

# Supreme Decision: Roger Taney and the Dred Scott Case

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Supreme Decision: Roger Taney and the Dred Scott Case

By Mike Nicholas '07



Of all the events that pushed a divided nation closer and closer to war, none seemed to have the power to ignite the passions of sectionalists more than the Dred Scott Decision. What began as an obscure, relatively innocuous civil action in a Missouri district court evolved into a national battle cry for abolitionists in the North, a vindication of the peculiar institution for the South, and a catalyst that would ultimately bring the two sides to settle their dispute on the battlefield. At the center of this controversial decision was its principal architect and author, Chief Justice Roger B. Taney. Criticism of this Marylander came from those who at one time held him in the highest esteem and regarded him for his legal prowess, but who now despised him for what they considered to be his abdication of legal principle in favor of a personal bias for slavery, a corrupt bargain with the incoming president, and the final straw in a Southern conspiracy to expand slavery. In truth, however, Taney's opinion in *Dred Scot vs. Sanford* reflected none of these sentiments, and was instead founded upon what he believed to be a sound theory of constitutional jurisprudence.

Roger Brooke Taney was appointed to the Supreme Court of the United States during the height of Andrew Jackson's presidency. During this time, property qualifications for suffrage were greatly reduced, and as a result the privilege was extended to a far greater number of the citizenry than ever before. Consequently, the affairs of the national government were now influenced by laborers and frontiersmen alike, and when combined with the economic shift of the era (particularly in the north) producing an unprecedented growth in industry, state governments found themselves having to regulate beyond simple natural rights and into the realm of social and economic legislation.<sup>1</sup>

This stood in contrast to the time of Taney's predecessor, the famed Chief Justice John Marshall, who along with his equally famous Marshall Court, had strictly limited the reach of states into the social realm and preserved the power of the federal

<sup>1</sup> Smith, Charles W. Robger B. Taney: Jacksonian Jurist. P.27

government. The age of Jackson would prove a marked shift in constitutional doctrine, and with Taney at the apex, the Court would swing towards allowing a strong state power to regulate a whole range of interests, checked only when individual rights were threatened against the will of the populace.<sup>2</sup>

This new doctrine manifested itself in a series of rulings giving the states broader authority of regulation, something the Marshall Court had been hesitant to do. Among them were *Brown vs. Maryland*, *Briscoe vs. Bank of the Commonwealth of Kentucky*, and *Charles River Bridge vs. Warren River Bridge*. The common threads among them were questions of state authority to regulate different aspects of police action and commerce by the states over objections of federal jurisdiction. In *Brown*, the Court ruled that a Maryland statute requiring the licensing of importers of various goods was constitutional because it represented a police action by the state (as opposed to a regulation of commerce, reserved for the federal government) and was therefore legitimate. *Briscoe* saw the Court declare constitutional that individual states could charter banks, so long as they did not issue separate bills of credit, and *Charles River Bridge* strictly construed the obligation of contracts clause of the federal constitution. In each of these cases, Taney either authored the majority opinion or concurred in the outcome, and each case represented an empowerment of the state governments, reversing a powerful federalist trend.<sup>3</sup>

Along with the doctrinal shift of the Court came a change in the personality of its Chief. Taney, unlike Marshall, was meticulous in avoiding direct involvement in politics, and even avoided the mere appearance of impropriety or participation in any part of deliberative political discourse. While Marshall had often debated questions of the Court and endorsed political candidates in newspapers, Taney did not. This is not to say that he had no such opinions or to suggest that he refrained from expressing them; rather the form of such expression was usually confined to private correspondence or public comment, but only in the realm of his official duties.<sup>4</sup>

Taney was, however, a strong believer in slavery, and a partisan one at that. His opinions in *Prigg vs. Pennsylvania* and *Groves vs. Slaughter* reflect a deep defense of the institution. Each case dealt with an aspect of slavery, the most notable being his dissent in *Prigg*. The Court ruled that a Pennsylvania statute prohibiting the forcible removal of a slave from its borders to be unconstitutional. While Taney agreed with the outcome, he believed (and thus dissented) that the states could aid the federal government in the exercise of its powers (in this case, the deliverance of fugitive slaves). His views on slavery were never in doubt, but neither was his commitment to jurisprudence, evidenced by his personal correspondence with members of both political parties and ideological viewpoints.<sup>5</sup>

These events and incidents in the life and era of Taney up to this point bear no direct or causal link to the outcome of the Dred Scott case, but they do place the proceedings in their proper context, and offer a window into the mind of the eventual author of arguably one of the most famous decisions of the 19<sup>th</sup> Century. It is within this backdrop that the Dred Scott case was brought before the Court for final argument on

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<sup>2</sup> Smith, Charles W. Robger B. Taney: Jacksonian Jurist, P. 28

<sup>3</sup> Taney, Roger B; Samuel Tyler. Memoir Of Roger Brooke Taney. LL.D. Pp. 273-75.

<sup>4</sup> Fehrenbacher, Don E. The Dred Scott Case: Its Significance in American Law and Politics. P. 232.

<sup>5</sup> Taney, Roger B; Samuel Tyler. Memoir Of Roger Brooke Taney. LL.D. Pp 282-284

December 15<sup>th</sup>, 1856. The narrow issue was the plight of a one Dred Scott, a figure of little significance prior to the decision involving his plea in abatement to have himself declared free, by virtue of the fact that he had resided in free territory for a number of years, after having previously served time as a slave. The lower courts of the state of Missouri agreed with him, but the Missouri Supreme Court reversed, and the case was filed on his behalf in the federal court system, ultimately winding its way up to the Supreme Court (the December 15<sup>th</sup> hearing was actually a re-argument before the Court).

On a broader and more relevant plane, the case presented three distinct questions for the Court to decide. First, whether or not Dred Scott was a slave, and therefore entitled to file suit in federal court. By extension, the Court was being asked to decide whether or not all Negroes themselves were considered citizens of the United States. Second, the Court was presented with arguments as to the status of Negroes held in free states, whereby slavery is prohibited. The central question of this point was were they free by virtue of residency in a free state, and by extension, was the "property" of the slave owner forfeit upon entrance to a free state? Third, the Court was asked to consider the constitutionality of federal legislation regulating slavery in the territories.

Specifically called into question here was the Missouri Compromise, ensuring no territory above thirty degrees thirty minutes would permit slavery, and the Kansas-Nebraska Act which formalized the doctrine of popular sovereignty—having the issue decided by ballot referendum. The Court, through Taney, ultimately decided that Dred Scott (and by extension, all slaves and former slaves) was not a citizen, that residency in a free state did not deprive an owner of his property (including slaves), and that federal legislation to the contrary was unconstitutional. While a superficial overview seems simple enough, a deeper analysis into the actual deliberations of Taney and the Court, along with the rationale behind the decision reveal a nearly unprecedented complex web of legal intricacy.

That the first issue was to be decided by the Court was never in doubt, for the question of citizenship was a clear and obvious starting point for the case. Taney phrased the question of Negro citizenship (Scott's) in the form of asking "whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State, in the sense in which the word is used in the Constitution of the United States."<sup>6</sup>

In answering this question, Taney posited during deliberation that the Constitution specifically formed various classes of people. The Constitution gave Congress specific authority to naturalize Native Indians, and defined the body politic as "the people of the United States," which he then interpreted to be citizens. At no point in the history of the nation had Negroes been considered citizens of equal stature to whites, and in fact were considered "a subordinate and inferior class of being...and had no rights and privileges but such as those who held the power and the government might choose to grant them."<sup>7</sup>

It is important to note at this juncture that Taney considered the foregoing to be the rule of law at the time of the framing of the Constitution, and he noted as such not only in deliberations, but also in his writings, where he traced the institution from Aristotle, who believed wholly in the order of nature (hence the "subordinate class of being"), to the rise of Christianity, which in fact accepted it as a legal institution and only

<sup>6</sup> Hopkin, V.G. Dred Scott's Case, P. 62-63

<sup>7</sup> Hopkin, V.G. Dred Scott's Case, P 63

sought to regulate relations between master and slave, not dissolve the relationship completely. Finally, Taney referenced the writings of his predecessor in 1825, when John Marshall wrote that "...the world has agreed that it [slavery] is a legitimate use of force...by general consent" and therefore authorized by the law of nations. Taney rested on the belief that the Framers had considered their own view of the legality and justness of the issue of slavery and citizenship, and had decided the question in the form of the Constitution, and therefore slaves, even former slaves, in keeping with long standing legal tradition as well as the Constitution, were not to be considered citizens of the United States.<sup>8</sup>

While this was sufficient for the federal question of jurisdiction, discrepancy remained as to whether or not a slave or freed slave was a citizen of a particular state. This question, according to Taney, still did not give Scott standing to sue, because even if a state conferred citizenship upon him, it would not carry the force of law outside of the state, and the state itself would be prohibited to "introduce a new member into the political community created by the Constitution of the United States." Therefore, Dred Scott was not a citizen, and had no standing to sue for relief in federal court.<sup>9</sup>

While contemporary abolitionists argued that slavery was a reprehensible evil and that freed slaves should be treated as citizens of the United States, at least in terms of the right to file suit (although not necessarily equal to that of whites), Taney's deliberations were restricted to the study of history, precedent, and the standing law as to decide question of citizenship. The government and the people of the United States had the authority, in Taney's view, to re-define the law through constitutional amendment, but while this was proposed, it never came to fruition, and thus the supreme law of the land was one in favor of denying citizenship to former slaves. Further justification lay in Taney's belief that "each age fixes the standard of right and wrong, of legality and illegality for itself; and all rights...duties...and obligations descend to the next age, binding it just as they bound the previous age" unless the standard itself is altered. The Framers had spoken, the people had spoken (if through a lack of action to alter the status quo rather than through a direct affirmation of the institution), and therefore precedent bound the current generation.<sup>10</sup>

This is the juncture of the case that received the most criticism, the fact that Taney proceeded to consider the remaining two points of the case (whether or not Negroes could be free by virtue of residency in a free state and the constitutionality of federal laws to the contrary). The question Taney was forced to answer was whether or not further consideration of the case beyond the dispute of standing was to be considered *obiter dicta* of the Court, or binding precedent upon questions of legal error. Taney concluded for the latter, citing three distinct points. First, there was a subtle (yet important difference) between the nature of a writ of error in state court and a writ of error in federal court. The latter required that the entire body of evidence be presented to the appellate body. Therefore, the Supreme Court had the complete record of the case, and was duty bound to correct any errors it saw in the application of federal law (and the Constitution) made by lower courts. Second, the resolution of one error did not automatically prohibit further consideration of any remaining errors to be found in the record. To the contrary, Taney

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<sup>8</sup> Taney, Roger B; Samuel Tyler. Memoir Of Roger Brooke Taney. LL.D. Pn 370-71

<sup>9</sup> Hopkin, V.G. Dred Scott's Case. P 63-64

<sup>10</sup> Taney, Roger B; Samuel Tyler. Memoir Of Roger Brooke Taney. LL.D. Pp 344-45; 372-373

argued that a failure to do so would *de facto* permit the same misconception/application of federal law in the future. Finally, Taney found the need to resolve further error in the Dred Scott case, specifically to address points raised during argument by both counsel that were in error of federal law.<sup>11</sup>

With that as the logical framework for continuing, consideration of the remaining two points of the case was not in fact *obiter dicta*, but rather a ruling on the merits of the case as a whole presented before the Court. To address these issues Taney framed the following questions: "Were the Scotts free by reason of their stay in the territory? If they were not, was Dred Scott himself free by reason of his sojourn to Illinois?" The answer to the first question posed by Taney would also answer the third part of the overall case (whether or not federal regulation prohibiting slaves from *entering and remaining in slavery* between certain states was constitutional), while the answer to the second question just posed by Taney would satisfy the second part of the overall case (whether or not Dred Scott was free by virtue of his stay in a free state). The two answers would have to be inexorably linked, or else be in a self-defeating form of contradiction.<sup>12</sup>

As to the question of Dred Scott's freedom, his counsel had argued that the eighth section of the Missouri Compromise Act of 1820 prohibited slavery beyond the thirty degrees thirty minutes line, and therefore Dred Scott was free by virtue of this Act. In support, counsel cited Congress' expressed authority under the Constitution to "dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Taney made two key distinctions; first he gave a long historical treatise designed to give the clause proper context and meaning at the time in which it was written. Second, and more importantly, Taney distinguished between the property "belonging to the United States" and private property held by the individual. Both rights needed to be guarded with equal care, and as such Congress could not "infringe upon the rights of persons or the rights of property of the citizen." These were specifically enumerated in the Constitution, particularly the Fifth Amendment, which held that no person could be deprived of life, liberty, or property without due process of law. This protection trumped the authority of Congress to regulate property belonging to it (the territories). As a result, the eighth section of the Missouri Compromise Act of 1820 was void, for "an Act of Congress which deprives a citizen of the United States or his liberty or property merely because he came himself or brought his property into a particular territory of the U.S. and who had committed no offence against it could hardly be dignified as due process of law."<sup>13</sup>

The Scotts then were not free because of that provision, and further, the crux of the Missouri Compromise was invalid *prima facie*, for it automatically deprived citizens of their property simply upon geographical movement. The only remaining question to consider was whether or not Dred Scott was free by virtue of his sojourn to Illinois, and on this question Taney deferred in large part to the judgment of the Supreme Court of Missouri, which ruled that he was in fact still property. At that point, the foregoing portions of the opinion controlled, and Dred Scott was neither a citizen (the first question), free (the second), and any federal legislation to the contrary of the first and

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<sup>11</sup> Hopkin, V.G. Dred Scott's Case. P 65-66

<sup>12</sup> Hopkin, V.G. Dred Scott's Case. P 66

<sup>13</sup> Hopkin, V.G. Dred Scott's Case. P 70-71

second points with regards to slaves as property was void via the Fifth Amendment (the final point).

Almost immediately after Chief Justice Taney read his opinion from the bench, an outpouring of sharp and biting criticism surrounded the justice. Accusations took on three major forms, first that his judicial opinion was a reflection of his own views of slavery rather than grounded in actual law, second that he had colluded with incoming president Buchanan, and finally that his opinion was that of a Southerner who was part of a conspiracy to expand slavery throughout the Union. The first point can nearly be dismissed on its face; Taney's written opinion, his deliberations, and his correspondence indicate that his decision was grounded in a belief of the law. While many did and may still disagree with the conclusions drawn from his particular analysis, there is little evidence to suggest that Taney disregarded legal precedent in favor of his own personal opinion. Belief in such a notion would render a long historical account of constitutional provisions, a reflection on the origins of the legitimacy of slavery and a general refraining from active politicking from the bench wholly unnecessary, yet Taney performed all three throughout the case.<sup>14</sup>

The second point was far more serious and was articulated in a much more effective manner than the first. William Seward, a Senator from New York, immediately criticized the decision, being among the first, and certainly among the most vociferous to proclaim it to be *obiter dicta* and thus non-binding. But Taney had already addressed these objections, and thus the thrust of the attack came against his character. Seward first offered a scathing attack on President Buchanan, and then alleged that upon his election the Supreme Court and Taney approached him personally and made him aware of the case. Furthermore, he alleged that the Court was prepared to simply dismiss the case for want of jurisdiction (a conclusion that could have been reached after a finding that Dred Scott was not a citizen) but instead Taney desired to offer a plum to the new president, and therefore seized the opportunity to declare the Missouri compromise unconstitutional, solidify the principle of slaves as property, and as such force slavery throughout the United States "paramount to any popular sovereignty [(a reference to the Kansas-Nebraska Act, which was also Constitutionally suspect after the decision)] within the territories, and even to the authority of Congress itself." In so doing, the Court forfeited its dignity, unto which it had always held.<sup>15</sup>

The most powerful evidence *against* such claims of collusion came from letters of correspondence between two other justices, S. Nelson and J.A. Campbell, who heard the case, and Samuel Tyler, co-author of Taney's Memoirs. In each letter, the accusations are deemed "calumnious and spiteful," and a review of both the case and the actions of the Chief Justice were included. In both letters, Taney is seen neither communicating with Buchanan concerning the case, nor preparing any opinion or deliberation with anyone other than his fellow justices.<sup>16</sup>

Evidence of actual collusion is lacking not only because of the letters to the contrary, but also because of the lack of evidence of outside thought during Taney's deliberations with his fellow justices. Taney very well may have communicated with

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<sup>14</sup> Taney, Roger B; Samuel Tyler. Memoir Of Roger Brooke Taney. LL.D. P 373

<sup>15</sup> Taney, Roger B; Samuel Tyler. Memoir Of Roger Brooke Taney. LL.D. P 376

<sup>16</sup> Taney, Roger B; Samuel Tyler. "Various Correspondence." Memoir Of Roger Brooke Taney. LL.D. Pp 384

President Buchanan, and may have even allowed him to see an advance copy of the opinion, but the heart of Seward's claim is that there was a form of corrupt bargaining between Taney and Buchanan, and no such direct evidence is in support of it. More than likely, Seward was dissatisfied with the outcome to the point where he would place Taney in the center of what he and many other Northerner's believed to be a Southern conspiracy against the anti-slavery movement.

Thus the third point of criticism's veracity (that of Taney being a part of that conspiracy by virtue of being a Southerner in support of the institution) is the most difficult to determine. Almost immediately, he was absolved from this charge by newspapers, with the Cincinnati Enquirer condemning the attacks against him saying "Mr. Taney personally is opposed to slavery in principle and practice. The position he took was the result of a mistaken sense of duty and not of any partiality for slavery." Historians throughout history have furthered this view by arguing that Taney favored gradual emancipation, that slavery was against his conscience and that in truth he was an abolitionist at heart.<sup>17</sup>

Yet these sentiments, while endearing to the Chief Justice, in fact deny his record prior to the case. As discussed beforehand, he favored allowing the states themselves to choose their own courses of actions on numerous questions of economic and social liberty. This would go starkly against the abolitionist stance that slavery should be abolished by edict of the federal government. Even his written opinions, especially *Prigg* and *Groves*, reflected a very strong sentiment *in favor* of slavery and in the preservation of the institution. To deny that Taney was in fact a Southern gentleman is to deny the reality of who sat at the head of the Court. Up until just before the Dred Scott decision, Taney had become vehement and even partisan in his defense of slavery, but always within the bounds of the law afforded to him.<sup>18</sup>

Thus it is not a contradiction to say that Taney personally favored slavery but did not substitute his own passionate belief for it in place of the law. Rather, Taney believed that the law did in fact support his beliefs, and a critical analysis of the standing law and precedent of the time would tend to indicate that the notion of abolition in the Untied States was the *radical* option at the time, whereas the status quo was a maintenance of slavery as determined by the will of the individual states, the same state authority that Taney supported, especially when juxtaposed to Marshall. Thus the opinion written by Taney was founded upon tested legal grounds that went against the growing grain of the North, and ultimately would be meted out on the fields of battle.

As to the question of whether or not Taney's opinion served as the principal catalyst for the Civil War, a reasoned analysis would reveal that it certainly participated in the process, but was not in and of itself overtly responsible. The decision itself was both highly formal and emotional in its delivery, and certainly contributed to growing sectional animosity. Yet other important events would occur post-Dred Scott, including the raid on Harper's Ferry and the publishing of *Uncle Tom's Cabin*, which was without a doubt read by many more citizens than Taney's opinion was. In the end, the relationship

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<sup>17</sup> Fehrenbacher, Don E. *The Dred Scott Case: Its Significance in American Law and Politics*. P 560

\*Quoted from subsection marked with \*

<sup>18</sup> Fehrenbacher, Don E. *The Dred Scott Case: Its Significance in American Law and Politics*. P 560

between Roger Taney's Dred Scott opinion and the start of the civil war is contributory, but not necessarily causal.<sup>19</sup>

Thus despite claims to the contrary, a careful analysis of Roger Taney reveals a Southern man, believing in slavery, but believing above all in the rule of law. Taney believed that the Constitution as written, combined with the history, precedent, and status quo of the nation, supported the institution of slavery. Thus in Dred Scott's case it was a simple logical progression that led to the decision. Slaves were property. Dred Scott, being a slave, was property. Also as a condition of slavery, he was not a citizen, and therefore could not sue. Further, property could not be denied without due process of law, something geographical movement did not raze, and finally, attempts at federal legislation in contradiction of these points were to be held void. Roger Taney's Opinion of the Court was thus a product of reasoned jurisprudence; open to disagreement, but not to be reduced to mere personal preference of the author.

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<sup>19</sup> Fehrenbacher, Don E. The Dred Scott Case: Its Significance in American Law and Politics. P 562

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