

From Antislavery Lawyer to Chief Justice: The Remarkable but Forgotten Career of Salmon P. Chase

Randall E. Barnett



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Abstract

The Salmon P. Chase was a leading abolitionist lawyer and politician. In 1850, Chase was appointed Chief Justice of the United States. In addition to his judicial duties, Chase was a vocal proponent of abolition. He was instrumental in the passage of the Fugitive Slave Act of 1850, which required the return of escaped slaves to their owners. Chase's career was marked by his commitment to the cause of freedom and his leadership in the legal and political arena.

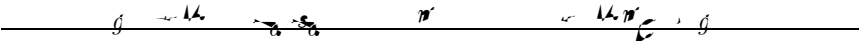
J5-0 5usn653B. Chase as an Antislavery Lawyer

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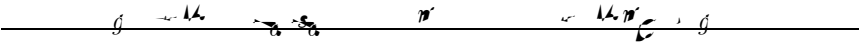
Carmack Waterhouse Professor of Legal Theory, Georgetown University Law Center; Director, Georgetown Center for the Constitution. This Article was presented as the 2012 Summer Canary Lecture at the Case Western Reserve University School of Law on September 27, 2012. Permission to reproduce and distribute for nonprofit educational use is hereby granted.

Introduction: Constitutional Abolitionism

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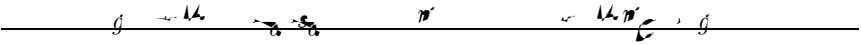


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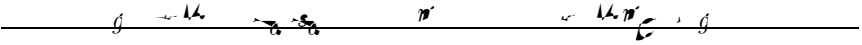


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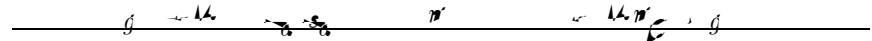
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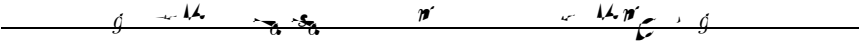
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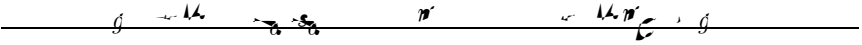
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II. The Chief Justiceship of Salmon P. Chase

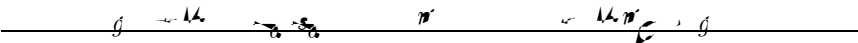
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The above
 1867, *Ex parte Merryman*, 17 F. Cas. 144 (C.C.D. Md. 1861) (No. 9,487) (holding that Congress, and not the President, has the power to suspend habeas corpus). President Lincoln disregarded this decision.
 In *re Turner*, 24 F. Cas. at 339 (“The first clause of the thirteenth amendment to the constitution of the United States interdicts slavery and involuntary servitude The alleged apprenticeship in the present case is involuntary servitude, within the meaning of these words in the amendment.”).
Id. (“[T]he indenture set forth in the return does not contain important provisions for the security and benefit of the apprentice which are required by the laws of Maryland in indenture of white apprentices, and is, therefore, in contravention of [the Civil Rights Act]”).
Id.
 Hyman, *supra* note 34, at 131.
Id.

131. *Ex parte Merryman*, 17 F. Cas. 144 (C.C.D. Md. 1861) (No. 9,487) (holding that Congress, and not the President, has the power to suspend habeas corpus). President Lincoln disregarded this decision.
 132. *In re Turner*, 24 F. Cas. at 339 (“The first clause of the thirteenth amendment to the constitution of the United States interdicts slavery and involuntary servitude The alleged apprenticeship in the present case is involuntary servitude, within the meaning of these words in the amendment.”).
 133. *Id.* (“[T]he indenture set forth in the return does not contain important provisions for the security and benefit of the apprentice which are required by the laws of Maryland in indenture of white apprentices, and is, therefore, in contravention of [the Civil Rights Act]”).
 134. *Id.*
 135. Hyman, *supra* note 34, at 131.
 136. *Id.*

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145. *g* , 74 U.S. a 726.
 146. Hyman, *supra* note 34, at 146.
 147. *Id.* at 147.
 148. *W*_y , 74 U.S. at 721.

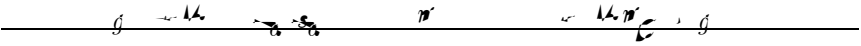


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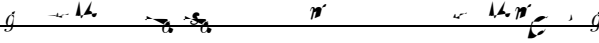
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185. *Id.* at 2600-01.
186. *Id.* at 2600.
187. § 5000A, 124 Stat. at 244.
188. *NFIB*, 132 S. Ct. at 2601.
189. *Id.* at 2600 n.11.
190. *Id.* at 2600.
191. *Id.* at 2600-01.

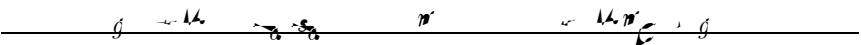
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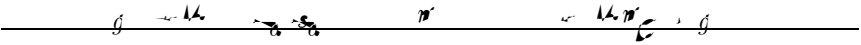


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III. Why Has Chase’s Career Been Forgotten?

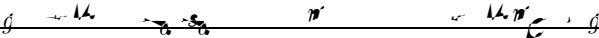
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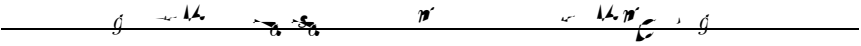
254. Robert J. Kaczorowski, *The Chase Court and Fundamental Rights: A Watershed in American Constitutionalism*, 21 N. Ky. L. Rev. 151, 191 (1993). I sometimes wonder the same thing about another Chief Justice. William Rehnquist was ill from cancer such that he was unable to attend oral argument in the medical marijuana case of *Gonzales v. Raich*, 545 U.S. 1 (2005), and he had to participate in the conference on the case by telephone. In *Raich*, the Court upheld the constitutionality of applying the Controlled Substances Act to the possession and distribution of marijuana for medical purposes as authorized by state law. The vote was six to three with Rehnquist, together with Justices O’Conner and Thomas, in dissent. Had he been in his prime, could the Chief Justice have held Justice Kennedy’s and Scalia’s votes to make a majority for invalidating the CSA? As with the *Slaughter-House Cases*, we will never know.

255. Kaczorowski, *supra* note 254, at 191.
256. Hyman, *supra* note 34, at 165.

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 W a 0 0 G d ' a c a a 0 h a
 Q a a 0 0 a d a h h c c a0 h
 a0 b a a h a0 b a d h a
 d a0ca d da d ca0 a h
 h h a0 . I h d , d h 0 a 0 ca0 acc 0 0 h 0 ,
 a h 0 h , Q a a 0 0 a d 0 ca .
 E ca0 c a Ab a0 L c 0 , Q a a , 0 h
 a , a 0 , h h h a a d a 0 0 a
 b h a h h c , a d cc d h c a h .
 R 0 0 b a 0 h a Q a a a 0 D 0 ca h c
 0 ca0c c h 0 a dd h h 0 0 0 -
 W h 0 d h R b0ca Pa . I 0 a c , h ,
 Q a h ad 0 h 0 0 c a0 c 0 0 h 0 a
 J ' 0 a0 0 b0ca a h a h d d h h
 0 ca0 cc A0 a d Ha0 0 ' b 0 F d a0
 Pa . S Q a a c d 0 d b d d a d d b

257. Lurie, *supra* note 107, at 85.
 258, *Id.*
 259, *Id.* For what is worth, “Miller blamed his opinion [in *Slaughter-House*] and the intrigue of Bradley and Swayne for being passed over to replace Chase as chief justice.” Kaczorowski, *supra* note 254, at 188.





c a0 a c d d. I a h a a c h a d h S h
c d , h a 0 d h C 0Wa , a d h a



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