

Fehrenbacher, Don E. "Roger B. Taney and the Sectional Crisis." *The Journal of Southern History* 43, no. 4 (November 1977): 555-566. <http://www.jstor.org/stable/2207005> (accessed 3 April 2013).

To understand the motives behind the opinion of the monumental Supreme Court Case *Dred Scott v. Sandford*, 60 U.S. 393 (1857), one needs to understand what drove the writer of that opinion, Chief Justice Roger B. Taney. In the late Historian Don E. Fehrenbacher's article, *Roger B. Taney and the Sectional Crisis*, Mr. Fehrenbacher details the political and sectional leanings of Chief Justice Taney to help one to understand the reason for his majority opinion. The author, Mr. Fehrenbacher, was the "William Robertson Coe Professor Emeritus of History and American Studies at Stanford and a Pulitzer Prize winner."¹ In addition, he taught at Oxford University, and the College of William and Mary. "Historian C. Vann Woodward, writing in the *New York Review of Books*, described Fehrenbacher's *The Dred Scott Case* as 'probably the most thorough study of any Supreme Court decision ever undertaken.'²

As with many of Chief Justice Taney's generation, slavery and secession were divisive issues and stood at the forefront of everyday life. Taney was a Jacksonian Democrat, having been appointed as Secretary of the Treasury and to the Supreme Court by President Andrew Jackson. He supported the pro-slavery faction, believing slavery was guaranteed by the Constitution, and blamed all the strife the country was suffering on Northerners and abolitionists. Furthermore, he strongly believed in states' rights. Unlike many Southerners of his generation, Chief Justice Taney was a unionist. He thought the South was "mistaken in claiming a

¹ Diane Manuel, "Pulitzer Prize-winning history Professor Don E. Fehrenbacher dies," *Stanford News Service*, (1997). <http://news.stanford.edu/pr/97/971216fehr.html>, (accessed 3 April 2013).

² Ibid.

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Comment [1]: Cited journal article—this is a HISTORICAL, academic journal.

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Comment [2]: Information about the historian who wrote the article. This tells the reader from where this historian is coming.

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Comment [3]: A hint at some historiography

constitutional right to secede; for secession is revolutionary and ‘only morally competent, like war, upon failure of justice.’”³

Another aspect of Chief Justice Taney’s values is that he was a proud Southern Gentleman. The anti-slavery and abolition movements in the North threatened his Southern heritage. These movements brought threats of slave-uprisings, angered Southerners, and instilled fear in their populations. Slave-holding to him and his fellow Southerners was a Constitutional right; Northerners were becoming too powerful and outspoken in matters that did not concern them.

With Chief Justice Taney’s background, the decision of the Dred Scott case is not surprising. Dr. Fehrenbacher’s article describes Taney’s respect for and dignity of the Court, and his efforts to keep his passionate views out of the public domain. But when writing the opinion in the Dred Scott case, he thoroughly reflects where these views lay; in the slave-holding South. Dr. Fehrenbacher effectively demonstrates Taney’s contradictory rulings in the Dred Scott case as follows:

Justice Taney redefined citizenship by declaring, “a person might ‘have all of the rights and privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State.’”⁴ This is in opposition to the U.S. Constitution, Article IV, Section 2, which states, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”⁵ By Taney’s logic, Negroes (including free blacks) were not

³ Don E. Fehrenbacher, “Roger B. Taney and the Sectional Crisis,” *The Journal of Southern History* 43, no. 4 (November 1977): 555-566. <http://www.jstor.org/stable/2207005> (accessed 3 April 2013). 558.

⁴ Ibid, 462.

⁵ Lee Epstein & Thomas G. Walker, *Constitutional Law for a Changing America: Rights, Liberties, and Justice*, (7th ed., 2010), Washington: CQ Press, 2010, 746.

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Comment [4]: Summary of article’s contents

citizens of the United States when the Constitution was ratified and thus, they had no rights under the U.S. Constitution, yet he provided no evidence the Framers intended to deny Constitutional rights to the African race.⁶

Justice Taney did not differentiate between slaves and free blacks in his ruling. He used the slave-trade and fugitive slave laws to designate Negroes as property, while conveniently forgetting these laws did not apply to free blacks.⁷ Yet foreigners, no matter the race or nationality, were afforded access to American courts.

Further, Dr. Fehrenbacher alludes to Chief Justice Taney's attempt to not give the Constitution a more liberal construction than the framers intended. For someone who interpreted the Constitution literally, how did Taney conclude "the right of property in a slave is distinctly and expressly affirmed in the Constitution," when the word slavery does not even appear in the Constitution?⁸ The author goes on that the founding fathers' views were integral to Taney's interpretation, "but in striking down the antislavery section of the Missouri Compromise he ignored the views of the founding fathers and brushed aside seventy years of legislative precedent."⁹

According to the late F.H. Hodder, Professor of History at the University of Kansas, Chief Justice Taney was opposed to slavery, freeing the slaves he inherited except two elderly slaves who he cared for until their death. He even defended a minister for inciting a slave insurrection.¹⁰ Hodder seems to paint an entirely different picture than does Fehrenbacher. On

⁶ Fehrenbacher, 562-563.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ F. H. Hodder, "Some Phases of the Dred Scott Case," *The Mississippi Valley Historical Review*, 16 no. 1 (Jun., 1929), 17.

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Comment [5]: Discusses article's argument

closer examination, there are more similarities than differences. Taney may have been anti-slavery but he was a Southern, states' rights man. Southern, states' rights included slavery. Dr. Fehrenbacher's article states, "Taney's real commitment was not to slavery, for which he had no great affection, but to southern life and values, which seemed organically linked to the peculiar institution and not able to be preserved without it. Thus, Taney defended slavery at every turn, not because he had once been a slaveholder but because he remained to the end of his life a southern gentleman."¹¹

Pulitzer Prize winning author and historian Eric Foner explains Chief Justice Taney's views, not in his defense, but as the views of most men of his generation. People have denounced Taney ever since his Dred Scott opinion for good reason. However, Foner believes the decision codified widely-held views of American society, both North and South.¹² Therefore, Taney's opinion on Dred Scott was not as revolutionary, at the time, as many people see it today.

Dr. Fehrenbacher effectively describes the many contradictions in Chief Justice Taney's ruling in the Dred Scott case. "Whenever it suited his purpose, the Chief Justice shifted easily from strict to loose construction of the Constitution. He interpreted the territory clause so narrowly as to render it null; he construed the due-process clause so broadly as to initiate a revolution in constitutional law."¹³ Even with this dreadful decision and tarnished legacy, one has to account for the era the decision was rendered. Southern honor was at stake, and more

¹¹ Fehrenbacher, 565.

¹² Foner, Eric, The Dred Scott Decision of 1857, <http://www.youtube.com/watch?v=qptqSpAXjBM&feature=related>, (accessed 7 April 2013).

¹³ Fehrenbacher, 564.

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Comment [6]: Historiography—what other historians have said about this same topic/argument. This places this argument in the larger context of the historical field.

importantly, so was the Union. The author does well in illustrating the values of a Chief Justice, who for honor and politics, unnecessarily opined on Dred Scott.