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Book Review by Randy E. Barnett

## AN INDISPENSABLE ABOLITIONIST

*Salmon P. Chase: Lincoln's Vital Rival*, by Walter Stahr.  
Simon & Schuster, 848 pages, \$35



"A Wild Goose Chase," political cartoon from Harper's Weekly, 1868.  
(Salmon Chase runs into a swamp as he tries to capture the Democratic convention with "universal suffrage salt.")

MOST AMERICANS HAVE NEVER heard of Salmon P. Chase. Of those who have, many know him for just one thing: he was an ambitious politician who wanted to be president. Those who have read journalist Doris Kearns Goodwin's *Team of Rivals* (2005) have also been told that Chase was a thorn in the side of Abraham Lincoln. But for many, Chase is just a name—Chief Justice John Roberts once told me the only thing he knew about him was that during Chase's tenure as Chief Justice (1864-73), Congress changed his title from "Chief Justice of the Supreme Court" to "Chief Justice of the United States." Today, millions of people use a credit card issued by JPMorgan Chase, without realizing that the bank was posthumously named in honor of Salmon Chase, who had served as secretary of the Treasury.

But Salmon Chase ought to be far better remembered: he was an American icon,

statesman, and hero. His story is quite simply the story of slavery's demise in America. Chase's previous biographers failed to chronicle comprehensively his tireless efforts on behalf of the abolitionist cause. Now, at long last, Chase has the biography he deserves in *Salmon P. Chase: Lincoln's Vital Rival*, by celebrated historian and legal scholar Walter Stahr, whose previous books include *Stanton: Lincoln's War Secretary* (2017) and *Seward: Lincoln's Indispensable Man* (2012).

TO UNDERSTAND CHASE'S IMPORTANCE, we must start with the arc of U.S. history in which he was a key player. When the Constitution was drafted, a widespread consensus held that the institution of slavery was contrary to natural rights and the first principles of the founding as reflected in the Declaration of Independence. Through a compromise with the slave states, Congress was empowered

to abolish the international slave trade after a 20-year hiatus. Congress banned it as soon as the waiting period was up. Even beforehand, as Princeton's Sean Wilentz has shown in his important book *No Property in Man: Slavery and Antislavery at the Nation's Founding* (2018), Congress used its commerce power to regulate and restrict the international sale of slaves, a cruel practice that relied on their capture in Africa and perilous journey across the Atlantic.

Wilentz details how every effort by the Deep South to include an express endorsement of the concept of property in man in the text of the Constitution was defeated by a coalition of Northern states and members of the Virginia delegation. Instead, slavery was referred to euphemistically in the text, and was expressly characterized as a creature of the positive law of the states in which it still existed. Enslaved people were called "persons," not property. The Fugitive Slave Clause in Ar-



ticle IV referred to a slave as a “person held to Service or Labour in one State, under the Laws thereof...” This drafting decision would later provide important ammunition for Chase and other antislavery constitutionalists.

**T**HE SAME SUMMER THAT THE CONSTITUTION was being drafted, the Continental Congress under the Articles of Confederation adopted the Northwest Ordinance, which barred slavery in the territory that would form the free states of Ohio, Indiana, Illinois, Michigan, Wisconsin, and a portion of Minnesota. It was a sign of the times that the Ordinance was approved by the delegations of every state, including every slave state. Then, in 1791, the free Republic of Vermont—the first country on earth to abolish slavery—joined the Union as the 14th state. The tide was rapidly going out on the institution of slavery.

What happened next was tragic. Historians agree that this rapid progress was arrested in 1793 by the invention of the cotton gin, which made farming cotton with slave labor enormously profitable. There then arose, for the first time, an ardently pro-slavery ideology. Some even argued that slavery was beneficial to the slave, since he was cared for “from cradle to grave” as in a socialist state.

In response to these pro-slavery arguments there arose an increasingly militant anti-slavery

faction, led by Massachusetts editor William Lloyd Garrison. These so-called “radical” abolitionists declared the Constitution was “a covenant with death and an agreement with hell,” because they believed it sanctioned slavery. In 1854, Garrison burned a copy of the Constitution during a Fourth of July rally—not a popular thing to do. Radical abolitionists favored the secession of the North, and their motto was “No Union with the Slaveholders.” In addition, the radicals opposed all political action as immoral. Many were, or became, political anarchists. All these politically alienating stances led other equally ardent opponents of slavery to shy away from adopting the “abolitionist” label.

This competing anti-slavery group is far less well remembered or understood, yet they were the ones who actually got the job done. These activists believed in utilizing the Constitution to oppose slavery. In *Ballots for Freedom: Anti-slavery Politics in the United States, 1837–1860* (1976), Civil War historian Richard H. Sewell revived the memory of these crucial activists, whom he dubbed “political abolitionists.” Others have referred to them as “constitutional abolitionists.” Unlike the Garrisonians, this group supported political action and denied that the Constitution was inherently pro-slavery. They claimed that the precise textual treatment of slavery in the Constitution, which had been insisted upon by the framers in Philadelphia, did

not ratify the concept of “property in man.”

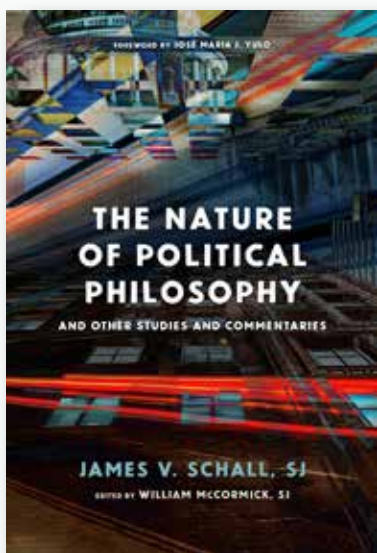
This more politically practical group was, however, divided on the question of just how anti-slavery the Constitution was. On the one hand, writers such as Lysander Spooner and William Goodell claimed that slavery was unconstitutional throughout the Union. On the other hand, a far larger group conceded that slavery was constitutional in the six original states that retained it. But on their interpretation, the federal government was empowered by the Constitution to end slavery everywhere else. Their slogan became “freedom national; slavery local.”

This stance, which is now called the “federalism consensus,” eventually became the basis of the Liberty, Free Soil, and Republican parties. The anti-slavery platform of the Republican Party led the Deep South to secede even before the Republicans could take office. Once in power, the Republicans did as they promised, as brilliantly detailed by City University of New York historian James Oakes in *Freedom National: The Destruction of Slavery in the United States, 1861–1865* (2012).

**B**EGINNING IN THE 1830S, THE FOREMOST developer and proponent of both constitutional and political abolitionism was Salmon P. Chase. As a Harvard Law School graduate, Walter Stahr is more



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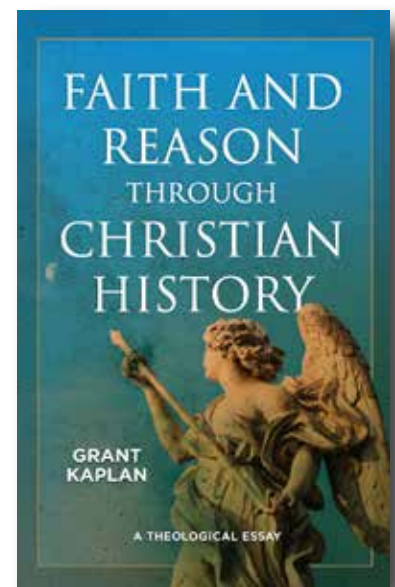
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qualified than previous biographers and other historians to describe Chase's constitutional approach and how it shaped the development of anti-slavery politics. Stahr not only acquaints readers with the "external" narrative of Chase's key role in public debates. He also presents, for the first time, an "internal" view of Chase as manifested in his diaries and extensive correspondence, along with the correspondence of others who knew him.

**C**HASE'S BATTLE AGAINST SLAVERY began in 1837. A young woman named Matilda Lawrence was taken to the North by her master, who was also her father and who passed her off as his white daughter. When they reached Cincinnati on their way back home, she pleaded with him to emancipate her. He refused, and she fled to the city's free black community. There she became employed by James Birney, a lawyer and a former slaveholder who was now the editor of an abolitionist newspaper. When Matilda's father sent slave catchers to capture her, Birney enlisted the legal assistance of a 29-year-old attorney in town named Salmon Chase. The two men petitioned for a writ of habeas corpus.

At the legal hearing, the slave catchers invoked the Fugitive Slave Act, which compelled the court to turn custody of Matilda over to them. Working with Birney, Chase developed the argument that the Fugitive Slave Act was unconstitutional because it was beyond the enumerated powers of Congress. The Fugitive Slave Clause appears in Article IV of the Constitution. Chase maintained that Article IV consists of "articles of compact," which function as a treaty between the states. A few of the clauses in Article IV expressly empower congressional enforcement, but the Fugitive Slave Clause is conspicuously silent on any congressional empowerment. Chase maintained that, since the Fugitive Slave Clause of Article IV was not explicitly placed under Congress's purview, it was unconstitutional for Congress to pass the Fugitive Slave Act pursuant to that clause.

The local judge ruled against Matilda, and she was shipped "down the river," never to be heard from again. But Chase's argument was heard far and wide. Published in pamphlet form, it launched him to the forefront of the political abolitionist movement. Eventually the Supreme Court rejected Chase's argument in the 1842 decision of *Prigg v. Pennsylvania*. But just because Chase's arguments failed in the Court did not make them wrong. He would continue to pursue them passionately throughout his career.

**T**HOUGH HE NEVER COMPLETELY ABANDONED litigation on behalf of runaways and the whites who assisted them, Chase shifted his energies to the political sphere. He was tireless in his efforts to organize a series of anti-slavery parties, beginning with the single-issue Liberty Party. He then helped found the Free Soil Party, which was opposed to the extension of slavery beyond the six original states in which slavery still existed. Chase coined the slogan "Free Soil, Free Labor, and Free Men" to express this version of the federalism consensus, which resonated better with Northerners than pure abolition.

In 1849, the Free Soil Party was sufficiently successful in the Ohio election to hold the balance of power in the state legislature between the Whigs and the Democrats. Chase and the Free-Soilers eventually made a two-part deal. They would tip control of the state legislature to the Democrats. In return, the Democrats would both abolish Ohio's discriminatory "black codes"—the first such abolition in the country—and send Chase to the United States Senate. The Ohio Whigs were outraged, and thus originated the charge that Chase was motivated solely by his own ambition rather than by principle. The accusation would haunt him for the rest of his life, and to this day some know him only for this alleged character defect.

It was during the Senate debate over the Compromise of 1850 that Senator Chase coined the phrase "freedom national; slavery sectional." Two years later, the phrase was more famously reiterated by Charles Sumner after he joined Chase in the Senate as a Free-Soiler from Massachusetts. In 1856, Chase was elected governor of Ohio on the Republican ticket, making him the nation's first elected Republican governor. After serving two terms, Governor Chase was a serious contender for the Republican presidential nomination. He and some other leading anti-slavery figures were beaten, however, by a late-comer to the movement: Abraham Lincoln.

The Republican Party was dominated by ex-Whigs. Chase considered himself (and called himself) a "Free Democrat": he adhered to the political philosophy of Thomas Jefferson and James Madison, while also opposing slavery. This put him at odds with former Whigs on policy matters apart from slavery. By contrast, Lincoln had been a one-term Whig congressman. More importantly, as Stahr explains, Chase was widely perceived as radically anti-slavery and pro-black. This made him less likely to carry the more conservative states of Pennsylvania, Indiana, and Illinois. Lincoln was less threatening and, frankly, more entertaining and better liked. To secure the nomination,

Lincoln amped up his anti-slavery rhetoric, especially in his speech to the Cooper Union in New York City in advance of the Republican National Convention in Chicago.

**B**UT LINCOLN WAS ALWAYS CONSIDERED too conservative and untrustworthy on the slavery question by the more principled anti-slavery Republicans—which explains why Lincoln chose Chase to be his treasury secretary and kept Chase in his cabinet as long as he did. Secretary Chase was Lincoln's bridge to the Republicans in Congress. Upon the death of Roger Taney, Lincoln chose Chase to be the Chief Justice of the Supreme Court (though given Chase's hardcore anti-slavery reputation, Lincoln waited until after he was reelected to do so). Thus, the "attorney general for runaway slaves" succeeded the racist author of *Dred Scott v. Sandford* (1857) as Chief Justice of the United States.

On Stahr's telling, the relationship between Chase and Lincoln was not nearly as fraught as it has been depicted by authors such as Doris Kearns Goodwin. Stahr reveals the degree to which Lincoln relied upon Chase. Chase in turn came to admire Lincoln, campaigning in both his election campaigns and singing his praises in private as well as in public. When war broke out, Lincoln and War Secretary Edwin Stanton joined Chase on a Treasury Department revenue cutter, the *Miami*, to visit the troops and scout out landing zones for an invasion of Virginia. And Lincoln accepted Chase's language, with just a few tweaks, to end the Emancipation Proclamation: "And upon this act, sincerely believed to be an act of justice, warranted by the Constitution, upon military necessity, I invoke the considerate judgment of mankind, and the gracious favor of Almighty God."

Chief Justice Chase swore in Lincoln for his second term and Andrew Johnson after Lincoln's assassination. He also presided over Johnson's impeachment trial, which makes for an informative chapter of the book. Stahr ably explains many of Chase's key votes, such as his choice to join Justice Stephen Johnson Field's dissent in the *Slaughter-House Cases* (1873). Field and Chase contended, against the majority in the 5-4 case, that the Constitution's Privileges or Immunities Clause protected against state abridgment, not merely rights that were *created by* the Constitution, but also fundamental rights that preexisted and were *secured by* the Constitution.

Stahr shows that Chase was not only anti-slavery, but also as racially liberal toward African Americans as it was possible to be in that period of high racism in both the North and the South. He favored black suffrage publicly



and privately. He integrated the Treasury Department and elevated blacks to supervisory positions. From the 1840s to his death in 1873, he was hailed by American blacks as a friend and advocate—for which he was condemned by his enemies in words not suitable for this journal. His will bequeathed \$10,000 to his alma mater, Dartmouth, and another \$10,000 to a small black college called Wilberforce.

Chase was also liberal when it came to the rights of women. He opposed coverture laws, which restricted the rights of married women, and he favored female suffrage. “I think there will be no end of good that will come from women’s suffrage,” he wrote, “on the elected, on elections, on government, and on woman herself.” He was likely influenced in this by Kate, his intelligent and strong-willed daughter, who took over the management of his social calendar after Chase tragically lost three wives to illness. Chase wrote that he “always favored the enlargement of the sphere of woman’s work and the payment of just wages for it.”

It is therefore a crying shame that a series of strokes prevented Chase from writing a dissenting opinion in *Bradwell v. State of Illinois* (1873), in which the Court upheld a decision by the Illinois Supreme Court to deny Myra Bradwell the right to practice law because she was a woman. Chase voted not only against Justice Samuel Freeman Miller’s opinion for the majority, but also against Justice Joseph Bradley’s notoriously misogynist concurring opinion. The Supreme Court reporter recorded: “The Chief Justice dissented from the judgment of the Court and from *all* the opinions” (emphasis added). This is the only time I know in which a justice dissented from a concurrence. Chase died three weeks after the decision was announced.

**S**TAHR’S BOOK IS A RIVETING READ, spanning Chase’s life and career in some 660 pages. I knew a lot about

Chase before reading this book, having first encountered him over ten years ago when I undertook a systematic study of anti-slavery constitutionalism as a Guggenheim Fellow in Constitutional Studies. As recently as 2020, I edited *The Life and Writings of Salmon P. Chase* so that some of Chase’s key arguments would be more accessible to a popular audience. But I gained new information and insight from nearly every page of Stahr’s biography. Above all, what comes through is Chase’s lifelong dedication to his principles, even as he pursued his political ambitions.

And what about those ambitions, for which he is now held in such low regard? Did he desire political power, as his opponents loudly charged? Surely. But so did Lincoln, and so do all successful politicians, good and bad. What distinguishes Chase is that his ambitions were always in service of his principles, rather than the other way around. He himself never denied that he was ambitious—but not, in his words, so “ambitious as some unambitious people have represented me.” Perhaps Reverend John Hall, one of Chase’s eulogists, put it best: “Do not too soon whisper the word *ambition* regarding the men who render to us great public service, as if ambition were something wholly and absolutely and essentially strong and wicked.” Ambition was sometimes merely the quality “by which men are impelled to the work they do, and that none others are able to do.” Or as Chase himself said, “great place has always been chiefly valuable as great opportunity for useful service.”

Chase was what we would today call a “conviction politician,” a deeply religious Presbyterian whose moral principles were his claim to fame. First and foremost among those principles were his diehard opposition to slavery and his insistence on the equal treatment of all Americans: black and white, male and female, native-born or immigrant. How do you attack a conviction politician? By attribut-

ing his political actions to personal ambition rather than to his professed principles.

Neither Stahr nor Chase’s more critical biographers, such as John Niven in *Salmon P. Chase: A Biography* (1995), have identified any time when Chase ever hedged, for the sake of political gain, on his commitment to promoting the interests of blacks. After all, when he threw his whole being into the anti-slavery cause, it was hardly a path calculated to achieving political fortune. As Horace Greeley, editor of the *New-York Tribune*, put it: the “man who had his eye on the presidency yet could avow himself an abolitionist as early as 1842—when we did not dream that one so thoroughly anti-slavery could be chosen governor, much less president—must be gifted with a prescience almost superhuman.”

On the day after Chase’s death, the *Tribune* offered the following summary: to Chase, “more than any other one man, belongs the credit of making the anti-slavery feeling what it had never been before: a power in politics. It had been the sentiment of philanthropists; he made it the inspiration of a great political party.” And as Stahr concludes, “Slavery ended in America not because of vast impersonal forces but because of the work of individual men and women, and Salmon P. Chase deserves his central place in this great American story.” For those seeking insight into how exactly this nation put an end to the evil of slavery, Walter Stahr’s engrossing book about this unjustly forgotten but truly great and indispensable American is essential reading.

*Randy E. Barnett is the Patrick Hotung Professor of Constitutional Law at Georgetown University, where he directs the Georgetown Center for the Constitution. He is the co-author (with Evan D. Bernick) of The Original Meaning of the Fourteenth Amendment: Its Letter and Spirit (2021).*



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