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America's Most Infamous Chief Justice: A Profile of Roger B. Taney

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More than 150 years after the disastrous Dred Scott decision, the United States continues to wrestle with its past -- especially its legacy with slavery. The last few years have seen Confederate monuments toppled and ex-southern heroes rebranded as villains. Roger B. Taney, a prominent 19th Century politician, had his own statues removed with surprisingly little controversy in August 2017 (Wamsley). Taney (pronounced *taw-ny*) was a special case, though, because he was no southern hero and was certainly never a Confederate. Taney, a loyal Unionist, served as Chief Justice of the United States from 1836-1864. His career culminated in 1857 when he handed down the Dred Scott decision, which ruled that blacks could not be U.S. citizens and that Congress could make no laws restricting the expansion of slavery.



Above Right: Portrait of Roger B. Taney by Stephen Alcorn, 1992.

It was the latest in a long line of events that eventually led to the Civil War. Routinely disparaged by north and south alike since his death in 1864, Taney represents an interesting middle ground. He was too pro-southern to be embraced by the north, and as a jurist who stayed loyal to the Union, was largely ignored by the rebel south. He even came from Maryland, a tormented border state, neither wholly north or south. Fittingly, Taney himself was full of contradictions. He intended to solve the slavery issue, but instead inflamed it. He issued the most prejudiced ruling in U.S. history, yet he freed his own slaves as soon as he inherited them. As a young man, he called slavery “a blot on our national character,” but as an old man, denied humanity itself to blacks. This ambiguity makes Chief Justice Taney a fascinating case study; his

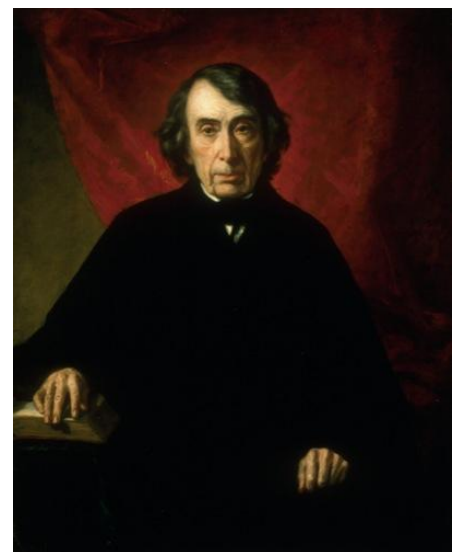
views were not set in stone, but rather dynamic -- and those changing views led him down a destructive and infamous path.

Taney was born in Maryland in 1777, just a year after the birth of the nation. Although he came from a long line of aristocratic tobacco growers, Roger was not the eldest child and was not expected to inherit the plantation. His father had other ideas, hoping that Roger would become a lawyer, and for good reason. All could see that Roger was highly intelligent, blessed with an analytical mind, sharp focus, and driving ambition (Simon 7). By 22, he was a practicing attorney and, thanks to his father's connections, soon involved himself in politics. For the next couple decades, Taney served in local and state politics while practicing law, as well.

By middle age, Taney had become one of Maryland's premier lawyers, but he looked more like a strict headmaster than a high-charged attorney: he was tall and gaunt, prone to illness. He dressed in drab, dark colors and wore his sharply-receded hair long, parting it steeply in the top right corner of his head, where it fell down over his ears and sometimes as far as his shoulders. In hindsight, he bears a striking resemblance to *Harry Potter's* Severus Snape, another ambiguous and complicated figure. Taney's personality matched his looks. He was serious, but not pretentious. He spoke simply and quietly to the courtroom, making the most complex issues appear simple. "He had a moonlight mind," wrote a colleague. "Like the moonlight of the arctics, he gave all the light of day without its glare" (Simon 13).

Below Right: Portrait of Roger Brooke Taney by George Peter Alexander Healy.

Taney also made his thoughts on slavery known



around this time when he defended the Reverend Jacob Gruber, an abolitionist preacher, in 1819. Gruber stood accused of trying to cause slave unrest after a particularly fiery anti-slavery sermon (Huebner). Taney successfully defended Gruber, adding his own opinion in the process: “Slavery...is a blot on our national character,” Taney said. “...every real lover of freedom confidently hopes that it will be effectually, though it must be gradually, wiped away...every friend of humanity will seek to lighten the galling chain of slavery, and better, to the utmost of his power, the wretched condition of the slave.” Privately, Taney seemed to agree. His slaves were all free by this point, with the elderly ones provided with stipends.

As prominent as Taney had become as an attorney, his career did not truly take off until he hitched himself to Andrew Jackson. Taney supported Jackson’s campaign efforts and was thrilled to see his man elected to the presidency in 1828 and 1832. Jackson rewarded Taney (whose name Jackson spelled “Tauny,” as if to help remember the pronunciation) by appointing him to a variety of federal positions, most significantly Secretary of the Treasury. As Secretary of Treasury, Taney proved a useful soldier in Jackson’s war against the Bank of the United States, which the president felt had grown too powerful (Cheatham 200). Willing to obey Jackson’s orders where others had refused, Taney was instrumental in the bank’s downfall. He earned a reputation as either a forceful ally of Jackson’s or as Jackson’s “pliant tool,” depending on where one’s sympathies rested (Simon 25, 31).

More significantly, Jackson rewarded Taney by nominating him to the Supreme Court in 1835. Congress, still resenting Jackson’s ruthless bank war, rejected Taney’s nomination. Jackson was never one to back down, though. He appointed Taney to the Supreme Court again the next year when the venerable Chief Justice John Marshall died. Enough seats had turned over in Congress that the nomination succeeded. Taney had reached the height of American legal

power and as the era of Chief Justice Taney began, his enemies predicted gloom and destruction. “Taney looked like the anti-Jacksonians’ worst nightmare: a smart, articulate ideologue,” writes legal historian Paul Finkelman. It would take decades for those gloomy predictions to come true, though.

Instead, Taney won over most of his colleagues, and even his enemies, with his gracious, magnanimous personality. “Chief Justice Taney’s understated leadership won him belated accolades from his most diehard critics,” notes historian James F. Simon (42). Justice Samuel Miller, for example, despised Taney initially but was pleasantly surprised by the man he met (Hall 142). “Before the first term of service in the court had passed, I more than liked him,” Miller said of his time on the Taney court. “I loved him.” Taney’s rulings also earned him a reputation as a flexible justice who was not limited to voting along sectional lines. In the early 1840s, Taney silently agreed with the majority opinion in the famous *Amistad* case, which ruled that kidnapped Africans on a Spanish ship would not be returned to their captors as stolen property because their capture had been illegal. In other cases, Taney conceded that free states had the right to ban slavery within their borders, taking a hands-off approach to the issue.

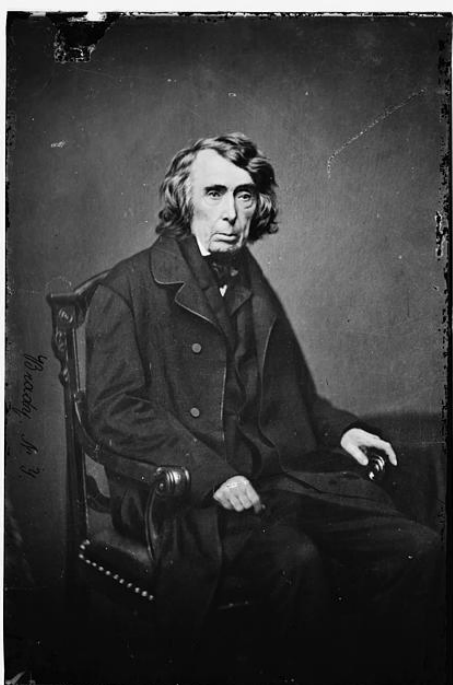
But the seeds of *Dred Scott* were already there. As early as the 1830s, Taney’s view on slavery was changing, as evidenced by an unpublished opinion of legal advice he’d written for President Jackson around this time. Using eerily similar arguments to his later opinion in *Dred Scott*, Taney advised Jackson that the framers of the Constitution did not consider blacks to be citizens and that the federal government – and not even international treaty – could limit slavery’s expansion. “The opinion would be stored away like a time bomb,” Simon says, “to be detonated a quarter century later in *Dred Scott v. Sandford*.” Presumably no one but Jackson read the opinion and the country moved along as usual, focused on other issues. Taney, who had

become Chief Justice at 59, presided over well-respected and disciplined court for the next twenty years with little controversy.

By 1857, Taney was a seasoned veteran of the Supreme Court, but few could have expected him to live as long as he did. He had always been sickly. Plagued with frequent colds and digestive issues, he was “constantly fussing about some real or imagined ailment” (Naden and Blue 65). Accordingly, it would not have been surprising if the elderly Chief Justice had died by the late 1850s. If he had, Taney’s reputation would likely be very different today. Historians would remember an understated, pragmatic Chief Justice who presided over one of the most stable periods in the court’s history. Taney would have seemed almost universally admired, or at least respected, by his contemporaries. He may have even appeared progressive for a man of his era and background. He had approached the controversial slavery issue with great caution even though he came from a wealthy, slave-owning family. Even in his personal life, Taney may have appeared friendly – or at least benign – toward blacks considering that he had manumitted his own slaves.

But Taney lived on, and his name would forever be tangled up in the slavery issue. The 79-year-old’s mind was still sharp when he ruled on *Dred Scott v. Sandford* in 1857. Today, the

Dred Scott case is almost synonymous with disaster, seen as a key milestone on the way to the Civil War. The case itself was fairly straightforward: a slave named Dred Scott sued for his freedom on the grounds that his master had taken him to live in free territories for years at a time. Thus, Scott’s argument went, he should be free. The case went through ten years of legal stalling, appeals, and delays, finally appearing before the Supreme Court in 1857.



Left: Roger B. Taney in old age. Photo by Mathew Brady, c. 1855-1864.

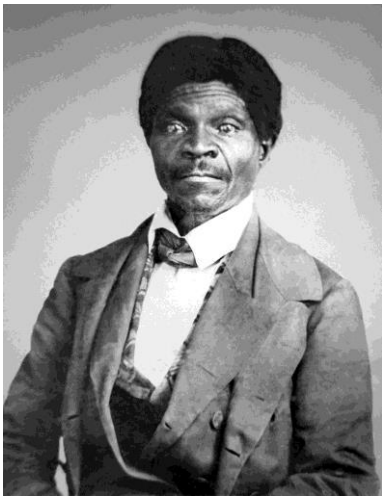
Taney, speaking for a 7-2 majority, rejected Scott's reasoning. Instead, Taney wrote that the founding fathers thought blacks were "...so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit." The Chief Justice claimed that since the framers of the Constitution had never meant for slaves to be citizens, Scott was not a citizen and was unable to sue in the first place. Rather than immediately throwing the case out, though, Taney made a rare misstep. Normally content to keep rulings narrow and simple, he overreached himself, perhaps unintentionally recalling his opinion to Jackson all those years ago. A longtime state's rights supporter, Taney declared that slavery's expansion could not be halted by the federal government, effectively ruling that the Missouri Compromise had been unconstitutional ("The Human Factor of History – Dred Scott and Roger B. Taney"). President-elect Buchanan supported the court's ruling, considering the matter settled.

The matter was not settled. The Scott case was no longer about one slave who thought he should be free. It now involved the entire nation, including the wild frontier territories that were already fighting over slavery's expansion thanks to the Kansas-Nebraska Act. If Bleeding Kansas was dying down, Taney's ruling placed slavery firmly back in the spotlight. Previously, there had always been a distraction: a war, a depression (or "panic"), an election. Now there was no avoiding slavery, and the Scott case was met with revulsion by the north, even by those who viewed slavery as acceptable within its confines. To non-abolitionist northerners, slavery's existence and its expansion were two entirely different matters. Now the floodgates had opened for slavery to expand wherever settlers could travel unless a state or territory specifically barred it. The north perceived Taney's pronouncement on slavery as largely beside the point, feeling

that the court's judicial power stopped once it had determined Scott could not sue ("Slaves and the Courts, 1740-1860"). Everything else seemed superfluous, and many did not appreciate the heavy-handed, grasping attempt to force a southern viewpoint on the rest of the country.

As for Dred Scott, he would remain a slave, but not for much longer. He was soon purchased by the Blow family, who set free him free ("The Human Factor of History – Dred Scott and Roger B Taney"). Scott died of tuberculosis not long after, aged about 60, in St. Louis. He could not have known it at the time, but his case would indirectly lead to the freedom of

millions of slaves through the Civil War. Although he had lived most of his life a slave, he died free and left a legacy that few men can claim.



Left: Dred Scott in an uncredited photograph, c. 1857.

The Chief Justice lived the remainder of his life despised in the north, especially by President Lincoln. The two men had much in common: tall, lanky builds, humble personalities, and exceptional intelligence. However, they were ideological opposites, and Lincoln actually came close to arresting his own Chief Justice. Seeking to insulate Washington D.C. from the war, Lincoln had arrested those suspected of being Confederate sympathizers and held them without trial. Taney, whose name was surely close to the top of any list of sympathizers, boldly intervened on behalf of the imprisoned, most notably in *Merryman ex parte* (Vorenberg). Lincoln simply ignored Taney's efforts except to write up a warrant for Taney's own arrest early in the war. For whatever reason, Lincoln shelved the idea of arresting Taney, perhaps because he realized the Chief Justice had little time left anyway. In his mid-80s by that point, Taney wrote that he was afraid to venture outside and that he was too frail to walk

across his room more than a few times. He increasingly lacked the stamina preside at Court, requiring “great assistance” to fulfill his duties (White).

He finally died on October 12, 1864, aged 87 -- the same day Maryland abolished slavery. “Two ancient abuses and evils were perishing together,” quipped George Templeton Strong (Vorenberg). Even though Taney remained loyal at a time when many of the country’s ablest leaders defected south, few attended his funeral. *Dred Scott v. Sandford* had already earned its infamy. Lincoln went to the service, perhaps more to keep up appearances than out of respect, and northern newspapers openly rejoiced over Taney’s death. By 1864, his transformation into an American villain was complete.

Taney’s ruling instantly turned him from an esteemed judge into a bona fide, whip-cracking southern caricature, a view that continues into our own century. Before Taney’s statues were removed from public spaces in Maryland last year, they had been vandalized repeatedly. One person drenched a Fredericksburg bust in bright red paint, which the mayor himself cleaned off (Fifiield, photo by Sam Yu). Another time, a bandana was wrapped around Taney’s face, making him look like a 19th Century gangster. Someone else covered the face of Taney’s Annapolis statue with a flag (“Roger B. Taney’s statue removed from Maryland State House ground”). Taney’s reputation continues to suffer in print, too. He “was a lifelong supporter of a white man’s right to own slaves,” wrote a pop-history article for *Telegram* in 2007. “In other words, his decision in the case of Dred Scott was a foregone conclusion.” In reality, nothing about the Dred Scott case was a foregone conclusion, especially in light of Taney’s past actions and opinions. Tempting as it is to create an overly simplistic view of the man, his personal feelings were more complex than that. He ended up a firm supporter of slavery, but those views had not been set in stone for 70-plus years; they had evolved over time. Few who had known the

gentle and mild Taney of the 1810s, for example, could have foreseen his hardline, sectional opinions of the 1850s.



Although Taney is a fascinating and complex figure, his actions have placed him firmly on the “wrong side” of history.

“However much we may admire Taney’s personal grace, his clever opinions...and sometimes brilliant analysis of constitutional issues,” writes Finkelman, “his racism, proslavery dogmatism, and secessionist sentiments will remain

his legacy.” Although there was more to Taney than the Dred Scott decision, reputations rarely recover from such fatal missteps. Clearly Taney was a skilled lawyer at one point, but as the U.S. barreled toward the Civil War, his solution to the slavery issue was hopelessly shrill and out-of-touch, to say nothing of its moral consequences. The case of Roger B. Taney shows that as the nation grappled with its contradictions and moral problems, some of the men trying to solve those problems were just as flawed.

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