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## A TALE OF TWO LAWYERS IN ANTEBELLUM CINCINNATI: TIMOTHY WALKER'S LAST CONVERSATION WITH SALMON P. CHASE

*Gordon A. Christenson\**

The summer of 1855 is much too warm and humid. The August rain this morning has cooled the woods and hillsides. But they seem darker now, sultrier, with shades of green playing between sunshine and shadow. Timothy Walker waves to his wife Ellen who stands on the porch of their home Woodland Cottage with two of their five children. He takes up the reins for his daily buggy ride to town. Walker always takes Madison Pike, moving onto it at the access gate near Grandin Road a few hundred yards east of his home. His mare steps carefully along the ruts of slippery rust-red mud until she reaches the tollgate, then turns back towards the city picking up pace on the Pike's macadam surface.

Twenty-five years it has been, Walker muses, a quarter century in Cincinnati. He thinks about that arduous journey—from Boston to the booming frontier River City—and how sensible his plan was then! He smiles. He would seek admission to the Ohio bar in Cincinnati. With one more year in a law office there plus his year's study at Harvard Law School and a year with Judge Howe's school in Northampton, he would pass the examination and be admitted in Ohio. Massachusetts would honor Ohio's license, and he would return to Boston fully qualified for practice. This would save four years of further apprenticeship required in Massachusetts, if he stayed in Boston. So he made the difficult trip, first to Baltimore and then over the Great Cumberland Road by mail stage all the way through a rough mountain road to Wheeling. There, he boarded the steamboat *Emigrant*. It took nearly three days down the Ohio to reach Cincinnati. And how exhilarated he felt rounding the bend and seeing the Queen City for the first time!<sup>1</sup>

Timothy thinks of this exuberant new beginning on his drive today and wonders why melancholia persists when his life is now so full. Has he always been this gloomy? Is it his nature from birth? An old wound perhaps? Losing Anna and their two children? His old religious crisis?

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\* University Professor Emeritus of Law and Dean Emeritus, University of Cincinnati College of Law. This is a revision and expansion of *A Tale of Two Members*, a paper read by the author at the Literary Club, Cincinnati Ohio, June 11, 2001. The final conversation between Timothy Walker and Salmon Chase, two antebellum lawyers who began their public careers as antislavery Whig leaders in Cincinnati in 1830 and joined the Literary Club in 1855, is imagined from historical events through sources documented in the footnotes.

1. WALTER THEODORE HITCHCOCK, TIMOTHY WALKER: ANTEBELLUM LAWYER 1-21 (1990).

This litany intensifies when he ponders, not for the first time, why he never returned to Boston. Most likely, in the beginning he stayed for Anna, who stole his heart completely. Their marriage planted him firmly in Cincinnati society, even later as he grieved her death. True, his law practice paid off handsomely, and his writing and teaching go well. Slavery so close to Cincinnati has not died out, as he expected. Riots and mobs have kept people on edge, and the city has grown too fast. Still, he and his second wife, Ellen, enjoy their bluestocking life immensely. Perhaps, it is work on the third edition of his book, awakening questions put to rest long ago, that leaves him so unsettled and anxious as he reconsiders the Constitution and slavery.<sup>2</sup>

Now suddenly, Walker is roused from these reflections by a mirage from hell coming at him as if from the past. Ahead on Madison Pike a wildly lurching teamster's wagon is bearing down on him fast, its horses galloping full speed in the middle of the road. The driver is lashing them ferociously and makes no attempt to move to the side or rein them in. Walker quickly pulls his mare right to avoid collision. But she shies away and rears as the teamster's horses rush pass and the rig swipes his carriage. A loose wagon pole rams Walker with full force, smashing hard into his chest. His buggy overturns and is dragged off the pike. Walker falls out unconscious.

Friends come upon Timothy Walker barely alive on the roadside, head bloody and chest bashed in. The crazed and obviously drunk driver is trying his best to revive him. When questioned about what happened, the driver shouts in a thick German accent, "[I] got as good a right on that side as any American."<sup>3</sup> They rush Walker back home to Woodland Cottage and send for a doctor who dresses the wounds then places him in Ellen's care. Rarely leaving his bed, Timothy wanders in and out of consciousness, trying to speak while spitting blood and gasping for breath. Finally he realizes that his injury is likely fatal. And he begins to dwell in the moment between moments, where old memories are one with his will to live. The vision of the demon wagon will not leave him alone. Again and again it reappears as if in a predawn dream but with frantic horses now whipped and driven into the midst of a gathering crowd, which instantly turns into an angry mob,

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2. TIMOTHY WALKER, *INTRODUCTION TO AMERICAN LAW* (3d ed. 1855). Walker's preface is dated October 1, 1855, at Cincinnati. We can infer that his revised manuscript was under preparation in August that year.

3. CLARA LONGWORTH DE CHAMBRUN, *THE MAKING OF NICHOLAS LONGWORTH: ANNALS OF AN AMERICAN FAMILY* 69 (1933). Chapter III of Clara De Chambrun's biography of her brother is devoted to Nicholas's maternal ancestry and includes extended excerpts from the diary and journal of their grandfather, Timothy Walker, whose daughter Susan was their mother. Clara's account of the accident attributes the quote to the German driver, though the source is not indicated.

frenzied and dangerous as it swallows up wagon, driver and horses and takes revenge.

When Walker is calmer and able to speak more clearly after a few weeks, he asks his sister Susan to fetch his old law partner, Salmon Chase, who has just become candidate for governor of Ohio on the new Republican Party ticket. Susan Walker is one of Chase's few close friends. They almost married a few years ago after Chase's third wife died of tuberculosis in 1852, but Susan said they knew each other too well.<sup>4</sup> So good friends they have remained. The tall and saturnine Chase was elected to the United States Senate by Ohio's legislature in 1849. He returned to Ohio politics this spring after the short congressional session, which ended his six-year term. Driven by powerful ambition for the presidency, he went to work right away to realign the antislave faction of the anti-immigrant Ohio Know Nothing Party with Independent Democrats and with new Republicans from the Free Soilers and old Liberty Party. At the "fusion convention" in Columbus in July as the new Republican Party took shape in Ohio, Chase was nominated for governor, after some harping by a small group of antislavery Whigs from Cincinnati led by Rutherford B. Hayes.

Susan finds Chase in town at the elegant Burnet House where he boards, getting ready for his campaign throughout the State. The Senator promptly goes with Susan in her carriage, out to Woodland Cottage to see his injured friend.

This accident saddens me more than you know, he says to Susan as they drive. Timothy was my first law partner. Susan asks him, didn't you and Timothy both come to Cincinnati about the same time? Actually, Chase answers, I was here twice before your brother came. The first time was when I was a boy. After my father died when we lived in Keene, New Hampshire, Mother sent me to Ohio to be with my uncle, Philander Chase. He was Episcopal Bishop of Ohio, very autocratic, and I spent four very unhappy years with him. We lived the first two years on his farm in Worthington. I learned there to trust in God. We came to Cincinnati when my uncle became president of Cincinnati College. I enrolled and found it grossly inadequate. Uncle Philander soon left to help start Kenyon College, and I returned to New Hampshire for Dartmouth.

If you were so miserable asks Susan, why did you decide to settle here, then? She humors him, for she has heard much of this before. Chase keeps talking, as if he doesn't hear. I moved to Washington, D.C. after graduating from Dartmouth and opened a school to teach classics.

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4. JOHN NIVEN, SALMON P. CHASE: A BIOGRAPHY 203-04 (1995).

On the side, I studied law with William Wirt. He was Attorney General at the time. They admitted me to practice there, but I decided to settle in Cincinnati instead to begin practice. That was March in 1830. I was only twenty-two years old. Andrew Jackson was president. I detested him. They warned me there were too many lawyers in Cincinnati. But I was ambitious and the city was booming. The future looked promising. So I took every advantage of the opportunity.

Back at Woodland Cottage while waiting for Chase, Timothy Walker also is remembering. It was August 1830, when he left Boston; he was twenty-seven years old and already an accomplished scholar. He had attended Putnam School, then Harvard College, where he won the prestigious Bowdoin competition for his junior year thesis, "The Political Institutions of the United States Compared with Those of the Ancient Republics." And he never got credit for translating Biot's *Course of Natural Philosophy* from French to English for Professor John Farrar. Then there was a serious religious crisis. That moment is vivid, hard to relive, to realize for the first time that his faith made no sense, was "contradictory to . . . reason."<sup>5</sup> He abandoned Calvinism, the faith of his Puritan ancestors—Brewsters all the way back to the Mayflower on his mother's side—and turned agnostic. By the time he graduated first in his class, though, he had resolved his religious doubts and joined the Unitarians, the faith of his paternal grandfather. Harvard then offered him a teaching position, but he declined. He preferred George Bancroft's splendid offer to teach at the celebrated Round Hill School for boys at Northampton. Bancroft's vision was to educate boys "not for an ideal world, but for the world as it is" and in practical as well as liberal studies in a diverse curriculum. Bancroft inspired him, planting seeds of realism and the idea of reform.

While still teaching at Round Hill, he published a highly successful geometry text. He also liked law and began its study with Judge Howe, then moving to Harvard Law School when the judge died. There, he found two giants to teach him, the eminent legal scholar and benefactor Nathan Dane and the great Joseph Story, Associate Justice of the United States Supreme Court. They were in the midst of reforming the law curriculum. And from that time on, Story was his mentor and inspiration. Walker left for Cincinnati after a year, with letters of introduction from Story and Josiah Quincy, Harvard's president, in hand, a new Puritan in a hurry. Within a decade he was known as America's Blackstone.<sup>6</sup>

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5. HITCHCOCK, *supra* note 1, at 5.

6. Paul M. Holsinger, *Timothy Walker: Blackstone for the New Republic*, 84 OHIO HIST. 145 (Summer 1975).

Walker's crushed chest now begins to hurt more, deep throbs of pain with each breath, and before long he forgets his early days and the demon wagon and all his moments and drifts into half-sleep.

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In 1829, the year before Chase and Walker arrived in Cincinnati, an anti-black mob invaded "Little Africa," the ghetto that housed free blacks.<sup>7</sup> By the 1800 census, there were only 337 free blacks counted in all of Ohio. But by 1829, in Cincinnati there were 2,200 free blacks, nearly ten percent of the city's white population of 25,000. The Congress's Fugitive Slave Act of 1793 had spawned a huge and vastly profitable underground industry, where slave-catchers in Philadelphia and Cincinnati and other border cities seized blacks not able to document their freedom and sold them into slavery. Beneath this depraved human activity smoldered memories of slave revolts—Gabriel Prosser's and Nat Turner's in Virginia, Denmark Vesey's in South Carolina, and others inspired by the brutal slave insurrection in Haiti in 1791.<sup>8</sup>

There had been slave uprisings before, especially inspired by the equality ideals of the *Declaration of Independence*, but the Haitian uprising added fuel to Garwin's conspiracy of 1793 in South Carolina and fired up Gabriel Prosser in 1800 to lead his own Virginia slave revolt of thousands with plans to take Richmond. They were stopped only when bridges to Richmond washed away in heavy rains, though conspiracies continued throughout 1801 and 1802.<sup>9</sup> The Haitian rebellion emboldened Denmark Vesey in 1822 to organize a violent uprising in Charleston, South Carolina, which was put down ruthlessly. More frightening was Nat Turner's brutal revolt in Virginia in 1831 chilling the most confident southerner and enraging white troops, which

7. HAROLD M. HYMAN, *THE RECONSTRUCTION JUSTICE OF SALMON P. CHASE: IN RE TURNER AND TEXAS V. WHITE* 32-34 (1997).

8. PETER P. HINKS, *TO AWAKEN MY AFFLICTED BRETHREN: DAVID WALKER AND THE PROBLEM OF ANTEBELLUM SLAVE RESISTANCE* 22-62 (1997); THOMAS O. OTT, *THE HAITIAN REVOLUTION 1789-1804*, at 195-200 (1973). Madison Smartt Bell's 1995 novel, *ALL SOULS' RISING*, depicts the passion and intricate and bloody detail of lives of people involved in the Haitian Revolution from all castes within that complex French colony.

9. DOUGLAS R. EGERTON, *GABRIEL'S REBELLION: THE VIRGINIA SLAVE CONSPIRACIES OF 1800 AND 1802*, at 50-68 (1993). That the Haitian slave rebellion was fresh in the minds of Virginians as well as the slaves is clear from the letter John Cowper wrote to Governor James Monroe from Norfolk on March 11, 1802: "There are now a considerable number of [slaves from Haiti] in this place, whose dispositions, I apprehend, will be influenced by the accounts which are daily arriving and published concerning the horrid scenes of St. Domingo . . . . The situation of this place is such as a few hours would reduce it to ashes." HINKS, *supra* note 8, at n.38.

pursued and slaughtered rebellious slaves by the hundreds.<sup>10</sup> Turner, whose revival camp triggered the uprising, was finally caught and hung but not before many Virginians were seized with panic. Some fled the county; some crossed the mountains to the Ohio River, some reached Cincinnati.

In 1829, free-born black abolitionist David Walker published his *Appeal to the Coloured Citizens of the World*. He had left Charleston in 1822 soon after the trial of Vesey and his conspirators and traveled in the South and West before settling in Boston. David Walker's *Appeal* called upon blacks to take more forceful action in their own interests to demand education and freedom:

Remember Americans, that we must and shall be free and enlightened as you are, will you wait until we shall, under God, obtain our liberty by the crushing arm of power? Will it not be dreadful for you? I speak Americans for your good. We must and shall be free I say, in spite of you. You may do your best to keep us in wretchedness and misery, to enrich you and your children; but God will deliver us from under you. And wo, wo, [*sic*] will be to you if we have to obtain our freedom by fighting.<sup>11</sup>

Beginning with the American and French Revolutions, extending to the terror in Haiti and ultimately to Nat Turner's revolt, it seemed as if a major effect of slavery was to be violent uprisings, massacres and race wars. Hardly anyone in either the North or South thought the races could live together both free, not after Jefferson's *Notes on the State of Virginia* in 1784 demeaned the black race as inferior in the face of his own words in the *Declaration of Independence* less than a decade earlier that "all men are created equal . . . with certain unalienable rights." The South's response came in two phases. The first was essentially defensive and led to a well-considered southern course of "States' rights" advocated by Senator John Calhoun and by writers from South Carolina beginning in the 1820s.<sup>12</sup>

One key factor was the southern reception of Chief Justice John Marshall's opinion in *McCulloch v. Maryland*,<sup>13</sup> which in 1819 upheld Congressional power to establish a national bank and struck down a State tax on the bank's assets in Maryland. The decision, which

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10. HERBERT APTHEKER, *AMERICAN NEGRO SLAVE REVOLTS* 293-324 (5th ed. 1983).

11. DAVID WALKER'S *APPEAL TO THE COLOURED CITIZENS OF THE WORLD* 72-73 (Peter P. Hinks ed., 2000).

12. DON E. FEHRENBACHER, *THE DRED SCOTT CASE: ITS SIGNIFICANCE IN AMERICAN LAW AND POLITICS* 46-47, 138-41 (1978); WILLIAM FREEHLING, *PRELUDE TO CIVIL WAR* (1966); ALLEN TRELEASE, *WHITE TERROR* (1971).

13. 17 U.S. 316 (1819).

extended federal reach into domestic powers of a southern State, was met with hostility. Marshall's interpretation of the Constitution maintained its legitimacy as a delegation of express and implied powers to the national government directly from the people, citing the preamble and rejecting the theory that the Constitution was a mere compact among the States. This opinion magnified the intensity of the southern reaction, confirming suspicions that the very existence of States' sovereignty was in danger and that Congress might well move to enact legislation affecting the status of slavery within their borders.<sup>14</sup>

The outward form of the first phase of southern defense was nullification of tariffs affecting the slave trade. It was coupled with internal action on the view that safety in the South lay in a strict policy against all emancipations or actions which granted any political or economic improvement whatsoever of status to free blacks that might encourage slave insurrection.<sup>15</sup> The second phase was more aggressive and assertive, beginning about 1835, after an explosion of abolitionist propaganda from the North exposed the evils of slavery in some detail.<sup>16</sup> In this response, the South assumed a benevolent stance towards slaves, claiming that slavery was not only better than freedom for the slaves but was divinely sanctioned.<sup>17</sup> Southern states held northern states responsible for incitement to servile insurrection by allowing the export of abolitionist propaganda and demanded cessation.

Then began a fierce campaign to affect the structure the framers adopted for the new Constitution. Its general outlines, according to William Winslow Crosskey, were:

... [T]hat the preamble of the Constitution [to establish justice... and secure the Blessings of Liberty] be held to be completely meaningless; that the judiciary power, and therefore all incidental legislative power, be largely destroyed; that the power "to provide for the general Welfare" and all the other general phrases of the document be explained away; that the power to regulate commerce be narrowed from a general power to a power merely over foreign and "interstate" trade; and that the latter branch of this emasculated power be in some

14. G. EDWARD WHITE, 3-4 HISTORY OF THE SUPREME COURT OF THE UNITED STATES: THE MARSHALL COURT AND CULTURAL CHANGE, 1815-35, at 542-53 (Paul A. Freund & Stanley N. Katz eds., 1988).

15. 3 WILLIAM WINSLOW CROSSKEY & WILLIAM JEFFREY, JR., POLITICS AND THE CONSTITUTION IN THE HISTORY OF THE UNITED STATES 406-07 (1980).

16. LEONARD L. RICHARDS, THE SLAVE POWER: THE FREE NORTH AND SOUTHERN DOMINATION, 1780-1860, at 128-29 (2000).

17. See, e.g., George McDuffee, *The Natural Slavery of the Negro: Message to the Legislature by the Governor of South Carolina*, reprinted in 6 ANNALS OF AMERICA, 1833-1840: THE CHALLENGE OF A CONTINENT 191-97 (1968).



way still further narrowed so as to preclude completely any national control over the movement of slaves from state to state. In general, it may be said that the Southern theories required that all national power over matters of an internal nature (interstate or intrastate) be absolutely denied or frittered down to uselessness. The states were to be declared sovereign over all such matters, and were in general to be absolutely uncontrollable by the nation.<sup>18</sup>

That the effects of this southern strategy reached Cincinnati, the North's southernmost city is scarcely in doubt. Cincinnati itself bet on a southern business plan for bringing mainly cotton north via rail and canals to Lake Erie and Erie Canal outlets to eastern and European markets. At a time when field slaves were all the more important to southern wealth from increasing production of cotton, sugar, and rice, the American South, which had begun to liberalize manumission policies after the Constitution was ratified, changed its stance. It adopted a hard line against any relaxation of the slave codes and in fact toughened them. Voluntary emancipation was now a "civic sin."

The Ohio legislature in 1804, soon after statehood, had begun to enact Ohio's infamous "black laws" to deter free blacks from moving into the State. African Americans were not to be admitted unless they posted \$500 good conduct bonds and documentation of free status. They could undertake only approved work. They had no vote. They could not testify in court against a white man or send their children to public schools. The reason given for passing these laws, though aimed at all blacks, was to prevent Ohio from becoming a haven for runaways. Ohio had anticipated trouble. It was an accommodation with the South—Kentucky across the river to the south and Virginia, the most enlightened southern State with 20,000 freed blacks to the east. To relieve growing fears of increasing numbers of former slaves, and their burden on society, Virginia by law in 1806 required all manumitted blacks to leave the State "within a year after receiving their freedom on pain of being reclaimed and sold as slaves."<sup>19</sup> Border States in the North began to fear the growing presence of large numbers of blacks. By 1830, when David Walker's *Appeal* circulated in the South and when copies were found with runaways, genuine terror struck southern authorities and spurred them to reinforce laws against slave literacy and circulation of literature or pamphlets thought to incite servile insurrections.

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18. CROSSKEY & JEFFREY, *supra* note 15, at 408-09.

19. JOHN CHESTER MILLER, *THE WOLF BY THE EARS: THOMAS JEFFERSON AND SLAVERY* 129 (1977).

At first it was easy for free blacks to move to Cincinnati for the same reasons Chase and Walker came—opportunity for economic gain and better lives in a booming area with labor shortages. Many of these were skilled artisans and mechanics. They were needed to build houses and make things such as the decorative iron railings for balconies sent down river to New Orleans. And until abolitionists became active, stirring resentment among the poorer white classes, the black laws were not generally enforced. In 1829 African Americans now in Cincinnati began to sign their names to a petition seeking to repeal Ohio's offensive black laws, but city authorities cracked down in response. They started to enforce these laws strictly, eventually calling upon all local blacks to post bonds for good behavior within thirty days. Faced with the classic dilemma—submit to unjust laws or leave the polity—black residents sent a committee to Canada to find a place of refuge. When an extended deadline expired with no compliance, white mobs were organized to burn and pillage houses in the black section. Over 1,200 African American residents fled, refugees from Cincinnati, to Canada. Their committee found a town named after the English abolitionist, William Wilberforce. Many resettled there.

By late summer the following year, first Salmon Chase and then Timothy Walker had moved to the Queen City. Chase was soon homesick. "I feel almost sorry that I ever left New England," he wrote a friend.<sup>20</sup> The paucity of intellectual life of Cincinnati was disgraceful, he found. To do something about this, he and Walker helped organize the Semi-Colon Club,<sup>21</sup> a literary and social group for New Englanders of both sexes that included the Beechers and Stowes, William Greene, Charles Stetson and Samuel Foote. Professor Daniel Aaron, historian of early Cincinnati, describes papers from this group as "a smug, opinionated, snobbish Whiggism, a contempt for the people . . . and an abhorrence of anything smacking of Jacksonianism."<sup>22</sup> But visitors from the East usually spoke of the club with high respect. "I must say," one club visitor wrote, "that Cincinnati, so far as related to refinement of manners, intellectual culture, and hospitality to strangers, is more like Boston than any other city in the United States, of which I have personal knowledge."<sup>23</sup> The Semi-Colon Club thrived until the financial panic of 1837, when funds to sustain social events dried up and the Club fell into decline.

20. NIVEN, *supra* note 4, at 32.

21. Louis L. Tucker, *The Semi-Colon Club of Cincinnati*, 73 OHIO HIST. 13, 16-21 (1964).

22. DANIEL AARON, CINCINNATI, QUEEN CITY OF THE WEST: 1819-1838, at 268-69 (1992).

23. *Id.* at 269.

In contrast with Chase, Timothy Walker was ecstatic when he landed on Front Street after the long trip down the Ohio on top of a grueling seventy-hour journey from Baltimore over the mountainous Great Cumberland Road. Casting off Calvinism had led him to experience a new freedom and to trust science and his own reason. But with this enlightenment came melancholy lows along with its joyous highs. When he found religious peace finally with the Unitarians, the church of his grandfather, it was scarcely a revivalist experience. As someone with a scientific mind, Walker drew directly from the earlier American Enlightenment—from Bancroft and the Adams, from Benjamin Franklin and Joseph Story, and most of all from the influence of his older brother Sears Walker, the famous astronomer, who joined his brother in Cincinnati in 1852, after recovering from mental illness in an insane asylum in the East, nursed by Dorothea Dix. Though Timothy Walker himself experienced no religious revival, he shared in the exhilaration of converts as they discovered or invented their own freedom on the western frontier. Free blacks wanted this freedom, too, but their status in the western territories, even in the territories governed by the ban on slavery by the Northwest Ordinance of 1787, was uncertain. Slavery might be extended to the territories and new States to relieve the pressure upon the South from large slave populations infected with the same yearning for freedom that was gained by insurrection in Haiti. The Free Soilers might succeed in keeping slavery out altogether, together with freed blacks, preserving the territories for white settlers entirely. These issues were prominently on the minds of most western leaders, including Timothy Walker and Salmon Chase, as the historical record and their own writings and advocacy reveal.

To bring people together to discuss important issues, Chase and Walker helped start the Cincinnati Lyceum, planned a literary magazine, *The Western Quarterly Review*, and joined other societies, such as the New England Society where Walker served as president. Walker's enlightenment spirit permeated the new Lyceum. He gave its first lecture, in 1831, a learned discourse on what he called the "social principle" of bringing culture and intellectual life to Cincinnati through voluntary activities. He examined first the purpose of the Lyceum and its scientific method:

Many can accomplish what one cannot. . . . Let us come here to have our powers of remembering, judging and reasoning tasked and exercised; to learn what really is, and not what imaginative persons think might be: in a word to listen to that most uncommon kind of matter, profitable common sense; matter which the least educated of

us can understand and appreciate, and which the best educated cannot despise."<sup>24</sup>

By April that year Walker met the charming Anna Lawler Bryant at the Semi-Colon Club. Anna was granddaughter of Mathew Lawler, one of Cincinnati's richest men. She and Walker married the following year and in June took an extended honeymoon east, visiting friends such as George Bancroft, Joseph Story, Daniel Webster, Henry Clay, and Edward Everett. When Walker and Anna returned, they brought Timothy's sister Susan with them and were eager to plunge into work and society, satisfied with their new married life and status in the beautiful River City. At that point, Walker's antislavery views remained undeveloped.

When Alexis de Tocqueville visited Cincinnati on his American journey late in 1831, he spent time with Timothy Walker as well as Salmon Chase, though Chase more often has been mentioned as a source for the Frenchman's work. Cincinnati was a microcosm of America, both explained to him, all the good and all the bad.<sup>25</sup> In his journal Tocqueville wrote that from Walker he gained special insights into the unique vitality of voluntary associations for the new American democracy in its relentless and anarchic westward move. The astute visitor asked "whether the 'excessive development of the "democratic" principle' did not frighten him." Timothy Walker candidly confessed it did. "I wouldn't say so in public," Walker said, "but between ourselves I admit it. I am frightened by the current that is carrying us on."<sup>26</sup> "The United States . . .," Walker told Tocqueville ". . . are in a crisis; we are at this moment trying out a 'democracy' without limits;

24. *Introductory Lecture, Cincinnati Lyceum*, by Timothy Walker, 1831, Walker Papers, box II, item 59, Cincinnati Historical Society; see ROBERT C. VITZ, *THE QUEEN OF THE ARTS & CULTURAL LIFE IN NINETEENTH-CENTURY CINCINNATI* (1989) (there was much wider acceptance of "middlebrow culture" than earlier historians have reported).

25. See WALTER STIX GLAZER, *CINCINNATI IN 1840: THE SOCIAL AND FUNCTIONAL ORGANIZATION OF AN URBAN COMMUNITY DURING THE PRE-CIVIL WAR PERIOD 1-7* (1999). Glazer's important socio-economic study of Cincinnati during the second quarter of the Nineteenth Century is a doctoral thesis completed in 1972, finally published in 1999 with new foreword and afterword. It began as a case study of Jacksonian America and an attempt to understand the society Tocqueville described in *Democracy in America*. While Tocqueville's view stressing the excesses of egalitarianism had become accepted as the prevailing pattern in Jacksonian America, Glazer's work demonstrates that Tocqueville had ignored the relationship between the "masses" and "men of talent," which Cincinnatians such as Walker and Chase described for him in 1831. Glazer analyzed the population in 1840 and identified these two groups that coexisted in harmony, though they broke down gradually afterwards as the shift from elite to mass control continued until the Civil War. Walker had seen the relationship more optimistically in 1830 in his first account of Cincinnati published as "Letters from Ohio," in the *New England Magazine*, describing the new western society in terms that closely anticipated Tocqueville. *Id.* at 5.

26. AARON, *supra* note 22, at 52.

everything is going that way. But shall we be able to endure it? As yet no one can say so positively.”<sup>27</sup>

In his discussion with Tocqueville, Salmon Chase had even more disdain for populism than Walker did. Chase was a non-drinker, an ardent member of temperance societies. He believed that drink, perhaps other human vices as well, corrupted universal suffrage. He complained to Tocqueville that unqualified officials are elected in Ohio “by flattering everybody, a thing which men of character will never do; by mixing with the mob; by basely flattering its emotions; by drinking together.” Only the voters of New England are “sufficiently enlightened” to choose the most qualified candidates, he said. To keep Jacksonians from power, Chase thought men should own property before they could vote or hold office.<sup>28</sup> He and Walker both held the antebellum Whig view that government depended upon propertied representatives of standing and that unrestrained democracy threatened the new republic with mobs and anarchy.

Tocqueville’s *Democracy in America* reflected opinion from conversations such as these as well as factual observations. Starting with observations about productive life on either side of the Ohio River and comparing slave labor with free labor, Tocqueville devoted an entire chapter on “the races”; where he explained why in his opinion the black and white races would never live together in peace in America.<sup>29</sup> He had studied the French version of Thomas Jefferson’s 1784 *Notes on the State of Virginia*, which included Jefferson’s position on gradual emancipation of slaves in Virginia to be followed by their colonization to another place. Jefferson was responding to a beginning concern over the consequences of eventual emancipation, which by 1784 had already commenced in Vermont, Massachusetts, Pennsylvania, Connecticut, Rhode Island, and New Hampshire, and was under discussion among Virginia planters looking for alternatives once slavery was abolished, for in the depression following the peace treaty of 1783, profitability of the slave system was in decline.<sup>30</sup>

“It will probably be asked,” Jefferson wrote, “Why not retain and incorporate the blacks into the state, and thus save the expence of supplying, by importation of white settlers, the vacancies they will

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27. GEORGE WILSON PIERSON, *TOCQUEVILLE AND BEAUMONT IN AMERICA* 361 (1938).

28. ALEXIS DE TOCQUEVILLE: *JOURNEY TO AMERICA* 84-85 (George Lawrence trans., J. P. Mayer ed., 1971); FREDERICK J. BLUE, *SALMON P. CHASE: A LIFE IN POLITICS* 20-21 (1987).

29. ALEXIS DE TOCQUEVILLE: *DEMOCRACY IN AMERICA* 326-48 (Harvey C. Mansfield & Delba Winthrop trans., eds., 2000).

30. MILLER, *supra* note 19, at 30.

leave?"<sup>31</sup> His response was intended in 1784 as a natural scientist's observation about difference in the races as part of his natural history of Virginia, written to answer condescending European naturalists, who considered New World "nature" of an inferior or degenerate kind.<sup>32</sup> Jefferson's description, however mistaken, later became the classic objection to mixing of the races:

Deep rooted prejudices entertained by the whites; ten thousand recollections, by the blacks, of the injuries they have sustained; new provocations; the real distinctions which nature has made; and many other circumstances, will divide us into parties, and produce convulsions which will probably never end but in the extermination of the one or the other race.—To these objections, which are political, may be added others, which are physical and moral.<sup>33</sup>

By 1831, nearly a half-century later, after the cotton gin had made slave labor profitable and the South had changed its mind, Jefferson's views had seeped into the most enlightened opinions, certainly those echoed by Chase and Walker in *Cincinnati*, which were intensified by slave uprisings in the South and expanding populism in the West, all of which Tocqueville saw at once.

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How is he? Salmon Chase asks Walker's wife Ellen as she greets him when he steps from Susan's carriage. They are old social friends, part of blue-blood society in *Cincinnati* that barely tolerates ambitious patricians. Susan has told him already; but, addressing Ellen austerely, Chase asks again, how serious is the injury? I'm not sure he'll recover, Ellen answers, keeping her English reserve. He's in much pain and sleeps so fitfully. They move into the parlor. Ellen asks if Susan would make tea. When alone with Chase, she asks him, is there anything unresolved between the two of you? Nothing I can think of, Chase

31. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 138 (William Penden ed., 1954).

32. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA, WITH RELATED DOCUMENTS 30-35 (David Waldstreicher ed., 2002). Waldstreicher's insightful introduction explains the view that racial differences were a product of climate: European naturalists such as Buffon and Raynal held that all people degenerated in the New World climate, not only slaves whose status formerly was justified on grounds that tropical peoples could work better than Europeans in the hot American sun. Degeneration also explained why slaves and Indians did not "multiply or become civilized by European standards," a theory Jefferson rejected. Jefferson's position distinguished racial facts of nature from the value of natural rights for all and thus held that while the "new American" could not be African, all slaves should be freed: "Race, as nature, separated white from black, even if natural rights meant that slavery should end." *Id.* at 31-32.

33. JEFFERSON, *supra* note 31 (enumerating factors such as skin color, hair, figure, bodily secretions, smell and "other physical distinctions proving a difference of race").

answers stiffly. Ellen explains. Timothy is agitated and insists on seeing you. There must be something. Timothy dwells constantly on the early days.

When Chase answers, he too looks back:

Timothy and I came to Cincinnati for the same reason, he says. In 1830 the city was booming. It was an exciting place to begin practicing law. Everybody made money by wits or cunning. The city was franchising turnpikes, canals, and steamboats—any new venture that would bring in money. They gave subsidies, too. Unscrupulous connivers got them with graft. New wealth was driving out the old. The river brought all sorts of people together—trade people, merchants, uncouth keelers on flat bottoms, rough river men along with the steamboats—and free blacks and slaves always finding ways to escape their masters or to cross over. We lived with cholera, floods, bank failures and wild land speculation—and Jacksonianism, rampant populism, anarchy. I started defending the runaways. Some of my clients were banks and merchants, and they didn't like my causes—my writings, my politics, and my black fugitive clients. I was very zealous.

Susan returns with tea; Ellen serves in silence, then quietly arises and goes upstairs to see if her husband is awake. She calls down after a few minutes asking Chase to come up to visit his old partner.

If Chase is shocked to find his friend in such a serious condition, he does not show it. Walker is lying in bed emaciated, struggling with each breath. He sees Chase and raises a hand up from the bedclothes to grasp his. Hello, Salmon. I'm very grateful you could come. We have matters to discuss—

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In Cincinnati Salmon Chase had a hard time attracting clients at first. Timothy Walker and Edward King,<sup>34</sup> a newly arrived young lawyer from Columbus, Ohio, invited Chase to join them in forming a law partnership.<sup>35</sup> Chase accepted, but quit after six months to join a banking practice. He had begun to compile the statutes of Ohio into a three-volume work, *Chase's Statutes*. He published it in 1835, including as preface an impressive forty-one page first history of Ohio with its

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34. Graduate of Litchfield Law School of Connecticut, Edward King was considered one of the best lawyers in Ohio; he was the son of Rufus King, distinguished member of the Continental Congress and Constitutional Convention and presidential candidate in 1816. Edward King died prematurely in February 1836.

35. HITCHCOCK, *supra* note 1, at 128-30.

prohibition of slavery from the Northwest Ordinance of 1787. The effort made him little money, but helped his reputation.

In 1833, after a year of planning, Walker, his partner King and new law partner Judge John C. Wright,<sup>36</sup> established the Cincinnati Law School and admitted their first class. The all-white male student body normal for that time and place was national, drawn from a number of States. Justice Story's vision at Harvard inspired Walker, the first dean, who designed a disciplined treatment of substance and practice for educating new lawyers. The rules were strict and extended beyond the curriculum. The school, for example, prohibited dueling or entering a tavern without a professor. The law school was the first to be established in Ohio. Six other law schools were operating in the United States, from a total of nine founded to that time, making the Cincinnati Law School the nation's tenth. Only one, the law school of Transylvania University in Lexington, Kentucky, was located west of the Alleghenies.<sup>37</sup> Walker's law school merged with Cincinnati College in 1835 and much later with the University of Cincinnati beginning in the 1880's.<sup>38</sup> Of that original group of law schools, only four have survived continuously to the present: Harvard, Yale, Virginia, and Cincinnati.

About that time, Salmon Chase began very awkwardly to court the beautiful Katherine Garniss. She was the daughter of a successful businessman who found Chase unbearable. As Alvin Harlow, author of *The Serene Cincinnatians*, wrote, "No more humorless man than Chase ever lived and attained prominence. He could not repeat a joke without wrecking it. He faithfully kept a diary, in which he chided himself on his sinfulness and unworthiness (though he was really a conceited person). He repeated Scripture while bathing and dressing; card-playing and wasting time were sins. He had once known a young woman whom he could have loved, had she not been 'fond of the gay world' and 'disinclined to religion,' which he prized 'more than any other earthly possession.'" <sup>39</sup> By then Chase had formed a new law partnership, this time

36. Judge Wright was a member of the Ohio Supreme Court and had been member of Congress from 1823 to 1828.

37. ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 118 (1921).

38. The University of Cincinnati College of Law still retains the shell of the old private Cincinnati College, with its Cincinnati Law School. See Irvin C. Rutter & Samuel S. Wilson, *The College of Law: An Overview 1833-1983*, 52 U. CIN. L. REV. 311, 316-17 (1983) (noting litigation invoking the Dartmouth College case to deny complete absorption by State legislation impairing the obligation of contract, thus maintaining continuity in the private and public institutions).

39. ALVIN F. HARLOW, THE SERENE CINCINNATIANS 176-77 (1950).



with banks as clients. These moves eased his money problems, and he began to make his mark.

In Cincinnati, Chase, Walker and many other Whigs joined and supported the American Colonization Society, which was formed in 1816. This influential group, which Abraham Lincoln joined in Illinois, opposed slavery, yet believed with Jefferson that the white and black races could never live together in America. We know how it favored sending redeemed or freed slaves off to colonies in Africa. Not so well known was the plan to establish free colonies in Haiti or to disperse freed blacks throughout the western States and territories and even beyond the Rocky Mountains in what was Mexican territory.

Not every person who opposed slavery in Cincinnati believed in colonization. Enthusiasts at the Lane Theological Seminary, such as Theodore Dwight Weld, noted abolitionist “afire from the evangelical revival then sweeping the country,” transformed the seminary into a center for temperance and radical antislavery. Students there mingled with local blacks and gave free classes for them in defiance of the black laws. Weld organized a Lane Seminary chapter of the new American Anti-Slavery Society. The *Declaration of the American Anti-Slavery Society*, written by William Lloyd Garrison of Boston and adopted by the Society in Philadelphia December 6, 1833, declared, “Every man has a right to his own body, to the products of his own labor, to the protection of law, and to the common advantages of society.”<sup>40</sup> The *Declaration* advocated immediate and total abolition. Garrison invoked both divine revelation and the Declaration of Independence for the Society’s sacred mission. All laws of slavery ought to be abrogated as against the divine prerogative, it stated, and no compensation was to be given for “man cannot hold property in man.” Nor should there be expatriation in aid of emancipation. While each state had the exclusive right to legislate on slavery and Congress had no power to interfere, Congress did have power to “suppress the domestic slave trade between the several states, and to abolish slavery in those portions of our territory” which the Constitution made exclusive to Congress. Garrison dismissed the United States Constitution as a pact with the devil because in the great compromise, he thought, the North wrongfully accepted slavery as the price for Union.

Late in 1834, Lane Seminary President Lyman Beecher and the trustees, under pressure from the community, ordered the students to cease all their radical antislavery activities, but Weld and other students

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40. William Lloyd Garrison, *Declaration of the American Anti-Slavery Society* (1833), reprinted in *ENCYCLOPEDIA BRITANNICA, 6 ANNALS OF AMERICA 1833-1840: THE CHALLENGE OF A CONTINENT* 12-13 (1968).

refused defiantly.<sup>41</sup> Beecher dismissed them. A sympathetic Chase let the students stay temporarily in a house his family owned; but eventually, like the blacks in 1829, they left and moved north—not to Canada, but to Oberlin College. Cincinnati's most virulent anti-abolitionist newspaper was the *Enquirer*, owned by John and Charles Brought. Often it portrayed Oberlin College as a “hotbed of interracial sex,” confirming the fact that what troubled anti-abolitionists even more than immediate abolition was fear of amalgamation of the races. In the North, one might take a righteous stand against slavery while still detesting blacks and not wishing to include them in white society.<sup>42</sup>

After leaving Cincinnati, Theodore Weld became one of the most influential abolitionists of his time. He gathered facts from interviewing thousands of witnesses to answer southern claims that their slaves were treated kindly, well-fed, clothed and well cared for; and he published these testimonies, which described the atrocities suffered by slaves, in graphic detail.<sup>43</sup>

During the explosive decade of the 1830s, ironically known as the beginning of Cincinnati's “Golden Age,” Salmon Chase and Timothy Walker both tragically lost their first wives. Anna Walker died in childbirth in 1834, which utterly devastated Walker, sinking him into deep depression. Katherine Garniss Chase died in December a year

41. THE WPA GUIDE TO CINCINNATI: CINCINNATI: A GUIDE TO THE QUEEN CITY AND ITS NEIGHBORS 30-31 (with a new introduction by Zane Miller and new Preface by Harry Grafi, reprinted in 1987 by the Cincinnati Historical Society).

42. LEONARD L. RICHARDS, GENTLEMEN OF PROPERTY AND STANDING: ANTI-ABOLITION MOBS IN JACKSONIAN AMERICA 123 (1970).

43. THEODORE WELD, AMERICAN SLAVERY AS IT IS: TESTIMONY OF A THOUSAND WITNESSES 7-9 (1839), reprinted in 6 ANNALS OF AMERICA 1833-1840: THE CHALLENGE OF A CONTINENT 464-67 (1968). He wrote:

We will prove that the slaves in the United States are treated with barbarous inhumanity; that they are overworked, underfed, wretchedly clad and lodged, and have insufficient sleep; that they are often made to wear round their necks iron collars armed with prongs, to drag heavy chains and weights at their feet while working in the field, and to wear yokes, and bells, and iron horns; that they are often kept confined in the stocks day and night for weeks together, made to wear gags in their mouths for hours or days, have some of their front teeth torn out or broken off that they may be easily detected when they run away, that they are frequently flogged with terrible severity, have red pepper rubbed into their lacerated flesh, and hot brine, spirits of turpentine, &c., poured over the gashes to increase the torture; that they are often stripped naked, their backs and limbs cut with knives, bruised and mangled by scores and hundreds of blows with the paddle, and terribly torn by the claws of cats, drawn over them by their tormentors; that they are often hunted with bloodhounds and shot down like beasts, or torn in pieces by dogs; that they are often suspended by the arms and whipped and beaten till they faint, and when revived by restoratives, beaten again till they faint, and sometimes till they die; that their ears are often cut off, their eyes knocked out, their bones broken, their flesh branded with red hot irons; that they are maimed, mutilated, and burned to death over slow fires. All these things, and more, and worse, we shall *prove*. Reader, we know whereof we affirm, we have weighed it well; *more and worse* WE WILL PROVE.

later, three weeks after her own difficult childbirth. In this golden period also, the American Anti-Slavery Society took hold seriously throughout Ohio. By 1835 it had 120 local branches and more than 10,000 members.<sup>44</sup> The Cincinnati Anti-Slavery Society also gathered support and had ninety-eight members by 1836, which jarred community leaders.<sup>45</sup> It was not long before slave holders who visited Cincinnati with their slaves were at risk. Southern planters who brought their household slaves with them from the Deep South to their summer villas in the Cincinnati hills stopped coming. If slaves absconded, abolitionists and their friends tried to outmaneuver slave catchers and spirited their charges off to Canada via the Underground Railroad or filed writs on their behalf seeking discharge. Southern spending in Cincinnati declined, and within a decade Chicago began to brag about the trade and tourism it was taking away from the Queen City.

Then James Birney came to town. Birney was a reformed southern slaveholder, a solid lawyer and future presidential candidate of the Liberty Party. He moved with his slaves from Alabama to Northern Kentucky, had a mystical experience, freed his slaves and became a fervent abolitionist. He joined the American Anti-Slavery Society and began publishing a radical abolitionist newspaper, the *Philanthropist*, moving it from New Richmond to Cincinnati in 1836. His paper soon was a strong national voice for abolitionists, but its sharp messages provoked local unrest and fierce opposition. In April, to protest, rioters burned down a black tenement before a large crowd of citizens who made no effort to extinguish the flames.<sup>46</sup>

A number of abolitionist newspapers in the North were targets of a growing reaction to a sudden explosion of propaganda sent to the South by abolitionists who were for the first time using newly installed fast steam printing presses. This bombardment from the North only confirmed southern fears that the abolitionists intended to incite slave insurrection and radical change. Southern states began to insist that the North suppress these threatening messages from their presses. Northern moderates soon feared that abolitionist radicalism would undermine their Whig power structure comprised of "gentlemen of property and standing."<sup>47</sup>

The *Philanthropist*, by now sponsored by the Ohio Anti-Slavery Society, issued a continuous barrage of radical sentiment in articles and commentary. Respected leaders of the community began to marshal

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44. HARLOW, *supra* note 39, at 207.

45. AARON, *supra* note 22, at 305.

46. *Id.* at 301.

47. RICHARDS, *supra* note 42, at 124.

powerful anti-abolitionist sentiments in order to counter the *Philanthropist's* messages, which they thought undermined Cincinnati's social order. In July, after some violence, a tumultuous public meeting took place at the Market House on Front Street. William Burke, the postmaster-minister, presided. The crowd voted resolutions and warnings, specifically accusing Birney's newspaper of inciting riots and public unrest by its incendiary abolitionist harangues.<sup>48</sup> After declaring that those opposed to the abolitionists drew inspiration from the Boston Tea Party, the crowd's leaders appointed a committee to inform Birney that he must stop publishing *The Philanthropist* in Cincinnati.

What happened next is well known, but it led to the worst mistake of Timothy Walker's life and the greatest boon to Salmon Chase's political career. The Market House committee, consisting of twelve "gentlemen of property and standing" in Cincinnati, was formed ostensibly to keep the peace.<sup>49</sup> Members included Judge Jacob Burnet, Nicholas Longworth, Josiah Lawrence, an important Chase client, and Timothy Walker, all community stalwarts. Chase was not included among them. The committee first tried to persuade Birney to stop publishing his offensive articles, saying it could not predict what would happen if these provocations continued. And the attempt failed. Birney refused to pull any punches, asserted freedom of the press and published even more offensive messages. On July 30, the next step commenced. With more than a little encouragement from the Market House committee, an organized white mob swiftly arose from the city.<sup>50</sup> Joined by a crowd from Covington, the mob methodically attacked and destroyed the newspaper, dumping its printing press in the Ohio River, as Boston patriots had dumped British East India Company tea into Boston Harbor, then moved on to Birney's home on Race Street intent on tarring and feathering him. Not finding him at home, the mob moved down Church Alley in the black section, burning down some shanties. It was true enough that the mob in Cincinnati was organized to silence the *Philanthropist*. But its leaders wanted more; and they also targeted the homes of key "amalgamationists"—those abolitionists who were thought to favor sexual co-mingling of the races made evident by the popularity of interracial brothels and a rising population of mulattoes born in Cincinnati. There were five or six small buildings clearly identified along Church Alley where "black and white men and women, of infamous characters, . . . huddled promiscuously together," and when

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48. AARON, *supra* note 22, at 307-08; RICHARDS, *supra* note 42, at 97-98.

49. RICHARDS, *supra* note 42, at 92-100, 134-50 (examining makeup of the mob).

50. OHIO ANTI-SLAVERY SOCIETY, NARRATIVE OF THE LATE RIOTOUS PROCEEDINGS AGAINST THE LIBERTY OF THE PRESS, IN CINCINNATI 39-40 (1836).

the mob was directed to them, it demolished them.<sup>51</sup> Cincinnati Mayor Davies stood by watching with approval. Finally, he dispersed the crowd after many hours, saying, "We have done enough for one night."<sup>52</sup>

For the next two nights Cincinnati was all fired up. Another mob went hunting for Birney, who was also considered an arch amalgamationist, but he was still out of town, so it attempted to destroy more black houses. This time volunteer organizations kept the rioters under control. Salmon Chase and a group of moderate leaders, which included Charles Hammond, colorful editor of the antislavery newspaper, the *Gazette*, stepped in to call a public meeting to calm things down. Members of the Market House committee, which instigated the riots in the first place, showed up right away trying to maintain their leadership. They addressed the crowd, Judge Burnet speaking first. Timothy Walker then followed with a speech. Both men expressed revulsion against the mobs and deplored violence, but they defended attempts to stop the newspaper's inflammatory abolitionist rhetoric. This apparent defense of violence against the press outraged Hammond; and he responded, gaining the crowd's attention by speaking with power and conviction. Point by point, he demolished both Burnet's and Walker's defense of attempts to silence *The Philanthropist*. These were blatant attacks on the free press, he bellowed to the crowd.<sup>53</sup> And Salmon Chase joined him, shouting that he "would give ten thousand dollars, sooner than see the abolition press put down by a mob."<sup>54</sup>

The crowd eventually dissipated, but not before Harriet Martineau, in Cincinnati on her American tour, witnessed the event. She was impressed with Cincinnati and liked Timothy Walker, but of the Market House committee members, she later wrote:

[A]s long as they continue active against the most precious rights of the community; as long as they may be fairly considered more guilty in this tremendous question of Human Wrongs than even the slaveholders of the south—more guilty than any class whatever, except the clergy—let them not boast of their liberality and their benevolence. Generosity loses half its grace when it does not co-exist with justice.<sup>55</sup>

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51. RICHARDS, *supra* note 42, at 99 (quoting *Narrative of Late Riotous Proceedings*, CINCINNATI WHIG, Aug. 2, 1836).

52. AARON, *supra* note 22, at 309.

53. *Id.* at 313.

54. BLUE, *supra* note 28, at 30.

55. AARON, *supra* note 22, at 313 (quoting 2 HARRIET MARTINEAU, SOCIETY IN AMERICA 368 (1837)).

Later she corresponded with Walker, as a friend, but in her book, *Retrospect of Western Travel*, she wrote that she was shocked how Walker, “the learned lawyer . . . with a strong sense about everything but politics, in which his aristocratic bias drew him aside into something like nonsense . . . told me that the object of his life is law reform in Ohio . . . could participate.”<sup>56</sup> How of all people had he allowed himself to be drawn into such mob action stirred by leading citizens against the abolitionist press?

When he returned to the city, James Birney retained Salmon Chase to sue the leaders for aiding and abetting the mob action and denying freedom of the press by its destruction.<sup>57</sup> Records do not show whether the suit named Timothy Walker as a defendant. Ultimately Chase collected money damages—\$50 for Birney and \$1500 for the owner of the press—but it was in his next court battle, the famous *Matilda’s case*, that Chase finally found fame.

Matilda was a lovely light-skinned mulatto slave and daughter of a Maryland planter who was moving by river boat to Missouri in 1836. She often accompanied her father at social events as his daughter, for she was educated and carried social graces; but she wanted her freedom. He refused. So she fled their river boat as it was moored to a Cincinnati wharf and headed for Church Alley, where a local barber hid her. Later, Birney hired her as housemaid for his wife. But the ever alert John M. Riley, notorious slave-catcher, tracked Matilda to the Birney household, where she was seized as a fugitive. Birney again retained Chase, this time to file a petition for a writ of habeas corpus, which was issued by court clerk William Henry Harrison, pending a hearing the next day. In a case argued for three hours before Common Pleas Judge David Este, Chase lectured the court on the broad constitutional and legal issues involved.<sup>58</sup> He argued that Matilda was not a slave, because slavery can exist only by positive law; and in Ohio, where slavery was not recognized, the presumption was freedom or liberty by natural law. Matilda was thus presumed free. She was free under the Declaration of Independence, the Ohio Constitution and the prior Northwest Ordinance of 1787, which enshrined freedom and prohibited slavery. He concluded that she was free as soon as the river boat touched Ohio soil. This followed, he said, because Ohio was a State as sovereign as Maryland. States’ rights did not allow one State’s

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56. HITCHCOCK, *supra* note 1, at 223-24 (quoting HARRIET MARTINEAU, *RETROSPECT OF WESTERN TRAVEL* 52 (1968)).

57. William E. Baringer, *The Politics of Abolition: Salmon P. Chase in Cincinnati*, 29 CINCINNATI HIST. SOC’Y BULL. 86-87 (1971).

58. AARON, *supra* note 22, at 53.

wrongs to intrude into another State's freedoms. And under Ohio law, before she could be returned as a fugitive under the Constitution's Fugitive Slave Clause, the party claiming her must prove she was a fugitive slave under Ohio procedure. Nor did the national government have any delegated power to enforce the Clause. Chase made an impassioned States' rights argument, but failed to convince Judge David Este, who dismissed the writ and remanded a frightened Matilda to Riley's custody for speedy transport South, where she was sold at public auction in New Orleans either before her father found her or with his connivance.

Chase printed his argument as a pamphlet and circulated it nationally.<sup>59</sup>

Birney's jubilant enemies retaliated. They charged him with violating the Ohio law of 1804, by harboring Matilda, a fugitive slave. A Cincinnati jury convicted him, and the same Judge Este fined him fifty dollars. In his defense, Chase appealed to challenge the constitutionality of fugitive slave laws before the Ohio Supreme Court. He won the appeal but only on a technicality he did not argue—that Birney didn't know at the time he employed her that Matilda was a runaway slave. The Ohio court avoided all constitutional questions. When Chase again printed and distributed his brief, his reputation soared in the black community and in the antislavery North. He immediately became known as the attorney general for runaway slaves. Many of these cases he argued without compensation, such as the case of John Van Zandt who was found guilty of harboring nine black fugitives he picked up in his wagon from alongside the road. Van Zandt said he didn't know they were fugitive slaves. The case went all the way to the United States Supreme Court, where William Seward helped Chase with the defense, only to lose there as well.

Writing in his journal a few years later, Timothy Walker expressed terrible guilt and sorrow over his part in the mob action against Birney's newspaper. He retreated from "politics" entirely and drew back from all activity against zealots of any stripe. He became an ardent anti-mob advocate of law and order. Salmon Chase, now full of political ambition and a zealous spirit, moved in the other direction.<sup>60</sup> James Birney left Cincinnati in 1837, as the students and blacks did only a few years

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59. Speech of Salmon P. Chase in the Case of the Colored Woman, Matilda, Who Was Brought Before the Court of Common Pleas of Hamilton County, Ohio by Writ of Habeas Corpus, March 11, 1837 (1837).

60. Herman Belz argues that "[t]he means by which Chase may have been able to escape the confinement of historical contextualism were his deeply-rooted political and moral convictions." Herman Belz, *Deep-Conviction Jurisprudence and Texas v. White: A Comment on G. Edward White's Historicist Interpretation of Chief Justice Chase*, 21 N. KY. L. REV. 117, 119 (1993).

before. He became secretary of the American Anti-Slavery Society and later led the Liberty Party. Abolitionist Gamaliel Bailey assumed editorship of the *Philanthropist*.

Walker's withdrawal allowed him time to finish, by 1837, his famous *Introduction to American Law*, a large first book for law students,<sup>61</sup> who were advised in a well-received *Introductory Lecture on the Dignity of the Law As a Profession* to shun delights and live laborious days.

Genius, without toil, may, to some extent, distinguish a man elsewhere; but here he must labor, or he cannot succeed. No quickness of invention can supply the place of patient investigation. A clear mind might determine at once what the law ought to be, but actual inspection alone can determine what the law is."<sup>62</sup>

In the book, Walker proceeded to state what American law is, beginning with international law and then the Constitution and Bill of Rights, next substantive law and finally civil procedure and conflicts of laws.<sup>63</sup> He also poured into the pages of his book a passion for law reforms, which he developed further in other writings, contrasting law as it is with how it should be reformed, hoping to influence each new generation of lawyers. Walker urged abolishing capital punishment,<sup>64</sup> prohibiting slavery in the territories, giving women the franchise, and allowing married women ownership of their own property; he supported protection of individual rights of debtors, juveniles, workers, the accused and the insane.<sup>65</sup> He proposed three constitutional amendments to strengthen federalism. He favored national codification of criminal law,<sup>66</sup> and later urged the Ohio legislature to codify civil procedure and other common law subjects. Since common law principles were uncertain, he favored codification so that judges would not decide cases according to subjective whims.<sup>67</sup> He favored appointment, not election,

61. TIMOTHY WALKER, *INTRODUCTION TO AMERICAN LAW* (1837). Citations hereinafter are to TIMOTHY WALKER, *INTRODUCTION TO AMERICAN LAW* (J. Bryant Walker ed., 5th ed. 1869), which is the most accessible early edition; its editor, Walker's son, added notes, but "made no changes whatever in the text." J. Bryant Walker, *Preface to the Fifth Edition* of TIMOTHY WALKER, *INTRODUCTION TO AMERICAN LAW* (J. Bryant Walker ed., 5th ed. 1869). The book remained in print through its eleventh edition in 1905. Roscoe Pound, the eminent legal philosopher who was dean of Harvard Law School for many years, read the book as part of his legal education. By that time, the beginnings of legal realism and sociological jurisprudence had undermined some of the work's original premises.

62. Reprinted in HITCHCOCK, *supra* note 1, at 84.

63. WALKER, *supra* note 61, at 103, 109-10, 153-214.

64. *Id.* at 201-05.

65. *Id.* at 111.

66. *Id.* at 195-96.

67. Timothy Walker, *Codification—its Practicability and Expediency—Being a Report Made to the Cincinnati Legislative Club, in 1835*, 1 W.L.J. 231 (July 1844), reprinted in JAMIL ZAINALDIN, *LAW IN ANTEBELLUM SOCIETY: LEGAL CHANGE AND ECONOMIC EXPANSION* 90, 92 (1983).



of judges to eliminate patronage and politics in judicial selection.<sup>68</sup> He opposed slavery and its extension into the western territories and favored abolition wherever Congress had exclusive power, as in the District of Columbia. On slavery and the Constitution, he wrote,

One thing is certain, that the federal government cannot interfere with it, in the States where it exists, without violating a compact of peculiar sacredness, without which the Union could not have been formed, and cannot now be preserved; but all else is doubtful. Whichever way we turn, shadows, clouds, and darkness rest upon the prospect. Can the Union survive the strife which threatens to be carried on with increasing violence, between the advocates and opponents of slavery?<sup>69</sup>

Walker dedicated the book to Justice Joseph Story, and it was well received in national reviews. It attracted a wide national audience well into the twentieth century through eleven editions. The future justice Oliver Wendell Holmes, Jr. read this book at Harvard Law School after he returned from the Civil War to begin his study of law. It gave him “a glimpse of what he was seeking—the law in its general, historical aspect,” according to one of Holmes’s biographers,<sup>70</sup> and his first grounding in American law, Holmes later told Chief Justice William Howard Taft.<sup>71</sup>

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By 1840, there were over forty-four thousand white residents and 2,258 black residents in Cincinnati, living in completely separate communities. Cincinnati’s African Americans were virtually excluded from the social structure, the clubs and voluntary associations, and any upward mobility.<sup>72</sup> The economic situation was very explosive. While Salmon Chase’s antebellum voice in Cincinnati linked human dignity with fair wages for free labor, his was not the only voice that had made that connection.<sup>73</sup> In the years before Chase arrived, Robert Owen’s New Harmony in Indiana, the short-lived socialist experiment of “enlightened atheism,” was close enough down the river from

68. WALKER, *supra* note 61, at 108.

69. *Id.* at 735.

70. CATHERINE DRINKER BOWEN, *YANKEE FROM OLYMPUS: JUSTICE HOLMES AND HIS FAMILY* 206 (1945).

71. William Howard Taft, *Dedication of Alphonso Taft Hall*, *College of Law, University of Cincinnati*, 6 (October 28, 1925).

72. GLAZER, *supra* note 25, at 162. A satisfactory account of the profound influence of Cincinnati’s black abolitionists has yet to be written.

73. See ERIC FONER, *FREE SOIL, FREE LABOR, FREE MEN: THE IDEOLOGY OF THE REPUBLICAN PARTY BEFORE THE CIVIL WAR* 76-77 (1970).

Cincinnati to have alarmed the good citizens.<sup>74</sup> Owen's views against religion, his theories on redistribution of wealth and his beliefs in communal ownership of property struck at the foundations of commercial civilization, challenging the most powerful groups of businessmen in Cincinnati. New Harmony, they concluded, attracted "moon worshippers, romantic young men, Wolstonecraftian [sic] ladies" as well as the lazy and unprincipled men of desperate fortunes.<sup>75</sup>

Owen's disciple, Josiah Warren, first American philosophical anarchist, inventor, reformer and musician, had set up his first "Equity Store" on the corner of Fifth and Elm.<sup>76</sup> He priced articles by the amount of time it took labor to produce them, plus a percentage to cover freight, shrinkage, and rent. IOU's were issued for labor. These "labor notes" served as a medium of exchange. Warren wrote a series of articles on the social system claiming that we all are creatures of surrounding circumstances and social environment and urged a peaceful revolution. His ideas alarmed the business community every bit as much as Frances Wright's advocacy of racial intermarriage enraged her own Cincinnati audiences. Newspaper editors pictured Wright as a wild woman whose sole aim was to destroy home and religion, "a brain from Heaven and a heart from Hell."<sup>77</sup> Even Wright steered clear of the abolition question, which by 1836 became the *bete noir* of Cincinnati commercial interests, exhausting all patience. According to historian Daniel Aaron, "the moral watchdogs of Cincinnati acted quite logically in lumping together, however indiscriminately, abolitionists, socialists, trade unionists, freethinkers, and radical Jacksonians."<sup>78</sup> While no one was beguiled by the myth of economic equality, the dissenters in an era of economic depression had more in common with slaves than their prejudices allowed them to admit. And Chase developed his free labor convictions in this environment.

After the crash of 1837, unemployment became acute in Cincinnati, and during the hot summer of 1841, racial conflicts grew over "negro stealing" and southern trade. Brawls broke out between bands of whites and blacks, and the intensity and passion of these brawls increased. Late that summer Salmon Chase traveled east on business, where he read sketchy accounts of a major race riot in Cincinnati. Flamen Ball, his new partner, wrote him the details. The riot began in early September, according to Ball, when "three black loafers from the water front not

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74. AARON, *supra* note 22, at 287.

75. *Id.* at 288.

76. *Id.* at 289.

77. *Id.* at 289-95.

78. *Id.* at 286.

residents of the city” assaulted a white woman. Bystanders chased the blacks away. “No harm was done to the woman, but word of the incident provided the incentive for impromptu organizers to launch an attack on the black ghetto.”<sup>79</sup> An armed mob of two thousand proceeded to Sixth and McAllister streets, taking with them a cannon loaded with slugs. They fired it several times, sweeping both sides of each street. The blacks, also armed, defended themselves. Anarchy reigned in the streets for three days, and the *Philanthropist* press was seized again and destroyed, its office gutted once more. The rioters “ransacked the Negro quarters, destroyed a Negro church, and drove Negro children from their houses. Some rioters ‘went so far as to ravish the person of a young black girl!’”<sup>80</sup> Martial law was established, but only in the ghetto; and blacks were seized and herded into the riot area. At a meeting of citizens at the courthouse, the crowd demanded the arrest of the blacks who knifed two white boys, rigid enforcement of black laws, prompt return of all fugitive slaves, the disavowal of abolitionism and abolitionists by every good citizen, and immediate disarmament of Cincinnati’s black population. An article in the anti-abolitionist *Enquirer* carried the story, blaming the abolitionists:

Prominent Negroes met at a church and agreed to comply with these demands. At three o’clock the authorities proceeded to the riot area and disarmed the Negroes. Enough arms, complained the *Enquirer*, were found to outfit “an Algerine pirate vessel. . . . How was it that almost every black among us, carried concealed about him, *deadly weapons*, prepared, at any moment, to steep his hands in human blood?”<sup>81</sup>

The mob dispersed only when Governor Tom Corwin arrived with the State militia.

On September 23, 1841, Cincinnati’s anti-abolitionists organized into a society and declared war against all abolitionists—*white men*—who, “disregarding the misery of the whites, make a parade of their kindly feelings toward the blacks,”<sup>82</sup> and damned the abolitionists who assisted blacks in mobbing and shooting whites. The Cincinnati mob of 1841, according to historian Leonard Richards, was set loose by prominent businessmen, lawyers and other leaders, whose power and standing in the social order was threatened. The “mob” achieved its main objective

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79. *Id.*

80. RICHARDS, *supra* note 42, at 128 (quoting the CINCINNATI REPUBLICAN, Sept. 7, 1841).

81. *Id.* at 127.

82. *Id.*

of stiffer controls of the city's blacks, although ironically it failed in its campaign against the abolitionists.<sup>83</sup>

By October, Salmon Chase was back in the city, which remained "tense from public fear of armed blacks and a widespread, though completely erroneous belief that white abolitionists had armed them."<sup>84</sup> Chase was disturbed most by the silence of the upper classes. He was disgusted at the failure of city authorities to take action against the inciters. He wrote a friend in Cleveland,

Indeed I see no reason why any law and liberty loving man would wish to come to this place; . . . it is painful to witness occurrences like these: more painful to know that if not absolutely sanctioned, they are feebly if at all condemned by the leading men, the ministry of the gospel are almost dumb; the condition of the press while they condemn the mob, dare not vindicate the character or objects of those whom the mob assails.<sup>85</sup>

Chase now abandoned the Whigs entirely and joined his friend Birney in the Liberty Party.

Also in 1841 a bank riot broke out, when outraged victims of bank failures took to the streets. And again in 1846, violence and armed warfare exploded among blacks, German and Irish immigrants and lower class native whites. Many of these riots in Cincinnati involved keelers from the river and toughs from Front Street or from Covington or Newport thought to love a good brawl. More likely, they were drawn in by the organizers to keep immigrant races or free blacks from clawing their way up from the bottom of the barrel past these poor whites and threatening the established order.<sup>86</sup> Cincinnati was now known widely as "mob city."<sup>87</sup> After moving back to New England, where she finished *Uncle Tom's Cabin*, Harriet Beecher Stowe wrote that the "whole secret instinct" of almost all Cincinnati attorneys and their wealthy clients "was to wish that slavery might in some way be defended because Cincinnati stood so connected with it in the way of trade, that conscientious scruples on this point were infinitely and intolerably disagreeable."<sup>88</sup> But there were exceptions, and she placed Chase at the head of the few lawyers who dared criticize slavery publicly.<sup>89</sup>

83. *Id.* at 129.

84. NIVEN, *supra* note 4, at 65.

85. *Id.*

86. GLAZER, *supra* note 23, at 74-77.

87. JAMES W. TAYLOR, "A CHOICE NOOK OF MEMORY" THE DIARY OF A CINCINNATI LAW CLERK 1842-1844, at 40 (James Taylor Dunn ed., 1950).

88. HARRIET BEECHER STOWE, MEN OF OUR TIMES 253 (1868).

89. *See id.* at 253-57.

Chase's biographer, John Niven, describes the political dilemma for Chase now that his antislavery renown reached national attention: while Chase had no political future with the Whigs, his Christian religion and his study of the founders' views led him to believe that:

Logically and legally slavery could be contained, a first step toward eventual emancipation. . . . Cincinnati was solidly Democratic. Leading citizens whether Democrats or Whigs were sensitive to the economic and social pull of the slave states. Workingmen, many of whom were recent immigrants, were fearful of cheap black labor and were largely racist or, rather, white supremacist in outlook. The riots against Birney and the destruction of his abolitionist press provided Chase with ample evidence of alliance between leading citizens and the laboring classes. Civil rights and civil liberties Chase discovered were held cheaply, if at all by Cincinnati masses.<sup>90</sup>

All these factors informed his decision to turn to the Liberty Party once James Birney had assumed leadership. Chase also made the personal decision to keep pressing Cincinnati judges with better arguments in the slave cases he took.<sup>91</sup> He believed them right, but they also fit into his personal ambition to seek a larger national stage.

In time Salmon Chase remarried, but his second wife died, again plunging him into despair. He married a third time only to suffer the same loss; and then never again did he risk emotional companionship in marriage, having also seen four of his six children die, too. Full of unbearable grief, he grew colder and more austere. He became distant and morose, cabining his emotions tightly. He now took up fresh political causes, especially the new Liberty Party that James Birney first championed on a national ticket. While a slight stammer impeded his public speaking, Chase was an excellent lawyer, but he now spent more and more time on politics. He maintained his friendship with Susan Walker, but in later life throughout his impressive accomplishments, his daughter Kate served as both political adviser and hostess; and it was she who kept the flames of his presidential ambition alive until her marriage to a rich socialite that left Chase crushed. He built impervious emotional defenses as well as an intimidating presence in politics.

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90. NIVEN, *supra* note 4, at 62.

91. Prominent among these cases were: *The Mary Towns case*, NIVEN *supra* note 4, at 62-63; *Jones v. Van Zandt*, 46 U.S. (5 How.) 215 (1847); see S.P. CHASE, RECLAMATION OF FUGITIVES FROM SERVICE: AN ARGUMENT FOR THE DEFENDANT, SUBMITTED TO THE SUPREME COURT OF THE UNITED STATES AT THE DECEMBER TERM, 1846, IN THE CASE OF JONES V. VAN ZANDT (1847); *State v. Hoppess*, in the matter of Watson, claimed as a Fugitive from Service (Sp. Ct. 1845), in 2 WESTERN LAW JOURNAL 279, 280-84 (1845). Chase's involvement and arguments are summarized in NIVEN, *supra* note 4, at 62-63, 76-86. See also PAUL FINKELMAN, SLAVERY IN THE COURTROOM: AN ANNOTATED BIBLIOGRAPHY OF AMERICAN CASES 10 (1985).

Timothy Walker on the other hand inclined more and more toward an inner life full of reading the best literature and listening to music. After six years of mourning the loss of Anna and their two children, he met Ellen Wood, who came from England with her family, and she agreed to be his second wife. It was a joyful marriage. He established Ellen's widowed mother, Mrs. Ann Bryan Wood, in a rambling frame house almost hidden beneath pepperidge vines and stately elms shading its porches on what became Annwood Street near his own home, which he named Woodland Cottage. These houses were close to Owl's Nest, about three hundred yards from the corner of Grandin Road and Madison Pike, then a toll road, and soon became stopping places for the whole neighborhood.<sup>92</sup> The Walkers hosted many cultural events there and entertained prominent visitors, including Chief Justice Coleridge, the tragedian Macready, and Charles Dickens during his 1842 visit to Cincinnati. Walker told Dickens the sad story about a Cincinnati recluse who lived in her wedding clothes after being jilted on her wedding day. It was widely believed that Dickens made her into Miss Havisham in *Great Expectations*.<sup>93</sup>

In 1843, Timothy Walker started a new journal, *The Western Law Journal*, which he edited for the ten years of its existence (1843-1852) and which became a well-respected source nationally for cases and law reform proposals. He published pleadings and opinions in many of Chase's fugitive slave cases as well as from his own practice and this *Journal* became a rich resource for future legal historians. Walker developed into a powerful and sought-after orator, and served as judge and member of City Council. In 1850, Harvard invited Walker to deliver the prestigious Phi Beta Kappa Lecture, which placed him now as he turned forty-six years of age at the forefront of American orators. He called his address *Reform Spirit of the Day*, and in it he decried political excesses, office seeking, greed, and love of money in the nation's culture and politics. He hoped for a "veritable aristocracy established all over the world," but a "spurious aristocracy of wealth" had arisen in the United States, which worshipped the "golden calf" in which merit and talent no longer counted.<sup>94</sup> This was his most spirited assault on the "age of money-making and wealth-loving." He linked wealth to

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92. DE CHAMBRUN, *supra* note 3, at 67-68.

93. While I was traveling in Ireland during the fall of 2000, our small group heard a similar story about a jilted recluse in County Kerry that Dickens heard about on his visit to Muckross. The locals swear she was Dickens's model for Miss Havisham. Our host commented that perhaps the archetype was universal.

94. Timothy Walker, *Reform Spirit of the Day*, An Oration Before the Phi Beta Kappa Society of Harvard University (July 18, 1850), in *REFORM SPIRIT OF THE DAY: AN ORATION BEFORE THE PHI BETA KAPPA SOCIETY OF HARVARD UNIVERSITY* 22-24 (James Munroe & Co. 1850).

corruption and said that the politicians “. . . instead of making laws for us, spend their breath, and our money, chiefly in making capital for themselves.”<sup>95</sup> The “master passion” of the time, he firmly believed, is the accumulation of wealth, and he feared history would look back on it as a “golden age” whose spirit made wealth the end instead of the means of life and happiness. He saw that money dominated both the law and legislation.<sup>96</sup> The next year he was elected to membership in the prestigious Association for the Advancement of American Science.

In 1855, Chase and Walker came together again as co-counsel in two antislavery cases before the courts in Cincinnati.<sup>97</sup> These cases challenged the tough new federal Fugitive Slave Law, imposed by the Compromise of 1850, which was followed by the Kansas-Nebraska Act of 1854. While Walker had supported the Missouri Compromise of 1820, he now seemed ready to join Chase in politics, thus he strongly opposed these new measures, engineered by “slave power,” which had pushed slavery into new territories formerly excluded and new States, including Texas.<sup>98</sup> No issues in antebellum America were more urgent or more consuming. The debates were ferocious as peril loomed. They questioned the very foundation of the Union. Abolitionists like William Lloyd Garrison and Wendell Phillips favored disunion every bit as much as South Carolina did. The extremists—abolition at any cost or slavery at all cost—were like the ends of a horseshoe. They were closer to each other than they were to the middle where Chase to the left and Walker to the right strongly advocated preserving Union at any and all cost and where Frederick Douglass believed in both the Union and abolition.

Another event of some note took place in 1855 as well, sometime before Walker’s accident, in the realm of social or literary clubs. Salmon Chase and Timothy Walker, together with twenty-seven other men, were taken into the Literary Club of Cincinnati. The Literary Club was founded in 1849 by twelve young men led by Ainsworth R. Spofford, later the distinguished Librarian of Congress (who had moved to Cincinnati from New England in 1844 and started a book store), Nelson Cross, and Stanley Mathews (future Associate Justice of the United States Supreme Court). We do not exactly know why twenty-nine men, the largest group of Cincinnati’s elite admitted during any single year in the Club’s history, joined in 1855. Even with the 1851 Club expansion to fifty members, the magnitude of these admissions was extraordinary. In addition to Chase and Walker, among these twenty-

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95. *Id.*; see also HITCHCOCK, *supra* note 1, at 223-26.

96. HITCHCOCK, *supra* note 1, at 226.

97. *Id.* at 138.

98. See RICHARDS, *supra* note 16; HITCHCOCK, *supra* note 1, at 52-53.

nine new members were Bellamy Storer, Joseph Longworth, Henry E. Foote, William Greene, and Charles Stetson—all prominent leaders in the community. Many belonged to the old Semi-Colon Club, the New England Club, the Buckeye Club, and the short-lived Cincinnati Literary Society which had been chartered by the Ohio Legislature in 1834 and met on Friday night, sometimes known as the Friday Night Club. Speculation has it that a realignment of clubs resulted from “unhealthy” political fights most likely over the abolition question with much bad blood, or from lack of attendance or interest, and that the new Literary Club provided a more civil alternative in formal debate and literary discussion than in other societies, which had turned onerous and contentious. Cincinnati society was growing weary of tension, continuous eruption and psychological upheaval.

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At Woodland Cottage, Salmon Chase waits silently at bedside as his injured old law partner gathers strength and begins a last lament. My life’s work is unfinished, Walker says. And most of it ends in disappointment. My book is wrong on slavery. Every one of my law reforms has failed. I even doubt reason sometimes and what law stands for. Calhoun was wrong, but so are Garrison and Phillips. The North is just as misguided as the South, he says. I have felt great anguish all my life from that incident years ago when I helped turn the mob against Birney’s newspaper. Instead of ending incitement by the abolitionists we only provoked violence against the innocent black people here and destroyed a newspaper.

I’ve dedicated my life to law and education, Walker continues with a voice more raspy as his chest heaves from the exertion and he weakens. I must finish the revision of my book before I die, he says, and write what I now know to be the truth. His voice becomes stronger as he explains the results of his study to Chase. The founders’ compromises were never meant to enshrine slavery permanently or protect it.<sup>99</sup>

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99. For recent scholarship on this question, see DON E. FEHRENBACHER, *THE SLAVEHOLDING REPUBLIC: AN ACCOUNT OF THE UNITED STATES GOVERNMENT’S RELATIONS TO SLAVERY* (Ward M. McAfee ed., 2001), for the view that the founders did not enshrine slavery into the national government to be protected by national institutions, but rather national protection evolved later from the increasing dominance of national institutions through slave power, fear of slave revolts throughout the South especially after the Haitian uprising, and extension of slave power into federal territories and newly admitted States. See also DAVID BRION DAVIS, *THE PROBLEM OF SLAVERY IN THE AGE OF REVOLUTION, 1770-1823*, at 521 (1999). For recent views that the founders did indeed infuse slavery throughout the national constitution and protect it within national institutions from the beginning, see PAUL FINKELMAN, *SLAVERY AND THE FOUNDERS: RACE AND LIBERTY IN THE AGE OF JEFFERSON* (1996); GLENN C. LOURY, *THE ANATOMY OF RACIAL INEQUALITY* 164 (2002).



Benjamin Franklin understood this right from the beginning. Most believed that this evil was a mistake that would gradually die out. But that was their delusion. Franklin thought all along that Congress had power over domestic slave commerce after 1808.<sup>100</sup> I've been all wrong in accepting Madison's view instead of Franklin's. And States' rights mean what you argued in *Matilda's case*, not what Calhoun invented. I want to ask whether I have enough evidence to correct my book in its third edition before I die. How can the races ever learn to live together as citizens? We are afraid. Uprisings and mobs terrify us with disorder and chaos. We are as perplexed as Jefferson, who knew we had a wolf by the ears.<sup>101</sup>

He is reliving his own vision of hell, his accident; then the nightmare dream of his carriage plunging into a crowd and their vengeance. What can we do?, he asks Chase. Walker now begins to speak more resolutely. We all know that your voice has never gone silent; it is the most courageous one anywhere to speak out on these issues. The rest of us go mute. When we finally speak we say that our sacred compact enshrines slavery, a necessary compromise to keep peace and the Union; and yet we know that is wrong. All my reform work here in Cincinnati on this subject has come to very little. What course is there now? Politics seem so futile, but what else is there? Civil war?<sup>102</sup>

Is this why you want to see me, Chase replies as he stiffens, to hear your confession? If you want to tell the truth you have just found, ask those you have wronged for forgiveness and tell your message strongly. Any errors in your book are few compared with those of our leading citizens. And what more could you have done? You are not alone responsible. The slave power has become too dominant. It has

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100. While the historical evidence was available to Walker, the best treatment of this question is contemporary. JOSEPH J. ELLIS, *FOUNDING BROTHERS: THE REVOLUTIONARY GENERATION* 78, 83-119 (2001) (detailing the fate of the resolution in 1790 from the Pennsylvania Abolition Society headed by Benjamin Franklin, supporting the view that Congress had power to deal with domestic slavery after 1808, which Madison turned upside down in the famous Compromise of 1790, in effect denying the power, two weeks before Franklin's death).

101. The phrase is Jefferson's in the context of the Missouri Compromise. If Congress had power to compromise and apportion the territories between free and slave, to maintain the balance when new States were admitted to the Union, it would also have power to forbid slavery entirely if the Free Soilers prevailed and the territories were reserved for whites, thus thwarting Jefferson's goal of diffusion of the black race from the South into the territories and new States. "Gradually," Jefferson wrote his friend John Holmes, "with due sacrifices, a general emancipation and *expatriation* could be effected. But as it is, we have the wolf by the ears, and we can neither hold him, nor safely let him go. Justice is in one scale, and self-preservation the other." Letter from Jefferson to John Holmes, April 22, 1820, in FAWN M. BRODIE, *THOMAS JEFFERSON: AN INTIMATE HISTORY* 442, 551 n.57 (1974); MILLER, *supra* note 19, at vii.

102. Walker had expressed concern about civil war in his book: "Whichever way we turn, shadows, clouds, and darkness rest upon the prospect. Can the Union survive the strife which threatens to be carried on with increasing violence, between the advocates and opponents of slavery? This is a fearful question, which time only can answer." WALKER, *supra* note 61, at 735.

corrupted our national institutions. It is beyond belief to see such power and influence shape admission of new States, election of presidents, appointments to the federal courts, and the new Fugitive Slave Law.

If you are asking what I think about your conclusion, you already know what I think. You are facing your own truth, now. My truth is something else. You know that I never have felt at home here in Cincinnati; and they have never accepted me, either. It is a city in turmoil. All the best and worst are here competing for money and power, afraid to face living with black citizens among us as part of our daily lives, afraid more now than at first to accept even gradual assimilation. How can we have confidence in our future as a city? If you want my opinion, you should write what is in your heart and not seek solace through what is in mine.

Salmon Chase abruptly stops talking. He sits a few minutes more in quiet, watching his patrician friend muster dignity in pain and anguish. Walker then says to his old partner, I had decided to do more, and then this accident happened.

Chase gets up, searching for words of comfort to offer; though none come easily, for his own ambitious gaze has indeed shifted far away from Woodland Cottage, beyond Cincinnati, beyond Ohio. I must go now, he says finally. You should save your strength and get well; the city needs your voice and pen and the country does, too. And may the Lord God keep you in peace.

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On October 1, 1855, Timothy Walker signed the preface to the third edition of his *Introduction to American Law* and sent the revised manuscript off to the printers. With great effort, he made every planned revision with the exception of the correction he wanted to make on the national power over slave commerce and the original meaning of States' rights. His condition slowly worsened through his fifty-third birthday early December and the holidays, until January 15, when he died.

On January 20, 1856, the Reverend A. A. Livermore delivered a moving funeral sermon before the Unitarian Congregation of Cincinnati on the life and death of Timothy Walker. "A strong and stately pillar of the social and civil edifice has fallen," began the Reverend.

A mighty oak of the forest, deeply rooted in its strengths, slowly matured through many years, with lofty trunk and boughs widely extended, and dispensing shelter, shade, and protection and rich bounty far around, has been prostrated to the earth. . . . We do not claim exemption for him from the passions and infirmities of human nature and human life. These he knew and regretted as much as we

can possibly do, and in this as in other cases he looked clearly and directly at the facts, and blinded himself as others with a veil of pretenses. He had a career of unusual trial, struggle and temptation, as he once expressed it, and that he did not in all things and always come off victor, is to be forgiven and forgotten. . . . His efforts & aims were not frittered away by a change of professions & occupation, by preparing to do one thing and doing another. . . . To the temptations of political life or editorship, or business he waved a decided negative, & gave in these days of fluctuating purposes, and flitting emigration the example of a persistent course, living in one place, devoted to one profession, and content to fill the single, but elevated and conspicuous niche which, had been assigned him by conscious consent in Western society.<sup>103</sup>

One can visit the Walker family grave in Spring Grove Cemetery in Cincinnati. Here in a serene setting a stone obelisk rises to mark the memory of the antebellum reformist, Timothy Walker, while the graves of his two wives and their children as well as his mother and brother and members of the Wood family lie on every side.

Also in October of 1855, Salmon Chase was elected Governor of Ohio. He moved to Columbus and four years later, elected Senator again, to Washington and then to serve in President Lincoln's cabinet as his war-time Secretary of Treasury. In advising Mr. Lincoln on war finances and emancipation as part of the war power, and in writing the first judicial interpretations of the Thirteenth Amendment after the Civil War as the new Chief Justice of the United States, Salmon Chase did not forget his days in Cincinnati and what he learned from his old friend and from a community that did not care for him.<sup>104</sup> When Chase died after several strokes in 1873, Rutherford B. Hayes, a politician and lawyer from Cincinnati, soon to be President in a disputed election which ended Reconstruction, said of the Chief Justice:

Chase possessed noble gifts of intellect, great culture, and a commanding presence. When this is said, about all that is favorable has been said. He was cold, selfish, and unscrupulous. . . . [H]is . . . contempt for the great office he held and his willingness to degrade it, should have made lawyers, at least, chary of praise. . . . [H]e always preferred the title of Governor to that of Chief Justice. He often expressed preference for the place of Senator to that of Chief Justice.<sup>105</sup>

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103. Sermon Delivered by Rev'd A. A. Livermore before the Unitarian Congregation of Cincinnati on the Life and Death of Timothy Walker, Jan. 20, 1856, Walker Papers, box III, Cincinnati Historical Society.

104. See HYMAN, *supra* note 7.

105. 6 CHARLES FAIRMAN, HISTORY OF THE SUPREME COURT OF THE UNITED STATES: RECONSTRUCTION AND REUNION 1864-88 (PART ONE) 1475 (1971).

A more sympathetic appraisal came from black writer Wendall Dabney in the 1920s:

Mr. Chase died in New York, May 7, 1873, of paralysis. He was buried in Washington, and on Thursday, October 14, 1886, his remains were removed to Spring Grove, Cincinnati. On this occasion ex-Gov. Hoadly, his once partner, gave a masterly oration upon his life and services, in Music Hall, and addresses were made by Congressman Butterworth, Governor Foraker and Justice Mathews; James E. Murdock read a poetical tribute from the pen of W. D. Gallagher. Conspicuous in the crowd who had assembled to pay their last tribute to the distinguished dead were some old colored men who had been slaves, and who felt a debt of gratitude to a man who had done so much for their liberty.<sup>106</sup>

Recent scholarship has revised the older, more distorted views of Chase as overly ambitious and now considers him as one of the great leaders of antebellum United States and of Reconstruction.<sup>107</sup> In addition to the granite monument overlooking a lake in Spring Grove Cemetery, a memorial for Salmon P. Chase was established in Cincinnati when the YMCA night law school in 1943 renamed that school in his honor.<sup>108</sup> Later crossing the river to Northern Kentucky University in 1972, the Salmon P. Chase College of Law now finds its place as a distinguished part of that vibrant university.<sup>109</sup>

Timothy Walker's reputation today is slower to recover the same national stature he achieved while living.<sup>110</sup> He was close to the

106. WENDALL P. DABNEY, CINCINNATI'S COLORED CITIZENS 81 (1926).

107. BLUE, *supra* note 28, at 323 (“[H]e . . . guided the Union through the financial difficulties of the war years and skillfully led the Supreme Court through the equally trying years of Reconstruction. He maintained a reputation for honesty and fought consistently for a program of reform.” He persisted in agitating “‘against slavery’ and all forms of racial injustice.”); NIVEN, *supra* note 4, at 450-51 (describing Chase as guiding the nation’s finances during Civil War, establishing the national banking system, stabilizing the Supreme Court beyond partisanship for the greater good of the country; and in the end remaining a “tragic figure” disdaining ostentatious materialism, “entirely out of the world in the midst of this great Babylon.”); HYMAN, *supra* note 7, at 166-69; G. Edward White, *Reconstructing the Constitutional Jurisprudence of Salmon P. Chase*, 21 N. KY. L. REV. 41 (1993); Michael Les Benedict, *Salmon P. Chase as Jurist and Politician: Comment on G. Edward White, Reconstructing Chase’s Jurisprudence*, 21 N. KY. L. REV. 133 (1993); Robert J. Kaczorowski, *The Chase Court and Fundamental Rights: A Watershed in American Constitutionalism*, 21 N. KY. L. REV. 151 (1993).

108. C. MAXWELL DIEFFENBACH ET AL., THE LAWYERS’ SCHOOL: A CENTENNIAL HISTORY OF SALMON P. CHASE COLLEGE OF LAW 9, 20 (1995).

109. An entire issue of the 1993 NORTHERN KENTUCKY UNIVERSITY LAW REVIEW is devoted to a symposium on Salmon P. Chase, with distinguished scholars adding to a generous reappraisal of the contributions of Chief Justice Chase.

110. In addition to recognition by Hitchcock’s impressive 1990 biography, HITCHCOCK, *supra* note 1, the rehabilitation of Walker’s antebellum influence is undertaken most prominently in AARON, *supra* note

founding generation, yet believed in law reform and codification to see an end of slavery and stave off chaos from the crowd and popular democracy. For a time, he was a “man of his age” in Cincinnati, where in word and deed he projected the civic republicanism of the founders into a future for the new democrats. There is no public memorial for Walker, though the obelisk monument rises in Spring Grove Cemetery and his bust is displayed prominently in the Cincinnati History Museum, where one can hear his voice in a simulated conversation with his contemporaries about early Cincinnati. For us all, he left behind his antebellum ideas on law reform and codification, his example as a new western leader, his published lectures and orations, his famous book and writings, and the first law school in Ohio.

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22. See also ZAINALDIN, *supra* note 67, at 90-101 (1983); KERMIT L. HALL, THE MAGIC MIRROR: LAW IN AMERICAN HISTORY 126-27 (1989); GLAZER, *supra* note 25, at 2, 5-7, 127-28, 178 nn.8-9.