

The Dred Scott Case: Historical and Contemporary Perspectives on Race and Law.

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Review

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Konig, David Thomas (ed.) and Paul Finkelman and Christopher Alan Bracey (eds.). *The Dred Scott Case: Historical and Contemporary Perspectives on Race and Law.* Ohio University Press, \$54.95 ISBN 978-0-8214-1912-0

Examining Dred Scott's Impact and Legacy

Few Supreme Court cases have attained the level of notoriety as the *Dred Scott* case. Even fewer have attracted such a widespread and persistent attention from scholars across academic disciplines. *The Dred Scott Case: Historical and Contemporary Perspectives on Race and Law* presents the latest product of such an attention. The volume is a collection of essays originally presented at a Washington University symposium to commemorate the case's 150th anniversary. Divided into four categories, the 14 essays explore the history of the case and its historical and contemporary implications. As far as the historical details or constitutional interpretations of the case are concerned, little new ground has been broken, but these essays have collectively expanded the context of the case and greatly enriched our understanding of its impact, then and now.

In his lead essay, David Konig offers a fresh look at Chief Justice Roger B. Taney's opinion of the court, which Konig defines as "a proslavery historical narrative" (12). Completely ignoring other, competing narratives of the nation's past created by both black and white abolitionists during the antebellum era, Taney chose to adopt a particular version of national memory, largely fashioned by David Ramsay and John Marshall, that attempted to erase African Americans' role in the founding of the American republic and to justify his politically motivated ruling. But the "judicially endorsed versions of the past," Konig observes, could "spread wide into the political culture" and exert "enormous extrajudicial pressure on our legal and political systems" (20). Also linking his discussion to "the power of the past" (the title of Part I), Adam Arenson tells the little-known history of how the public memory of Dred Scott, who had been forgotten after the ruling of the case, was revived and reconstructed almost a

century later. The story of how black and white St. Louisans, including Dred and Harriet's descendants, had worked to restore and sustain the public memory of the Scotts, is one of the most fascinating pieces of the volume. But for some reason, the volume does not include a discussion on the existing scholarship on Harriet Scott.

The four essays in Part II examine the explicit and inexplicit connections of *Dred Scott* to the politics of the Civil War and the subsequent emancipation of slaves. Using Lincoln's response to the *Dred Scott* ruling as a point of analysis, Mark Graber discusses how Lincoln had carved out a "middleman's" position amidst the competitive solutions—as featured by John Brown's antislavery violence, Stephen Douglas's popular sovereignty unionism, and Roger B. Taney's proslavery constitutionalism—to deal with the "constitutional evil." Lincoln's strategy was to combine "strong antislavery rhetoric" and "tepid antislavery proposals" to provoke southern secession and the first use of violence while securing the support from the Border States (61). The ultimate goal was to make a Union victory and, eventually, to end slavery in the Union. Lincoln's position regarding emancipation is discussed in Louis Gerreis's piece, but the essay's real intent is to examine the difficult and uncertain process of wartime emancipation in Missouri. Lincoln's decision to embrace emancipation had alienated his political allies in Missouri, such as Frank Blair, who had bitterly resisted emancipation, out of fear of "negro equality," and had later opposed the implementation of Reconstruction amendments.

In discussing the judicial legacy of the *Dred Scott* decision, Austin Allen rejects the long held notion that Taney's ruling had originated the use of the concept of substantive due process, a principle that had been frequently invoked by the Supreme Court in the post-Reconstruction era to protect the vested interest of business. Taney's discussion of the unconstitutionality of the Missouri Compromise in the Court's decision, Allen argues, was centered on the enumerated limitations of congressional authority over the territories and was "basically irrelevant for the discussions of substantive due process" (95). Constitutional protection of the inviolability of vested interest under contract, however, seems to be a firmly guarded position by the majority of the Court even at the time of emancipation. At least, that was the case in Daniel Hamilton's study of the federal courts' rulings on *Osborn v. Nicholson*, which involved the dispute over a contracted sale of slaves signed before the adaptation of the Thirteenth Amendment in 1865. While the lower federal court ruled to nullify the legality of the contract by citing the broad principles of racial equality

as intended in both Thirteenth and Fourteenth Amendments, the Supreme Court reversed the ruling by declaring the supremacy of the protection of contract. The high court's narrow reading of the Reconstruction amendments, in Hamilton's view, had denied the possibility for the federal government to create "an alternate hierarchy of legal and constitutional rights, one in which the destruction of all vestiges of human property took precedence over strict construction of contracts and vested rights" (110). In this regard, the ghost of Taney's ruling outlived emancipation.

The five essays in Part III address a diverse array of contemporary issues as affected by the legacies of the *Dred Scott* decision. In his examination of the social-cultural meaning of Taney's ruling, Christopher Alan Bracey argues that Taney's denial of Dred Scott's citizenship was fundamentally a denial of human dignity and cultural equality of persons of African descent. The duality as embraced by American political culture—the pursuit of liberal ideals and the insistence on racial subordination—had been a major obstruction for the nation to achieve genuine racial equality. The emphasis on human dignity, in Bracey's view, has to be the precondition to achieving meaningful political, social, and economic equality. Similarly, both Leland Ware and Cecil Hunt take Taney's ruling as the intellectual origin of what they respectively call the "ideology of black inferiority" and the "racial ideology of black disrespect" (142, 164). Black inferiority as articulated by Taney, Ware argues, had been "redeployed in the postwar regime of racial subordination," reinforced by scientific racism, and perpetuated by literary and popular culture, as well as the modern-day news reports on urban crimes and welfare recipients (142, 152). All this has jointly created "a complex amalgam of overt discrimination, internalized stereotypes, and implicit biases that operate in ways that disadvantage African Americans" (152). For Hunt, Taney's proslavery ruling was not merely "a justification" for the economic system of the South, but also "a validation" for the region's "way of life," which was deeply rooted in a culture that valued "honor" and "respect" (159, 161). Thus, historically speaking, white resentment toward the national struggle for racial equality is to a large extent derived from their sense of "a loss of their deserved racial honor, respect, and supremacy" (166).

The most interesting and intriguing piece in the volume is perhaps John Baugh's linguistic analysis of Taney's phrase "whose ancestors were imported into this country, and sold as slaves," which the Chief Justice used to prescribe Dred Scott's status (172). The term "Negroes" as used by Taney and later by the Warren Court in its *Brown v Board of Education* decision contains a precise

specification for a particular racial group, but the contemporary usage of “black” or “African American” in race-based policy making has erased the distinction between the descendants of “involuntary” and “voluntarily” immigrants from Africa. The “voluntary” African immigrants, Baugh argues, came to the United States long after the ending of slavery and that they and their descendants (such as Colin Powell and Barack Obama) may have encountered a very different historical experience than that of the descendants of former slaves. For Baugh, to recognize the distinction between the two categories of African Americans is necessary and important since the ultimate goal of such programs as affirmative action were designed to overcome the “racial injustices born of slavery” that continue to afflict “so many U.S. slave descendants” (175). Baugh’s piece serves as a natural introduction to Alfred L. Brophy’s piece, which discusses reparation options for slavery.

Two essays in the final part, written respectively by two former Missouri judges, examine how state politics and state precedent had shaped the fate of the *Dred Scott* case at the national level. Duane Benton makes a critical review of the Missouri state supreme court’s ruling over *Scott v. Emerson*, in which he believes that injected judges’ personal political biases, overruled precedents, ignored the state legislature’s freedom suit laws and violated the supremacy principle established in the federal constitution. Michael Wolff’s study of the state supreme court judges in 1840s and early 1850s lends support to Benton’s argument although he points out that the dissenter of *Scott v. Emerson*, Hamilton Gable, was a former slave owner.

The final piece in the volume, written by Paul Finkelman, who has previously authored a book on the *Dred Scott* case, offers a masterful narrative of the history of the case. Finkelman’s piece, I think, should be placed as the opening chapter for the volume. It would do a good job to provide the needed overview of the case and to give a powerful introduction to this enormously thought-provoking volume.

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