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Abstract

The *Scott v. Sandford* decision will forever be known as a dark moment in America's history. The Supreme Court chose to rule on a controversial issue, and they made the wrong decision. *Scott v. Sandford* is an example of what can happen when the Court chooses to side with personal opinion instead of what is right.

Keywords

Dred Scott, Sandford, law, slavery, free state, slave state, US Supreme Court, Roger B. Taney, African American, slave, freedom, property

Disciplines

African American Studies | American Politics | Constitutional Law | Fourteenth Amendment | History | Inequality and Stratification | Law and Race | Legal | Legal History | Political History | Political Science | Race and Ethnicity | Social History | Social Policy | United States History

Comments

Recipient of the 2014 Samuel P. Weaver Prize

Dred Scott v. Sandford Analysis

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Professor Mott

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I affirm that I will uphold the highest principles of honesty and integrity in all my endeavors at Gettysburg College and foster an atmosphere of mutual respect within and beyond the classroom.

Introduction

Dred Scott v. Sandford is one of the darkest cases in the history of the Supreme Court. After years of slavery, parts of the United States were beginning to head in a direction away from slavery. The establishment of the Missouri Compromise and gaining some territories as slave states and others as free states, was proof of this shift from slavery, especially in the north (Pearson Education Inc. 2005). The *Scott v. Sandford* decision, in which an African American man was denied both his freedom and his citizenship to the United States, did not link up with this new way of thinking. The divided opinion amongst the Justices illustrated the divided nation (*Scott v. Sandford* 1875).

When the Dred Scott case came to the Supreme Court, the nation was in a time of great divide, with pro and antislavery groups arguing about whether new states should enter the nation as "slave" states, where slavery was legal, or "free" states, where slavery was illegal. The nation was on the verge of violent conflict over the issue and Congress was too divided to do anything (Pearson Education Inc. 2005). This argument was heightened by the establishment of the Missouri Compromise of 1820, which had some territories enter the nation as slave states and others as free states (Independence Hall Association 2013). The Supreme Court did something out of character. In the midst of all this uncertainty, they took *Scott v. Sandford* and decided to make a ruling on this controversial issue (Pearson Education Inc. 2005). Analyzing *Scott v. Sandford* is helpful in concluding the extent Supreme Court rulings should reflect popular opinion.

History of *Scott v. Sandford*

When *Scott v. Sandford* came to the court, Chief Justice Roger B. Taney was relatively new to the position. His time as Chief Justice was marked by a concept of "dual sovereignty,"

which involved strong national power, but also the states having strong power in their own way. The two governments were foreign to each other, in Taney's opinion (Pearson Education Inc. 2005). Another factor to keep in mind is that Taney was a former slave owner. In addition to Taney, four other Justices on the Supreme Court were former slave owners (Independence Hall Association 2013). The overall make-up of the of the court involved five southerners and fourth northerners (Pearson Education Inc. 2005). Of the nine Justices, only Justice John McLean and Justice Benjamin Curtis were republicans (McDougal and Littell 2008, 166).

The case was brought to the Circuit Court of St. Louis county by Dred Scott before it came to the Supreme Court. The Circuit Court ruled in favor of Scott. Through a series of appeals and after eleven years, the case made its way to the Supreme Court, where it was argued twice (*Scott v. Sandford* 1875).

To fully understand the opinion of the court, it is imperative to know the background of *Scott v. Sandford*. Dred Scott was of African descent and born in America. He was a slave in 1834. He belonged to Dr. Emerson, a surgeon for the United States army. Scott and Dr. Emerson were originally located in Missouri, a slave state. But, in the year 1834, Dr. Emerson took Scott to the Rock Island Military Post in Illinois, a free state, where he worked for him as a slave. This continued until 1836, when Dr. Emerson moved with Scott to Fort Snelling located in Upper Louisiana, a territory at the time (*Scott v. Sandford* 1857). Later, this territory would enter the Union as a free state because of the Missouri Compromise (32a. The Dred Scott Decision 2013).

While this was occurring, Harriet, the eventual wife of Dred Scott, was a slave to Major Taliaferro. He also worked for the United States Army, and in 1835, Major Taliaferro took Harriet to Fort Snelling. Once there, Harriet worked as a slave for Major Taliaferro until 1836, when she was sold to Dr. Emerson. Both Harriet and Dred Scott were held as slaves to Dr.

Emerson at Fort Snelling until 1838. While working as slaves for Dr. Emerson, Harriet and Dred Scott were married (*Scott v. Sandford* 1857).

In 1838, Dr. Emerson moved Dred, Harriet, and their first daughter, Eliza, to the Jefferson Barracks Military Post in the state of Missouri. They continued to live in Missouri, and while living there, Dred and Harriet Scott had a second daughter named Lizzie. Throughout this entire history, Dr. Emerson referred to and treated Dred Scott as his slave, and after buying Harriet and the birth of the two daughters, Dr. Emerson treated the entire family as his slaves (*Scott v. Sandford* 1857).

Just before the suit was filed, Dr. Emerson sold Dred Scott, Harriet, and their two children to John F. A. Sandford. Sandford, considering the Scott family his slaves, "laid hands on them and imprisoned them" many times (*Scott v. Sandford* 1857). These actions would be considered legal if Harriet, Lizzie, Eliza, and Dred Scott were his slaves. Dred Scott sought to challenge this. Due to the Missouri Compromise, Illinois and the territory where Dr. Emerson had taken Dred Scott and purchased Harriet, were free (Independence Hall Association 2013).

Dred Scott sued his owner, John Sandford, for assaulting himself, Harriet, Lizzie, and Eliza. Scott openly admitted he was born a slave and of African descent, but he also argued that once his owner took him and his family to a free state and territory to reside, his family became free from slavery. And since they were free when Sandford moved them back to Missouri, Scott claimed it was illegal for Sandford to assault him and his family. Scott also claimed he should be legally considered a citizen by the state. These are the grounds on which Scott sought to sue Sandford. His declaration specifically had three counts: that Sandford assaulted Dred Scott, that Sandford had assaulted Harriet, and that Sandford had assaulted Lizzie and Eliza. The defendant, Sandford, plead not guilty to these actions. His rational was that Dred Scott and his family were

his slaves, and thus he had every right to lay his hands on them. They were his property, protected by the Constitution (*Scott v. Sandford* 1857).

The Opinion of the Court

As Chief Justice Taney said in the opinion of the court, this case brought two major questions to the Supreme Court: "1. Had the Circuit Court of the United States jurisdiction to hear and determine the case between these parties? And 2. If it had jurisdiction, is the judgment it has given erroneous or not?" (*Scott v. Sandford* 1857). *Scott v. Sandford* was nothing short of controversial, and though several concurring opinions and two dissents were written, the court came to a 7-2 verdict in favor of Sandford. Taney wrote for the court (McDougal and Littell 2008, 166).

The first issue Taney addressed was the issue of Scott's freedom. Even though Scott had spent time in states and territories where slavery was illegal, Taney and the court ruled that the laws of the state Scott was in when he chose to sue, Missouri, should apply, "as Scott was a slave when taken into the State of Illinois by his owner, and was there held as such, a brought back in that character, his status as free or slave depended on the laws of Missouri, and not of Illinois" (*Scott v. Sandford* 1857). Because Missouri was not a free state, it did not matter that Scott had lived in free states and territories, he was a slave under Missouri law (Pearson Education Inc. 2005).

The second major judgment made in the opinion of the court was that, according to Taney, African Americans, whether slaves or not, were not legally considered citizens or entitled to the privileges that citizens enjoy, "a free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a 'citizen' within the meaning of the Constitution of the United States" (*Scott v. Sandford* 1857). The Constitution only mentioned people of

African descent twice, both times speaking about them in terms of property, "the right of property in a slave is distinctly affirmed in the Constitution" (*Scott v. Sandford* 1875). In Taney's opinion, Africans were not part of the "sovereign people" who crafted the Constitution (Independence Hall Association 2013). Taney believed, "it is not the province of the court to decide the justice or injustice... of these laws... The duty of the court is to interpret the instrument they have framed with the best lights we can obtain on the subject... according to its true intent and meaning when it was adopted" (*Scott v. Sandford* 1875) and his interpretation was that the constitution did not recognize Africans as citizens under any circumstances. Because Taney was stating that Scott did not have citizenship due to his African heritage, he did not have a right to sue in a United States court of any kind. Therefore, the Circuit Court did not have jurisdiction over this case (Pearson Education Inc. 2008).

Taney took his ruling one step further and decided that since slaves were considered property, they were protected under the Fifth Amendment. Property rights cannot be denied without due process (Independence Hall Association 2013). Taney argued that it was therefore unconstitutional for any state to make a law taking away another person's property, in this case their slaves. Additionally, the power of deciding who is and who is not a citizen is a power that should be exclusively left to the national government and not up to individual states to discern, "no State can by any subsequent law make a foreigner or any other description of person citizens of the United States, not entitle them to the rights a privileges secured to citizens by that instrument" (*Scott v. Sandford* 1857).

This ruling lead to the conclusion that the Missouri Compromise, which admitted some territories as free states, was unconstitutional because it was infringing on people's property rights. Taney states that while the government is allowed some leeway in terms of doing what it

sees as proper, "the power of Congress over the person or property of a citizen can never be a mere discretionary power under our Constitution and form of Government" (*Scott v. Sandford* 1875). Since the Missouri Compromise technically did this, Taney declared Congress was violating the 5th amendment and banned all of their attempts to stop slavery (McDougal and Littell 2008, 166).

It is clear when reading Taney's opinion that he did not want the blame for this decision to fall on the Supreme Court. He made it clear that Congress, if they so desired, could change the law so that people of African descent could be citizens, but, under the current language of the Constitution, they could not be citizens, "they may, if they think proper, authorize the naturalization of anyone, of any color, who was born under allegiance to another Government. But the language of the law... shows that citizenship at that time was perfectly understood to be confined to the white race" (*Scott v. Sandford* 1875). Clearly Taney was attempting to put the responsibility for action on Congress.

Dissenting Opinions

Though this opinion was not the popular opinion of the nation, only two Justices dissented. Justice McLean and Justice Curtis disagreed on both of Taney's and the court's main points. Upon examination of the national Constitution and state constitutions, they both found that people of African descent could be considered citizens. McLean said, "Being born under our Constitution and laws, no naturalization is required, as one of foreign birth, to make him a citizen. The most general and appropriate definition of the term citizen is 'a freeman'" (*Scott v. Sandford* 1875). They also both found that Scott should be considered free under the laws of the Missouri Compromise, and they saw no reason that this was unconstitutional, citing that

Congress possess the power to "make all needful Rules and Regulations" and therefore had the power to prohibit slavery (*Scott v. Sandford* 1875).

Impact on the Nation

This decision had a large impact on the nation. It made power of slavery much greater. Prior to the decision, many Americans were comfortable with the concept of individual states and Congress limiting slavery in some areas. Taney changed all of this when he took the extreme side of the slavery debate and made that the law. It raised questions about whether free states could stop people from selling and bringing in slaves within their own borders (McDougal and Littell 2008, 167).

The *Scott v. Sandford* decision took a divided nation and divided it even further. The north refused to accept the decision made by a Supreme Court they felt was full of people from the south, believing the next step would be to make it so states were required by law to allow slavery (Independence Hall Association 2013). The Justices wanted to end the slavery debate, but instead they just gave it more fuel. People were not only angry about the ruling, but also angry at President Buchanan for supporting the decision. Faith in the Supreme Court plummeted and would take years to rebuild. Additionally, Taney would be forever marked by this ruling (Pearson Education Inc. 2005).

The unrest over the slavery issue fueled by *Scott v. Sandford* came to a head with the Civil War. After four years of fighting, the Union won and Taney's opinion was no longer the law. Slavery was abolished with the establishment of the Thirteenth Amendment and citizenship for all races was granted with the passing of the Fourteenth Amendment. With these new amendments, *Scott v. Sandford* was no longer the precedent and America could move in a new direction (McDougal and Littell 2008, 165).

Critique

The Supreme Court plays a pivotal role in defining law in the United States. Ideally, they are a political body above party politics, and make rulings by what they think is morally right. It is cases like this, where with hindsight we can blatantly see the Supreme Court ruled incorrectly, that raise concern about the weight placed on these nine people, who never need to face re-election. Their sole purpose is to hold up the ideals laid out in the Constitution. The Justices on the *Scott v. Sandford* court, allowed themselves to be too swayed by their own personal opinions, and not the words on the Constitution.

One big critique of the court's ruling in *Scott v. Sandford* is that, while Taney sights parts of the Constitution that discuss the use of African people as slaves, he does not give attention the numerous times the Constitution and other significant United States documents mention equality. That all people be treated equally is an ideal that America was founded upon. Taney does mention that the Declaration of Independence states, "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them is life, liberty, and the pursuit of happiness." It would seem the obvious intent of these words is that all men are equal, and that acts like slavery, which make certain men less than others, should be illegal. Instead, Taney spins these simple words to mean something completely different, "it is too clear for dispute that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration" (*Scott v. Sandford* 1875). This twisting of the intent of the original writers illustrates one of the biggest problems with the Supreme Court -- it is possible to make the Constitution argue almost any point.

The fact that the Supreme Court took this case, and the way they ruled can be considered an overstep of their boundaries. This was a simple cases of Dred Scott suing for his freedom, the only real question being did he still qualify as free upon moving back into a slave state. The court had a different agenda. It is clear by the way the background of the case is recorded, with Dr. Emerson moving Scott from state to state, that the court was setting the case up to make a ruling on the Missouri Compromise. Simply stating that the laws of the current state apply, or that Scott's heritage kept him from being a citizen, would have stopped Scott for acquiring his freedom (McDougal and Little 2008, 166). The court went out of its way to make the compromise unconstitutional, and take the law and make it proslavery.

The choice to strike down the Missouri Compromise and to proclaim that African people could not be legally considered citizens was especially alarming at the time because the ruling did not agree with popular opinion. Though there was currently a debate amongst states about whether slavery should be allowed, most people supported the idea of states being able to decide for themselves (McDougal and Littell 2008,167). Additionally, a large part of the nation, especially the north, was moving away from the idea of slavery. The court completely went in the opposite direction, disregarding the public's opinion. Taney stated in his opinion, "the change in public opinion and feeling in relation to the African race which has taken place since the adoption of the Constitution cannot change its construction and meaning, and it must be construed and administered now according to its true meaning" (*Scott v. Sandford* 1875).

The begs the question, to what extent should the Supreme Court's interpretation to the Constitution reflect popular opinion? If the Constitution is representative of the will of the people, and the Supreme Court's job is to interpret the Constitution, then popular opinion should be of high significance to the court. This is especially true because the Constitution is purposely

so vague. The founders purposely left room for interpretation, and this interpretation should stem from what the people want. Justices come to the court with some ideologies, as well as political leanings. Having a diverse bench is important so the court can accurately rule for the people. Another reason the court should listen to popular opinion is that the Supreme Court has no means of enforcement. All the court can do is rule and hope the other branches of government and the nation follows their ruling (Casillas, Enns, and Wohlfarth 2011). The only aspect the Justices should listen to more than popular opinion is what is morally right. The Constitution is a document about equality and freedom. These are the ideals the Justices must answer to, then popular opinion, then any additional political leaning they might possess.

If the Supreme Court had ruled differently in *Scott v. Sandford*, America could have gone in a completely different direction. The United States was undoubtedly on the verge of war before the court ruling, but Taney's opinion divided the nation even further and increased tensions between the north and south. While civil war may have been inevitable, it is impossible to know for sure how much of an impact this decision had. One thing is clear, *Scott v. Sandford* set the nation backwards. America was headed toward the path of ending slavery, and it would take years of war and the almost separation of a nation to reverse Taney's opinion. If the court had ruled for Scott, the south still would have been proslavery, things would have still taken time, but the Supreme Court could have been the body that gave America direction, since President Buchanan and Congress could not do it (Pearson Education Inc. 2005).

Conclusion

Scott v. Sandford will always be known as an extremely influential case. Not only was it pivotal in moving the United States toward the Civil War, it illustrates a shortcoming of the court: following personal opinion over the people's opinion, and over what is right. This is not

the only time this occurred, another example being cases heard around the time of Roosevelt's New Deal, and will no doubt continue to happen. While Supreme Court Justices are intelligent people, they are not perfect and they have biases. *Scott v. Sandford* was a particularly upsetting case, because it prolonged a dark time in our history. This is worrisome when looking at cases the Supreme Court is currently trying today, especially with equality issues like gay marriage. Only with the passing of time will it be clear if the Supreme Court is making the right decisions. In *Scott v. Sandford*, the fight for equality was denied by a document made to uphold equality. Injustice like this is why the American people must remain critical of the Supreme Court in order to keep it within its bounds.

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