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After 150 Years, Worst Supreme Court Decision Ever Continues to Haunt

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After 150 years, worst Supreme Court decision ever continues to haunt

Wednesday, March 07, 2007 Michael Higginbotham

On March 6, 1857, Chief Justice Roger Taney of Maryland authored the United States Supreme Court's *Dred Scott v. Sandford* opinion, declaring that it had no jurisdiction to hear Dred Scott's claim to freedom because he was Black and, therefore, not a citizen of the United States. The case had been set in motion almost 25 years earlier, when Dr. John Emerson, a physician in the United States Army, voluntarily took his slave, Dred Scott, from Missouri, a slave state, to the free state of Illinois. After returning to Missouri, Scott filed suit claiming that by virtue of his time in Illinois, he became a free person consistent with Illinois law. In holding against Scott, Taney reasoned that residence in a free state did not automatically eliminate slave status. That determination was left to the state having jurisdiction over the trial, and Missouri had already determined that, despite his stay in Illinois, Scott was still a slave.

Dred Scott's legacy lies in the Supreme Court's determination that Blacks, whether slave or free, were not citizens and therefore were not entitled to Constitutional protection. Despite being born in the United States, possessing citizenship in a free state, or having served in the United States Armed Forces, Blacks were viewed by the majority of justices as belonging to "an unfortunate race." Unfortunate, because Justice Taney reasoned that Blacks were viewed by the founding fathers as socially and legally inferior to Whites. Accordingly, Scott's color, not his free status, determined his rights under the law. Whether slave or free, Taney declared Blacks to be "so far inferior, that they had no rights which the White man was bound to respect." With these words, the confusion surrounding constitutional rights held by free Blacks was clarified. While slavery was a despicable institution that should have been eradicated, the truth of the matter is that the original constitution permitted its existence. The real tragedy of Dred Scott is that the Supreme Court went well beyond the founding fathers' express direction by denying rights to free Blacks as if they were slaves.

The fundamental flaw in the Dred Scott decision was the courts lumping of free Blacks and slaves together. Scott did not argue that slaves had rights. He argued that free Blacks had rights and that he was free by virtue of having been brought voluntarily by his owner to a free state. Scott viewed his transportation to a free state as an act of manumission since Dr. Emerson had knowledge of Illinois law prohibiting slavery when he brought Scott to Illinois. The court ignored this argument claiming that it did not matter whether Scott was slave or free because he was Black. Blackness, not slave status, was the mark of inferiority thus making Scott unprotected by the Constitution. Without providing any data, Taney concluded that it was universally recognized among civilized men that Blacks were inferior.

Taney said Blacks were inferior because they were discriminated against under various state laws. While certainly such discrimination existed, in nine of the 13 original states, including two slave states, free Black men

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were permitted to vote.

The Dred Scott case is the worst ever because it is immoral in that it sanctioned slavery and impractical because it exacerbated political divisions by preventing compromises on abolition favored by congress. The decision was especially antagonizing to abolitionists because it meant that even if they somehow managed to prevail politically, the constitution absolutely prevented both the abolition of slavery and elevation of free Blacks to citizenship. One consequence of Dred Scott is that those who were not abolitionists, but who were either sympathetic to, or members of antislavery groups, were deprived of the hope of a political solution, and became increasingly radicalized.

Most significantly, however, Taney got the law wrong. Taney had no textual support for lumping free Blacks and slaves together. Taney's basis for doing so was his interpretation of the original intent of the founding fathers. Yet, Taney appears to have exaggerated, mischaracterized, utilized inconsistent reasoning, and made up evidence to support his view.

The Dred Scott holding was unquestionably racist. Taney's opinion constitutionally doomed Blacks to the status of mere property, whether they were born in this country or not, whether they were "free" or slaves. Presidential candidate Abraham Lincoln said that the opinion made it seem that "all the powers of the earth" were combining against the Black person, and "now they have him, as it were, bolted in with a lock of a hundred keys, which can never be unlocked without the concurrence of a hundred men, and they scattered to a hundred different and distant places."

Taney's racist reasoning made war inevitable. Furthermore, Taney's perception of Black inferiority continues to haunt us even today when Blackness is linked with crime or unemployment, poverty, lack of education, or other negativity. Taney rendered the worst Supreme Court decision ever in Dred Scott.

Michael Higginbotham is the Wilson Elkins Professor of Law at the University of Baltimore and is the author of "Race Law."

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