christian, of Richmond, President of the Virginia State Bar Association, before The Virginia State Bar Association at Homestead Hotel, Hot Springs, Virginia, August 8th, 9th and 10th, 1911* (Richmond, 1911), 18. On George L. Christian, see Fred Arthur Bailey, "Free Speech and the Lost Cause in the Old Dominion," *Virginia Magazine of History and Biography,* 103 (April 1995), 244–50.

[30] John D. Lawson served as dean of the University of Missouri Law School from 1903–1912 and for many years as the editor of the *American Law Review* and *Central Law Journal.* He also edited the multivolume *American State Trials.* See Percy Anderson Hogan, "History of the University of Missouri Law School," *Missouri Law Review,* 5 (1940), 280–82. John D. Lawson, ed., *American State Trials* (17 vols., Wilmington, 1914), I, 70–71. Elbert William R. Ewing, *Legal and Historical Status of the Dred Scott Decision* (Washington, 1909); Morris M. Cohn, "The Dred Scott Case in the Light of Later Events," *Virginia Law Register,* 18 (1912), 401–9. Steiner, *Life of Roger Brooke Taney.*

What do Taney's words in the trial of Jacob Gruber actually tell us about his beliefs about slavery? It is difficult to discern Taney's thinking. Famously unwilling to comment on controversial matters before the Court as chief justice, he left virtually no personal record of his thoughts on the subject. The handful of legal sources that exist, as Taney's admirers recognized, present as many questions as answers about his true sentiments: do they reflect the personal beliefs of Taney the lawyer and judge? Or do they merely represent an attempt to win a case or to state the law? But Taney's words in the Gruber case did conform closely to his other activities at the time. In his law practice he attempted to ameliorate the conditions of free and enslaved African Americans; in his private life he freed his slaves and advocated gradual emancipation; as a state senator he favored limitations on the institution of slavery. It is, therefore, reasonable to conclude that his bold statements on Gruber's behalf—his description of slave traders as "reptiles," his characterization of slavery as a "blot on our national character," and his belief that human bondage violated the spirit of the Declaration of Independence—revealed his sincere thinking at the time of the trial.

Sometime after he uttered these words, however, Taney's perspective subtly began to shift. Cases involving slavery still constituted a miniscule portion of his practice, but in 1821, for the first time in his career, he argued against slaves suing for their freedom, and as Maryland attorney general he defended a notorious slave trader before the U.S. Supreme Court in 1827. As U.S. attorney general under President Andrew Jackson, Taney provided glimpses of the stance he would take in the *Dred Scott* decision, particularly regarding the question of whether African Americans had been included in the political community at the writing of the Constitution. In 1832, he authored an official opinion on the constitutionality of a South Carolina statute that provided that black seamen who arrived in Charleston were subject to arrest and confinement while their ship remained in port. Written for the secretary of state, Taney's opinion referred to African Americans as members of a "degraded class." Whatever limited rights African Americans possessed, Taney argued, came from the states, who legitimately conferred or withdrew those privileges based on "the sufferance of the white population." Maintaining white control over black liberties also helped prevent "the evils of insurrection and rebellion." To be sure, Taney's attorney general opinion laid out an extremely narrow vision of black rights. It did not go nearly as far as *Dred Scott* on this point, however, and one scholar has argued that his belief that blacks stood outside of the political community at the founding did not "necessarily exclude the possibility that free African Americans might be, or become, citizens of the United States, even if citizens with sharply curtailed rights." Notably, Taney continued his personal activities on behalf of African Americans at this time and retained a reputation as a friend to enslaved blacks seeking to buy their freedom. As late as 1839, the abolitionist James G. Birney relayed to one of his colleagues what had been told to him by a slave whom Taney had assisted in this manner: Taney "was considered by the colored people of Baltimore as one of their steadiest and surest friends—and that his temper toward them never failed to manifest itself on all proper occasions where money was to be raised for their assistance or improvement." For Taney, denying black citizenship clearly did not mean condemning all African Americans to servitude. The 1820s and 1830s, in short, might best be understood as a period of transition in Taney's thinking.[31]

[31] *Hughes v. Negro Milly,* 5 H. & J. 310 (1821); *United States v. Gooding,* 25 U.S. 460 (1827). Taney lost in

Whatever change occurred in Taney's mind during this period took place in a fluid political environment—at the state and national level—that was becoming increasingly inhospitable toward open discussions of slavery. Taney's service in the state senate concluded in 1821, at the same time that Federalist dominance in Maryland came to an end. Having split into two factions over the question of war with England in 1812, Maryland Federalism—a political home for moderate antislavery men—never fully recovered. As the party's fortunes rapidly declined, Taney sought new political connections at about the time that he moved to Baltimore in 1823. While there, Taney witnessed the rise of an aggressive abolitionism and a corresponding, militant reaction. In 1824 the noted Quaker abolitionist Benjamin Lundy moved to the city and published antislavery writings that repeatedly provoked the ire of local slaveholders. When the Baltimore slave trader Austin Woolfolk beat Lundy nearly to death in 1828, the episode brought into sharp relief the debate over the morality of slavery. Many gradualists—Taney probably included—felt the need to distance themselves from Lundy and other advocates of immediatism. At this time, Taney embraced the party of Andrew Jackson, a slave-owning Tennessean who built a southern-dominated political party that focused on the rights of slaveholders and the prerogative of states. Over the next several years the Democratic party supported slavery and white supremacy in a variety of ways—from its Indian removal policy to its eventual stance in favor of the annexation of Texas. As an official of the Jackson administration, Taney ceased to think of slavery solely from the perspective of a small-town Maryland lawyer and instead began to reason and act as a representative of the president and his party. Nat Turner's rebellion in 1831 gave Taney further cause to reconsider his views on slavery and black rights. The revolt prompted a nearly universal response of fear and dread on the part of white southerners, who became more mindful of the threat of uprising and increasingly vigilant about maintaining racial control.[32]

During the 1840s and early 1850s, against a backdrop of sectional political polarization, the nuance of Taney's attitudes and actions regarding slavery began to dissolve. No record of personal activities by Taney on behalf of slaves exists for this period, and the legal evidence indicates a purely proslavery position. As chief justice of the Supreme Court, Taney's opinions reflected an emerging "southern rights" argument that emphasized the need to protect the property rights of slaveholders by preserving state control over slavery. In *Groves v. Slaughter* (1841), a case involving the sale of slaves in Mississippi, Taney went beyond the scope of the question at hand—and beyond the written opinion of his colleagues—to argue that the power to regulate interstate slave trading lay exclusively with the states. In *Prigg v. Pennsylvania* (1842) Taney concurred with the majority opinion invalidating Pennsylvania's personal liberty law as a violation of both the Constitution and

Hughes, where the Court of Appeals of Maryland upheld the validity of the manumission. Taney won the acquittal of the slave trader in *Gooding.* On *Gooding,* see Gustavus Myers, *History of the Supreme Court of the United States* (Chicago, 1925), 362–65. "Opinion by Roger B. Taney, Attorney General, South Carolina Law Respecting Colored Mariner, May 28, 1832," container 21, Carl Brent Swisher Collection (Library of Congress, Manuscript Division, Washington, D.C.). H. Jefferson Powell, "Attorney General Taney and the South Carolina Police Bill," *Green Bag,* 5 (Autumn 2001), 85. James G. Birney to Joshua Leavitt, May 23, 1839, in *Letters of James Gillespie Birney, 1831–1857,* ed. Dwight L. Dumond (Gloucester, 1966), 488. For letters that discuss Taney assisting other enslaved men in buying their freedom, see Cornelius Thomason to William Beall, Feb. 24, 1831, Mary L. Urner Collection (Maryland State Archives, Annapolis); Taney to Beall, April 23, 1832, *ibid.*; Taney to Beall, Sept. 6, 1832, *ibid.*; and Taney to Beall, Sept. 29, 1833, *ibid.* I thank Max Grivno for supplying me with this correspondence.

[32] Haller, "Rise of the Jackson Party," 307–12. Bruce Rosen, "Abolition and Colonization, the Years of Conflict: 1829–1834," *Phylon,* 33 (no. 2, 1972), 181–83. On Benjamin Lundy, see Merton L. Dillon, *Benjamin Lundy and the Struggle for Negro Freedom* (Urbana, 1966). Jean Baker, *Affairs of Party: Political Culture of the Northern Democrats* (Ithaca, 1983); Fehrenbacher, *Slaveholding Republic.*

the federal Fugitive Slave Law of 1793. The Pennsylvania statute required slave catchers to obtain a proper writ from a state judge before removing any African Americans from the state. In the majority opinion, Justice Joseph Story struck down the Pennsylvania law on the grounds that regulation of the slaveholder's right of recovery lay exclusively with Congress. In a concurrence, Taney rejected Story's reasoning. The chief justice insisted that the Constitution prohibited states only from *interfering* with a slaveholder's right to recover his property, not from *supporting* or *enforcing* the rights of slaveholders. States could regulate slavery, he concluded, so long as they did not threaten the constitutional guarantees of slaveholders. In *Strader v. Graham* (1851) Taney again argued for state power to protect slavery, this time by dismissing a suit for damages involving a group of slaves who had been taken briefly into Ohio and later fled from Kentucky into Canada. When the owner of the slaves sued a group of men who had allegedly aided their escape, the defense counsel argued that the Northwest Ordinance, which had banned slavery in the Old Northwest in 1787, freed the slaves upon their stepping foot on Ohio soil. Writing for a unanimous Court, Taney dismissed the case for lack of jurisdiction by claiming that the laws of Kentucky superseded the Northwest Ordinance. Although none of these Supreme Court decisions proved particularly controversial, Taney went beyond his colleagues in compiling a solidly proslavery record. In each instance Taney preserved slaveholders' rights by ensuring that states maintained control of slavery.[33]

By the time of *Dred Scott,* Taney's thinking had evolved into full-blown extremism. The best evidence that Taney's notorious judicial opinion reflected his personal beliefs came in a rare private letter on slavery, penned in August 1857, just after he wrote the *Dred Scott* decision. In the letter, Taney affirmed his adamant disapproval of emancipation. "Every intelligent person whose life has been passed in a slaveholding State, and who has carefully observed the character and capacity of the African race, will see that a general and sudden emancipation would be absolute ruin to the negroes, as well as to the white population," he wrote. "In the greater number of cases that have come under my observation, freedom has been a serious misfortune to the manumitted slave; and he has most commonly brought upon himself privations and sufferings which he would not have been called on to endure in a state of slavery." Apart from the strictly legal holding in *Dred Scott,* moreover, the rhetoric of Taney's opinion—the idea that an African American could "justly and lawfully be reduced to slavery for his benefit"—reveals his acceptance of the claim of southern paternalists that slavery benefitted blacks. By the 1860 presidential election Taney had joined the vast majority of his fellow white southerners in conflating free soil and abolition, as well as in dreading the possibility of a Lincoln presidency and a massive insurrection. "I am old enough to remember the horrors of St. Domingo," he confided to a friend on the eve of the election, "and a few days will determine whether anything like it is to be visited upon any portion of our own southern countrymen. I can only pray that it may be averted and that my fears may prove to be nothing more than the timidity of an old man."[34]

[33] *Groves v. Slaughter,* 40 U.S. 449 (1841); *Prigg v. Pennsylvania,* 41 U.S. 539 (1842); *Strader v. Graham,* 51 U.S. 82 (1851). For more on these cases, see Finkelman, "'Hooted Down the Page of History,'" 89–98; R. Kent Newmyer, *The Supreme Court under Marshall and Taney* (Wheeling, Ill., 2006), 118–31; Huebner, *Taney Court,* 155–64; Earl M. Maltz, *Slavery and the Supreme Court, 1825–1861* (Lawrence, 2009); and Carl B. Swisher, *History of the Supreme Court of the United States,* vol. 5: *The Taney Period, 1836–1864* (New York, 1974), 528–91.

[34] Ironically, in the same August 1857 letter Taney also noted how well his own emancipated slaves had done. Taney to Nott, Aug. 19, 1857, in *Proceedings of the Massachusetts Historical Society,* 445. *Scott v. Sandford,* 60 U.S. at 407. On the important point that Taney's opinion in *Scott* overlooked and overturned Missouri precedent on the

Taney's views had changed dramatically over the years. In 1819 he advocated gradual emancipation, thought Congress should limit the spread of slavery, and believed the institution incompatible with the Declaration of Independence. By the time of *Dred Scott* Taney believed only states could control slavery, ruled that Congress could not prohibit slaveholding in the territories, concluded that the Declaration of Independence had no bearing on black rights, believed that slavery elevated African Americans, and abhorred the thought of emancipation. Although for decades Taney's defenders attempted to link his earlier antislavery statements from the Gruber trial with the *Dred Scott* decision, the fact remains that the two episodes had nothing to do with each other. Nearly forty years apart—half a lifetime for both Taney and his country—the defense of Gruber helps neither explain nor justify Taney's "visceral" proslavery decision in *Dred Scott*. The Roger Taney of 1819 simply was not the same man as the Taney of 1857. Arguably the most extreme member of the proslavery majority on the Supreme Court at the time of *Dred Scott v. Sandford,* Taney had been the most antislavery of the group early in his career.[35]

Roger Taney's odyssey from antislavery lawyer to proslavery justice mirrored larger currents in American political and constitutional development. Having come of age during the founding era, Taney possessed an early nineteenth-century brand of antislavery that began to evaporate during the 1830s. The rise of the immediatist abolitionist movement, with its emphasis on moral purity and revolutionary change, significantly altered the nature of the political debate over slavery. During the early nineteenth century, an amalgam of antislavery societies existed throughout the upper South and border states, and national political leaders vigorously and openly discussed ways to restrict the growth of the peculiar institution. Abolitionists' uncompromising rhetoric forced antislavery opinion from the mainstream to the margins, as more moderate antislavery advocates—particularly in slaveholding states—felt forced to defend themselves against charges of extremism. This development silenced some of slavery's opponents and nudged others toward a more proslavery stance, thus circumscribing the national political debate on the subject. By the 1840s and 1850s the Democratic party had shifted the discussion away from the question of whether slavery conformed to the nation's founding principles and redefined the issue as one of protecting the property rights of southern slaveholders. As Lincoln put it in an 1854 speech, "The plain and unmistakable spirit of [the founding] age, towards slavery, was hostility to the PRINCIPLE, and toleration, ONLY BY NECESSITY. But NOW it is to be transformed into a 'sacred right.'" Of course, Taney's *Dred Scott* opinion ultimately embodied this transformation. Historians should take note of the words and deeds of the young Frederick County lawyer, but not because—as late nineteenth- and early twentieth-century apologists believed—Taney's early antislavery words prove his innocence in *Dred Scott*. Rather, Taney's changing views show that he was both a product and a proponent of this shifting discourse about slavery.[36]

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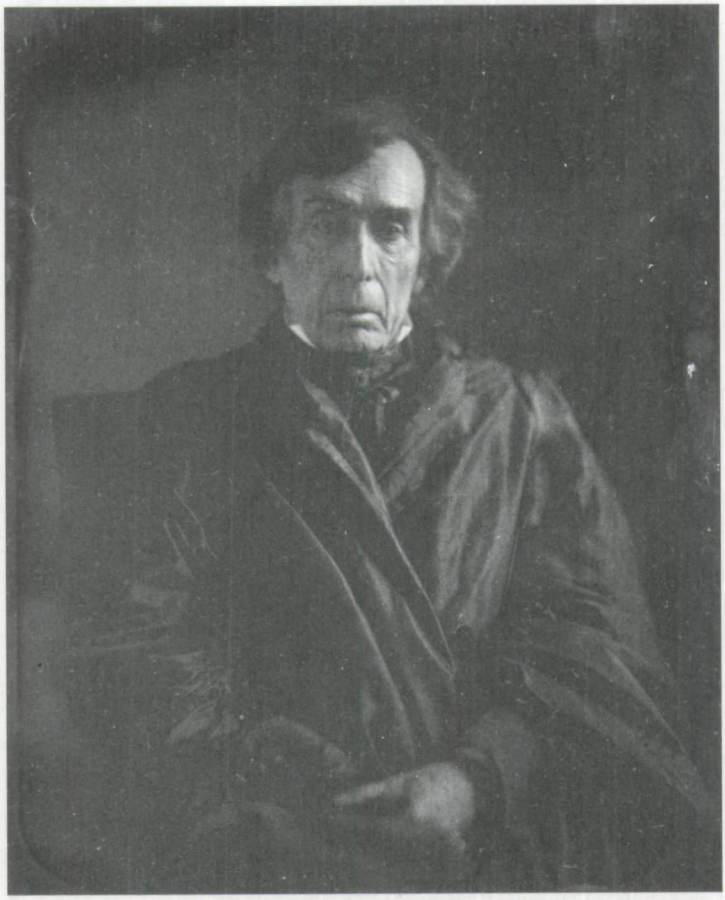
fate of a slave sojourner, see Dennis K. Boman, "The Dred Scott Case Reconsidered: The Legal and Political Context in Missouri," *American Journal of Legal History,* 44 (2000), 405–28. Taney to J. Mason Campbell, Oct. 19, 1860, Benjamin C. Howard Papers (Maryland Historical Society, Baltimore), quoted in Fehrenbacher, "Roger B. Taney and the Sectional Crisis," 556–57.

[35] Fehrenbacher, "Roger B. Taney and the Sectional Crisis," 561. On the views on slavery of the other southern members of the Supreme Court at the time of *Dred Scott,* see Timothy S. Huebner, *The Southern Judicial Tradition: State Judges and Sectional Distinctiveness, 1790–1890* (Athens, Ga., 1999), 55–67; Robert Saunders Jr., *John Archibald Campbell, Southern Moderate, 1811–1889* (Tuscaloosa, 1997), 57–68; John P. Frank, *Justice Daniel Dissenting: A Biography of Peter V. Daniel, 1784–1860* (New York, 1970), 55–62; and Alexander A. Lawrence, *James Moore Wayne: Southern Unionist* (Chapel Hill, 1943), 97–99, 139–59.

[36] William Freehling, "The Founding Fathers and Slavery," *American Historical Review,* 77 (1972), 81–93; Da-



This full-plate daguerreotype photograph of Roger B. Taney was taken by Mathew Brady in 1849. Although done the same year as Miner Kilbourne Kellogg's oil portrait of the chief justice (see page 21), this darkened image makes Taney appear quite older—and perhaps even a bit sinister. *Courtesy Beinecke Rare Book and Manuscript Library, Yale University.*

vid Brion Davis, "The Emergence of Immediatism in British and American Antislavery Thought," *Mississippi Valley Historical Review,* 49 (Sept. 1962), 209–30. Matthew Mason, *Slavery and Politics in the Early American Republic* (Chapel Hill, 2006). Merton Dillon, *Slavery Attacked: Southern Slaves and Their Allies, 1619–1865* (Baton Rouge, 1990), 87–161; Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York, 1982), 402–34; Abraham Lincoln, "Speech on the Kansas-Nebraska Act at Peoria, Illinois," in *The Portable Abraham Lincoln,* ed. Andrew Delbanco (New York, 1992), 74. This shift is evident in the vote in the U.S. House of Representatives in favor of implementing a gradual abolition policy in Missouri in the 1819 enabling act for statehood. This attempt to restrict slavery in a state—not a territory—constituted a limitation on slavery that few mainstream political leaders ever again dared support. I am grateful to Daniel Feller for this important insight.