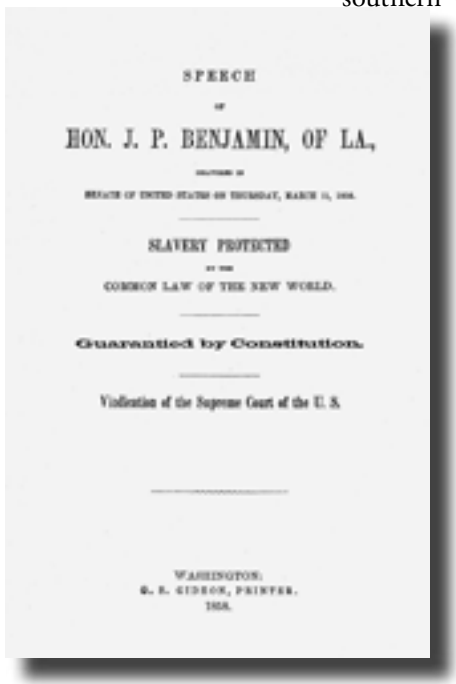
Judah P. Benjamin and Slavery

Maury Wiseman

Judah P. Benjamin, ca. 1858
(Courtesy American Jewish Archives)

Judah Phillip Benjamin was one of the first Jewish senators in the United States. Representing the state of Louisiana and later the Confederate States of America, Benjamin was also an adherent of the South's peculiar institution of slavery. That Benjamin supported slavery should not be surprising considering that he was born, raised, and lived most of his life in slave societies, yet historians have only cursorily examined his views on this subject. Benjamin's 11 March 1858 Senate speech advocating the adoption of the Lecompton constitution in the Kansas territory—the Kansas Bill—provides the most comprehensive articulation of his views on slavery.

Born on St. Croix in 1811, Judah Benjamin's parents, Rebecca and Philip, immigrated to the southern United States in 1813. Stopping first in Wilmington, North Carolina, they continued on to Charleston, South Carolina, where they resided amid a thriving Jewish community. Benjamin's intellectual precociousness earned him the financial backing to attend Yale University, but he left after only a brief stay. He returned to Charleston and, opting to descend further into slave territory rather than leave it behind, then moved to New Orleans, where he began studying law.[1]


SPEECH

OF

HON. J. P. BENJAMIN, OF LA.,

IN THE

SENATE OF THE UNITED STATES ON THURSDAY, MARCH 11, 1858.

SLAVERY PROTECTED

BY THE

COMMON LAW OF THE NEW WORLD.

Guaranteed by Constitution.

Vindication of the Supreme Court of the U. S.

WASHINGTON:
G. S. GIDEON, PRINTER.
1858.

Cover of Benjamin's 11 March 1858 Senate speech
(Courtesy American Jewish Archives)

Benjamin was admitted to the Louisiana Bar in 1832. His career advanced quickly, even while his personal life was often filled with turmoil. He married Natalie St. Martin, the daughter of a prominent local Creole family the following year. Their marriage, however, was

tumultuous, and despite the birth of their only child, Ninette, in 1843, Natalie separated from him in 1845 and moved to Paris, France. They never divorced, eventually developing a closer relationship following his arrival in England in 1865.

Despite these personal issues, Benjamin's legal reputation grew dramatically, and by the late 1840s he was admitted to the Bar of the United States Supreme Court. Securing a place in politics with the help of two powerful Louisiana Whigs, John and Thomas Slidell, he was elected to represent New Orleans in the Louisiana House of Representatives in 1842 and participated in the state constitutional convention of 1844–1845. In 1852, Benjamin sought and won election to the U.S. Senate. Declining a nomination for the U.S. Supreme Court, he served in the Senate until 1861, first representing Louisiana's Whig constituency, then joining the Democratic ticket in 1856 after the demise of the Whig party.

The basis of Benjamin's political success was his advocacy of states' rights and slavery alongside his promotion of commercial development and internal improvements. Although he was an ardent sectionalist, he preferred the moderate Baltimore Convention over the more radical Charleston Convention during the secession crisis of 1860–1861. When negotiators failed to secure a compromise to save the union, Benjamin heeded his constituents' demands and, on 26 January 1861, Louisiana became the fourth state to secede from the union. Benjamin resigned his Senate seat soon thereafter.

Organizational ability and political experience made Benjamin a candidate for many available administrative and diplomatic positions in the new Confederate States of America. Initially appointed Attorney-General, in October 1861 he was installed as the Secretary of War. He lacked a military background, however, and his efforts often transgressed military codes and procedures; he personally clashed with several prominent Confederate generals, including Thomas "Stonewall" Jackson and Joseph Johnston. Internally strife-ridden and constantly assailed in the southern press, his tenure as Secretary of War culminated in the military debacle at Raleigh, North Carolina, in late 1861. The defeat forced Benjamin out of office, but he was quickly reappointed as Secretary of State in March 1862. Tireless efforts to manage Confederate intelligence operations and secure foreign aid and recognition went unrewarded as the Confederacy began crumbling, and he was forced to flee Richmond as the Confederate capital collapsed in April 1865. He evaded federal troops on his flight south through Florida and managed a harrowing escape to the Bahamas before proceeding to Havana, Cuba. From there, he made his way to London in early September 1865.

Benjamin began rebuilding his legal career immediately upon his arrival in England. Not yet a British citizen and retaining invalid American legal credentials, Benjamin's route to legal practice in England began inauspiciously

Sugar plantation and home of Judah P. Benjamin, Bellechasse, LA
(Courtesy American Jewish Archives)

enough at the Benchers of Lincoln's Inn in late 1865. Within a year, however, he was granted special permission to apply for admission to the Bar in May 1866. Working with the same diligence and utilizing his same talent in foreign language, rhetoric, and diplomacy that marked his career in the United States, Benjamin quickly won praise in England. In August 1868 he published a famous legal treatise widely known as "Benjamin on Sales." Later, he was named Queens Counsel for Lancashire County and became a barrister at his English alma mater before retiring from public life in 1883. He spent his remaining time with Natalie and Ninette in Paris before succumbing to illness on 6 May 1884.

Benjamin's views on slavery are complex and often ambiguous. His biographers and historians of southern Jewish history have noted that Benjamin was not a "proslavery ideologue" or a "fanatical defender of slavery."[2] Robert D. Meade claimed that Benjamin "viewed Africans as human beings not resigned to their lot as commonly perceived in the South."[3] Although Benjamin vigorously defended slavery on the Senate floor as the voice of his constituency, he did not engage in a personalized "fist-pounding, red-faced, blowhard defense of it."[4] Benjamin's slaves, according to Pierce Butler and repeated by every biographer since, had "none but kindly memories, and romantic legends of the days of glory on the old place."[5] We may, however, attribute the fond memories former slaves retained for their master to the restrictive social context perpetuating the "Old South" myth throughout the Jim Crow South.

Slavery held a pragmatic appeal to Benjamin in that slaves were legally sanctioned sources of status, capital, and labor. Benjamin was a slave owner who did not inherit his slaves but consciously purchased them as an adult, willingly overlooking any moral dilemmas and instead appealing to the social status ascribed to slave ownership. He worked more than one hundred slaves

on his *Bellechasse* plantation in the notoriously grueling sugar industry that he was trying to advance in Louisiana. He understood the financial investment of slavery and, like most southern planters, faced financial disaster in the event of uncompensated emancipation. Like many other white southerners, Benjamin feared "the gravest of social perils" in the southern states if millions of slaves were suddenly freed.[6] He was not opposed to emancipation, alluding to this possibility in his Kansas Bill speech, but only if it occurred gradually and with just compensation as it did in England.[7] He did not anticipate former slaves to be a part of America's future, for which reason he favored the efforts of the African Colonization Society.

Foremost a legalist, Benjamin grounded his convictions about slavery in British and American legal codes. To him, the laws of nations determined the legal status of slavery, a point he established as early as 1842, while providing the legal counsel for various defendants in the widely discussed and controversial "*Creole* cases." The *Creole* was a slave trader ship whose human cargo mutinied, killing the owners' agent and forcing the vessel to sail for the Bahamas. British authorities arrested the ringleaders but granted the remaining passengers freedom in the Bahamas. During the ensuing legal battles, Benjamin argued on behalf of the insurance companies that the former slaves' masters, and not the underwriters, were responsible for their property. The liberation of the slaves was not due to "foreign interference" covered by the policy, but by "the force and effect of the law of nature and of nations on the relations of the parties against which no insurance was or could be legally made.…[S]lavery is against the law of nature; and although sanctioned by the law of nations it is so sanctioned as a local or municipal institution of binding force within the limits of the nation that chooses to establish it and on the vessels of such nation on the high seas but as having no force or binding effect beyond the jurisdiction of such nation."[8]

The laws of nature may be binding, but the laws of nations were open to deliberation. These laws dictated the status of slaves respective only to that nation and deferred to the laws of other nations when in their jurisdiction. Benjamin continued by claiming that the slaveholders and the crew instigated the revolt because of their unnecessary cruelties toward their tightly packed human cargo.[9] This argument illuminates one of the paradoxes of Benjamin's views on slavery. Although providing a humanitarian defense for slaves and legally validating their emancipation, Benjamin also suggested their inferiority to whites and advised that they be securely bound and guarded because of their limited emotional and psychological development and to secure them as human property.[10]

Emancipation occurred in the *Creole* case because British jurisdiction prohibited slavery, but under United States jurisdiction Benjamin asserted in the Senate in the wake of the *Creole* case that "slaves are, by our laws, nothing but property."[11] Benjamin expanded on this legal opinion in his 11 March 1858 Senate speech on the Kansas Bill, which provided a comprehensive antebellum

southern legal defense of slavery. In 1858, the Kansas territory suffered internal strife over the slavery issue that eerily foreshadowed the impending national crisis. The territory's proslavery faction supported an elected government seated in Lecompton, Kansas. Claiming overwhelming voter fraud and intimidation, the antislavery section of the territory elected its own government, located in Topeka. While the citizens of Kansas fought each other on the ground, the competing legislatures appealed to Congress for legal recognition. Quickly organizing a radical proslavery state constitution, the Lecompton government petitioned Congress for admission into the union as a slave state. President James Buchanan, eager to smooth over the boiling tensions, pushed this "Kansas Bill" into Congress, where it was hotly contested in the Senate.

Benjamin evaded the dubious political situation in the territory by focusing on the unavoidable issue of slavery and the widening rift that institution was creating in the United States. Dismissing charges of fraud and voter intimidation as the tactics of northern abolitionists, Benjamin argued that the citizens of Kansas employed their popular sovereignty, an idea proposed by Senator Stephen A. Douglass of Illinois, to approve slavery in their state constitution. However, the "non-slaveholding States of the Confederacy" refused to acknowledge this proslavery constitution, the vehicle of popular will, and would vote against the admission of Kansas as a slave state even "if the whole people of the Territory should establish a constitution recognizing that institution."[12] The northern states' denial of popular sovereignty contravened legislation sanctioned by the Supreme Court's *Dred Scott* decision and incensed Benjamin. Responding that "as long as the constitution of my country endures," he considered it his "constitutional duty to perform the most sacred of all obligations" by defending the constitutional right to property and by abjuring the American legal system to uphold those rights.[13] To Benjamin, an attack on private property was an assault on the keystone of a free society. Consequently, a defense of private property was a defense of the individual liberties of free individuals protected in the federal constitution.[14]

Benjamin attacked the antislavery proposition that "slavery is the creature of the statute law of the several states where it was established."[15] Providing an extensive history of slavery's prevalence in the British colonies and its protection under colonial common law, he contended that this was the legal structure employed until the American Revolution severed the colonies from England, resulting in the consummation of a new federal constitution informed by established common law. Although emancipation had already begun in Great Britain, those policies did not apply to British colonies operating under the assumptions of colonial common law. In North America, common law dictated that "a negro [sic] … was merchandise, was property, was a slave, and that he could only extricate himself from that status stamped upon him by the common law of the country by positive proof of manumission. No man was bound to

show title to his negro [sic] slave. The slave was bound to show manumission under which he had acquired freedom by the common law of the colony."[16]

According to Benjamin, the U.S. Constitution was created with this common law assumption in mind. He agreed with northern senators that slaves only exist as property in title unless provisions enforced that title beyond state borders, but for this reason he argued that the constitution provided a fugitive slave clause acknowledging slavery's legitimacy. Limited in its address of the slavery issue, the constitution simply "guarantees to the South the sanctity of its peculiar property" while protecting the North against "any abnormal augmentation" of southern population statistics affecting national representation.[17] Judge John McLean, a dissenting party in the *Dred Scott* case, validated the fugitive slave clause, recognizing that it "was designed to protect the rights of the master against the people and legislation of other States."[18] From this perspective, it was the responsibility of antislavery advocates to initiate "positive acts of legislation" forbidding slavery. Many northern states amended their state constitutions and called for gradual emancipation, but northern slave owners sold their slaves to southern planters, who northerners now demanded must abolish the institution they helped construct and entrench.

After eliciting constitutional sanctioning for slavery, Benjamin aggressively defended the legal precedents upholding this interpretation. A staunch proponent of the *Dred Scott* decision, Benjamin defended Chief Justice Roger Taney and the Supreme Court's actions as the standard procedure of justices acknowledging their jurisdiction over a case's merits before stating a decision based on those merits. He rejected Senator William Fessenden's (Maine) claim that slavery was not constitutionally recognized by rhetorically asking why Congress would allow the continuing importation of slaves following the American Revolution and then reject those imports as illegal property. Moreover, if slaves were not constitutionally recognized, why were they the subject of heated congressional debates over representation, and why are there provisions for slaves as part of the population? Benjamin then responded to Senator Jacob Collamer's (Vermont) statement that slavery can only exist as property within state limits. According to Collamer, if slaves were ordinary property subject to standard property law, as many southerners argued, then why were there special provisions for slavery in the constitution? Benjamin contested this understanding of the law by separating title in property from the ability to enforce that title, which Collamer conflated into one idea. "Slaves, if you please, are not property like other property in this: that you can easily rob us of them; but as to the *right* in them, that man has to overthrow the whole history of the world, he has to overthrow every treatise on jurisprudence … ere he can reach the conclusion that the person who owns a slave, in a country where slavery has been established for ages, has no other property in that slave than the mere title which is given by the statute law of the land where it is found."[19]

Benjamin reserved only a segment at the conclusion of his speech for the actual events in Kansas. He condemned Kansas free-soilers for repudiating the Lecompton government and then asking for their Topeka constitution to be recognized as the state's legitimate constitution after the Lecompton government had already submitted a constitution to Congress. When congress addressed the Lecompton constitution and amended it to protect the rights of free-soilers, Topeka rejected it. Because the Topeka government had not requested, and already rejected, federal assistance, there was no reason for federal troops to protect them. Topeka's rejection of federal assistance and its attempts to contravene legal procedure made members of this group, in Benjamin's view, little more than a "miserable rabble of insurgents."[20]

While Benjamin was never wed to the peculiar institution, an analysis of his speech on the Kansas Bill depicts an individual firmly bound to its legal sanctity. Benjamin's views on slavery resonated with the Talmudic expression, "the law of the land is the Law," and they corresponded to those of many white southerners, including southern Jews.[21] Those views were guided by historical precedents that culminated, as Benjamin believed, in the legislative protection provided by the U.S. Constitution. He remained committed to this conviction and to the political sentiments of his constituency, even as the Kansas Bill floundered in Congress and as the issue of slavery festered before finally exploding in the American Civil War.

Maury Wiseman is a doctoral candidate at the University of Florida. His dissertation is titled "Fire-eater, railroad baron, and 'the alien Jew': the life and memory of David Levy Yulee" and focuses on the different ways in which Yulee, representing the state of Florida as the first Jewish Senator in the United States, has been remembered in textual and public spaces. Wiseman currently resides in Ocala, Florida.

Notes

[1]Refer to the following sources for biographical information on Judah Benjamin: Robert Douthat Meade, *Judah P. Benjamin: Confederate Statesman* (New York: Oxford University Press, 1943); Pierce Butler, *Judah P. Benjamin* (Philadelphia: George W. Jacobs and Co., 1907); Eli Evans, *Judah P. Benjamin, The Jewish Confederate* (New York: The Free Press, 1988); Robert N. Rosen, *The Jewish Confederates* (Columbia, SC: University of South Carolina Press, 2000).

[2]Rosen, 63; Meade, 92.

[3]Meade, 62–63.

[4]Evans, 37.

[5]Butler, 62. See also Meade, 63; Evans, 33; Rosen, 63.

[6]Butler, 62.

[7]*The Congressional Globe*, 35th Congress, 1st Session (1858), 1068–1069.

[8]Butler, 42–43.

[9]Evans, 38.

[10]Evans, 38–39; Meade, 62–63.

[11]Butler, 85–86.

[12]*The Congressional Globe*, 1065.

[13]Ibid.

[14]Butler, 147.

[15]*The Congressional Globe*, 1066.

[16]*The Congressional Globe*, 1068.

[17]Ibid.

[18]*The Congressional Globe*, 1069. McLean asserted this position in *Prigg vs. State of Pennsylvania.*

[19]*The Congressional Globe*, 1069.

[20]*The Congressional Globe*, 1072.

[21]The most extensive study of Jews and slavery is still Bertram Korn, "Jews and Negro Slavery in the Old South, 1789–1865," in *Strangers and Neighbors: Relations between Blacks and Jews in the United States*, ed. Maurianne Adams and John Braces (Amherst, MA: University of Massachusetts Press, 1999), 147–182.