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The American Constitution

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Ugly Truths

The United States Supreme Court is no stranger to a misguided decision in its rather tumultuous history, and often regarded as the most infamous of them all is Chief Justice Robert Taney's majority opinion in the shameful case of *Dred Scott V Sanford*. Dred Scott was a slave from Missouri who was then moved by his owner to reside in for some time in the free state of Illinois, and subsequently the free territory of Louisiana (as decided by the Missouri Compromise of 1820). After returning to Missouri, Scott filed a suit suing for his freedom, on the grounds that his residencies in a territory and state where slavery was abolished rendered him a free man. The questions at stake in this case became first, if a person of African descent could be considered an American citizen (and therefore be entitled to those rights and privileges of citizenship, such as the right to sue), and second, if congress even has the power to prohibit slavery in federal terrirroties. The Court held in a 7-2 decision that people of African descent, both free and slave, could never be considered citizens and that congress was not afforded the power to ban slavery in a federal terrirorty. This consequently judged the Missouri Compromise unconstitutional, highlighting that slaves were deemed property, not persons, in the eyes of the Constitution.

Understandably, many today are quick to label Taney's decision as inherently evil, wrong, and a chief example of judicial activism "gone wrong". Historian Don Fehrenbacher advances this sentiment, writing that Taney's opinion was "a work of unmitigated partisanship, polemical in spirit though judicial in its language..." Fehrenbacher's criticism of Taney's decision, however, assigns him the complete blame rather than the Constitution itself. Taney and rest of the court's

"verdict of history" clearly resulted in an immoral decision (which the implications of "morality" is in and of itself a nuanced ordeal), but jumping to this analysis "conveniently allows us to ignore the possibility that Chief Justice Taney was in fact accurately and persuasively interpreting the Constitution before him", as claimed by our imagined editorial. Without excusing Taney or the rest of the 1857 justices for their blatant disregard for Black humanity, it should be acknowledged that some of the anger towards this specific decision is displaced. The editorial's take posits that Taney simply offers his best reading of a flawed Constitution. The fabricated argument reaches the conclusion that, "It is better to face this ugly truth rather than to evade it through trite, moralistic denunciations of Chief Justice Taney's work in *Dred Scott*." However, I believe it is possible to both simultaneously concede that Taney's reading was an *accurate* one of a flawed document threaded with ugly truths and intentions, yet *unpersuasive* and overshadowed by the inability of the act of judicial review to remain apolitical and unaffected by underlying biases. This essay will explore this dual nature of accepting Taney's reading as accurate but not persuasive by shedding light on the inherently flawed nature of the Constitution as a founding document, and the methods Taney utilizes in deciding on the two main issues addressed in his majority opinion– ultimately discussing the implications of this interpretation on the structural problems inhibiting the US Supreme Court, and what this means for contemporary American social issues.

In order to assert the validity in Taney's reading, one must first reconcile with the unpleasant truth behind the attitudes and values entwined into the foundations of both the Constitution, and therefore our country: our founders were racist. This comes as a shock to absolutley no one, and may seem like a trite point to be making, but was not one historically widely accepted. Until recent history (and even still), this understanding of the Constitution and the nation's founding was viewed as "unpatriotic", and often a white-washed guilt-free version of this story was/still is taught. At the time of the *Dred Scott* decision, this point of view was virtually unheard of, and those who were brave enough to share this ideology, such as William

Lloyd Garrison, were considered traitors to the country. Garrison was the founder of a newspaper called *The Liberator*, notorious for escalating a radical abolitionist agenda. In Garrison's "On the Constitution and the Union", he builds this claim that the correct interpretation of the Constitution acknowledges its permission of slavery, in contrast to many abolitionist thinkers of the time. This understanding becomes central in claiming Taney's reading as accurate.

In his majority opinion, Taney answers the question regarding citizenship of people of African descent by first pointing to Article 4, section 2, clause 1, reading, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States" (Taney, 5). This clause translates to mean in plain English, that regardless of what state you lived in, you were entitled to the same rights as other citizens in the same state. He invokes this clause at the outset of his argument in order to argue that if the framers had ever intended to include Black people in the meaning of the word citizen, they were out of their minds, because it would completely undermine the institution of slavery. If they were, this could mean that free blacks in the north could move to the south and have the protection of law in the south, and this clearly was not the case. This point to me, is a correct and accurate **logical** assertion on Taney's behalf. His argument simplified is essentially that if A (citizen) =B (protection of these rights), and if B (protection of these rights)=C (apply to a free Black person), A (citizen) must = C (black person); however, B does not equal C in reality (the framers could have never intended for them to be equal), so therefore C and A can not be equal as well. Taney additionally points to the 5th amendment's due process clause protecting "life, liberty, and *property*" (Taney, 5), once again highlighting the constitutional view of slaves as property, not people, and therefore not citizens.

The provisions of the Missouri Compromise are then struck down as unconstitutional in Taney's decision, affirming that congress did not have the power to prohibit slavery in the terriroties. This battle of federalism between the national government and states is only at its beginning in the wake of the upcoming Civil War. Invoking the same clauses in article IV, Taney cites, "New States may be admitted by the Congress into this Union… Congress shall have

Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States…"(Taney, 6). One would think this clause would be proving Taney's decision wrong, but instead he claims that the text meant only the territories they had at the time, and didn't speak for any future decisions. This argument, put bluntly, is rather shaky, and did not even *begin* to persuade me of this point. His logic is merely based in opinion and not rooted in the Constitution. Taney then points to articles of the Constitution that legitimize slavery as a practice including Article I, section 9, clause 1 (the protection of the international slave trade) and reliance on Article IV, section 3, clause 2 (the fugitive slave provision). This evidence points more to the accuracy of Taney's reading of the Constitution, in harmony with the Garrisonian view of the Constitution being a pro-slavery document, and therefore existing in opposition with "fundamental American" concepts of liberty or freedom.

The editorial's claim of Taney's interpretation of the Constitution being accurate resonates with me, on the basis that the Constitution is a flawed (or "evil"– thank you William Lloyd Garrison) document. His logic in interpreting the clauses in Article IV pointing to the absurdity of the claim that the founding fathers could've meant to include slaves (also to Mcclean's point in his dissent, Taney's conflation of the terms "slave" and "free black man") in the defintion of citizens, and the legitimization of slavery through the aforementioned provisions support this belief. However accurate his interpretations may be though, I remain unpersuaded. I'm tempted to argue that regardless of what the Constitution says, perhaps Taney and his fellow justices should've seen the further moral and social repercussions of their decisions, but as soon as such a thought reached this paper, I immediately realized this opens a sort of Pandora's box. The same sentiment could be used to further opposite values such as those of my own beliefs, all control would be lost over the "rules" or "code" of law, and there would go any reliability or legitimacy in judicial review (if there was any to begin with). "The sad and simple truth is that Taney was being faithful to law by ignoring morality and politics, and this is what a judge must do." This then becomes the crux of the issue, because there is no apparent answer here. If there

were, our judicial system would probably look very different than it does today. The fundamental issue at the core of this question rests in the pitfalls of the Constitution itself.

The next logical step in this reasoning would then be to ask: how would this be solved? Through amendments? Through mass change? However, no party in power will want to take part in inciting mass change when that very structure is the reason it's in power in the first place. Change, evolution, etc., means chaos for the dominant current party. And that's why people, like Taney, are scared of such change– it threatens them. But just because Taney was a racist coward, to put it lightly, doesn't take away from the credibility of his arguments in his reading. I don't have the answer on what he should've done here, or at least one in order to better match my views. However, the general sense of maybe what should've been done here by Taney and the rest of the court is avoidance. Avoidance obviously doesn't solve any of our issues, but it doesn't further them either. Stagnation, I fear, may be better than making things worse, especially on the brink of war.

The question regarding whether Taney was "right" or not in his specific interpretation of the Constitution, in order to answer the question in *Dred Scott*, however, is rendered useless by the reconstruction era amendments. The very first phrase of the 14th Amendment overruled every sentiment expressed by Taney in his opinion. The more relevant matter then becomes how constitutional framework, texts, and vagaries pose barriers today in achieving further social justice, and if that's even something possible to be attained because of the structure of the document itself. It may not be an easy task to paint the Constitution as an explicitly "pro-slavery" document, but it certainly is easy to prove it as *not* an "anti-slavery" document; and, in my view, for it to be "neutral" on slavery, *makes* it a pro-slavery document.

"If you are neutral in situations of injustice, you have chosen the side of the oppressor" (Desmond Tutu).

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