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[Home](#) > [Vol 1, No 2 \(2009\)](#) > [Johnston](#)

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## Dred Scott's Expansion in Judicial Power and Augmentation of Sectional Conflict

### Mark Johnston

As the sole unelected branch of the federal government, the role of the Supreme Court continues to be scrutinized and debated by politicians nationwide. In addressing the function of the court, Alexander Hamilton wrote: "It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts."<sup>[1]</sup> The political authority and solidarity of the court was first truly tested by the issue of slavery. In 1857, a case resonating from the Louisiana Court of Appeals prompted Chief Justice Roger Taney to attempt to unilaterally resolve the issue of slavery with the use of unprecedented judicial power. The Chief Justice's effort to resolve the slavery issue instead transformed the "peculiar institution" of the South into "a federal institution, the common patrimony and shame of all the states."<sup>[2]</sup> Taney's extension of judicial influence not only reflected his personal political inclination towards unilateral action, but also increased sectional animosity throughout the nation. Due to Taney's majority opinion in *Scott v. Sandford*, past negotiations about slavery were nullified and war became the only viable option for restoring the Union.

#### *The Development of the Court, the Rise of Roger Taney, and Expanding Bitterness*

In order to accurately comprehend the ramifications of Taney's majority opinion in *Dred Scott*, it is imperative to understand the court prior to 1857. In Federalist 78 (1788), Alexander Hamilton referred to the court as "the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them."<sup>[3]</sup> The Constitution produced by the 1787 Philadelphia convention was particularly vague in addressing the power of the court. As a result of this imprecise authority, the court was not categorized as a desirable occupation for public servants. For example, after being appointed as the first Chief Justice of the Supreme Court, John Jay promptly resigned to pursue the governorship of New York. According to judicial historian Henry J. Abraham, "Jay's view of the young Supreme Court was an inauspicious body, characterized by little work, dissatisfied personnel, and a lack of

Mark Johnston

popular esteem and understanding."<sup>[4]</sup> Additionally, politicians were dissuaded by associate justices' obligation to "ride circuit," or travel hundreds of miles to preside over certain appellate courts. The prestige and prominent legal authority that marks the contemporary court was not established until 1801, with John Adams' appointment of John Marshall to the position of Chief Justice.

Within two years of being appointed, Marshall revolutionized the third branch of government by substantially augmenting its power in the American political system. In *Marbury v. Madison* (1803), Marshall used the court's interpretative authority to strike down an act of Congress as unconstitutional. With his majority opinion in *Marbury*, Marshall transformed the court into an institution of oversight, and subsequently afforded the court the power of judicial review. Marshall contested in his opinion that "all laws which are repugnant to the constitution are null and void,"<sup>[5]</sup> and thus granted the power to the judiciary to interpret and eradicate acts of Congress. Marshall utilized judicial review to apply his radically federalist agenda by extending the court's jurisdiction over states,<sup>[6]</sup> recognizing the constitutionality of the National Bank,<sup>[7]</sup> and by limiting President Jackson's influence on American-Indian removal.<sup>[8]</sup> Marshall's death in 1835 concluded his historic 34-year tenure, and moreover gave the Jackson administration the opportunity to appoint a new Chief Justice. In regards to Jackson's criteria for appointing Marshall's replacement, historian Henry Abraham wrote, "He was determined to reward the party faithful; if that meant extending his much-vaunted spoils system to include nominees to the highest judicial body in the land, so be it."<sup>[9]</sup> Jackson's appointment of Roger Taney as Chief Justice engendered the political cronyism that defined his patent "spoils system." Taney's willingness to rely on unilateral decision-making coupled with his general disregard of historical political precedent persuaded Jackson to appoint his longtime collaborator and ally to the bench.

During the Jackson administration, and prior to his Supreme Court appointment, Taney had fashioned himself a renowned political reputation as a devoted Jacksonian Democrat and advocate of the president. In repayment for his abiding commitment to the President, Jackson appointed Taney to a number of positions including Chairman of the Central Committee of Maryland and Attorney General of the United States.<sup>[10]</sup> His most contentious nomination came in 1832, when Jackson selected Taney to become the Secretary of the Treasury, on a recess appointment. The cabinet vacancy was caused by Jackson's continued debate with Congress over the Second National Bank. Jackson argued that executive power permitted him to unilaterally close the National Bank. The three previous Treasury Secretaries rejected Jackson's demands to transfer government funds to privatized institutions, a move that would have certainly sabotaged the National Bank. President Jackson depicted his Secretaries as insubordinate, and fired them upon their refusal to act. Jackson appointed Taney during a congressional recess because of his pledge to resolve the banking crisis by complying with Jackson's agenda. Taney's management of the Second National Bank verified his willingness to expand the court's constitutional authority in order to

solve national controversy. Taney's inclination to rely on his personal judgment persuaded him to attempt to solve the slavery crisis in *Dred Scott*.

Due to Taney's radical extension of executive power, the Senate rejected his confirmation as Treasury Secretary when they reconvened in 1834. Jackson, angered by the Senate's action, wrote to Taney, "For the prompt and disinterested aid thus afforded me, at the risk of personal sacrifice which were then probable and which has now been realized, I feel that I owe you a debt of gratitude and regard which I have not the power to discharge." [11] Jackson got his chance to repay his debt in 1835, when Chief Justice Marshall died. Jackson submitted the loyal Taney as his nomination to be the highest jurist in the nation. The Senate demonstrated minor resistance to Taney's confirmation and he was accepted with a 29 to 15 vote, but was opposed by Henry Clay, Daniel Webster, and John C. Calhoun. [12] Upon becoming the fifth Chief Justice of the United States, Taney's views on slavery were uncertain. Taney was an adamant advocate of state's rights and argued that the federal government had no jurisdiction in regulating slavery. However, he morally disagreed with slavery, and liberated his personal slaves 30 years before being confirmed to the court. [13] Taney even signed the majority opinion that afforded *habeas corpus* to the crew of the *Amistad*. Chief Justice Taney's moderate moral position on slavery confirmed that his majority in *Dred Scott* was not blatant social racism, but was an effort to resolve an issue that very literally divided America. Upon granting a *writ of certiorari* to *Scott v. Sandford*, Taney decided to become the mediator of an issue that redefined the national identity.

When the court granted the writ of certiorari to Dred Scott's petition, the nation was already on the threshold of division. The issue of slavery highlighted the polarization of geographic regions that had been in existence since the inception of western civilization on the North America continent. In a letter to his friend John Holmes, Thomas Jefferson portrayed the issue of slavery as, "a firebell in the night [that] awakened and filled me with terror." [14] This exceptionally divisive issue not only plagued politics and created divisions, but also transcended to the economy and society. While the Northern economy developed a productive infrastructure and manufacturing system, the Southern economy still depended exclusively on slave labor. *Uncle Tom's Cabin*, and William Lloyd Garrison's *The Liberator*, additionally propelled the slave debate into mainstream popular culture. Northern politicians became disillusioned with Congressional and Presidential action. Countless Americans felt that the federal government was not representing the will of the people, but the interests of a "slave power." Congressional support for the Mexican-American War (1846), The Gadsden Purchase (1854), and the Kansas-Nebraska Act (1854) further enraged Northern politicians. In debate over the Gadsden Purchase, one Ohio Congressman summarized Northern rhetoric when he claimed, "It is inconsistent with the genius of our institutions, and injurious to the character of the United States, to extend slavery." [15] The South on the other hand, felt that the North was attempting to corrupt an institution, which was engrained in their economic and social history. The Fugitive Slave Law of 1850 exemplified Southern efforts to permanently institute slavery

Mark Johnston

protections in federal statutory law. The deadlock over slavery that beleaguered Congress throughout the 1850s persuaded numerous politicians to encourage the Supreme Court to consider the slavery issue. Countless members of Congress felt that representative democracy had failed when confronted with the slavery debate, and many had assurance that the Supreme Court could finally bring closure to this troublesome issue. Ironically, political confidence in the court diminished after the *Scott* decision amplified hostility against slavery throughout the North.

#### *Taney's Detrimental Majority*

After he won a decisive victory in the election of 1856, the "doughface" President James Buchanan was challenged by the slavery issue two days into his presidency. On March 6<sup>th</sup>, 1857 the court announced its opinion in *Dred Scott v. Sandford*. Writing for the majority, Chief Justice Taney attempted to decisively conclude the slavery debate in America. In the first portion of his ruling, Taney determined that slaves were not citizens of the United States, but were merely property. Taney concluded that since slaves were equivalent to property, they had no right to petition any court in the United States, and specifically the Supreme Court had no jurisdiction to liberate Scott. The opinion stated: "The court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen, in the sense in which that words is used in the Constitution of the United States, then the judgment of the Circuit Court is erroneous, and must be reversed."<sup>[16]</sup> Although many legal historians argue that the court had no standing to make a ruling after invalidating the jurisdiction of Scott's claim, Taney asserted that since slaves were property, they were warranted no constitutional protection.<sup>[17]</sup> Taney justified his position by arguing that at the time of the drafting of the Declaration and ratification of the Constitution, slaves were not recognized as equal persons. The Chief Justice pointed to Article I, Section II, Clause III which stated, "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons."<sup>[18]</sup> The court's recognition of slaves as property not only ceased all gains made towards emancipation, but also guaranteed whites a right to own slaves as protected by the Fifth Amendments due process clause.

After denying Scott's claim, Taney struck a fatal blow to slave concessions that ultimately complicated negotiations between the North and South. Taney asserted that slaves' standing as legal property made it unconstitutional for Congress to regulate the institution in the territories. Since the Missouri Compromise clearly prohibited involuntary servitude in certain geographic regions, it was subsequently deemed unconstitutional. While Article IV, Section III gave Congress the authority to "dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States,"<sup>[19]</sup> Taney felt that property regulation exceeded the authority of the legislature. He wrote, "The words rules and regulations are usually employed in the Constitution in speaking of some particular

specified power which it means to confer on the Government, and not, as we have seen, when granting general powers of legislation."[\[20\]](#) Although Taney cited no court precedent or rhetoric of the founders at this portion of the opinion, this verdict proved to be the most devastating to the stability of the Union.[\[21\]](#) The Missouri Compromise, and subsequent minor conciliations, had held the Union together for multiple decades. The *Dred Scott* opinion additionally exempted all future territories from Congressional regulation over slavery. This palpably threatened the legislative equilibrium between slave and free states. With one decision, the Supreme Court invalidated all of the negotiations of the past 37 years, which permitted the United States to at least appear to be a cohesive nation.

Taney's majority opinion embodied the unilateralist fortitude that persuaded President Jackson to appoint him in the first place. Chief Justice Taney had previously indicated his willingness to use unilateral authority during the controversy over the Second Bank of the United States. The majority opinion clearly verified Taney's resolution to decisively bring closure to the slavery debate. According to Civil War scholar Don Farenbacher, "He [Taney] was, in fact, determined to rule on the constitutionality of the Missouri Compromise restriction, and his strategy clearly reflected that determination."[\[22\]](#) The longing of the Chief Justice to have the court act as the final arbiter over the divisive issue of slavery, even created extensive tension between Taney and certain Associate Justices. While Taney exceeded the compulsory five-vote majority, the dissenting justices felt that the court had sidestepped democracy in an attempt to solve the slave crisis. The tension in the Supreme Court chambers became so passionate, that Chief Justice Taney prohibited his clerk from delivering dissenting Justice Benjamin Curtis a copy of the majority opinion.[\[23\]](#) Even though Chief Taney's considerable expansion of judicial authority shocked the Northern population, it is particularly illustrative of Taney's personal political ideology.

#### *Scott as a Catalyst for Secession & War*

The judgment in *Scott v. Sandford* generated immense pandemonium in the North, and received ample praise throughout slave states. Taney attempted to ultimately conclude the slave controversy in the United States, and would end up augmenting sectional tensions. *The New York Herald* wrote, "*Dred Scott* and the decision which bears his name will be familiar words in the mouth of the ranting demagogue in rostrum and pulpit, and of the student of political history."[\[24\]](#) The decision augmented the Northern paranoia of a government controlled by a "slave power." The opinion provided a rallying point for energetic abolitionists against the "slavocracy" who they felt dominated the politics of the nation. The *New York Times* referred to Dred Scott personally as, "His name will live when those of CLAY, and CALHOUN, and BENTON will be feebly remembered or wholly forgotten."[\[25\]](#) The *Scott* decision reenergized the abhorrence for slavery and encouraged abolitionists to intensify their rhetoric. The escalation of national hostility expanded sectional animosity so extensively that the South deemed differences between themselves and the North irreconcilable, and subsequently abandoned the Union.

Mark Johnston

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Taney's opinion invigorated Northern suspicions, but it made the issue of slavery irreconcilable. In order to permanently reverse the *Scott* decision, the legislature would have to pass a Constitutional amendment recognizing African-Americans as citizens, which they would only do after the carnage of the Civil War (Fourteenth Amendment, 1868). Since only the southern states in the Union favored slavery expansion, neither of these proposed amendments would have earned the votes necessary for passage before the Civil War. The republican government mixed in a deadlock over slavery, looked to the court as the final magistrate in the growing sectional crisis, but received instead an opinion that increased hostility. Taney's opinion was an unmistakable attempt to resolve a crisis that had confronted the nation since the Philadelphia Convention in 1787. Taney biographer, Charles Smith, explained Taney's intension, "to save the Union by protecting property rights guaranteed in the Constitution."<sup>[26]</sup> Ironically, the Taney opinion helped push the divided nation on a path for war. Besides eternally engraining discrimination in Constitutional precedent, the *Scott* decision destroyed the compromises that had held the nation together for more than a generation. The termination of all previous conciliations on slavery destroyed the only safeguard that had managed to keep a polarized nation united.

#### *From Unilateralism to War*

As the ineffective Buchanan administration came to a conclusion in 1861, the United States was literally divided. During his renowned debates with Senator Stephan A. Douglas, Buchanan's successor Abraham Lincoln asserted the following about *Dred Scott*: "I agree with Judge Douglas (dissenting justice) he is not my equal in many respects-certainly not in color, perhaps not in moral or intellectual endowment. But in the right to eat the bread, without the leave of anybody else, which his own hand earns, he is my equal and the equal of Judge Douglas, and the equal of every living man."<sup>[27]</sup> Although Lincoln was not a rampant abolitionist, his moderate apprehension towards the *Dred Scott* decision encouraged numerous Southerners to believe that his presidency brought radical Northern politics to the White House. Lincoln's interpretation of Constitutional law caused him to have a different interpretation of Scott's legal claims than Chief Justice Taney. Taney's attempt to protect the Union with his "final judgment" on slavery provoked the animosity that Lincoln would employ on his rise to the Presidency. The *Dred Scott* opinion not only significantly expanded the authority and influence of the Supreme Court, but it demonstrated the determination of Taney to unilaterally solve the slavery debate. Almost a century later, the same public complaint of judicial activism that marked Taney's tenure, was applied to Chief Justice Warren desegregation of America's school. While Taney's utilization of judicial review engrained American law with racism, Warren's decision enabled millions of African-Americans to build an educational base to overthrow the shackles of tyranny, which plagued this minority population for centuries.

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Mark Johnston

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[2] James McPherson, *Battle Cry of Freedom* (Oxford: Oxford University Press, 1988), 176.

[3] Madison et al., *The Federalist Papers* (New York: Penguin Classics, 1987), 436.

[4] Henry J. Abraham, *Justices, Presidents and Senators* (Plymouth: Rowman & Littlefield Publishers, 2008), 67.

[5] *Marbury v. Madison*, 5 U.S. 137 (1803).

[6] *Gibbons v. Ogden*, 22 U.S. 1 (1824)

[7] *McCullough v. Maryland*, 17 U.S. 316 (1819)

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[11] Samuel Taylor, *Roger Brooke Taney* (Baltimore: J Murphy, 1872), p 223.

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[16] *Scott v. Sandford*, 60 U.S. 393 (1857).

[17] Don Fehrenbacher, *The Dred Scott Case* (Oxford: Oxford University Press, 1978), 336.

[18] U.S. Const. art. I, § 2, cl. 3.

[19] U.S. Const. art. 4, § 3,

[20] *Scott v. Sandford*, 60 U.S. 393 (1857).

[21] Don Fehrenbacher, *The Dred Scott Case* (Oxford: Oxford University Press, 1978), 367.

[22] Don Fehrenbacher, *The Dred Scott Case* (Oxford: Oxford University Press, 1978), 366.

[23] David O'Brien, *Storm Center* (New York: W.W. Norton & Company, 2008), 116.

[24] Don Fehrenbacher, *The Dred Scott Case* (Oxford: Oxford University Press, 1978), 568.

[25] "Dred Scott," *New York Times*, September 21, 1858, p. 4.

[26] Charles W. Smith, Jr., *Roger B Taney: Jacksonian Jurist* (Chapel Hill, N.C., 1936), 154.

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Mark Johnston

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