

The Mind of Roger Taney: New Light on the *Dred Scott* Decision

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George Payne Rainsford James (1799–1860) arrived in the United States for the first time on the eve of Independence Day, 1850. He deplanked with his family from the steamship *Washington* in New York City after a two-week transatlantic crossing from Southampton, England. This “celebrated,” “distinguished,” and “renowned” British man of letters had published works of history and dozens of popular romantic novels.¹ He considered planting roots in New England; instead he ended up spending six years in cavalier country after being appointed consul by the Foreign Office to head Britain’s consulate in Norfolk, Virginia, in 1852. James idolized Sir Walter Scott, and James’s own storytelling, mixing chivalric heroism and aristocratic high-mindedness, resonated with leading Southern statesman and intellectuals who sought out the entertaining company of “a gentleman” with “winning manners, good conversational powers and unflinching courtesy.”² In

¹A scholarly biography of James remains to be written. The best starting point is Stephanie L. Barczewski, “George Payne Rainsford James,” *Oxford Dictionary of National Biography*, vol. 29 (Oxford and New York: Oxford University Press, 2004), 698–700. See also S.C. Hall, *A Book of Memories of Great Men and Women of the Age, from Personal Acquaintance*, 2nd ed. (London: Virtue and Company, 1877), 263–64; S.M. Ellis, *The Solitary Horseman; or the Life & Adventures of G.P.R. James* (Kensington, UK: Cayme Press, 1927); Adrian Hoffman Joline, *George Payne Rainsford James: A Writer of Many Books* (n.p.: n.p., 1906). On James’s arrival in New York City, see “G.P.R. James and the Dembinskis,” *Commercial Advertiser* (New York), July 6, 1850; *Daily National Intelligencer* (Washington, DC), July 8, 1850. Both the Virginia Historical Society and the Princeton University Department of Rare Books and Special Collections house small collections of James’s correspondence that focus on his literary career.

²“Death of G. P. R. James, the Novelist,” *Baltimore Sun*, June 28, 1860; Ellis, *Solitary Horseman*, 168–214; James Meehan, “The Solitary Horseman in Virginia: Novelist G.P.R. James as British Consul, 1852–1858,” *Virginia Cavalcade* 27, no. 2 (Autumn 1977): 58–67.

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May 1857, less than two months after Chief Justice Roger Taney had rendered his opinion in *Dred Scott v. Sandford*, James dispatched to his superiors intelligence derived from multiple conversations with Taney, whom James described as an “old and intimate friend.”³ In Richmond’s plush Exchange Hotel, James asked Taney about the case, his take on the recent elections, and on the political future of the United States. James’s missive to the Foreign Office on the gist of these conversations has never before appeared in print. James reveals Taney as not only unapologetic about his decision in the case, but deeply pessimistic about the future of the Union.

From London to America

Born in London, the son of a prosperous physician who treated royal ailments, the young G.P.R. James grew up headstrong and hungering for adventure. He joined the British army as a teenager and fought in the Napoleonic wars. Insatiably curious and with a knack for languages, James remained on the continent and traveled widely. He became a prolific novelist, if not an especially original or gifted one, sometimes churning out for a growing public market two or three novels annually by dictating to a “living pen,” an amanuensis, rather than by writing in his own hand. They generated “enormous sales throughout the United States.”⁴ He dedicated *Richelieu: A Tale of France* (1829), a three-volume work of historical fiction, to Sir Walter Scott, who had encouraged the youthful James in his literary aspirations. A twenty-one-volume edition of his collected works appeared one year before his voyage to the United States. In prefacing the collection, James acknowledged the support of Washington Irving, whom he had met in Bordeaux, in encouraging him to take up a literary career.⁵ With almost eighty “original works” in more than 190 volumes, James’s “literary fecundity” is, wrote Horace Greeley’s *New-York Daily Tribune*

³G.P.R. James, letter to George William Frederick Villiers, Fourth Earl of Clarendon, May 20, 1857, Great Britain, Public Record Office, Kew England, Foreign Office Records, General Correspondence, United States of America, Series II, 5/677. The text of this letter is appended to this article.

⁴Elizabeth Fox-Genovese and Eugene D. Genovese, *The Mind of the Master Class: History and Faith in the Southern Slaveholders’ Worldview* (Cambridge and New York: Cambridge University Press, 2005), 349, 349–50n43.

⁵George Payne Rainsford James, *Richelieu: A Tale of France*, 3 vols. (London: Henry Colburn, 1829), 1: v–vi; and *The Works of G.P.R. James, Esq.*, 21 vols. (London: Smith, 1849), 1: vi.

in 1860, the year of James's death, "perhaps without parallel in any other author who has written the English language."⁶

Shortly after arriving in the United States encumbered by financial distress, James went on tour to earn money, delivering a rapid succession of lectures in New York and New England on literature and on the history of civilization. Observers wondered whether he, like so many other British dignitaries before him, would splatter acid when writing about their travels in the United States. "I have always made it a rule," he pronounced to the press, "in regard to the many lands I have visited, never to receive hospitality and kindness from any nation, and then to show them up (as we term it) to the British public in a book."⁷ James lived up to his promise. He appears to have possessed a rather genial, venturesome personality borne of a determined interest to engage others in friendly conversation and to acquire from them the grist from which his relentless storytelling was made. In letters to his English publisher Charles Ollier, James, like Alexis de Tocqueville, had much positive to say about the beauty and exceptionalism of the United States and the decency of its people. Underneath the "chaos of democracy," James wrote in a private letter, a solid foundation of "principles of great value and importance" lies.⁸

From New York City to Norfolk

After leaving New York City with his family in tow, James rented a home in rural Stockbridge, Massachusetts, where, for more than a year, he mixed writing with a rather feeble attempt at farming. James had friends in high places in the British government to rescue him from hoe and plow. He left Stockbridge in November 1852 to accept an appointment as British Consul at Norfolk, Virginia, one of six southern ports in which Great Britain had consulates. During his three-year stay in this declining city of about fifteen thousand inhabitants, he carped about the heat, mosquitoes, cost of living, dearth of intellectual community, and disease. James wanted out, calling Norfolk, next to New Orleans, "the most unhealthy city in the United States."⁹ In 1855, James and his family lived through one of the worst epidemics of yellow fever in United States history. The disease ravaged Norfolk, killing several thousand residents. The British

⁶"Death of G.P.R. James," *New-York Daily Tribune*, June 28, 1860. See also, "Death of G.P.R. James, the Novelist," *Daily National Intelligencer* (Washington, DC), June 29, 1860; "Death of G.P.R. James," *Weekly Georgia Telegraph* (Macon, GA), July 6, 1860.

⁷G.P.R. James to H. Fuller, July 7, 1850, *Daily National Intelligencer* (Washington, DC), July 13, 1850.

⁸G.P.R. James, letter to the Reverend Francis Kilvert, June 15, 1851, cited in Ellis, *Solitary Horseman*, 142.

⁹G.P.R. James, letter to Charles Ollier, November 6, 1853, cited in Ellis, *Solitary Horseman*, 173.

Foreign Office decided in 1856, at James's urging, to have the consulate moved from Norfolk to Richmond. James remained in Richmond for two years before transferring to the same post in Venice, where he died of a stroke in 1860.¹⁰

Life in Richmond

Years before James's arrival in the United States, Southern gentlemen had been lapping up his *The History of Chivalry* (1830), and he quickly made friends in Richmond's elite social circles and beyond. They gifted him on the eve of his departure from the city with an inscribed silver punch bowl and a ceremony with verse that included reference to his nickname, "The Solitary Horseman," given because so many of his novels began with the character. George Cary Eggleston, who practiced law in Richmond in the 1850s and would become a prominent journalist after the Civil War, remembered James as a graying, "rather short and rather stout" fellow who cut "a conspicuous figure in Richmond."¹¹ A story circulated that his initials stood for George Prince Regent and the moniker stuck. James gravitated toward salonnière Anna Cora Mowatt Ritchie, the French-born wife of William Foushee Ritchie, editor of the *Richmond Enquirer*. He struck up a close friendship with John R. Thompson, editor of the *Southern Literary Messenger*, arguably the antebellum South's most prestigious literary periodical. After James's departure from the United States, no less than William Gilmore Simms, the father of southern literature, boasted to John Esten Cooke that James "in his letters & in his conversation, was always warmly generous. I really believe he has said & written to me in terms of higher compliment than all our authors put together, yourself perhaps excepted."¹²

¹⁰Ellis, *Solitary Horseman*, 192–94, 199–200, 211; George D. Armstrong, *The Summer of the Pestilence: A History of the Ravages of Yellow Fever in Norfolk, Virginia, A.D. 1855* (Philadelphia: J. B. Lippincott & Company, 1856); Thomas J. Wertenbaker, *Norfolk: Historic Southern Port* (Durham, NC: Duke University Press, 1931), 210–16; Thomas C. Parramore, *Norfolk: The First Four Centuries* (Charlottesville: University of Virginia Press, 1994), 176–81, 190–92.

¹¹George Cary Eggleston, *Recollections of a Varied Life* (New York: Henry Holt, 1910), 67; "G.P.R. James and His Virginia Friends," *Charleston (SC) Mercury*, October 19, 1858.

¹²William Gilmore Simms, letter to John Esten Cooke, January 29, 1859, in *Letters of William Gilmore Simms*, ed. Mary C. Simms Oliphant et al., 6 vols. (Columbia: University of South Carolina Press, 1955–2012), 4:114. Though previously critical in print of James's novels as lackluster, Simms became friends with the "excellent" James after meeting him. See James Everett Kibler Jr. and David Moltke-Hansen, eds., *William Gilmore Simms's Selected Reviews on Literature and Civilization* (Columbia: University of South Carolina Press, 2014), 59–60, and Simms, letter to John Reuben Thompson, January 10, 1863, cited in Oliphant, *Letters*, 4:421. On the cool, even hostile reception James initially received in Norfolk, see "The New British Consul at Norfolk," *Charleston (SC) Courier*, December 2, 1852; Ernest Obadele-Starks, *Freebooters and Smugglers: The Foreign Slave Trade in the United States after 1808* (Fayetteville: University of Arkansas Press, 2007), 138; Meehan, "Solitary Horseman in Virginia," 58; Ellis, *Solitary Horseman*, 173–79.

Although early on in Norfolk James fell under suspicion of being an abolitionist of the “deepest die,” he quickly proved to possess little more than an antislavery patina. In his official capacity as consul, James avoided public criticism of slavery, taking the position that he “had no business to meddle with the institutions of a foreign country in any way.”¹³ Inspired by legends associated with the Great Dismal Swamp on the borders of Virginia and North Carolina, while living a few miles northeast in Norfolk, James published in 1856 what served as a conspicuous counterweight to the abolitionist indictment of slavery and southern culture contained in Harriet Beecher Stowe’s *Dred: A Tale of the Great Dismal Swamp*, published the same year.¹⁴ Whereas Stowe drew loosely on the 1822 Denmark Vesey conspiracy in Charleston in composing her second antislavery novel, James wrote *The Old Dominion; or, the Southampton Massacre* with the 1831 Nat Turner insurrection in mind.

In contrast to Stowe, James portrayed southern slaveholders with considerable sympathy, as paternalistic masters under duress because of quotidian struggles with abolitionist fanatics and temperamental slaves. James’s Virginia slaveholders regarded slavery as an evil foisted upon them by the British long before independence, one from which they, according to James, would have loved to extricate themselves under the proper conditions. In reviewing the book, the *Southern Literary Messenger*, despite reservations about his portrayals of both blacks and whites, praised his delicate handling of the slavery question and his depiction of “very many [social] scenes...that will be recognized as singularly truthful.”¹⁵ The book “has found favour in the South and is powerfully abused in the North,” James wrote to John Pendleton Kennedy of Baltimore, a literary figure in his own right whom Franklin Pierce had appointed Secretary of the Navy. “[B]oth...circumstances,” he gleefully added, “tend to increase the sale, so that it has been wonderfully well read.”¹⁶ James also earned applause by conspicuous acts of generosity to Richmond’s citizens. During a severe cold snap during the winter of 1856–1857, James purchased coal with which the poor could heat their homes.¹⁷

Before departing for Venice, James published a rosy description of plantation life in a prominent New York literary magazine. The essay clearly reprised

¹³G.P.R. James, letter to Charles Ollier, November 6, 1853, cited in Ellis, *Solitary Horseman*, 174; Meehan, “Solitary Horseman in Virginia,” 62.

¹⁴G.P.R. James, *The Old Dominion; or, The Southampton Massacre: A Novel* (New York: Harper & Brothers, 1856); Harriet Beecher Stowe, *Dred: A Tale of the Great Dismal Swamp* (Boston: Phillips, Sampson and Co., 1856).

¹⁵The untitled and unsigned review appears in *Southern Literary Messenger* (April 1856), 320.

¹⁶G.P.R. James, letter to John Pendleton Kennedy, May 3, 1856, cited in Ellis, *Solitary Horseman*, 199.

¹⁷*Lowell (MA) Daily Citizen and News*, February 3, 1857. See also “G.P.R. James., Esq.,” *Charleston (SC) Courier*, September 17, 1858.

themes from *The Old Dominion* in which the narrator, an Englishman named Sir Richard Conway, converses with a slaveholding planter and calls slavery “a very great evil.” The planter responds, “Perhaps so...yet it is one which exists. It is not of our making, and I can see no escape from it either with benefit to the poor people themselves, safety to the state, or justice to the master.”¹⁸ In the essay, James, like the planter, conceded “evils in the system.”¹⁹ Despite having witnessed as consul multiple scenes of brutal punishment inflicted on slaves by authorities during his stay in Virginia, he insisted nonetheless on his departure from the city that “after six years’ residence in the State, I can safely say, I never saw more than one instance of cruelty toward a negro, and that was perpetrated by a foreigner.”²⁰ More instances of “cruelty to a wife or child [existed] in Northern lands,” James asserted, than to slaves in the South.²¹

In Norfolk and Richmond, James would typically leave the consulate for several months, beginning in August, to vacation with his family in more salutary or desired locations. In the resort community of Old Point Comfort on Chesapeake Bay, James met and became friendly with Judge Taney. Anne Taney, Roger’s beloved wife and the sister of Francis Scott Key, and Alice Carroll Taney, the youngest of his seven children, died at Old Point Comfort of yellow fever in 1855. Although James was adventuring in Wisconsin at the time, his youngest son Charles recalled symptoms of the disease, such as the horrible hemorrhaging of blood through the pores of the skin; the flight of notables from the contagion to Old Point Comfort; and the deaths of Mrs. and Miss Taney: “The inhabitants [of Old Point Comfort] eventually obtained a cannon, planted it on a pier, and would not let the boats from Norfolk approach. We saw the other Miss Taney at Baltimore in the following autumn. She had never been gay and pretty like her sister, and sorrow had made her quite nun-like. She gave my mother a very doleful book of devotions entitled *A Companion for the Sick Room*.”²²

In Richmond, James stayed at the Exchange Hotel, the city’s finest, and it was there in the warmth of relaxed elegance that he engaged Taney in post-*Dred Scott* conversations that would form the warp and woof of James’s missive sent to Britain’s secretary of state for foreign

¹⁸James, *Old Dominion*, 28.

¹⁹G.P.R. James, “Life in Virginia,” *Knickerbocker* 52 (September 1858): 278.

²⁰*Ibid.*

²¹*Ibid.*, 279.

²²Ellis, *Solitary Horseman*, 192–93. For a description of the resort, see “Old Point Comfort,” *Trenton (NJ) State Gazette*, July 22, 1853; “Old Point Comfort,” *Richmond (VA) Whig*, June 12, 1857; “Our Old Point Comfort Correspondence,” *New York Herald*, September 6, 1857.

affairs, George William Frederick Villiers, Fourth Earl of Clarendon.²³ Taney had just passed his eightieth birthday, and though still tall and physically imposing with an agile mind, he was clearly a dispirited, pessimistic, and aggrieved old man in declining health.

Taney and the Decision

Historians have divided on Taney's motivations in rendering his opinion in the *Dred Scott* case. Shortly before his death in October 1864, Taney appointed Samuel Tyler his biographer. On November 4, Tyler wrote Taney's son-in-law, J. Mason Campbell, for access to papers with which to prepare the volume. According to Campbell, however, "The Chief Justice kept no copies of the letters he wrote, and with very few exceptions destroyed all he received."²⁴ In considering Scott's appeal from lower courts early in 1857, the Taney-led Supreme Court appeared ready initially to refuse jurisdiction by reaffirming the court's previous ruling in *Strader v. Graham* (1851). In this case, Taney ruled that each state possessed

an undoubted right to determine the status, or domestic and social condition of the persons domiciled within its territory except insofar as the powers of the states in this respect are restrained, or duties and obligations imposed upon them, by the Constitution of the United States....[T]he condition of the negroes, therefore, as to freedom or slavery after their return [from free soil] depended altogether upon the laws of that state [to which said blacks had returned].²⁵

Thus, according to the precedent of the *Strader* decision, *Dred Scott's* status would have been decided by the laws of Missouri. President-elect Buchanan, without question, engaged in behind-the-scenes maneuverings with justices other than Taney to get the court to seize the opportunity of the *Dred Scott* case to render a much more expansive decision in the hope of extinguishing once and for all the incendiary question of

²³The *Richmond Whig* announced the arrival of Roger Taney at the Exchange Hotel in the May 15, 1857, issue. James had lived at the hotel and took many meals there when vacationing. See Ellis, *Solitary Horseman*, 207, 209. For descriptions of the hotel, see, "The Exchange Hotel (Richmond)," *Daily National Intelligencer* (Washington, DC), May 5, 1852; "Exchange Hotel," *Richmond Enquirer*, November 12, 1852.

²⁴Samuel Tyler, *Memoir of Roger Brooke Taney, LL.D.* (Baltimore: John Murphy & Co., 1872), ix–x.

²⁵*Strader v. Graham*, 10 Howard U.S. 82 (1850) 93.

whether Congress under Article IV of the Constitution had the right to regulate out of existence slavery in the territories. Buchanan had a close friendship with Justice John Catron from Tennessee, and he encouraged Buchanan to lean on Justice Robert Grier, a Northern Democrat from Buchanan's home state of Pennsylvania, to join the majority of the court in a way that would suggest to the public cross-sectional support of the decision.²⁶

Although no hard evidence has surfaced to convict Taney of collusion with Buchanan, Abraham Lincoln, in his famous "House Divided Speech" (1858), spoke of the "dark and mysterious circumstances" that led to the infamous decision, and he cast particularly incriminating light on Taney, since he was the court's chief justice and deliverer of the most comprehensive opinion. As was reported in 1857 and emphasized by many scholars subsequently, Buchanan had suspiciously whispered something into Taney's ear during the inaugural ceremony before pronouncing in his inaugural address that the question of slavery's extension in the territories was a matter that "legitimately belongs to the Supreme Court."²⁷

Lincoln's most condensed public criticism of the decision came, however, a year earlier in Springfield, Illinois, about a month after James had reported to the Foreign Office on his conversations with Taney. In responding to Stephen Douglas's immediate acceptance of the decision, Lincoln zeroed in not on the possibility of backroom wheeling and dealing, but on two issues: whether Scott, as a black man, could sue for freedom in United States courts and whether Congress had constitutional authority to regulate slavery in the territories. On

²⁶The scholarly literature on the *Dred Scott* case is voluminous. Cf., for example, Bernard C. Steiner, *Life of Roger Brooke Taney: Chief Justice of the United States Supreme Court* (Baltimore: Williams & Wilkins Company, 1922), 336–43; Carl Brent Swisher, *Roger B. Taney* (New York: Macmillan Company, 1935), 503–11; David M. Potter, *The Impending Crisis, 1848–1861* (New York: Harper & Row, 1963), 274, 280–81, 329–30; Donald Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978); Walter Ehrlich, *They Have No Rights: Dred Scott's Struggle for Freedom* (Westport, CT: Greenwood Press, 1979), 130–33; Kenneth M. Stampp, *America in 1857: A Nation on the Brink* (New York: Oxford University Press, 1990), 93–100; Paul Finkelman, *Dred Scott v. Sandford: A Brief History with Documents* (Boston: Bedford/St. Martins, 1997), 32–33, 36; Sean Wilentz, *The Rise of American Democracy* (New York: W.W. Norton, 2005), 707–8, 711–15; Austin Allen, *Origins of the Dred Scott Case: Jacksonian Jurisprudence and the Supreme Court, 1837–1857* (Athens: University of Georgia Press, 2006), 161–70; William Freehling, *Road to Disunion*, vol. 2., *Secessionists Triumphant, 1854–1861* (Oxford and New York: Oxford University Press, 2007), 113–22; Mark A. Graber, *Dred Scott and the Problem of Constitutional Evil* (Cambridge and New York: Cambridge University Press, 2006); and Earl M. Maltz, *Dred Scott and the Politics of Slavery* (Lawrence: University Press of Kansas, 2007), 115–17.

²⁷Robert V. Remini and Terry Golway, eds. *The Penguin Book of U.S. Presidential Inaugural Addresses* (New York: Penguin Books, 2008), 154–63.

the legal and historical criticism of Taney's opinion, Lincoln declared that he could do no better than the opinions rendered by the two dissenting justices: John McClean of Ohio and Benjamin Curtis of Massachusetts. In large part because of those dissenting opinions the key issues in the case, in Lincoln's mind, were not "fully settled" and thus could be subsequently overruled, precedent notwithstanding.²⁸

Many scholars have followed Lincoln's lead. Donald Fehrenbacher's Pulitzer prizewinning *The Dred Scott Case* (1978) labeled Taney's opinion "visceral," that of an old, angry, and embittered man, morally and emotionally sapped by the recent horrible deaths of wife and daughter, yet defending to the last breath the values of a Southern gentleman.²⁹ Did Taney, like President Buchanan, hope to preserve the Union by bringing finality to the incendiary issue of when or whether the people of a territory could decide the question of slavery's extension? Did Taney hope to render a majority decision that would dissipate the storm, stabilize the country, protect the South, and preserve it within the Union? A crucial key to understanding Taney's thinking in *Dred Scott*, a kind of prequel to that decision that probes the relation of the Constitution and slavery, lies in an opinion rendered by Taney in 1832 while serving as Andrew Jackson's attorney general.

The Prequel

At bottom, Taney was a states' rightist who believed the Constitution was a compact created by sovereign states. Although, as G.P.R. James pointed out to his superiors, Taney had freed all of his slaves early in his adult life, Taney carried forward pronounced apprehensions that the antislavery crusade was threatening to unleash in the South a bloody civil war. In 1793, the United States experienced its first major refugee crisis when thousands of whites from the slave revolution in the French plantation colony of Saint-Domingue (modern Haiti) arrived in ports up and down the Atlantic coast. Baltimore received a disproportionate share of the dispossessed, and the teenage Roger Taney, born and raised in nearby Calvert County, witnessed the disturbing scene of more than a thousand emaciated and bedraggled refugees overwhelming private relief

²⁸Abraham Lincoln, "Speech at Springfield, Illinois," June 26, 1857, in *The Collected Works of Abraham Lincoln*, ed. Roy P. Basler, 9 vols. (New Brunswick, NJ: Rutgers University Press, 1953–1955), 2:403–9.

²⁹Fehrenbacher, *Dred Scott Case*, esp. 551–61.

in the city. Indeed, the image of the “horrors of St. Domingo” never left his mind.³⁰

In 1822 Charleston authorities claimed to have uncovered the most sophisticated insurrectionary plot in United States history, masterminded by a literate, skilled, multilingual freed person of color named Denmark Vesey. When, in immediate response, the South Carolina legislature passed an act that required the incarceration of all black seamen aboard vessels entering Charleston harbor until their departure, Great Britain cried foul to federal authorities, pointing out that an 1818 treaty between the two countries guaranteed rights to British seamen while in American ports regardless of color. Tensions on this issue ebbed and flowed over the years, and legal opinions in the United States divided.

In 1832, with the matter still unsettled, Secretary of State Edward Livingston asked Attorney-General Taney for his wisdom on the matter. In Taney’s view, South Carolina’s so-called Negro Seamen Act was constitutional since a sovereign state must certainly have the right to preserve itself from “the danger to be apprehended from the introduction of free people of colour among their slaves.” “It is impossible to imagine,” Taney added, that slaveholding states had surrendered this vital policing power upon ratifying the Constitution since to do so would have brought down upon them “inevitably the evils of insurrection & rebellion among their slaves, & the non slave holding states could have no inducement to desire its surrender.”³¹ In the *Dred Scott* case, Taney echoes to a considerable degree language and argument he used in 1832 to justify South Carolina’s self-preserving right to exercise a police power that trumped federal treaty-making authority.

With Taney’s compact theory of union in mind, Forrest McDonald concluded in *States’ Rights and the Union* (2000), contra Fehrenbacher, that Taney and the majority “can be accused of spurious reasoning, but the decision was based on the adherence to the Constitution as they understood it, not upon favoritism toward their section of the country.”³² James’s report to his superiors in England on his conversations with

³⁰*Dunlap and Claypoole’s American Daily Advertiser* (Philadelphia), January 14, 1794; Roger Taney, letter to J. Mason Campbell, October 19, 1860, Benjamin C. Howard Papers, Maryland Historical Society, Baltimore, MD.

³¹The text of Taney’s 1832 opinion can be found in H. Jefferson Powell, “Attorney General Taney & the South Carolina Police Bill,” *Green Bag* 5 (Autumn 2001): 75–102. For a definitive documentary history of the Denmark Vesey affair, including documents on the Negro Seamen Act, see Douglas R. Egerton and Robert L. Paquette, *Court of Death: A Documentary History of the Denmark Vesey Affair* (Gainesville: University Press of Florida, 2016).

³²Forrest McDonald, *States’ Rights and the Union: Imperium in Imperio, 1776–1876* (Lawrence: University Press of Kansas, 2000), 179.

Taney suggests that Fehrenbacher's and McDonald's contrasting assessments need not be mutually exclusive. In both his *Dred Scott* opinion and in his conversations with James, Taney launched a fiery offensive against multiple enemies: radical abolitionists, Know-Nothings, and Republicans. According to James, Taney fully understood that his decision, which he regarded as principled under the law, would not likely bring finality to the slavery question and safety to the South—but indeed might well have the opposite effect, exacerbating sectional tensions to the breaking point.

James's letter also reveals that the Supreme Court's most prominent Jacksonian jurist had in his dotage become despairing of the political direction of the country. Sounding a bit like Alexis de Tocqueville in his second volume of *Democracy in America*, Taney lamented the social disorder produced by the onward march of democracy, the resulting "anarchical tendencies," "filibustering spirit," "fanaticism," and "corruption" that he declared were fissuring the country beyond repair. James's letter evokes the "excess of democracy" thesis put forth by the influential historian David Donald in 1961 in explaining what precipitated the Civil War.³³ Drawing on Tocqueville, Donald contended that in the antebellum United States novelty, individualism, rapid social mobility, and selfish grasping for the existing abundance had acted as a social solvent such that existing institutions could not successfully manage a string of serious crises. "American society in the 1850s," Donald contended, "was singularly ill equipped to meet any shocks, however weak. It was a society so new and so disorganized that its nerves were rawly exposed"³⁴ More recently Kenneth Stampp, in his last major book, expounded on virtually every one of Taney's points to argue for 1857 as "the political point of no return—when it became well nigh impossible to head off a violent resolution of the differences between them [North and South]."³⁵

³³David Donald, *Lincoln Reconsidered: Essays on the Civil War Era*, 2nd. ed. (New York: Vintage Books, 1961), 209–35.

³⁴*Ibid.*, 234.

³⁵Stampp, *America in 1857*, viii.

G.P.R. JAMES, LETTER TO GEORGE WILLIAM FREDERICK VILLIERS, FOURTH EARL OF CLARENDON, MAY 20, 1857¹

British Consulate Richmond Virginia
30 May 1857

My Lord,²

I find that it is the practice of the French Consulates here to send home a report of the Elections in the various States of the Union. I certainly do not wish to do less than Consuls of any other Nation, and therefore beg to inform Your Lordship that the election of Attorney General, Members of Congress, States Senators and Delegates for Virginia, took place on Thursday 28 May.

The Democratic Party has carried all before it, even in Richmond, where a Whig Majority was anticipated by both Parties. At the same time many of the symptoms of that schism in the Democratic Camp which I have previously noticed, were very apparent, though as usual both factions of the party united to maintain Democratic ascendancy.

I think, however, that the views of certainly the most experienced, and probably most enlightened of the Statesmen of this Country, may be more acceptable to your Lordship than any details of the late Elections in Virginia. As they were given to me, not confidentially, but in private Conversation, I take the liberty of making this Dispatch "Private."

Chief Justice Taney,³ who has inaugurated the eight last Presidents,⁴ and who is looked upon as the most eminent Lawyer, with the exception of Judge Marshal[I],⁵ that America has ever produced, has been lately in Richmond, and when he had no Papers to read at night, usually spent his evenings, tête a tête, with me, as an old and intimate friend.

He has always been a Democrat in his political views, and is a friend of Mr. Buchanan. Age has not in the least degree diminished His

¹Not for reproduction or distribution without the consent of Robert Paquette.

²George William Frederick Villiers, Fourth Earl of Clarendon (1800–1870), served as British Secretary of State from 1853 to 1858. James's letter can be found in Great Britain, Public Record Office, Kew England, Foreign Office Records, General Correspondence, United States of America, Series II, 5/677.

³Roger Brooke Taney (1777–1864) was the fifth chief justice of the United States. Nominated by President Andrew Jackson and confirmed by a vote of 29 to 15 in the Senate, Taney took the oath of office in Baltimore on Monday, March 28, 1836. He held the position of chief justice until his death in 1864.

⁴Actually the last nine presidents, if Andrew Jackson's second inaugural is counted.

⁵Only John Marshall (1755–1835) served longer than Taney as chief justice of the United States Supreme Court. His thirty-four year career on the court began in 1801 and ended with his death.

clearness and vigor of his mind; nor has it blunted that sagacity for which he was always conspicuous.

Domestic affliction indeed—the sudden death of his Wife, and the loss of his youngest daughter by yellow fever under circumstances of infinite horror—has greatly depressed his spirits, but, I do not think, has at all affected his views of the state of his Country.

I am sorry to say they are very unfavorable. In conversation, he pointed out to me that this system of rotation in Office, to which the Democratic Party now clings, must inevitably destroy it, that every man from whose hands office is wrenched for no fault becomes more or less inimical to that Party which he formerly supported but now taxes with ingratitude, and that, as offices are here innumerable, innumerable enemies are daily made.⁶ He believes that the units and power of the Democratic Party have alone saved the Union from being torn to pieces by the two conflicting factions—North and South—and that the growing dissensions in that Party must end in arraying North and South in actual hostility against each other.

The Chief Justice expatiated largely upon the anarchical tendencies apparent in various parts of the United States—upon the organized riots in Baltimore,⁷ the anomalous condition of New York,⁸ the apathy of the

⁶The spoils system had become a Democratic Party mainstay since the presidency of Andrew Jackson, but Democrats had also embraced the idea that favored placeholders should leave office and return home after a four-year term was up. Thus, Buchanan's election resulted in an ugly intra-party brawl between partisans of President Franklin Pierce, who wanted to remain in office, and partisans of James Buchanan, who wanted to replace them. Intra-party rivalries at local and state levels also generated conflict as Buchanan attempted to dispense limited jobs through party bosses to a superabundance of claimants. See Kenneth M. Stampp, *America in 1857: A Nation on the Brink* (New York: Oxford University Press, 1990), 72–79. Newspapers in the mid-1850s contain an outpouring of comment on the practice. For 1857, see, e.g., “The Spoils—The Spoils—Policy of the Administration,” *New York Herald*, March 11, 1857; “Rotation in Office,” *Columbus (GA) Enquirer, Tri-Weekly*, March 24, 1857; “Rotation in Office—A Muss,” *Richmond (VA) Whig*, April 21, 1857; “Rotation in Office” *Daily National Intelligencer* (Washington, DC), June 12, 1857.

⁷Paul A. Gilje, *Rioting in America* (Bloomington: Indiana University Press, 1996), 67, declares that in the 1850s, “nativist Americans developed intimidation at the polls into a new art form.” In the Know-Nothing Party stronghold of Baltimore, multiple riots erupted in 1856 and 1857. The most serious violence broke out on November 4, 1856, as Know-Nothing and Democrat partisans fought pitched battles in various spots throughout the city. “Estimates of casualties vary, ranging from 8 to 17 dead and 64 to 150 wounded.” See also David Grimsted, *American Mobbing, 1828–1861: Toward Civil War* (New York: Oxford University Press, 1998), 236–37.

⁸James here could be referring to Democratic Party factionalism in New York City or more general concern about the future of the Democratic Party in a key Northern battleground state against the fast-rising Republican Party. Although Republicans had swept to victory in the 1856 election, state corruption and disaffection within the Know-Nothing Party held out hope for Southerners like Taney that the state might return to the Democratic fold, and, indeed, in the elections for state office in 1857, Republicans suffered a stinging defeat at the polls with Democrats increasing their vote from 33 to 45 percent. See Stampp, *America in 1857*, 244–45.

Magistracy, the system of Lynching,⁹ the Filibustering spirit in all Southern Cities,¹⁰ the fanaticism of the North,¹¹ the corruption in Congress¹²—even as he asserted, in the Senate; and the disregard of Law, and want of respect for authority, evident everywhere.

This, he said, might all be amended, and probably would be so, did not the evils arise from sources, not only still acting, but daily increasing in force, and so deeply fixed in the new constitutions of the various States,¹³ and in the minds of men, that there was no hope of their peaceable removal. Amongst these sources he pointed out the continually recurring Elections by the people of every Office—small and great—upon whom the preservation of the peace, the execution of the Law, and the punishment of Offenders devolve. He showed that few if any Officers—whether seated on the Bench or in any way employed in enforcing respect for the laws—dared to do their duty, for fear of offending those who elected them and thereby losing the offices which gave them bread; and he anticipated a period of anarchy, as the only possible precursor of better things.

A war on the subject of Slavery between the North and South, he thought very probable and not remote; and he spoke freely of his late decision in the *Dred*

⁹During and after the 1856 presidential election, white Southerners in a majority of Southern states claimed to have uncovered slave insurrectionary plotting, although few of these panics seemed to have resulted in lynch mobs. Michael J. Pfeifer, *The Roots of Rough Justice: Origins of American Lynching* (Urbana: University of Illinois Press, 2011), 56, appendix, documents a number of lynchings in the Northeast and the Midwest in the 1850s. A case of a free Negro lynched in Adams County, Ohio, on the northern border of Kentucky, for allegedly raping a white woman received unusual press coverage because, as Pfeifer notes (44–45), the incident sparked a sectionalized discussion of whether the absence of capital punishment for such a crime in Ohio had precipitated the mob action. Taney may have also been thinking of newspaper reports of lynchings in Bleeding, Kansas.

¹⁰Unauthorized paramilitary adventures by United States citizens against foreign countries with which it was at peace increased after the Mexican War. “Filibuster” derives from the Dutch word *vrijbuitter*, for a corsair or piratical adventurer. See Robert E. May, *Manifest Destiny's Underworld: Filibustering in Antebellum America* (Chapel Hill: University of North Carolina Press, 2002). Although filibustering took on a predominantly Southern flavor after the Compromise of 1850 upset the sectional balance between slave and free states, many Southern notables, like Taney, denounced the lawlessness of the activity. Ironically, G.P.R. James's second son Courtenay ran off to Nicaragua to join William Walker, the most famous filibuster of them all. Wounded in action, Courtenay survived the ordeal, returned to the United States, and joined the Union army during the Civil War. See *Albany (NY) Journal*, May 14, 1857, and “A Son of G.P.R. James, Enlisted,” *Albany (NY) Journal*, November 6, 1863.

¹¹James is undoubtedly referring here to Taney's animosity toward Northern abolitionists.

¹²The Thirty-Fourth Congress, which adjourned March 1857, received blistering criticism for corruption, and Washington lobbyists formed a prime target. The House of Representatives had become so tainted with “land-jobbing, treasury-plundering and fraud encouraging” that a Congressional Corruption Committee was formed to investigate. See, “The Congressional Corruption Committee—Its Causes and Effects,” *New York Herald*, May 20, 1857; “Thirty-Fourth Congress, Second Session. Great Excitement in The House. The Corruption Investigation,” *Philadelphia Inquirer*, May 20, 1857; Stamp, *America in 1857*, 27–28.

¹³The United States had thirty-one states in 1857. As Alexander Keyysar has noted, in the half-century or so before the Civil War, “every state...held at least one constitutional convention, and more than a few held several.” *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), 26–27. These conventions, in lowering or removing property and tax barriers to white male suffrage as well as democratizing other political forms, unleashed disruptive popular forces in most states.

Scott case, saying that he was fully aware, at the time he pronounced it, of the dangerous consequences which might ensue, but that he was on the Bench to announce the law and the constitution, not to make them: he was disinterested too; for nobody could either promote or displace him, and all his own slaves he had emancipated twenty years ago.

The Chief Justice referred also to the late enlistment question, taking views in which of course I could not altogether agree, but denouncing the course taken by Mr. Cushing, in the Hertz trial,¹⁴ in very strong language.

I have endeavored, My Lord, to compress into as small a space as possible the substance of several nights' conversations; and I will only add, that I believe that every word of Chief Justice Taney was sincerely spoken; for they were addressed to an intimate friend, and no one has ever doubted that he is a candid, upright, and fearless man.

I have the honor to be
My Lord
Your most obedient
humble Servant

G.P.R. James

¹⁴In 1855, J. C. Van Dyke, United States district attorney for Philadelphia, prosecuted Henry Hertz for violations of the Neutrality Act of 1818. With the approval of John F. Crampton, British Minister to the United States, Hertz had been working to enlist persons in the United States for military service in the British army battling Russian forces in Crimea. United States attorney general Caleb Cushing, Anglophobic, expansionist, and pro-Southern, regarded the evidence of British complicity at the highest levels as damning and sought to expel Crampton and several implicated British consuls from their posts in the United States. At the beginning of Hertz's trial, Van Dyke read out loud before the court a missive from Cushing that blasted the British government for disrespecting the United States and violating its territorial sovereignty. Cushing's letter received much publicity and strained relations between the United States and Great Britain at a time of growing tension between the two countries over Central America. The best analysis of Hertz and the enlistment crisis is William F. Liebler, "John Bull's American Legion: Britain's Ill-Starred Recruiting Attempt in the United States during the Crimean War," *Pennsylvania Magazine of History and Biography* 99 (July 1975): 309–35. See also Claude M. Fuess, *The Life of Caleb Cushing*, 2 vols. (New York: Harcourt, Brace and Company, 1923), 2:165–71, and *Documents Relative to Central American Affairs, and the Enlistment Question* (Washington, DC: C. Wendell, 1856), 245–485.