CHIEF JUSTICE ROGER B. TANEY: A TRANSITIONAL FIGURE BETWEEN THE OLD AGRARIAN ORDER AND THE INDUSTRIAL SYSTEM

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CHIEF JUSTICE ROGER B. TANEY: A TRANSITIONAL FIGURE BETWEEN THE OLD AGRARIAN ORDER AND THE INDUSTRIAL SYSTEM

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INTRODUCTION

As Chief Justice of the United States Supreme Court from 1837 to 1864, Roger Brooke Taney[1] is an important figure who deserves understanding. His decisions upholding the right to hold property in slaves did much to solidify anti-slavery sentiment in the North. And his defense of the public interest against claims of monopoly was instrumental to the growth of American business. Yet little attempt has been made to understand the components of his judicial decision-making process. The purpose of this monograph is to explain Taney's judicial behavior in terms of a consistent set of attitudes.

Three relatively recent attempts to explain Taney are worthy of note. Charles W. Smith[2] has attempted to pattern Taney's judicial responses in terms of a consistent judicial philosophy. To Smith, Taney's concern was to uphold popular sovereignty. He sought to safeguard it by maintaining intact the intended division of powers between

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[1] Taney is pronounced as if spelled T-a-w-n-e-y.

[2] Charles W. Smith, Roger B. Taney: Jacksonian Jurist (Chapel Hill, 1936).

state and federal government.

To Fred Rodell "there is not one of his decisions as Chief Justice . . . but can be traced, directly or indirectly, to his big plantation birth and background."[3] Rodell does relate Taney's experience in state banking to a greater concern for that form of enterprise than the conventional planter might have held.

Carl B. Swisher[4] contends that Taney was personally unsympathetic to slavery, but was devoted to most of the other traditional Southern values. Taney's judicial favoritism for slavery is seen to reflect a realization that the institution was inseparably linked with those aspects of the old order which he loved. Swisher believes that Taney shared the traditional distrust of his class for business enterprise, but realized its inevitability and was pragmatic enough to make occasional concessions to it.

Rodell and Swisher correctly realize that Taney's judicial behavior must be explained in terms of socio-economic values, not abstract principles of justice. But even Swisher fails to entirely capture the complexity of

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[3]Fred Rodell, Nine Men: A Political History of the Supreme Court from 1790 to 1855 (New York, 1955), p. 170.

[4]Carl B. Swisher, Roger B. Taney (Hamden, Conn., 1961).

Taney's character. As Swisher has found, Taney was no devotee of slavery *per se*. He opposed sudden emancipation because he realized that it would destroy many aspects of Southern Culture to which he was deeply attached. Taney did share many of the traditional Southern agrarian values. But the suggestion here is that Swisher portrays Taney as more of an agrarian than he actually was. Taney's opinions in cases involving corporations reflect a desire to encourage business enterprise, not agrarian suspicion of an expanding economy. In a sense Taney spanned the gap between the old agrarian order and the coming industrial system.

CHAPTER I

MARYLAND YEARS AND JACKSONIAN POLITICS

Roger Brooke Taney was born in Calvert County in 1777 on the ancestral plantation of his old Maryland family.[5] Tidewater Maryland society was patterned after that of the English countryside. Prosperous planters such as the Taneys prided themselves upon their resemblance to English country gentlemen. They built great homes. They were socially minded and loved the active life. Great English-style fox hunts were regularly held in which the burdens of hospitality were rotated between the plantations. And like the English country gentry, they considered it their province to lead the people in public affairs. Gradually they developed a deep antipathy for the mercantile sharpness which drained much of their wealth to the North. And by the time of the Revolution they accepted law as a respectable profession for sons who chose to leave the land.

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[5]Except where otherwise cited the source for all specific material relating to Taney's life is Samuel Tyler's Memoir of Roger Brooke Taney, LL.D. (Baltimore, 1872). The portion of the book covering Taney's life up to 1801 is autobiographical.

Young Roger came to love this way of life, and he assumed most of the values of the old order. He shared its deep attachment to the land. And he cherished memories of its warm hospitality as long as he lived. But he developed a more tender, reflective character than most of the boys brought up in the planter aristocracy, perhaps because of the poor health and lack of bodily strength which plagued him throughout his entire life.

Taney's higher education began in 1792 when he entered Dickinson College in Carlisle, Pennsylvania. He was only fifteen at the time, and his somewhat apprehensive father had asked the head of the college, Dr. Charles Nisbet, to take a personal interest in the boy. This request was conscientiously complied with, and the evenings which Taney spent in the home of his mentor were probably a greater influence upon his mind than his more formal studies at Dickinson. Nisbet had been brought to America from Scotland by the college trustees, and like many other Britishers his revulsion from the atrocities of the French Revolution had made him an intense supporter of the concept of a ruling elite which would govern for the benefit of all. The informal discussions between the articulate headmaster and his politically unsophisticated young pupil must have

strengthened within Taney the Federalist principles of his family. And here too he must have been impressed with his own position as a gentleman born and bred to rule.

After receiving his Bachelor of Arts Degree in 1795 Taney gratified his father by deciding upon a career in the law. In terms of the family situation and planter values this was a natural decision. The elder Taney was determined to leave the entire family plantation to Roger's oldest brother in the English manner. And he was not wealthy enough to purchase estates for each of his remaining three sons. He considered Roger able enough to establish himself in a profession, and law was the common profession for members of the aristocracy to pursue.

Taney entered into his study of jurisprudence at Annapolis under the tutelage of Jeremiah Townley Chase, a judge of the General Court of Maryland. At this time the General Court had jurisdiction over all of the higher civil and criminal cases. It met twice annually at Annapolis to serve that portion of Maryland lying west of Chesapeake Bay, and also twice at Easton to serve Eastern Maryland. During his three years of study at Annapolis Taney repeatedly heard the great lawyers of his day pleading before its bar, and these experiences instilled in him a great respect for

the law. In 1799 Taney was admitted to the bar, and in response to his father's wish he decided to return to Calvert County to practice.

It was not the undistinguished legal career which Calvert County might have afforded that the elder Taney now had in mind for his son, however, but his own seat in the Maryland House of Delegates. Michael Taney was impressed with his son's abilities. And within the Maryland aristocracy it was expected that able sons would enter politics. Furthermore, the elder Taney had reason to believe that Roger could be elected even though he was relatively unknown in the district. The formal governmental structure of Old Maryland seems to suggest the existence of a broad base for political participation. The state constitution provided a broad suffrage franchise, and only a moderate amount of property was required for holding office.[6] But in practice state government was controlled by an aristocratic oligarchy. Through

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[6]The Maryland Constitution of 1776 extended the franchise to all freemen of twenty-one years of age possessing a freehold of fifty acres or property above the value of thirty pounds. Members of both Houses of the legislature were required to possess an estate in freehold of at least five-hundred pounds, real or personal. Members of the Upper House were elected indirectly through an electoral college. Philip A. Crowl, "Maryland During and After the Revolution: A Political and Economic Study," Johns Hopkins University Studies in Historical and Political Science, LXI (Baltimore, 1943), 32-33.

tradition and an open form of ballot which allowed the wealthy to exert a maximum of persuasion families of large fortune dominated Maryland politics.

By Roger's self-admission his political ambitions had become sufficiently whetted so that he was not annoyed at the bit of duplicity used to induce him to return. In rural Maryland state elections had historically been won through personal popularity, family influence, and liberal quantities of free beer. Taney entered the race for delegate from Calvert County, and with ample assistance from these conventional aids he was sent to Annapolis for the legislative session which began in November of 1799.

The session was distinguished by the passage of a bill providing for the construction of a canal connecting Chesapeake Bay with Delaware Bay. The bill was popular in the region lying along the Chesapeake, a region which could hope to profit from allowing Philadelphia to compete for its market, but it was opposed by the merchants of Baltimore who wished to retain their existing advantage. Taney actively supported the bill, and this contest is significant as his first public struggle against what he considered to be commercial avarice.

Taney's bid for re-election in 1800 was crushed amidst a changing political scene. For the first time in Calvert County history candidates for state office were forced to campaign upon their political principles, and the trend was strongly against the Federalist principles which Taney attempted to uphold.[7] By 1800 the average man was demanding a greater share in government. And Maryland Federalists had lent credence to the charge that they were undemocratic by attempting to place the choice of presidential electors in the hands of the legislature. Furthermore, ever since the Federalist-controlled Congress of 1793 had passed a direct tax on land and slaves there existed a growing feeling in rural areas that agrarian interests would not be served by a party dependent upon commercial and financial support. Taney was heckled for being an aristocrat throughout the campaign. In the election he was crushed.

Following this unexpected blow Taney turned in earnest to the law. Michael Taney desired that his son establish himself in Baltimore, but Roger cautiously chose instead to practice before the less auspicious bar of

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[7] In addition to Tyler see Edward G. Roddy, "Maryland and the Presidential Election of 1800," Maryland Historical Magazine, LVI (1961), 221-278.

Frederick. He did not develop the ornate style of many of his colleagues in the law, but the clear logic of his presentations soon gained him admiration. To William Wirt his mind was like the moonlight of the Arctic; it "gave all the light of day without its glare."[8] By 1806 his practice had become sufficiently lucrative to enable him to marry his sweetheart, Anne Key. In 1823 his increasingly respected abilities gave him the confidence to move to Baltimore, where he established himself as one of Maryland's finest lawyers. And in 1825 he argued his first case before the Supreme Court of the United States.

Taney retained his interest in politics while pursuing his legal career, but even as he was becoming one of the leading Federalists of his state he was steadily drifting away from the mainstream of party thought. America's efforts in the War of 1812 were opposed by many influential Federalists. In Maryland, where war was less critical to the economy than in commercial New England, a majority of the party remained patriotic. But anti-government sentiment was sufficiently strong so that the state party split into two bitterly opposed factions. Taney regretted the declaration of war,

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[8] Swisher, p. 109.

but once the country had been committed he assumed leadership of the faction which supported Madison in the war effort. Taney's brother-in-law, Francis Scott Key, belonged to this faction, and his Star-Spangled Banner stands with the near-treasonous Hartford Convention to reflect the split in Federalist ranks. The Federalist Party was ruined as a national organization by the Hartford Convention. But in Maryland its strength lingered long enough for the party to sweep the state elections of 1816. In the election of that year Taney himself gained a seat in the Maryland Senate.

The material is not available for a thorough study of Taney's political development. But it is possible to sketch the maturation of his belief in a democratic theory of equality. While in the Maryland Senate Taney fought criticism from the opposing wing of his own party with an appeal to the people much like those which came to characterize Jacksonianism. In this appeal he affirmed his own belief in democracy while warning of enemies within the Federalist Party who sought to rule without regard for the people.[9]

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[9]Taney, An Address to the People of Frederick County, Feb. 27, 1817, quoted in part by Swisher, pp. 76-78.

While Taney was serving out his five year term in the Maryland Senate the Federalist Party was expiring on the national level, and the one-party presidential election of 1824 marked the beginning of his drift into the legions of Andrew Jackson. We can see how Taney chose Jackson over John Quincy Adams on the strength of Jackson's image as the champion of equal rights. After James Monroe's election as president in 1816 Jackson had written to him of the many Federalists who had remained loyal to the war effort, and he had expressed the hope that Monroe would rise above partisanship and consider these men for cabinet positions on their merits.[10] In 1824 Jackson published this correspondence to attract the votes of old Federalists. Taney was impressed with the appeal, and in a letter to an old friend he expressed the reasons why he preferred Jackson:

> He is honest, he is independent, is not brought forward by a particular class of politicians, or any sectional interest. He is not one of the Secretaries. He is taken up spontaneously by the people, and if he is elected will owe obligations to no particular persons. It is a way in which a President ought to come in, for he is then unfettered by secret promises and may act independently. I am sick of all Secretary candidates, and would be glad to see it understood that a man might be elected without the patronage of the

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[10] Jackson to Monroe, October 23, 1816; Monroe to Jackson, November 14, 1816; Jackson to Monroe, January 6, 1817. Cited in Tyler, pp. 156-158.

> President for the time being, or the power of members of Congress, or a combination of mercenary presses or local interests.[11]

Jackson was defeated by John Quincy Adams after the election was thrown into the House of Representatives, and Taney firmly supported Jackson in his 1828 campaign to gain the office from which he believed he had been unjustly deprived. Taney was resentful of Jackson's defeat in the House after he had secured a popular and electoral majority over Adams, but his open support of Jackson against Adams in 1828 was based more upon ideological considerations than upon righteous indignation. Although the election largely turned on personalities, Jackson was trusted more than Adams by those who were unsympathetic to the idea of economic progress through corporate privilege.

Taney did not personally know either Jackson or his running-mate, John C. Calhoun. But Taney and Calhoun had a mutual friend in Virgil Maxcy of Tulip Hill, Maryland. Maxcy worked closely with Calhoun throughout the campaign, and in his reports of the efforts of the Jackson-Calhoun supporters in Maryland he recorded Taney's open support. He wrote Calhoun that Taney had ceased to be a Federalist

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[11] Taney to William M. Beall, April 13, 1824. Cited in Swisher, pp. 121-122.

and had become above all a Jackson man. He informed him that Taney had been appointed chairman of the Maryland Central Committee for Jackson by the state Jackson convention held in Baltimore in May, 1827. And he speculated that Taney could also have had the presidency of the convention if he had desired it.[12]

There is no indication that Jackson ever considered Taney in forming his original cabinet, and there is no indication that Taney expected any consideration for the part he played in Jackson's tremendous victory of 1828. But through a series of events the cabinet vacancy was created without which, in all probability, Taney would never have entered national politics. Jackson's original cabinet members functioned smoothly together for a while, but by 1831 Calhoun's pursuance of an independent course in the tariff crisis, Van Buren's guile, and the refusal of a number of cabinet wives to accept Secretary of War John Eaton's crass and reputedly immoral wife as a social equal had made the association an intolerable one. In the spring of that year Jackson determined to reorganize his cabinet, and Attorney-General John M. Berrien was among those members

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[12] Maxcy to Calhoun, May 7, 1829, J. Frank Jameson (ed.), "Correspondence of John C. Calhoun," Annual Report of the American Historical Association for the Year 1899 (Washington, 1900), II, 800-807.

whom he persuaded to resign.

On June 21, 1831 Jackson appointed Taney to the vacant Attorney-Generalship. Certainly Taney's entry into national politics was a matter of the merest chance in the sense that Berrien would normally never have resigned the position, but once the vacancy existed in 1831 Taney's appointment to fill it was no shot-in-the dark. Taney's pre-eminent position before the Maryland bar had been acknowledged in 1827 with his appointment as state Attorney-General. He had been unanimously recommended for that office by the Baltimore bar, and named to it by a governor who belonged to the other political faction. By this time Taney was also a familiar advocate before the Supreme Court of the United States, and as Justice Henry Baldwin reported to Jackson, the Court held him in the highest regard. And, of course, in addition to this unquestioned ability to fill the position Taney was a Jackson man.

Once Taney was in the cabinet it was natural that he and Jackson should become fast friends, for in the broad structure of their temperaments they were very similar. There was little element of doubt in the make-up of either. Each tended to find things entirely right or entirely wrong. Untroubled as both were by indecision they quickly became

emotionally involved in issues. And once so involved they were similarly inclined to defend their judgments without regard for the personal consequences of their actions.

Furthermore both were followers of the Jeffersonian tradition. They idealized the old values of self-reliance, hard money, and equal opportunity for all. But they extended Jeffersonian democracy to include an expanding society. Jefferson had sought to maintain an essentially agrarian economy. Taney and Jackson both had experience in business, and did not fully share Jefferson's agrarian prejudices. They favored business enterprise as long as it remained open on an equal basis to all.

Taney's appointment to the cabinet was coincidental with the beginnings of the struggle over the recharter of the Second Bank of the United States. Among its other functions the Second Bank served as a depository for government funds. In this capacity it collected large amounts of state bank notes. Normally these bank notes could circulate for a long time before being turned in for redemption, thereby allowing the state banks to operate with a small specie reserve. The Bank of the United States made it a practice to present these notes weekly for redemption. This sometimes made it necessary for the state banks to contract their loans, and in consequence diminished their

profits. Therefore the Bank of the United States was opposed by state-bank men and businessmen with a need for easy credit. Farmers and planters who shared the traditional agrarian aversion to all business enterprise comprised the other element of the unlikely combination which rallied behind Jackson to destroy the Bank. It was the Bank War which drew Jackson and Taney together. Taney was Jackson's staunchest supporter in the struggle. And the two men opposed the Bank out of the same impulses. To both it was an anti-republican monopoly. The language of their attacks, however, appealed to agrarians who opposed all business enterprise. For instance, in his official messages and papers Jackson frequently referred to the Bank as a "monster of corruption." And in a letter to the Speaker of the House of Representatives outlining the grounds for his opposition Taney argued that:

> It is a fixed principle of our political institutions, to guard against the unnecessary accumulation of power over persons and property in any hands. And no hands are less worthy to be trusted than those of moneyed corporations.[13]

But Jackson and Taney were concerned with destroying the Bank to encourage enterprise, not eliminate it. Years later Taney prepared a manuscript account of the Bank War.

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[13]December 4, 1833, cited in Tyler, p. 212.

In this manuscript he explained that he opposed the Second Bank because it had used government resources to gain a monopoly over all banking. He believed that if the Bank had been rechartered it would ultimately have driven every state bank out of existence.[14] Jackson's veto message on the recharter bill was prepared largely by Taney. After an argument against the Bank's constitutionality it closed with an appeal for free enterprise:

> It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes. . . . There are no necessary evils in government. Its evils exist only in its abuses. If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and low, the rich and poor, it would be an unqualified blessing.[15]

Jackson appointed Taney as Chief-Justice of the Supreme Court in 1837. The appointment was, of course, made in large part because of the close agreement between the two men on constitutional principles. But strangely enough the position was tendered to Taney and accepted more as a financial reward than as a mark of prestige. As United States Attorney-General Taney had been able to continue

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[14] Swisher, p. 169.

[15] A Compilation of the Messages and Papers of the Presidents, 1789-1807, ed. James D. Richardson (Washington, 1901), II, p. 590.

his Baltimore legal practice. But he was forced to give it up after he accepted a recess appointment as Secretary of the Treasury in 1833 for the purpose of removing the federal deposits from the Bank of the United States. In removing the deposits Taney gained the enmity of some of the financial, commercial, and manufacturing interests of the nation. The Second Bank responded to Taney's move by sharply contracting credit, and this convinced the business community that Taney's actions had dictated the curtailment. Baltimore was especially hard hit by the money pressure, and after the Senate rejected his appointment to the Treasury in June of 1834 Taney found it very difficult to re-establish his old legal practice. Jackson realized his difficulties and determined to give him a federal position. In early 1835 he nominated Taney for the Supreme Court position made vacant by Justice Duvall's resignation. It was later learned that Chief Justice John Marshall had desired Taney's approval,[16] but even if this had been known it would have made no difference to the vindictive majority in the Senate. On the very last day of the session Taney was again humiliated by a rejection. In the following summer John Marshall died, and with dogged resolution Jackson nominated

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[16]Tyler, p. 240.

Taney for his position. The administration had gained strength in the Senate since the previous session, and on March 15, 1836, Taney was confirmed as Chief Justice.

In that role, as we shall see, Taney proved himself alert in the defense of slavery as a component of his beloved Southern Culture. But he was no less alert in using the power of the Court to sweep aside special privilege entrenched in State Law. In doing so he contributed significantly to the more rapid emergence of industrial America.

CHAPTER II

TANEY'S CHARACTER AND POLITICAL VALUES

Above all else, perhaps, Taney was a profoundly sentimental person who held old memories in tender reverence. While he resided at Frederick he daily pilgrimaged to the grave of his mother. The partial autobiography which appears in Samuel Tyler's account of his life remains unfinished because following the death of his wife in 1855 Taney found it impossible to continue work on an account which constantly brought to mind this inconsolable loss. And in those last, crisis-torn years of his life his only joy lay in writing and receiving letters from his family and old friends.

Kindness and humility were other aspects of Taney's gentle nature. These traits allowed him to hold the Negro in sincere affection. In response to a general vilification of Taney by the North following the Civil War many of his old friends attempted to convey a sense of his hatred of slavery and genuine sympathy for the Negro. They pointed out how Taney had freed the slaves which he had inherited from his father while continuing to look after their welfare.

They recalled how as a young lawyer Taney had defied popular opinion to defend a Methodist minister from Pennsylvania who had given an anti-slavery sermon in Hagerstown.[17] In arguing the case of the Reverend Jacob Gruber he had not been content to merely defend his client's freedom of speech, but went on to give a ringing fulmination against slavery itself:

> 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 effectively, though it must be gradually, wiped away; and earnestly looks for the means, by which this necessary object may be best attained.[18]

Countless other examples of Taney's kindness to the Negro were recollected to dispute the stereotype of a malevolent old Negrophobe.[19]

Yet Taney shared the contemporary view that the Negro was innately inferior. He considered emancipation to be an act of benevolence, not an inalienable right which the

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[17] See Century Magazine, XXVI (1883), 957-958. Two such letters appear here in dispute of an article appearing in the July issue of the magazine which had castigated the character of Taney.

[18] Tyler, pp. 130-131.

[19] Tyler, pp. 190, 476, 479.

Negro could demand as a white man might. Furthermore, the preservation of the finer aspects of planter society was more important to Taney than emancipation. He held memories of the hospitality and charm of the old order in tender reverence as long as he lived. Any plan for emancipation had to be consistent with the preservation of this side of planter life. For a brief while Taney believed that this could be accomplished through Negro colonization. The American Colonization Society was founded in 1816 for the purpose of removing freed Negroes to Liberia, and Taney served as vice-president of the local organization.[20]

Within a few years it was clear that the movement was a failure. It had proved economically unfeasible to transplant any great number of Negroes. Furthermore, most freedmen were determined to remain in America. In 1831 Nat Turner, a Negro preacher, led a slave massacre of sixty white persons in Southampton County, Virginia. The failure of the colonization movement and the Nat Turner insurrection destroyed Southern enthusiam for emancipation. Now the South saw that the only alternative to the firm defense of slavery would be a gigantic race-adjustment problem which would have to be borne solely by themselves, and which

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[20]Swisher, p. 93.

would certainly destroy their old culture. It is significant to note how slavery became more acceptable to Taney, as it did to so many other Southerners, once this single alternative to it became apparent. The ideas expressed in Jackson's farewell address belonged to the new Chief Justice as well as the outgoing President,[21] and the message's warning against abolitionist agitation serves to show how Taney had come to resent outside judgments against slavery such as the one he had defended two decades previously. The address recalled that the states had exclusive control over their domestic institutions. And it delicately cautioned the North not to judge Southern institutions by its own moral standards:

> Motives of philanthropy may be assigned for this unwarranted interference, and weak men may persuade themselves for a moment that they are laboring in the cause of humanity and asserting the rights of the human race; but everyone, upon sober reflection, will see that nothing but mischief can come from these improper assaults upon the feelings and rights of others.[22]

There is no evidence that Taney ever accepted slavery as a positive good in the manner that Calhoun and other Southern leaders came to defend it. But by the time of the Dred Scott decision slavery did not seem nearly the evil to

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[21] Swisher, pp. 352-353.

[22] A Compilation of the Messages and Papers of the Presidents, 1789-1897, ed. James D. Richardson, III, p. 298.

Taney that it had been four decades previously:

> It is difficult for anyone who has not lived in a slaveholding State to comprehend the relations which practically exist between the slaves and their masters. They are in general kind on both sides, unless the slave is tampered with by ill-disposed persons; and life is usually cheerful and contented, and free from any distressing wants or anxieties. . . . Unquestionably it is the duty of every master to watch over the religious and moral culture of his slaves, and to give them every comfort and privilege that is not incompatible with the continued existence of the relationship between them. And as far as my knowledge extends, this duty is faithfully performed by the great body of hereditary slaveholders in Maryland and Virginia.

In this same letter written to a Northern clergyman who had published a careful analysis of the slavery conflict, Taney reviewed the reasons why the South did not feel that it could compromise upon the issue:

> And if in the present state of things additional restrictions were placed on the authority of the master, or new privileges granted to them [the slaves], they would probably be told that they were wrung from the master by their Northern friends; and be taught to regard them as the first step to a speedy and universal emancipation, placing them on a perfect equality with the white race. It is easy to foresee what would be the sad result of such an impression upon the minds of this weak and credulous race.[23]

Taney was as determined as any of his colleagues on the bench that the slavery interests should be respected.

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[23] Taney to the Reverend Samuel Nott, August 19, 1857, Massachusetts Historical Society Proceedings, XII (March, 1873), 446.

He was contemptuous of those Southerners who could not be expected to stand to arms for the independence of their section. In 1856 he wrote his son-in-law of his fear that these persons would undermine Southern resistance, allowing the North to rule the South through federal dominance:

> There are many bold and brave men at the South who have no vassal feeling to the North. And they will probably stand to their arms if Fremont is elected, or further aggressions made under Filmore. But what can they do, with a powerful enemy in their midst? I grieve over this condition of things, but it is my deliberate opinion that the South is doomed, and that nothing but a firm united action, nearly unanimous in every state, can check northern insult and northern aggression. But it seems this cannot be.[24]

Taney's personal correspondence and utterances following the outbreak of civil war clearly reveal his antipathy to federal dominance. As the two sections were drawing their Eastern forces up along the Potomac he expressed to Ex-President Franklin Pierce his hope that the North would allow the South to depart in peace:

> The paroxism of passions into which the country has suddenly been thrown appears to me to amount almost to delirium. I hope that it is too violent to last long - and that calmer and more sober thoughts will soon take its place - and that the North as well as the South will see that a peaceful separation is far better - than the union of all the present states under a military government and reign of terror - preceded too by a civil war with all its horrors and

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[24]Taney to J. Mason Campbell, October 2, 1856, cited in Swisher, p. 493.

> which end as it may will prove ruinous to the victors as well as the vanquished - But at present I grieve to say - passions and hate sweep everything before them.[25]

The grandson of Revolutionary War hero John Eager Howard stopped to see Taney before leaving for the Confederate army and was given well-wishes and a sense of destiny: "The circumstances under which you are going are not unlike those under which your grandfather went into the Revolutionary War."[26]

Unlike problems of slavery, Taney did not see problems of business enterprise from the narrow point of view of a Southern agrarian. As Secretary of the Treasury he had observed that:

> . . . there is perhaps no business which yields a profit so certain and liberal as the business of banking and exchange; and it is proper that it should be open, as far as possible, to the most free competition and its advantages shared by all classes of society.[27]

The government funds which were "removed" from the Bank of the United States had been deposited in a number of state banks. Taney invited the presidents of these selected banks to use the funds to encourage business enterprise, especially

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[25] Taney to Pierce, June 12, 1861, Pierce MSS., Library of Congress.

[26] Swisher, p. 574.

[27] Bray Hammond, Banks and Politics in America from the Revolution to the Civil War (Princeton, 1957), p. 338.

that of merchants in foreign trade, when this could be done without prejudice to the needs of other social groups:

> In selecting your institution as one of the fiscal agents of the government, I not only rely on its solidity and established character, . . . but I confide also in its disposition to adopt the most liberal course which circumstances will admit towards other monied institutions generally. . . . The deposits of the public money will enable you to afford increased facilities to commerce and to extend your accommodation to individuals. And as the duties which are payable to the government arise from the business and enterprise of the merchants engaged in foreign trade, it is but reasonable that they should be preferred, . . . whenever it can be done without injustice to the claims of other classes of the community.[28]

The traditional anti-corporate prejudices of Taney's planter heritage had been modified by his own experiences in business. Taney had served as counsel to the Baltimore and Ohio Railroad.[29] He had served for a time as the director of the Frederick branch of the Farmer's Bank of Maryland.[30] And he had served for years as the director of the Frederick County Bank.[31] By the time that he entered Jackson's cabinet Taney viewed business questions from the standpoint of a new set of capitalists who desired to get ahead, but

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[28] Hammond, p. 420.

[29] Swisher, pp. 115-116.

[30] Swisher, pp. 83-84.

[31] Swisher, p. 85.

found their ambitions stifled by corporate privilege.

Taney did retain the agrarian concern for a stable circulating medium. While in the Maryland Senate he had introduced a bill entitled "An act to prevent the passing of bank notes within the state at a rate below their nominal value."[32] Taney believed that banks which over-extended themselves to the point where they could not redeem their own notes at face value had no right to existence. And he opposed all attempts to depreciate the value of notes of sound banks. This belief in sound money ran far deeper than economic self-interest. It was a moral principle. It reflected his belief that the rewards of industry should be certain.

In terms of his socio-economic values it is not surprising that as Chief Justice, Taney usually upheld the authority of the states over their internal social and economic institutions. It was essential to the new set of capitalists with which he "identified" that the states should be allowed to modify grants of special privilege in old corporate charters. With the destruction of the Bank of the United States, furthermore, the responsibility for maintaining

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[32]Swisher, p. 86.

a stable currency rested with the states. But states' rights were also the great bulwark against Northern interference with slavery. To a large extent, therefore, the same means proved useful in the realization of two sets of values, one agrarian, the other business.

CHAPTER III

THE TANEY COURT

In a number of instances the full import of positions assumed by Taney on the Court can be appreciated only in comparison with positions taken by his Southern colleagues. Some idea of the composition of the Court is therefore necessary to understand the significance of its split decisions. The Court which sat with Taney in his first term on the bench was a heterogeneous mixture of inimical political and social values. Joseph Story of Massachusetts had been on the bench since 1811. He had been Marshall's closest colleague, and he mourned the passing of the old Federalist order as Taney would later mourn the final passing of the Jeffersonian-Jacksonian spirit. Smith Thompson of New York was a Monroe Republican. John McLean of Ohio had been Jackson's first appointment to the Court, but he revealed himself to be more of a Whig than a Republican. Henry Baldwin generally upheld the Jacksonian principles for which he had been appointed, but the Pennsylvanian suffered from occasional mental breakdowns that made his behavior unpredictable. James Wayne of

Georgia was typically Southern on questions of slavery, but he was as sympathetic as anyone on the Court to corporate interests. Although appointed as a Republican, he must properly be considered a Whig. Philip Barbour of Virginia, the final Jackson appointee, consistently upheld the old Republican values. Van Buren appointed John Catron of Tennessee and John McKinley of Alabama to the bench early in 1837. Catron had risen from a poor white family to become Chief Justice of the Tennessee Supreme Court. McKinley had recently lost his seat in the United States Senate. Like Catron, and unlike the other Southern Democrats who sat on the Taney Court at one time or another, McKinley did not have a planter background.

Only two of the justices who represented the five Southern circuits in 1837 passed from the Court in the next two decades. Barbour died in 1841. Van Buren's appointment to the vacancy, Peter Daniel, proved to be as staunch a champion of Virginia agrarianism as Barbour had been. Daniel was born to a family of average wealth but married into the landed aristocracy. He developed a strong attachment to it and came to resist everything that threatened it. McKinley died in 1852, and Pierce appointed John Campbell to the vacancy. Campbell was very similar in background

and outlook to Taney. He had also been born into a wealthy planter family, and like Taney, he had manumitted the slaves he inherited. He was a much younger man than Taney, and when the Civil War broke out he left the Court to aid his section.

On the other hand only McLean survived from the four Northern circuits. Following Thompson's death in 1843 Samuel Nelson was raised to the Court from the Chief-Justice-ship of the New York Supreme Court by Tyler. Baldwin died in 1844, and Polk appointed Robert Grier of Pennsylvania to the vacancy. Story died in 1845 and the New England circuit which he had represented for so long was given to Levi Woodbury of New Hampshire. Woodbury died in 1851, and Fillmore appointed Benjamin Curtis, a Whig lawyer from Boston, to the vacancy. With the exception of Curtis all of these replacements were Democrats. Table 1 classifies by party and section the justices of the Taney Court.

Table 1. The Taney Court: participating justices classified by party and section.[a]

So. Democrats	So. Whigs	No. Democrats	No. Whigs
Roger B. Taney	James M. Wayne	Smith Thompson	Joseph Story
Philip P. Barbour		Henry Baldwin	John McLean
John Catron		Samuel Nelson	Benjamin Curtis
John McKinley		Levi Woodbury	
Peter V. Daniel		Robert C. Grier	
John A. Campbell			

[a]The justices are classified in terms of the party with which they identified after the party realignment of the period was completed, rather than the party to which they belonged at the time of their appointment.

CHAPTER IV

THE DEFENSE OF SLAVERY

As Chief Justice, Taney assumed the Southern position in every important case relating to the domestic institution of slavery. Taney had no desire to extend slavery into states which opposed it. But he believed that property rights to slaves in states which wished to retain the institution should be protected. Where this required local control Taney defended states' rights. Where it required national control Taney advocated federal supremacy.

One of the most troublesome of the slavery problems was that relating to slaves who escaped from their masters and fled northward. In 1842 the Court was forced to define the permissible extent of state authority over fugitive slaves. The immediate question before the Court in Prigg versus Pennsylvania[33] was the constitutionality of a Pennsylvania statute which had become a means of defeating any attempt to recover fugitive slaves in the state under the federal Fugitive Slave Law. Section D of Article 4 of the

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[33] 16 Peters, 539 (1842).

Constitution provides that fugitives from the laws of one state that escape into another state "shall be delivered up, on claim of the party to whom service or labor may be due." This clause was assented to by the framers in response to the demands of the slaveholders for a specific guarantee of their right to have fugitive slaves returned from other states. The federal Fugitive Slave Law had been passed to give effect to this provision.

Justice Baldwin believed that the constitutional provision was so complete in itself that all state or federal legislation on the matter was unnecessary. The rest of the Court agreed that legislative enactment was essential to enforce the provision, and that Congressional authority on the subject was supreme over state authority.

This ruling supported the Southern position. It prohibited the Northern states from interfering with the rendition of fugitive slaves within their own borders. And it was the only ruling that was necessary to resolve the case. But in writing the opinion of the Court Story went on to assert the exclusiveness of the national power over fugitive slaves. Under this doctrine any state regulation pertaining to the rendition of fugitive slaves was illegal, even if in complete harmony with the intent of the Fugitive Slave Law. There were not enough federal officers to enforce

the Fugitive Slave Law. Its effectiveness depended upon the cooperation of state officers. The practical effect of denying state officers the right to assist in enforcing the measure would be to negate it.

Justice Wayne wrote a concurring opinion in which he specifically agreed with Story that the states could not aid in the enforcement of the federal Fugitive Slave Law. McKinley and Catron silently concurred with all points of Story's decision. Justices McLean, Thompson, Daniel, and Taney assented to the ruling that state laws in conflict with the federal measure were void, but contended that the states could pass supplementary legislation. Taney went on to declare that the states were obligated to pass supplementary legislation:

> And the words of the article which direct that the fugitive "shall be delivered up," seem evidently designed to impose it as a duty upon the people of the several states to pass laws to carry into execution, in good faith, the compact into which they thus solemly entered with each other.[34]

Taney thus believed that state legislation was legal, but only if it reinforced the U. S. Constitution's provision regarding fugitive slaves.

A second constitutional question relating to slavery arose out of the determination of the South to isolate its

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[34] 16 Peters, 628.

slaves from the presence of free Negroes. The South feared that these persons would incite rebellions among the slaves. This anxiety led South Carolina, Georgia, and Louisiana to pass laws which forbade the entry of free Negroes into their states. The constitutionality of these laws was never challenged before the Supreme Court, but in two separate cases the Court was forced to pass upon the validity of laws closely analagous to them. Taney may well have viewed these cases in terms of the right of the South to safeguard itself against slave insurrection.

The first of these cases involved a New York statute designed to protect the state from foreign paupers by requiring each vessel entering New York Harbor to report the age, health, and other data pertaining to its passengers. This statute was challenged in New York versus Miln (1837)[35] on the grounds that it interferred with Congressional authority over commerce.

Taney assented to the position of the majority of the Court. Speaking for the Court, Barbour discussed the costs which streams of immigrants lacking means of support imposed upon New York. The Court was impressed with an obvious need for regulation to ease the burden on the state. Deeming the problem of foreign pauperism to be critical to

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[35] II Peters, 102 (1837).

the welfare of the state, the Court ruled that the subject was more properly a matter of police than commerce regulation. Therefore, it resided within the powers belonging to the state:

> New York, from her particular situation, is, perhaps, more than any other city in the Union, exposed to the evil of thousands of foreign emigrants arriving there, and the consequent danger of her citizens being subjected to a heavy charge in the maintenance of those who are poor. It is the duty of the State to protect its citizens from this evil; they have endeavored to do so, by passing, amongst other things, the section of the law in question. We should, upon principle, say that it had a right to do so.[36]

Certainly this ruling upholds the right of a state to deny entry to a class of persons deemed undesirable by it. The lone dissent was registered by Justice Story.

The Passenger Cases[37] of 1849 were similar in many respects to New York versus Miln. They involved attempts by New York and Boston to tax foreign immigrants arriving in their ports. These immigrants commonly became public charges, and ostensibly the money raised by the statutes was to be used to assume these costs. The laws were challenged on the grounds that they infringed upon Congressional treaty-making and commerce authority.

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[36] II Peters, 141.

[37] 7 Howard, 283 (1849).

In their arguments before the Supreme Court the state counsels, Martin Van Buren for New York and John Davis for Massachusetts, cited the similarities between the laws in question and the laws of Southern states regulating the admission of free Negroes. For example, John Davis asked, if Massachusetts cannot exclude immigrants likely to become paupers, "on what principle can the laws expelling or forbidding the introduction of free Negroes be sustained?"[38]

In the opinion of the Court the statutes were void. McLean and Wayne held that any imposition upon passengers was a regulation of commerce. McLean defended the Whig position that all matters relating to commerce were denied to the states. Wayne found but one exception to this principle: states which recognized slavery could exclude free Negroes. On these grounds they ruled that the state laws in question were illegal."

Catron, McKinley, and Grier joined with McLean and Wayne to void the contested statutes, but they avoided the broad question of whether a state could ever regulate immigrants. They ruled that in these particular cases the taxes were regulations of commerce, not police measures. They found that the legislatures had been less concerned with the costs of supporting immigrants than with excluding them for

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[38]Charles Warren, The Supreme Court in United States History (Boston, 1922), II, p. 455.

entirely different reasons. Furthermore, some of the revenue derived from the statutes was to be distributed to institutions not directly related to the immigrant problem. As acts to regulate commerce the statutes were unconstitutional because they were in direct conflict with existing federal measures and commercial treaties. Sidestepping the question of federal exclusiveness in the regulation of commerce, they presumably believed that under certain circumstances a state tax on immigrants could be a legitimate exercise of the police power.

Taney, Daniel, Woodbury, and Nelson dissented from the opinion of the Court. They maintained that immigrants must be regarded as persons, not as subjects of commerce. Therefore the states possessed broad powers over immigrants. Taney argued that the Court should exercise restraint in reviewing state laws passed as health or security measures:

> And it must, therefore, rest with the State to determine whether any particular class or description of persons <u>are likely to produce discontent or insurrection in its territory</u> or to taint the morals of its citizens or to bring among them contagious diseases, or the evils and burdens of a numerous pauper population . . . and to remove from among their people and to prevent from entering the State, any person or class of persons, whom it may deem dangerous or injurious to the interests of its citizens.[39]

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[39] 7 Howard, 467. The underscoring is mine.

The words underscored clearly suggest the probable relationship in Taney's mind between the right of a state to control the entry of undesirables in general, and its right to exclude free Negroes.

The final slavery problems to confront the Taney Court involved the right to hold slaves in the territories. Taney did not favor the extension of slavery per se, but he did fear that if the free-soil section of the country was allowed to become disproportionately powerful enough to dominate the South it would show no respect for Southern slavery interests. By the terms of the Missouri Compromise of 1820 slavery was prohibited in the Louisiana Purchase north of the parallel 36°30'. In Dred Scott versus Sandford[40] Taney declared the Compromise to be unconstitutional.

The case of the Negro Dred Scott began inauspiciously. It originated in a lower court of Missouri, where in 1846 Scott brought suit for his freedom against the widow of his deceased master. A number of years previously he had, as a slave, accompanied the master, Dr. John Emerson, to Rock Island in Illinois, and also to Fort Snelling, in present-day Minnesota. Illinois was free-soil by state law and the

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[40] 19 Howard, 393 (1856).

Northwest Territories Ordinance of 1787. Fort Snelling was considered free-soil by the terms of the Missouri Compromise. After four years of residency in the North, Scott was returned to the slave-state of Missouri. Here he continued to be held as a slave by Emerson, and then following his death, by the widow. He brought suit on the grounds that by virtue of Illinois law, the Northwest Territories Ordinance of 1787, and the Missouri Compromise he had been a free man while residing in the North, and still retained this status.

In 1852 the Missouri Supreme Court ruled that whatever Scott's status had been while he resided in the North, he automatically subjected himself to Missouri law once he voluntarily returned to that state. An anti-slavery interest appealed this decision through the federal court system up to the United States Supreme Court. In March, 1857, Taney delivered the formal decision.

Taney ruled that Scott could not sue in federal court because he was not a citizen of the United States. To be included under the term "citizen of the United States" a native-born individual had to belong to a class of persons who were recognized as citizens of the several states at the time of the adoption of the Constitution. And Taney showed in a lengthy historical narrative that Negroes had not then

been acknowledged as citizens.[41] If he had stopped here the case would have attracted little attention. But he went on to review Scott's claim to freedom based on residency in land declared free-soil by the Missouri Compromise.

Taney first averred that Congressional authority over the existing territories was not the power to "make all needful rules and regulations" seemingly spelled out by Article IV of the Constitution. This clause, he explained, had been intended to apply only to the lands which the federal government would receive from the confederated states. To prove this he presented a discourse tracing the history of the original territory and the Constitutional clause in question.[42]

There was no express definition of the power which Congress might exercise over citizens in territories acquired under its authority to erect new states. Therefore, reasoned Taney, the Court had to look to the general principles of the Constitution for its powers of regulation here. Under these principles Congress was prohibited from interfering with the ennumerated rights of person and property. It could not, for instance, establish a religion in the

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[41] 19 Howard, 404-427.

[42] 19 Howard, 432-445.

territories, deny settlers trial by jury, or force them to quarter troops in their homes. Neither could it arbitrarily deprive settlers of their personal property. And under the Constitution slaves were a form of property. Upon these considerations Taney declared the Missouri Compromise unconstitutional.[43]

Curtis presented the ablest dissent from the decision of the Court. He acknowledged that Congress could not deprive a citizen of his property in the territories without due process of law. But he reasoned that an act barring slavery from the territories could not possibly impair a citizen's right to his property because slaves were not property except where positively protected by law. As soon as the master removed his slaves from a slave-state he lost all rights of property in them.[44] Therefore, the Missouri Compromise had been constitutional, and under its terms Scott had been free while he resided at Fort Snelling.

Curtis' argument on the vital territorial question was no more conclusive than Taney's. Disagreement centered upon the abstract question of whether or not slavery was contrary to natural law and required the protection of

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[43] 19 Howard, 450-452.

[44] 19 Howard, 624-625.

municipal law to exist. Each perceived natural law in terms of its ability to substantiate his personal viewpoint on slavery in the territories.

McLean agreed with Curtis on the constitutionality of the Missouri Compromise, while Grier, Wayne, Campbell, Catron, and Daniel concurred with Taney's ruling that it was unconstitutional. Significantly, Taney's reasoning on the territorial question was not entirely convincing even to some of the justices who shared his conclusion. Catron found Congress to be vested with much broader powers over the territories than Taney had visualized. His basis for declaring the Compromise unconstitutional were the terms of the Louisiana Purchase. The third article of the purchase agreement provided that until the inhabitants of the ceded territory could be made citizens of the United States they should be protected in the "free enjoyment of their liberty, property, and religion." Slaves were a lawful form of property in the old province of Louisiana. And its inhabitants could not become United States citizens until states were carved from the area.[45] Therefore, said Catron, it had been unconstitutional for Congress to interfere with slavery in the area.

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[45]19 Howard, 524-525.

In Campbell's opinion Congress possessed no jurisdiction in the territories which it did not possess in the Union. And he pointed out that Congress could do nothing to destroy the bond between master and slave within the limits of the Union.[46]

Daniel saw that the power of regulation in the territories had been given to Congress as a trust for all of the people of the United States. It would be a breach of that trust to give one class of citizens, such as Northern free-farmers, a special advantage in the territories.[47]

In a large number of cases, it seems, ranging from questions of state authority over immigrants and fugitive slaves to the power of Congress in the territories, Taney placed the power of judicial decision-making on the side of slavery. But defense of this ingredient of an older agrarian way of life was not the only set of values which he was prepared to defend.

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[46] 19 Howard, 515-517.

[47] 19 Howard, 489-490.

CHAPTER V

THE PROMOTION OF COMPETITIVE ENTERPRISE

Taney's corporation decisions provided one necessary foundation for the development of American business enterprise. Early corporation charters granted by the states often contained exclusive privileges. It had been the principle of the Marshall Court to scrupulously uphold these privileges. As Chief Justice, Taney almost immediately established a principle by which these old corporations could be divested of many advantages which precluded the entry of new enterprise. At the same time Taney favored corporate claims which were divorced from special privilege or irresponsible banking procedures. His voting responses in corporation cases relate to a desire to expand business enterprise, not to limit it in the way that many agrarians desired.

Significantly, the first decision which Taney wrote as Chief Justice represents a major step forward in freeing business enterprise from the old corporate monopolies. The origins of Charles River Bridge versus Warren Bridge[48] dated

[48] 11 Peters, 420 (1837).

back to the early history of Massachusetts state. In 1785 the Charles River Bridge Company was chartered by the state legislature to erect a bridge across the Charles River from Charlestown to Boston. The Company was authorized to collect tolls on the bridge for forty years, at the end of which time it would revert to the state. The bridge was completed in the following year. In 1792 the state chartered another bridge across the Charles, at Cambridge, and placated the Charles River Bridge Company by extending its charter to seventy years.

As the population of Boston increased the public began protesting the continued payment of tolls after the original investment had been paid off several times. In 1828 Massachusetts chartered the Warren Bridge, which was to revert to the state as soon as its original investment was paid off. It was so close to the Charles River Bridge that after it became free a few years later, it practically deprived the original bridge of any revenues. The Charles River Bridge Company sought an injunction against the new bridge from the Massachusetts courts, and then from the United States Supreme Court, on the grounds that in destroying the value of its franchise the state had committed a breach of contract.

This request appeared to be in line with Marshall's Dartmouth College ruling.[49] In that decision the Court had held that states were contractually bound to uphold grants of privilege made in corporate charters. It was true that in the Dartmouth Case the obligations with which the state was forbidden to interfere had been expressly given in the contested charter. And in the Charles River Bridge case the state had never expressly promised to refrain from jeopardizing the value of the franchise. But this obligation was seemingly implicit in the nature of the agreement.

Taney did not question that the state had at least faintly implied in the charter that it would never destroy the value of the franchise. The critical question entertained was whether or not a state could be bound by implied promises. In ruling that they could not be, Taney all but admitted the frame of values which guided his decision. Taney feared that if state charters were allowed to carry implied contracts:

> We shall be thrown back to the improvements of the last century, and obliged to stand still, until the claims of the old turnpike corporations shall be satisfied, and they shall consent to permit these States to avail themselves of the lights of modern science, and to partake of the benefits of those improvements which are now adding to the wealth and prosperity, and the convenience and comfort of every other part of the civilized world.[50]

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[49] Dartmouth College v. Woodward, 4 Wheaton, 625 (1819).

[50] II Peters, 553.

In words alarming to vested corporate interests he pronounced the doctrine that as an obligor in a contract a state was bound only to those obligations which it had expressly made. Taney turned to the English common law for precedents. He relied largely on a clause from the decision in Stourbridge Canal versus Wheeley, a recent case involving rights granted to a canal by Parliament:

> This, like many other cases, is a bargain between a company of adventurers and the public, the terms of which are expressed in the statute; and the rule of construction in all such cases, is now fully established to be this; that any ambiguity in the terms of the contract, must operate against the adventurers, and in favor of the public, and the plaintiffs can claim nothing that is not clearly given them by the act.[51]

Story, Thompson, and McLean dissented from Taney's reasoning. In a lengthy opinion Story disputed the principle on implied rights which Taney had accepted. He also examined Stourbridge Canal versus Wheely, and found a critical clause which Taney had neglected to cite:

> Now, it is quite certain, that the company has no right expressly given to receive any compensation, except & c.; and therefore it is incumbent upon them to show, that they have a right, clearly given by inference from some other of the causes.[52]

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[51] 2 Barn. & Adol., 793.

[52] 2 Barn. & Adol., 793.

From this and a number of older English decisions Story reached the opinion that a state could contract away rights by implication. On this basis he defended the claim of the Charles River Bridge Company.

In 1851 Taney utilized the principle of the Charles River Bridge Case to open another area of enterprise to free competition. The case of Richmond Railroad versus Louisa Railroad[53] arose out of the fierce railroad building competition of the period. The Richmond, Fredericksburg, and Potomac Railroad had been chartered by the Virginia legislature in 1834. The charter contained an express promise by the state that with the completion of the line from Richmond to Washington no other railroad would be chartered over "any portion of the said distance of the route, the effect of which would be to diminish the number of passengers traveling between the one city and the other" on its line. In 1836 the Louisa Railroad Company was chartered to construct and operate a line which would traverse some of the points on the Richmond Railroad. This charter was challenged by the original railroad on the grounds that it would tend to reduce passengers on its line in violation of a state obligation in its own charter.

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[53] 13 Howard, 71 (1851).

Taney concurred with the majority of the Court in upholding the new charter. The Court accepted the doctrine that a state was expected to observe the express obligations imposed upon it by legislative contracts, but nothing more, as the basis for its judgment. It found the only express obligation upon Virginia in the charter of the Richmond Railroad to be the promise that no other railroad would be allowed to carry passengers from Richmond to Washington, or from Washington to Richmond. In its charter the Louisa Railroad was specifically denied the right to transport passengers the entire distance between these two cities. Hence even though it did allow the new railroad company to carry passengers from Richmond to other cities on the Richmond Railroad's line the charter was constitutional.[54]

To the three Whigs on the Court, McLean, Wayne, and Curtis, the Court's interpretation of the charter clause was not "consistent with the substantial object of the parties, or with the language they have employed to make known their agreement." In their opinion the practical object of the clause was to prevent the Richmond Railroad from losing any passengers to other lines, not just those passengers who

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[54] 13 Howard, 82.

wished to travel the entire distance from Richmond to Washington.[55] Therefore, they argued in dissent, the Louisa charter was unconstitutional.

In these cases involving claims of corporate privilege the Southern Democrats on the Court voted as a bloc. But they did not all necessarily perceive the fundamental question involved to be the same. The suggestion here is that Taney was opposing privileged business, while McKinley, Daniel, and Campbell were opposing all business, with the possible exception of local banks. The breakdown of the voting of the Court in cases involving the rights of corporations where special privilege was not at issue seems to reflect this dichotomy.

Bank of Augusta versus Earle (1839)[56] involved the power of a corporation to make a contract outside of the state in which it was chartered. The case arose out of the refusal of debtors to pay bills of exchange purchased from the Bank of Augusta, the Bank of the United States (then existing under a Pennsylvania charter), and the Carrollton Railroad Company. The bills had all been purchased in Alabama, and the plaintiffs were all corporations of other states. The debtors contended that they were not obligated

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[55] 13 Howard, 84.

[56] 13 Peters, 519 (1839).

to pay because corporations could not conduct business outside of their home states. They argued that because corporations are creatures of the law, they have no right to existence beyond the limits of the state which chartered them. This contention was upheld by Justice McKinley in federal Circuit Court.

Fundamentally at issue in the case was the question whether the American economy would be allowed to expand on a broad base, or return to one of agrarian simplicity. The full significance of the case was widely realized. Most of the business community was distressed at the suggestion that no business could be conducted across state lines. On the other hand many of the forces which had backed Jackson in the Bank War supported McKinley's position. State-bank men who were desirous of gaining the business of the Bank of the United States favored it, as did the anti-corporation wing of the Democrat Party. Van Buren's official organ, the Washington Globe, praised McKinley for his "strikingly just and proper" decision.[57]

Speaking for the Court, Taney ruled that a corporation could do business in any other state which had not expressly

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[57]February 1, 1839, cited in Warren, p. 329.

denied entry to it. He agreed with McKinley that a state could prohibit or qualify the entry of a corporation of another state, but held that a foreign corporation's right to do business there would be assumed unless the state expressly prohibited it.

McKinley alone argued that all interstate business was illegal. Whig newspapers hailed the repudiation of his doctrine. The Madisonian (Washington, D.C.) said:

> We are rejoiced that the march of agrarianism which had reached the ermine, has been stayed by the Supreme Court in the reversals, by that tribunal of Judge McKinley, who is of the Globe and C. J. Ingersoll School, in his hostility to banks. . . . The decision will give great satisfaction to the business community at large.[58]

In the 1853 term Taney concurred with the majority of the Court in acknowledging that a corporation was a legal citizen. The narrow point at issue in the case of Marshall versus the Baltimore and Ohio Railroad[59] was whether the plaintiff, a citizen of Virginia, could sue the railroad company in federal court, the railroad being a corporation chartered in Maryland. The Constitution specifies that jurisdiction of the federal courts includes controversies between citizens of different states. The plaintiff was

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[58] March 13, 1839, cited in Warren, p. 333.

[59] 16 Howard, 314 (1853).

allowed to bring suit against the railroad with the ruling that a corporation was a legal citizen of the state which had chartered it.

Taney's position here appears to qualify the rights of corporations. Actually his response reflects his favorable attitude towards corporations whenever they were not claiming special privileges. With their recognition as citizens, corporations received rights outside of the state of their origin.

The decision of the Court was unacceptable to Catron, Campbell, and Daniel. They had no objection to allowing a corporation to be sued, but feared the broader implications of corporate citizenship. Campbell's dissent reflects agrarian anti-corporate intransigence.

> It may be safely assumed that no offering could be made to the wealthy, powerful, and ambitious corporations of the populous and commercial States of the Union so valuable, and none which would so serve to enlarge the influence of these States, as the adoption, to its full import, of the conclusion, "that to all intents and purposes, for the objects of their incorporation, these artificial persons are capable of being treated as a citizen as much as a natural person."[60]

Daniel's dissenting opinion voices the suspicion of the old agrarian order that corporate enterprise could not produce

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[60] 16 Howard, 353.

a superior society. In reference to the Court's recognition of corporation citizenship he said:

> Thus does it appear to me that this court has been led on from dark to darker, until at present it is environed and is beaconed onward by varying and deceptive gleams, calculated to end in a deeper and more dense obscurity. In dread of the precipices to which they would conduct me, I am unwilling to trust myself to these rambling lights; and if I cannot have reflected upon my steps the bright and cheering day-spring of the constitution, I feel bound nevertheless to remit no effect to halt in what, to my apprehension, is the path that terminates in ruin.[61]

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[61] 16 Howard, 345.

CHAPTER VI

SOUND CURRENCY, HONESTLY EXCHANGED

While the Second Bank of the United States existed as a restraint few state banks overextended themselves to the point where the value of their notes were jeopardized. Believing as he did in money of stable value, Taney might well have sympathized with this function of central banking. It is possible he did not understand the important role of the Bank in this respect. Yet had he fully comprehended it, it remains doubtful he would have approved the existence of the institution. The nub of the difficulty was that the Bank could not have performed the function of restraining the issue of state banks without at the same time curtailing their profit-making opportunities. From this dilemma there could have been no easy exit. At any rate, following the destruction of the Second Bank a flood of state banks poured notes of doubtful value into circulation. As Chief Justice, Taney sought to impose fiscal integrity on state banks, both private and public.

One means by which banks could overextend themselves and continue in operation was to refuse to accept their own

bank-notes in payment of debts due them. In an attempt to correct this practice Mississippi enacted a statute compelling its state banks to accept their own notes. The Planters' Bank of Mississippi found that it could circumvent the measure by assigning bills payable to it to an agreeable third party prior to the time the bills became payable. This third party being under no obligation to receive payment in the depreciated bank-notes of the Planters' Bank, the debtor was forced to pay his bill in currency more valuable than that which he had originally received for it.

In response to this practice Mississippi enacted a law making it illegal for a state bank to transfer any note or bill receivable. In its charter the Planters' Bank had been given the right to discount bills and notes, and dispose of its property to its best interest. In Planters' Bank of Mississippi versus Sharp[62] it argued that the state's attempt to interfere with its right to transfer property impaired a contract in its charter.

A majority of the Court held the Mississippi statute to be unconstitutional. Taney and Daniel refused to accept the decision, with Daniel delivering the dissent. Daniel interpreted the bank's charter strictly and held that the

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[62] 6 Howard, 301 (1848).

power to dispose of effects did not include the power to assign notes. Furthermore, he considered it an established right of a debtor to be able to pay off a promissory note in the currency of the bank that held it. These principles, he concluded, were sufficient to vindicate the Mississippi legislation . . .

> if legislation can need vindication or apology, the purpose of which are to prevent, if possible, the paper of these corporations, spread over the community by them, from utterly perishing on the hands of the note-holder, and to disappoint dishonest combinations to set the public laws at defiance, and, further, to oppress and ruin the note-holder by taking his property, and leaving him the worthless and false and simulated representatives of an equivalent.[63]

Taney was less concerned with abstract principles of states' rights than with preventing the holders of bank notes from being defrauded. In Planters' Bank of Mississippi versus Sharp Taney found it necessary to construe state authority broadly to favor the note-holders of an irresponsible bank. In Woodruff versus Trapnell (1850)[64] on the other hand, he construed state authority narrowly to defend the claim of a note-holder.

The Bank of Arkansas had been chartered in 1836 as a public corporation in which the state was the sole stockholder. Its charter carried a promise by the state that

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[63] 6 Howard, 343.

[64] 10 Howard, 190 (1850).

"bills and notes of said institution shall be received in all payments of debts due to the state of Arkansas." This section of the charter was repealed in 1845, shortly before the bank failed. In Woodruff versus Trapnell the Court was faced with the question whether the refusal of the state to accept payment in bank notes that had been in circulation previous to the repeal was a violation of the contract clause of the Constitution.

William E. Woodruff was the state treasurer of Arkansas from 1836 through 1838. In this official capacity he received large sums of money from the secretary of the treasury of the United States. Allegedly he did not turn all of these funds over to the state. In 1847 judgment was reached against him for $3,359 and costs. The case arose out of his attempt to pay the judgment in notes of the then insolvent Bank of Arkansas, notes which had been issued prior to 1845.

Taney concurred in the judgment of the Court. Speaking for the Court, McLean ruled that Arkansas' pledge to the holders of the notes at issue was a binding contract. On this basis the state was directed to accept payment from Woodruff in the disputed bank notes.

Justices Catron, Daniel, Grier, and Nelson dissented in favor of the state's position. The dissenters founded

their construction upon a judgment that the state's guarantee to accept the notes of the bank had not been a contract, but a gratuitous offer.

In 1853 the ill-fated Bank of Arkansas was involved in another important decision. In Curran versus Arkansas[65] the Court was forced to decide on the constitutionality of state acts interfering with creditor claims on the assets of the insolvent bank. The case arose out of state laws passed to settle the affairs of the bank. At the time that the doors of the bank were closed to creditors it possessed over one million dollars worth of assets, including ninety thousand dollars in specie. By an old state law the corporation was required to distribute these assets to its creditors. The plaintiff in the case was one of these creditors.

The Arkansas legislature settled the affairs of the bank in a series of acts from 1843 through 1846. Two of these acts appropriated its specie to pay the legislature. A third transferred to the state titles of property received on debts due to the bank. In his suit Curran demanded that his claim against the bank be satisfied out of the assets which had been taken by the state. The case was

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[65] 15 Howard, 304 (1853).

brought before the United States Supreme Court on appeal from the Arkansas Supreme Court, the state tribunal having ruled against Curran.

Again Taney limited the authority of the state in order to uphold the claim of a note-holder. With Taney's concurrence the Court ruled that Arkansas had impaired an obligation of the plaintiff's contract with the bank. Speaking for the Court, Curtis reasoned that the state had provided capital for the bank in the character of a stock-holder, just as if it had been a private individual. When the bank became insolvent the state could not change its character to that of a creditor any more than an individual might. On the basis of state law the plaintiff had reason to expect that if the bank became insolvent its assets would become a fund for the payment of its debts. He had parted with his property with this understanding. Therefore, reasoned the Court, the state had impaired a contractual obligation existent in the bills of the bank by requiring the bank to distribute its assets to its stockholders rather than its creditors.

Justices Catron, Daniel, and Nelson dissented from the opinion of the Court. Without developing their reasoning they held that the state was a legitimate creditor

of the bank. Perhaps, they admitted, the state had distributed the assets of the bank unfairly among the creditors, but this charge could not be reviewed by the United States Supreme Court.

In opposing attempts of banks and states to circumvent their promises to pay Taney helped provide a legal buttressing for "rules of the game" in the absence of which it would have been next to impossible for business or any other enterprise to "play." He helped make it clear that law would not condone violations of promises to pay. Certainly this increased the degree of security enjoyed by men in their commercial dealings with each other, and with states and state-chartered corporations. It is difficult not to believe that this increased sense of security contributed significantly to the mushroom growth of business enterprise.

CHAPTER VII

CONCLUSION

A leading figure in an acute age of transition, with one foot in the old order and one in the new, Taney's judicial responses reflect the attitudes of both. While Southern agrarianism is evidenced in his decisions relating to slavery, he at the same time utilized the authority of the Court to defend economic egalitarianism.

Taney's death in 1864 coincided with that of the Old South he loved. But he is not a tragic figure in the sense that Calhoun is. All that he struggled for did not perish in the Civil War. His opposition to economic privilege and his defense of essential corporate rights and stable currency were vital to the development of American business.

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