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One Country, One Race

Several court cases and public controversies in American history illustrate the nation's evolving struggle with the question of race.

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COVER STORY

Ask a random sampling of Americans to name the key turning points in the country's struggle against racism, and most would cite the Civil War, Abraham Lincoln's Emancipation Proclamation, the Thirteenth and Fourteenth Amendments to the Constitution, Rosa Parks's quiet defiance on a city bus, and Martin Luther King's march on Washington. Few would mention the role of the courts in this struggle, which is as old as America itself, but the judiciary has played an active, if not always constructive, part in the country's painful journey from slavery to integration.

The court cases dot the decades, and they can be found in nearly every level of jurisdiction. An exhaustive review could be the subject for a book (and indeed has been the subject of several). A few cases, however, stand out from the rest:

Plessy vs. Ferguson (1896) enshrined into law the flawed half-measure known as "separate but equal." The country fully embraced "separate"; it was the "equal" we had trouble accepting. To be equal requires that we consider issues of morality and justice—issues the country was not ready to face. It was *Brown vs. Board of Education* (1954) that showed us that "separate but equal" was not working. The decision in this case opened the door to integration, but it did not mandate integration beyond the schoolhouse, and it failed to set time limits on when desegregation would take place. Hence, it was at best a half-measure. Further removing government strictures against integration, more than a hundred years after the Civil War, in *Loving vs. Virginia* (1967) the Supreme Court declared unconstitutional all state laws against interracial marriage.

In the *Regents of the University of California vs. Bakke* (1978) affirmative action case, white Americans bristled at institutionalized discrimination—something black Americans had endured for centuries. During and after the O. J. Simpson murder trial (1995), we caught a glimpse of white Americans coping with something else many black Americans had known all too well—a court trial in which the facts and the evidence were irrelevant and the verdict was predetermined.

But perhaps none of these cases had a more profound effect on American history, politics, and culture than *Scott vs. Sandford* (1857). And because this year marks the 145th anniversary of the so-called Dred Scott decision, it is only appropriate to devote special attention to this pivotal case.

Hard Questions

Dred Scott is a decision and a chapter in U.S. history that most Americans would rather forget. Years after the decision was handed down, Justice Charles Evans Hughes called it a "self-inflicted wound" on both the nation and its highest court. But nations, like individuals, learn more from their mistakes than their successes, and *Scott vs. Sandford* offers plenty of lessons.

At its core, the case asked and answered two critical questions. An illiterate slave from Virginia did the asking. Born into slavery sometime around 1800, Dred Scott's twin questions were as profound as they were simple: Am I free, and am I a citizen? The questions probably never would have been asked had Scott not been sold to John Emerson, a U.S. Army surgeon. Emerson's military service carried him—and Scott—to Missouri, Illinois, and the Wisconsin Territory. As part of the Northwest Territory, Wisconsin and Illinois prohibited slavery. And this gave Scott an opportunity to make his case and ask his questions. After Emerson's death in 1846, Scott sued Emerson's widow for his freedom, arguing that living in a free territory made him a free man and accorded him the rights of a citizen. A full decade later, he finally got his answer. In delivering it, Chief Justice Roger Brooke Taney rephrased the question. "Can a Negro, whose ancestors were imported into this country and sold as slaves," Taney bluntly queried in his majority opinion, "become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights . . . guaranteed by that instrument to the citizen?" Taney's answer, of course, was a resounding no. Laced with evident scorn and a simple refusal to consider evidence that contradicted his thesis, Taney's decision declared blacks "so far inferior, that they had no rights which the white man was bound to respect."

Even so, Taney's racist rant disguised as jurisprudence turned both the Declaration of Independence and the Constitution into empty promises in their common foundation on the premise that "all men are created equal," making them serve as mere window dressing for a brutal and backward system. In Taney's view, the Declaration of Independence showed that "neither the class of persons who had been imported as slaves nor their descendants, whether they had become free or not, were then acknowledged as a

part of the people, nor intended to be included in the general words used in that memorable instrument." Moreover, he argued that because the Constitution defined "the Negro race as a separate class of persons" and failed to regard slaves "as a portion of the people or citizens of the government then formed," the Constitution permanently and unequivocally sentenced both slaves and free blacks to an eternal netherworld of non-citizenship.

Approved by a 7-2 majority and received with equanimity by the James Buchanan White House, the decision offered a sobering glimpse of a country in moral bankruptcy and political crisis. The Declaration of Independence had at least promised equality among men; likewise, the Constitution promised justice and liberty to free men and women. Neither the documents nor the nation to which they gave birth were perfect, but their promises surely were. Taney, in effect, nullified those promises for all black people, forever.

The decision had far-reaching consequences. Trying to apply a judicial remedy to a political, and indeed moral, problem sent shockwaves through the country. Far from solving the problem of slavery and easing North-South tensions, the case widened the distance between the country's two halves. To add insult to injury, Taney didn't limit his opinion to the matter of Scott's freedom and citizenship. He also declared unconstitutional congressional actions that barred slavery in new states, a matter the Constitution surely left to Congress. This gave pro-slavery forces a chance to legislate slavery and spread it throughout the West. But the grimest consequence of Taney's opinion was how it slammed the door shut to reform and common sense. The Supreme Court was supposed to be the nation's ultimate locus of justice and fairness; Chief Justice Taney obliterated that notion. By declaring that slaves could never become free and free black men could never be citizens of the United States under the Constitution as written, Taney blocked the last avenues of legal and realistic political recourse for changing the status quo. Former slave Frederick Douglass and other abolitionists realized that a higher authority would have to overrule the ultimate constitutional authority of our country. After the *Scott* decision, the only recourse the reformers had was revolution and ultimately war.

The intervening 145 years have vindicated Scott and repudiated Taney. Four years of internecine warfare and generations of political reforms have created lasting institutional changes in American government and society. The Thirteenth and Fourteenth Amendments led the way. The former abolished slavery; the latter granted U.S. citizenship to all persons born in the United States. Together, the two measures effectively reversed Taney's decision.

Today, Taney's descendants work alongside Scott's. An African American sits on the very bench once marred by Roger Taney. African Americans play leading roles in Congress. And as President George W. Bush plans and wages war, two of his most trusted foreign-policy advisers happen to share Dred Scott's skin pigment, not Roger Taney's. This is by no means tokenism: Secretary of State Colin Powell and National Security Adviser Condoleezza Rice are arguably the best and the brightest America has to offer. Simply put, the United States has come a long way, at least institutionally. What is not so certain is whether the social revolution and institutional reforms that followed the Civil War have had an impact on the hearts of Taney's and Scott's descendants.

Making Race the Issue

In the nineteenth century, America fought a war to end slavery. In the twentieth century, the nation tore down the vast infrastructure of institutional racism that remained in both the North and South long after Confederate general Robert E. Lee's surrender. As we begin the twenty-first century, our goal should be nothing less than the defeat of individual racism—the racism that lurks in our hearts and perpetuates a status quo that separates the races. This is not a matter of Left or Right on the political spectrum, but up or down.

Before the status quo can be reversed, before a wound can be healed, it must first be exposed. That is what Dred Scott did. Although he failed to win his freedom, he succeeded at exposing the hypocrisy and backwardness that had always lurked just below the surface in America. To be blunt, in the struggle against racism, many twenty-first century individuals are like many of the nation's nineteenth-century institutions—backward and hypocritical. The first step in changing this is to realize that although race is a surface issue, it is still an issue.

For example, race still dominates American public policy debates. From election campaigns to decennial redistricting to taxation to judicial appointments to criminal justice, officials in government never miss an opportunity to look at America through the prism of race.

From sports broadcaster "Jimmy the Greek" to Major League baseball pitcher John Rocker to professional golfer Fuzzy Zoeller to the "great white hope" embodied by boxer Gerry Cooney, race casts a long shadow across the sports world as well. And as sports play such a central role in American culture, the shadow falls across much of society. Indeed, the business side of sports remains largely beyond reach of African Americans, who have yet to become the principal owners of any major professional sports team.

Race also remains a critical issue within academia. Take the imbroglio between Harvard president Lawrence Summers and former Harvard professor Cornel West. It reveals a misunderstanding of race on the part of both Summers and West. Summers reportedly upbraided West for grade inflation, organizing the prospective presidential campaign of the Reverend Al Sharpton, and recording a rap CD, and called on West to spend more of his time teaching and researching. Summers apparently viewed the CD project and other such activities as anti-intellectual, or was perhaps simply embarrassed that a Harvard professor would associate himself and the university with people and music Summers considers of questionable intellectual merit. There is also the possibility, of course, that he just wanted West to spend more time in the classroom.

Regardless of his rationale, Summers's injunction was not well received by West, who responded by demanding that Summers declare his unapologetic support of affirmative action and threatening to leave Harvard and take much of the Afro-American Studies Department with him. (A few weeks later, he made good on his threat and jumped to Princeton.) What Summers failed to recognize, for his part, was that hip-hop music is a global cultural phenomenon. In the year 2000, for example, 101.5 million hip-hop albums were sold, totaling \$1.2 billion in sales. Hip-hop influences marketing, business, and culture around the globe. It conveys ideas and sometimes even reveals deep truths about a particular culture and time. West, who is known as a "street intellectual," was simply attempting to communicate his

ideas in a way that the youth in the street would understand. It is worth noting that 60 percent of all hip-hop music is purchased by white, suburban youth.

Perhaps if Summers had understood that West was trying to spread a message of responsibility and heritage in the “new” medium of hip-hop culture, he would have praised West for his innovation rather than scolding him. However, as John McWhorter, a senior fellow at the Manhattan Institute and professor at California-Berkeley, wrote in the *Wall Street Journal* (April 16, 2002), “Visionary or not, rap is not scholarship.” It was West’s responsibility, as a professor in one of the most esteemed universities in the world, to explain what he was doing before the problem arose. As a professor, he has an opportunity—and a responsibility—to wield great influence, to ensure that backward ideas like Taney’s are challenged and overcome by reason and fact. West must not forget that if he is going to benefit from working in an environment controlled by a white establishment, he must play by the rules of that establishment. He is not a slave of the institution, but, like all employees of whatever color, he must serve the institution under the leadership of the president, the trustees, and other officials.

West’s CD has earned its share of criticism. However, regardless of one’s opinion of West’s musical skills or the CD’s philosophical content, it is laudable by at least one measure: the CD provides an alternative to the negative attitudes and images perpetuated in certain forms of music produced by black artists. In Scott’s day, as Taney’s decision reminds us, slaves were nothing more nor less than property. As such, black women were literally treated as sex objects by slave masters. Ironically, this is the same message we hear today in a growing number of lyrics written and performed by African Americans. By referring to black women as prostitutes and even animals, by turning them into objects of gratification, we have, in a sense, come full circle.

Sadly, much of America follows the lead of those in public policy, sports, and entertainment, looking at the country as Taney did—through the lens of black and white. Taney based his decision on race, ignoring truth, history, and conscience. The truth was that black men were considered full citizens throughout the North and participated in the electoral process and owned property in several states. History reported that black men had voted at the time of the ratification of the Constitution, and that Southern slave owners often emancipated entire families from servitude into freedom. Finally, Taney’s conscience should have reminded him that no man has the right to be master of another, that no race is inferior or superior to another. As French author Alexis de Tocqueville wrote in *Democracy in America* (1835), during his trek across the country, despite the “almost-insurmountable barriers . . . raised between them,” nature itself sought to bring the races together. Yet none of that mattered to Taney and the defenders of the status quo, for whom skin color determined a man’s destiny.

Many Americans today continue to cling to that viewpoint, although they are usually less transparent about it than Taney. Consider how often university provosts and high-school superintendents—the plurality of whom are white men—often seem to marvel at the scholastic achievement of a black student. Consider how angry self-appointed black leaders become when Condoleezza Rice speaks of opportunity and freedom at the Republican National Convention, or when Supreme Court Justice Clarence Thomas dares to say that he doesn’t need to be led by them. Consider how white columnists and newsmen, who normally pound their ideological foes, tend to pull their punches well clear of Rice and Powell or Jackson and Sharpton. Consider how the media uses unnecessary adjectives to label Americans (“an articulate black man,” “police arrested the black suspect in last night’s robbery”). Consider how crimes committed across racial lines are somehow deemed more newsworthy—and more worthy of punishment—than others.

Consider how individuals will calibrate their responses to this very article based on the race (or races) of its authors. We know that if this piece were written by a white man, he would run the risk of being labeled a racist or an agitator, and if it were written by a black man, he would run the risk of being called an Uncle Tom or a radical.

Residue of Racism

The driving desire of Dred Scott was American citizenship and the freedom that should follow from it. The misunderstanding of race became a roadblock for



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Scott, and he tried to move around it. But because racism was embedded in the institutions of nineteenth-century America, in the very fiber of his nation, he could not, and even the Supreme Court refused to help. In Scott's day, Congress saw slavery as a bargaining chip to be used rather than an evil to be exorcised. Presidents averted their gaze from this "peculiar institution." Citing the Constitution, which, according to Taney's perverse interpretation, defined a slave as only three-fifths of a white man (however, the notorious Three-fifths Compromise was for census purposes, to allocate congressional seats—definitely *not* to define personhood), the Dred Scott decision illustrates how the courts reacted to race.

Scott began a process that continues today—the hard work of turning the roadblock of race into a stepping stone. What makes it still difficult is the racist residue in human hearts, a

residue that cannot be removed by government plans, policy papers, platitudes, or twelve-step programs. But what if each of us followed Scott's example and asked those hard questions of ourselves? Am I free—free from the preconceptions passed down from one generation to another, free from the blinders of race, free to treat race as a stepping stone rather than a stumbling block? Am I a citizen? That responsibility entails much more than voting and paying taxes. It is an aspiration to be a part of something bigger than oneself—something beyond one's personal condition, family, hobbies, job, and 401(k).

In the eyes of the law, Dred Scott was free for only nine months. (After Taney's crushing decision, the sons of Scott's original owner purchased his freedom. He died soon after.) He was never considered an American citizen. But in a broader sense, Dred Scott was free from the moment he summoned

the courage to ask his questions, free from the blinders and preconceptions of race. And although his country never called him a citizen, he had an innate understanding that he was something more than property, that he was connected to something bigger than his own condition. He understood more about citizenship than many of the men who decided his fate and future.

To become a truly united people in the twenty-first century, we Americans must follow Scott's example rather than Taney's, and cleanse our hearts of racism. Only then will we become one race—an American race.

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