

The Worst Decision Ever?

Dred Scott lost in the Supreme Court, but he blazed a legal path that others would follow.

By Stuart Streichler

One hundred fifty years ago last Tuesday, the Supreme Court decided one of its most sensational cases. By a 7-2 margin, the justices ruled against Dred Scott, a slave from Missouri.

Although the Court's opinion in *Dred Scott v. Sandford* (1857) did not last long as an authoritative statement of the law, it marked a critical point—perhaps the most critical—in the long constitutional contest over race and equality.

In the 1830s, Scott's owner had taken him to Northern territory, where slavery had been banned by the Missouri Compromise, enacted by Congress in 1820. After returning to St. Louis, Scott claimed he was free, even in a slave state, by virtue of his prior residence on free soil.

Scott sued with his wife, Harriet. After several years in the state judicial system and winning a jury verdict that was reversed on appeal, Scott went before the federal court in St. Louis. He had to assert his citizenship to file a lawsuit there—a fateful requirement—and when he lost, his case came before the nation's highest court.

On the morning of March 6, 1857, the Supreme Court's nine justices took their seats before a packed courtroom. Chief Justice Roger Taney read the Court's opinion for more than two hours. He was tired, his hands were shaking, and spectators could hardly hear him. His voice was "feeble," reported the anti-slavery *New York Tribune*; "still feebler" was "what he had to say."

Taney said the federal courts could not hear the case because Scott was not a citizen. Slave or free, African-Americans were not U.S. citizens, according to the chief justice, and they never could be. He also declared the Missouri Compromise unconstitutional, marking the first time since *Marbury v. Madison* (1803) that the Supreme Court had struck down an act of Congress.

The question about the Missouri Compromise—involving the expansion of slavery—was the hot-button issue of the times. Many Americans believed slavery could not survive without

spreading west. Abolitionist Charles Sumner was characteristically blunt: Slavery would die "as a poisoned rat dies of rage in its hole" if confined to existing slave states. By denying Congress authority to prohibit slavery in any territories, the decision put an end to the political compromises that had kept North and South together during the antebellum period.

What left a lasting impression, though, was the opinion's unrelenting discussion of citizenship and race. In one passage, Chief Justice Taney described African-Americans as "beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect." This was the state of opinion at the nation's founding, Taney explained. African-Americans were not among "all men" created equal of the Declaration of Independence. Nor were they part of the Constitution's "We the People of the United States."

Not content to describe the view at the founding or its effect in 1857, Taney sought to determine the future. He said the Constitution speaks with "the same meaning and intent" as when it was adopted. The only way to confer citizenship on African-Americans was to amend the Constitution, a prospect Taney considered inconceivable.

Frederick Douglass sized up the opinion as well as anyone. It was, he said, the "judicial incarnation of wolfishness."

'CANNOT BE OBEYED'

In the attempt to settle everything, Taney provoked a reaction unlike any the Court had previously experienced. Opinion divided along sectional lines, as might be expected. The decision on the territories was widely condemned in the North.

Although racial discrimination was pervasive throughout the country, there was a sense that Taney had gone too far on the question of citizenship. Abolitionist challenges to the Supreme Court's authority were nothing new. As one anti-slavery editorial declared, the decision was the "Moral Assassination of a Race and Cannot be Obeyed." It was more surprising when state leg-

islatures such as Maine's joined in, resolving that the decision was "not binding in law or conscience."

For Scott and his family, the outcome of the case was only a temporary setback. Within two months, they had a new owner who emancipated them.

The Supreme Court's decision had a more complicated legacy. Historians consider the case one of the key events on the road to the Civil War. For students of American constitutional law, the decision represents a classic illustration of judicial overreaching, even hubris. Some consider it the Supreme Court's worst decision.

As legal precedent, Taney's opinion was short-lived. Slavery, of course, was undone by the war and formally abolished by the 13th Amendment, rendering Taney's position on the territories meaningless. Less than a dozen years after the decision, the 14th Amendment specifically overturned the Court's ruling on citizenship. "All persons born or naturalized in the United States," the amendment said simply, are "citizens of the United States." It also prohibited the states from violating the rights of U.S. citizens or denying persons equal protection of the laws.

As historian James McPherson has suggested, we will never know whether the 14th Amendment would have had such broad protections if Taney had not written his opinion in *Scott v. Sandford*. That is one reason why the case still looms large after all these years.

RACE IN COURT

If asked today to locate the precise moment in American history when racial issues became inextricably bound up with judicial interpretations of the Constitution, we might think first of the civil rights revolution of the mid-20th century, particularly *Brown v. Board of Education* (1954). Or perhaps we would take note of the Supreme Court's decision approving Jim Crow segregation in *Plessy v. Ferguson* (1896). Or we might consider the

ground laid for these historic cases by the adoption of the Reconstruction amendments.

The Dred Scott case is the forerunner to all of that. That litigation framed issues of race and rights that have stuck with us in one form or another. There is no reason to believe Scott meant to lay before the nation the fundamental question of the standing of African-Americans in the United States, but that is what followed from his legal declaration that he was a citizen.

He had struck a nerve with his federal lawsuit. Freedom suits were not unprecedented in the antebellum period, and slavery was no stranger to the Supreme Court's docket then, but Scott's claim of citizenship highlighted a fundamental contradiction in America on the eve of civil war. Claimed as a slave, he considered himself free—a citizen, no less—and he was willing to go to court to prove it.

Dred Scott is often taken to represent America as it was, but Scott really left us with a glimpse of America as it could be. Historians know few details about his life, and why he persisted in pursuing his legal claims remains a mystery. He evidently believed he had rights the courts would confirm. In that sense, Scott's decade-long effort to secure freedom in court anticipated the extended legal struggle for civil rights in the 20th century.

Historians don't often think of Dred Scott blazing a path in the law. Yet when all is said and done, he will always have a place at the head of a long line of Americans who, however they fared in court, shaped the Constitution's meaning by the force of their simple assertions of the right to go to school and work, speak, protest, and live in freedom.

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