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Roger Taney: One Mean Supreme

George Washington owned slaves. So did Thomas Jefferson and half the other Founding Fathers. Roger Taney willingly freed his slaves out of personal principle yet it is his reputation that has been forever tarnished by his association with the "peculiar institution." Raw deal? Well, not if you consider that it was Taney, the chief justice of the United States Supreme Court, who tried to cram the legitimization of human bondage into the Constitution. With the *Dred Scott* decision of 1857, Taney affirmed the concept that blacks were an inferior race with no rights of citizenship under the law. Furthermore, he declared that Congress had no right to limit the expansion of slavery into U.S. territories. Taney actually believed the decision would settle the long-festering slavery issue once and for all. Instead, *Dred Scott* inflamed it even further, dragged the nation closer to civil war, and, in the words of Representative Thaddeus Stevens of Pennsylvania, "damned the late chief justice to everlasting fame and I fear everlasting fire."

The Dred Scott case was fairly routine in the beginning, a decade before Roger Taney got his hands on it and made it a landmark decision. Back in 1846, it was simply about a slave named Dred Scott

who sought freedom for himself and his family by suing for it in the Missouri circuit court. Scott had good reason to believe then that he would prevail. His owner, an army surgeon, had brought Scott and his family from Missouri to live with him at U.S. Army posts in Illinois and in the Wisconsin Territory, both of which prohibited slavery. Missouri courts in the past had granted freedom to enslaved persons whose owners had taken them for extended periods of residence into free states or territories under the legal principle "Once free, always free." Scott won in the circuit court, but the verdict was appealed, and the politically charged proslavery Missouri Supreme Court reversed it. Dred Scott was still a slave in the eyes of the law. After this setback, Scott sued for freedom in federal court, but there, too, he lost. Finally, after a nearly decade-long legal odyssey, he appealed to the U.S. Supreme Court. He didn't stand a chance.

Dred Scott was facing a nine-member court of which the majority were proslavery Democrats. Chief Justice Taney, having served in that capacity for nearly two decades, enjoyed a decent reputation, but, as historian Kenneth M. Stampp writes, "his judicial robes had only partially concealed his persistent partisanship, especially on matters relating to slavery and the sectional conflict." Furthermore, Scott, though ably represented by his lawyer, Montgomery Blair, had to contend with a formidable team of opposing attorneys who argued that as a black man he was not a U.S. citizen and therefore should never have been permitted to file his suit. They also argued that when Scott was returned to Missouri, his status as a slave was determined by that state's laws, not those of Illinois. The same concept applied to his return from the Wisconsin Territory, although the opposing attorneys broadened the argument considerably when they asserted that the restrictions against slavery imposed by Congress in the various territories under the Missouri Compromise of 1820–21 were unconstitutional in the first place. It was this argument, asserts historian Don Fehrenbacher, that converted "Dred Scott's private case . . . into a public issue," and turned the Supreme Court into a "public arena."

Given the composition of the court and the tenor of the times, Dred Scott's quest for freedom appeared to be doomed. "It seems to

be the impression," wrote Montgomery Blair, "that the Court will be adverse to my client and to the power of Congress over the Territories." Blair probably never imagined just how adverse it would be. On the morning of March 6, 1857, a crowd of reporters and spectators crammed into the Supreme Court chamber, then housed in the U.S. Capitol building, to hear the aged and infirm chief justice deliver the court's opinion. With trembling hands and feeble voice, Taney read for more than two hours. His voice may have been weak, but, writes Kenneth Stampp, "his words were not, for they bristled with uncompromising defiance of abolitionists, free soilers, and Republicans." In what Stampp calls "a breathtaking example of judicial activism," Taney had practically rewritten the Constitution to conform to his own proslavery agenda.

The chief justice devoted nearly half of his opinion to the issue of Dred Scott's right "to sue as a citizen in a court of the United States." The question, he said, was whether black people were to be regarded as members of the political community, "and as such become entitled to all the rights and privileges, and immunity guaranteed by [the Constitution] to the citizen." The answer, Taney declared, was *No.* When the Constitution was framed, he reasoned, blacks were regarded "as a subordinate and inferior class of beings, who . . . had no rights or privileges but such as those who held the power and the Government might choose to grant them." In other words, although blacks were not specifically barred from citizenship under the Constitution, that was implicit in the framers' racist attitudes toward them.

To reinforce the argument, Taney dragged in the Declaration of Independence, saying in effect that the assertion "all men are created equal" really meant all *white* men. Blacks, he wrote, were not "acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument." In the "civilized and enlightened portions of the world," they were then considered "altogether unfit to associate with the white race . . . and so far inferior, that they had no rights which the white man was bound to respect; and . . . might justly and lawfully be reduced to slavery for his benefit." Therefore, it was "too clear for dispute, that the en-

slaved African race . . . formed no part of the people who framed and adopted this declaration." The same was true for the Constitution, he said, because racial opinions were no different by the time it was framed.

After this imaginative foray into the minds and intentions of the Founding Fathers, which he conjured to deny citizenship for blacks, Taney moved on to the issue he was certain would silence the antislavery movement forever: Whether or not Congress had the power to legislate slavery in the territories, as it had for seven decades. Were Dred Scott and his family free because of their stay in a territory where slavery was prohibited by the Missouri Compromise? Not in Taney's view, because Congress never had the authority to restrict slavery in a territory to begin with. The provision in the Constitution that allowed Congress to "make all needful rules and regulations" regarding the territories, Taney said, only applied to those belonging to the United States in 1787, not those subsequently acquired. "It was," he wrote, "a special provision for a known and particular territory, and to meet a present emergency, and nothing more." It was certainly not to give "supreme power of legislation." The territories acquired since 1787, Taney asserted, were not intended to be held as colonies "and governed by Congress with absolute authority." Nor could citizens who migrated to a territory "be ruled as mere colonists, dependent upon the will of the General Government, and to be governed by any laws it may think to impose." Also, the people of a territory had the Fifth Amendment on their side, protecting the rights of private property. And that property included slaves! So, because the Taney Court had decided that the prohibition of slavery in the Wisconsin Territory (as well as the others) was unconstitutional, and thus void, it followed, as Taney wrote, "that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory."[1]

As Kenneth Stampp writes, "The Court's opinion meant, of course, that not only the slavery provision of the Missouri Compromise but all other acts of Congress excluding slavery from various territories had been equally unconstitutional. A restriction thus imposed on congressional power to govern the territories, unmentioned in the Constitution, unknown to its framers, undisclosed for many years thereafter, but recently devised by . . . pro-slavery partisans, was now, according to the opinion of the court, the law of the land."

1. As to Scott's stay in the free state of Illinois, Taney applied an earlier Supreme Court ruling and declared that the laws of Missouri applied, not those of Illinois.

Reaction to the *Dred Scott* decision from abolitionists and other slavery opponents was furious. Representative John F. Potter of Wisconsin (by then a state) called it "sheer blasphemy . . . an infamous libel on our government . . . a lasting disgrace to the court from which it was issued and deeply humiliating to every American citizen." The *Chicago Tribune* branded the opinion "shocking to the sensibilities and aspirations of lovers of freedom and humanity," while the *New York Tribune* declared that the decision "is entitled to just so much moral weight as would be the judgment of a majority of those congregated in any Washington bar-room." In the *New York Evening Post,* William Cullen Bryant asked, "Are we to accept, without question, these new readings of the Constitution—to sit down contentedly under this disgrace—to admit that the Constitution was never before rightly understood, even by those who framed it—to consent that hereafter it shall be the slaveholders' instead of the free men's Constitution? Never! Never!"

Proslavery factions, on the other hand, were ecstatic. Abolitionism, proclaimed the Richmond *Enquirer,* had been "staggered and stunned," and the "diabolical doctrines" of Northern fanatics repudiated. Never before, said the Chicago *Times,* had the "creed of an entire political party [the Republicans] been swept away from the consideration of all honest people, by the solemn and profound adjudication of the supreme tribunal."

But the Republican party was hardly swept away by the *Dred Scott* decision; rather, it was given renewed energy and focus that helped elect Abraham Lincoln in 1860. As the abolitionist and former slave Frederick Douglass said in a speech, "All measures devised and executed with a view to . . . diminish the antislavery agitation, have only served to increase, intensify, and embolden that agitation."