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Earl M. Maltz. *Dred Scott and the Politics of Slavery.* Lawrence: University Press of Kansas, 2007. ix + 182 pp. $15.95 (paper), ISBN 978-0-7006-1503-2.

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Dred Scott is one of a handful of Supreme Court decisions that has become part of the general history of the United States. In most history textbooks, it takes up between one long paragraph and two pages. In most survey courses dealing with antebellum America, it is sandwiched between the Kansas-Nebraska Act of 1854 and the Lincoln-Douglas debates of 1858. Veterans of such books and such classes remember that the case has something to do with slavery and the decision of the Court was "bad," but the exact details are just a little vague. For those who were or became truly interested, however, there was Don E. Fehrenbacher's Pulitzer Prize-winning, 741-page *The Dred Scott Case: Its Significance in American Law and Politics* (1978).

As part of its series, Landmark Law Cases and American Society, the University of Kansas Press recruited Earl M. Maltz to write a more concise exploration, *Dred Scott and the Politics of Slavery*. Well written and classroom friendly, Maltz's *Dred Scott* consists of ten chapters (including an introduction and conclusion) together with a chronology of the case, a seven-page bibliographic essay, and an index. The first five of these chapters are concerned with the legal and political background. They trace the dual debates over slavery and the western territories from the Northwest Ordinance to "bleeding" Kansas. At the same time, cases involving the Supreme Court and slavery–primarily *Groves v. Slaughter* (1841), *Prigg v. Pennsylvania* (1842), and *Strader v. Graham* (1850)–are discussed in some detail. Concluding his analysis at the end of the third chapter, Maltz writes that in *Prigg*, "both the anti-slavery [Justice Joseph] Story and the majority of the Southern justices showed a willingness to make concessions in order to promote sectional harmony" (p. 33). This, he contends, was in keeping with the Court's earlier decisions, but he adds ominously that in *Scott* a different dynamic was reflected, one produced by the political struggles of the 1840s and 1850s, "one in which the Southern justices in particular demonstrated an unyielding militancy in defense of slavery" (p. 33).

Chapter 6, "The Supreme Court in 1856," is a remarkably interesting prosopography of the Court's members. It summarizes their lives, their judicial philosophies, and their places in the context of their time. Maltz writes that sectional politics rather than constitutional law would determine the decision in *Dred Scott*, but this chapter puts flesh on the bones and blood in the veins of chief justice Roger Brooke Taney and his colleagues.

The next two chapters concentrate on the arguments presented before the Supreme Court and the opinions of its members in *Scott v. Sanford*. Scott's lead attorney, Montgomery Blair, focused his argument on the laws of Illinois that freed slaves if their owners voluntarily brought them into the state. Blair's opponents, Reverdy Johnson and Henry S. Geyer, contended that the Court was bound to recognize the Missouri Supreme Court's decision which declared that Scott remained a slave and, in addition, that the Missouri Compromise of 1820 had been an unconstitutional exercise of congressional power. It was, Johnson declared, the "law of the stronger attempted in the exercise of the conqueror's right" (p. 111).

Speaking for the majority, Chief Justice Taney delivered the opinion of the Court on March 6, 1857. First, confronting the jurisdictional issues raised by the claim of diversity of citizenship, Taney held that Negroes were not citizens of the United States and that the district federal court had erred in not dismissing the case for lack of jurisdiction. Instead of concluding, however, the chief justice asserted that it was the Court's practice to correct

errors when reversing the rulings of an inferior court, particularly where silence might lead to misconstruction or further controversy. Thus he cleared the way for the most significant portion of the decision.

Initially declaring that article 4, section 3 vested Congress with plenary powers over only those territories belonging to the nation at the time of ratification, Taney determined that such powers did not apply to the land acquired through the Louisiana Purchase. Then, after cavalierly dismissing the existing precedent in *American Ocean Insurance Company v. Canter* (1828), he bolstered his argument against the Missouri Compromise's ban on slavery by invoking the Fifth Amendment's guarantee that "no person shall ... be deprived of property without due process of law" (p. 122) and the special place of slavery by citing the fugitive slave clause and the Constitution's guarantee that states could continue to import slaves until 1808. Turning finally to the common-property doctrine, the chief justice wrote that the Louisiana Purchase was the property of the nation as a whole, "and it must therefore be held in that character for their common and equal benefit ... until it shall be associated with the other States as a member of the Union" (p. 123).

Six of Taney's colleagues agreed with him that Dred Scott and his family remained slaves, but each wrote a separate, concurring opinion. Justice Samuel Nelson, for example, chose to ignore the question of Congress's power to ban slavery in the Missouri Compromise and focused narrowly on the ability of Missouri's Supreme Court to determine the status of the Scotts. The opinions of Justices Robert Grier and James Wayne were brief and in essential agreement with the arguments of Taney and Nelson. Justices John Catron, John Campbell and Peter Daniel, however, wrote longer opinions and like Taney concentrated on the unconstitutionality of the Missouri Compromise, the constitutional guarantee of slave property and the Calhounite common-property doctrine.

The two dissenters, John McLean and Benjamin Curtis, disagreed with the chief justice on almost every point. Both more antislavery and nakedly political than Curtis, McLean's opinion declared the Scott family free on the basis of John Emerson's residence in Illinois, his nationalist view of federalism, the power of the Supreme Court to overturn the decision of a state court, and the constitutionality of the Missouri Compromise's prohibition of slavery. More scholarly in argument and moderate in tone, Justice Curtis challenged the underlying assumptions of Taney's decision finding Dred Scott free primarily on the flawed grounds of the Missouri Supreme Court in *Emerson v. Scott*.

The last two chapters of the book attempt to analyze the impact of the *Dred Scott* decision on contemporary events and its broader meaning for the judiciary. On the first point, Maltz summarizes its rejection by the Republican Party, its ambiguous adoption by the Democratic Party, and its ultimate irrelevance in the wake of secession and its bloody aftermath. "Modern historians," he writes, "generally do not view *Dred Scott* as a major cause of the Civil War; however, the war clearly led to the demise of the constitutional doctrines embraced by Chief Justice Taney and ... the majority of the Court" (p. 154).

On the second point, Maltz calls the Court's decision in *Dred Scott* an exercise in "judicial hubris." It reflected a misapprehension of American society and the American political system. In general, both the public and interested parties will accept the Court's rulings–even when they disagree with those rulings, but when there are fundamental differences and battle lines already exist, the dynamic changes. Although the Court's decision may matter, it is the actions of the other branches of government that determine the issue. Taney's decision betrayed a misunderstanding of "the appropriate role of the Supreme Court" (p. 156) and Maltz concludes, "Those who embrace his vision of the judicial function do so only at their peril" (p. 156).

This is an excellent book–made even better by the author's bibliographic essay. Earl Maltz has carefully read all the primary sources surrounding the *Dred Scott* case as well as most of the secondary literature. He has also converted his study into a morality tale on the limitations of judicial decisions. For Maltz, the law is deeply imbedded in its society and the judges that interpret the law are subject to all the pressures and prejudices and parochialism of that society. When, like Chief Justice Taney, they overreach, the result of their decisions may create consequences that are the opposite of their wishes.

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