

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

On this day in 1863, Chief Justice Roger B. Taney of Maryland issues *Ex parte Merryman*, challenging the authority of President Abraham Lincoln and the U.S. military to suspend the writ of habeas corpus (the legal procedure that prevents the government from holding an individual indefinitely without showing cause) in Maryland.

Early in the war, President Lincoln faced many difficulties due to the fact that Washington was located in slave territory. Although Maryland did not secede, Southern sympathies were widespread. On April 27, 1861, Lincoln suspended the writ of habeas corpus between Washington, D.C., and Philadelphia to give military authorities the necessary power to silence dissenters and rebels. Under this order, commanders could arrest and detain individuals who were deemed threatening to military operations. Those arrested could be held without indictment or arraignment.



On May 25, John Merryman, a vocal secessionist, was arrested in Cockeysville, Maryland. He was held at Ft. McHenry in Baltimore, where he appealed for his release under a writ of habeas corpus. The federal circuit court judge was Chief Justice Roger B. Taney, who issued a ruling, *Ex parte Merryman*, denying the president's authority to suspend habeas corpus. Taney denounced Lincoln's interference with civil liberties and argued that only Congress had the power to suspend the writ.

Lincoln did not respond directly to Taney's edict, but he did address the issue in his message to Congress that July. He justified the suspension through Article I, Section 9, of the Constitution, which specifies a

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

member of the Federalist Party, but later broke with the party over the War of 1812. After switching to the Democratic Party, Taney was elected to the Maryland Senate in 1816. He emerged as one of the most prominent attorneys in the state and was appointed as the Attorney General of Maryland in 1827. Taney supported Andrew Jackson's presidential campaigns in 1824 and 1828, and he became a member of Jackson's Democratic Party. After a cabinet shake-up in 1831, President Jackson appointed Taney as his attorney general. Taney became one of the most important members of Jackson's cabinet and played a major role in the Bank War. Beginning in 1833, Taney served as secretary of the treasury under a recess appointment, but his nomination to that position was rejected by the United States Senate.

In 1835, after Democrats took control of the Senate, Jackson appointed Taney to succeed John Marshall on the Supreme Court as Chief Justice. Taney would preside over a jurisprudential shift toward states' rights, but the Taney Court did not reject federal authority to the degree that many of Taney's critics had feared. By the early 1850s, he was widely respected, and some elected officials looked to the Supreme Court to settle the national debate over slavery. Though he did not own slaves himself, Taney was outraged by Northern attacks on slavery, and he sought to use the Dred Scott decision to permanently remove slavery as a subject of national debate. His broad ruling deeply angered many Northerners and strengthened the anti-slavery Republican Party, and Republican Abraham Lincoln won the 1860 presidential election.

After Lincoln's election, Taney sympathized with the seceding Southern states, but he did not resign from the Supreme Court. He strongly disagreed with President Abraham Lincoln's more broad interpretation of executive power in the American Civil War. In *Ex parte Merryman*, Taney held that the president could not suspend the writ of habeas corpus. At the time of Taney's death in 1864, he was widely reviled in the North, and he continues to have a controversial historical

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

reputation. The Dred Scott ruling is widely considered to be one of the worst Supreme Court decisions ever made, though some scholars hold other aspects of Taney's tenure in high regard.

Early life and career

Taney was born in Calvert County, Maryland on March 17, 1777, to Michael Taney V and Monica Brooke Taney. Taney's ancestor, Michael Taney I, had migrated from England in 1660 and he and his family established themselves as prominent Catholic landowners in Maryland. As Roger Taney's older brother, Michael Taney VI, was expected to inherit the family's plantation, Taney's father encouraged him to study law. At the age of fifteen, Taney was sent to Dickinson College, where he studied ethics, logic, languages, mathematics, and other subjects. After graduating from Dickinson in 1796, he read law under Judge Jeremiah Townley Chase in Annapolis. Taney was admitted to the Maryland bar in 1799.

Marriage and family

Taney married Anne Phoebe Charlton Key, sister of Francis Scott Key, on January 7, 1806.[2] They had six daughters together. Though Taney himself remained a Catholic, all of his daughters were raised as members of Anne's Episcopal Church. Taney rented an apartment during his years of service with the federal government, but he and his wife maintained a permanent home in Baltimore. After Anne died in 1855, Taney and two of his unmarried daughters moved permanently to Washington, D.C.

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

Early political career

After gaining admission to the state bar, Taney established a successful legal practice in Frederick, Maryland. At his father's urging, he ran for the Maryland House of Delegates as a member of the Federalist Party. With the help of his father, Taney won election to the House of Delegates, but he lost his campaign for a second term. Taney remained a prominent member of the Federalist Party for several years, until he broke with the party due to his support of the War of 1812. He joined the Democratic-Republican Party and, in 1816, won election to a five-year term in the Maryland State Senate. In 1823, Taney moved his legal practice to Baltimore, where he gained widespread notoriety as an effective litigator. In 1826, Taney and Daniel Webster represented merchant Solomon Etting in a case that appeared before the Supreme Court of the United States. In 1827, Taney was appointed as the Attorney General of Maryland. Taney supported Andrew Jackson in the 1824 presidential election and the 1828 presidential election. He joined Jackson's Democratic Party and served as a leader of Jackson's 1828 campaign in Maryland.

Taney's attitudes toward slavery were complex. He emancipated his own slaves[8] and gave pensions to those who were too old to work. In 1819, he defended an abolitionist Methodist minister who had been indicted for inciting slave insurrections by denouncing slavery in a camp meeting. In his opening argument in that case, Taney condemned slavery as "a blot on our national character."

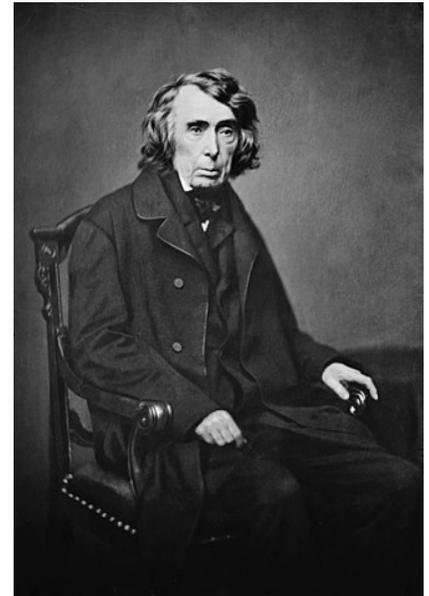
Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

Cabinet member

As a result of the Petticoat Affair, in 1831 President Jackson asked for the resignations of most of the members of his cabinet, including Attorney General John M. Berrien. Jackson turned to Taney to fill the vacancy caused by Berrien's resignation, and Taney became the president's top legal adviser. In one advisory opinion that he wrote for the president, Taney argued that the protections of the United States Constitution did not apply to free blacks; he



would revisit this issue later in his career. Like his predecessors, Taney continued the private practice of law while he served as attorney general, and he served as a counsel for the city of Baltimore in the landmark Supreme Court case of *Barron v. Baltimore*.

Taney became an important lieutenant in the "Bank War," Jackson's clash with the Second Bank of the United States (or "national bank"). Unlike other members of the cabinet, Taney argued that the national bank was unconstitutional and that Jackson should seek to abolish it. With Taney's backing, Jackson vetoed a bill to renew the national bank's charter, which was scheduled to expire in 1836. The Bank War became the key issue of the 1832 presidential election, which saw Jackson defeat a challenge from national bank supporter Henry Clay. Taney's unyielding opposition to the bank, combined with Jackson's decisive victory in the election, made the attorney general one of the most prominent members of Jackson's cabinet.

Jackson escalated the Bank War after winning re-election. When Secretary of the Treasury William J. Duane refused to authorize the removal of federal deposits from the national bank, Jackson fired Duane and gave Taney a recess appointment as secretary of the treasury.

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

Taney redistributed federal deposits from the national bank to favored state-chartered banks, which became known as "pet banks." In June 1834, the Senate rejected Taney's nomination as secretary of the treasury, leaving Taney without a position in the cabinet. Taney was the first cabinet nominee in the nation's history to be rejected by the Senate.

Supreme Court nominations

Despite Taney's earlier rejection by the Senate, in January 1835 Jackson nominated Taney to fill the seat of retiring Supreme Court Associate Justice Gabriel Duvall. Opponents of Taney ensured that his nomination was not voted on before the end of the Senate session, thereby defeating the nomination. The Democrats picked up seats in the 1834 and 1835 Senate elections, giving the party a stronger presence in the chamber. In July 1835, Jackson nominated Taney to succeed Chief Justice John Marshall, who had died earlier in 1835. Though Jackson's opponents in the Whig Party once again attempted to defeat Taney's nomination, Taney won confirmation in March 1836. **He was the first Catholic to serve on the Supreme Court.

The Taney Court

Marshall had dominated the Court during his 35 years of service, and his opinion in *Marbury v. Madison* had helped establish the federal courts as a co-equal branch of government. To the dismay of states' rights advocates, the Marshall Court's rulings in cases such as *McCulloch v. Maryland* had upheld the power of federal law and institutions over state governments. Many Whigs believed that Taney was a "political hack" and worried about the direction that he would take the Supreme Court. One of Marshall's key allies, Associate Justice

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

Joseph Story, remained on the Court when Taney took office, but Jackson appointees made up a majority of the Court. Though Taney would preside over a jurisprudential shift toward states' rights, the Taney Court did not reject broad federal authority to the degree that many Whigs initially feared.

1836-1844

See also: Presidency of Martin Van Buren and Presidency of John Tyler

Charles River Bridge v. Warren Bridge presented one of the first major cases of the Taney Court. In 1785, the legislature of Massachusetts had chartered a company to build the Charles River Bridge on the Charles River. In 1828, the state legislature chartered a second company to build a second bridge, the Warren Bridge, just 100 yards away from the Charles River Bridge.

The owners of the Charles River Bridge sued, arguing that their charter had given them a monopoly on the operation of bridges in that area of the Charles River. The attorney for the Charles River Bridge, Daniel Webster, Massachusetts had argued that the state of Massachusetts had violated the Commerce Clause by disregarding the monopoly that the state had granted to his client. The attorney for Massachusetts, Simon Greenleaf, challenged Webster's interpretation of the charter, noting that the charter did not explicitly grant a monopoly to the proprietors of the Charles River Bridge. In his majority opinion, Taney ruled that the charter did not grant a monopoly to the Charles River Bridge. He held that, while the Contract Clause prevents state legislatures from violating the express provisions of a contract, the Court would interpret a contract provision narrowly when it conflicted with the general welfare of the state. Taney argued that any other interpretation would prevent



The owners of the Charles River Bridge sued, arguing that their charter had given them a monopoly on the operation of bridges in that area of the Charles River. The attorney for the Charles River Bridge, Daniel Webster, Massachusetts had argued that the state of Massachusetts had violated the Commerce Clause by disregarding the monopoly that the state had granted to his client.

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

advancements in infrastructure, since the owners of other state charters would demand compensation in return for relinquishing implied monopoly rights.

In *Mayor of the City of New York v. Miln* (1837), the plaintiffs challenged New York statute required masters of incoming ships to report information on all passengers they brought into the country, i.e. age, health, last legal residence, etc. The question before the Taney court was whether or not the state statute undercut Congress's authority to regulate commerce; or was it a police measure, as New York claimed, fully within the authority of the state. Taney and his colleagues sought to devise a more nuanced means of accommodating competing federal and state claims of regulatory power. The Court ruled in favor of New York.

In *Briscoe v. Commonwealth Bank of Kentucky* (1837), the third critical ruling of Taney's debut term, the Chief Justice confronted the banking system, in particular state banking. Disgruntled creditors had demanded invalidation of the notes issued by Kentucky's Commonwealth Bank, created during the panic of 1819 to aid economic recovery. The institution had been backed by the credit of the state treasury and the value of unsold public lands, and by every usual measure, its notes were bills of credit of the sort prohibited by the federal Constitution. Briscoe demanded that purveyors of rag paper be forced to pay debts in sound paper or precious metal, as contracts most often stipulated. Kentucky officials contended that their debtor bank, had not issued bills of credit of the sort prohibited by the Constitution because the institution had been granted a separate corporate identity by legislative charter. Surely the framers had in mind banning only notes issued directly by treasuries or land offices.

Briscoe v. Bank of Kentucky manifested this change in the field of banking and currency in the first full term of the court's new chief justice. Article I, section 10 of the Constitution prohibited states from

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

using bills of credit, but the precise meaning of a bill of credit remained unclear. In the 1830 case, *Craig v. Missouri*, the Marshall Court had held, by a vote of 4 to 3, that state interest-bearing loan certificates were unconstitutional. However, in the *Briscoe* case, the Court upheld the issuance of circulating notes by a state-chartered bank even when the Bank's stock, funds, and profits belonged to the state, and where the officers and directors were appointed by the state legislature. The Court narrowly defined a bill of credit as a note issued by the state, on the faith of the state, and designed to circulate as money. Since the notes in question were redeemable by the bank and not by the state itself, they were not bills of credit for constitutional purposes. By validating the constitutionality of state bank notes, the Supreme Court completed the financial revolution triggered by President Andrew Jackson's refusal to recharter the Second Bank of the United States and opened the door to greater state control of banking and currency in the antebellum period. The opinion given by the majority, which Taney was a part of, fit neatly into the Jacksonian economic plan by holding that the notes of the Bank of Kentucky were not bills of credit prohibited by the Constitution, even though the state owned the banks and the notes circulated by state law as legal. Thus, the bank notes were constitutional.

In the 1839 case of *Bank of Augusta v. Earle*, Taney joined with seven other justices in voting to reverse a lower court decision that had barred out-of-state corporations from conducting business operations in the state of Alabama. Taney's majority opinion held that out-of-state corporations could do business in Alabama (or any other state) so long as the state legislature did not pass a law explicitly prohibiting such operations.

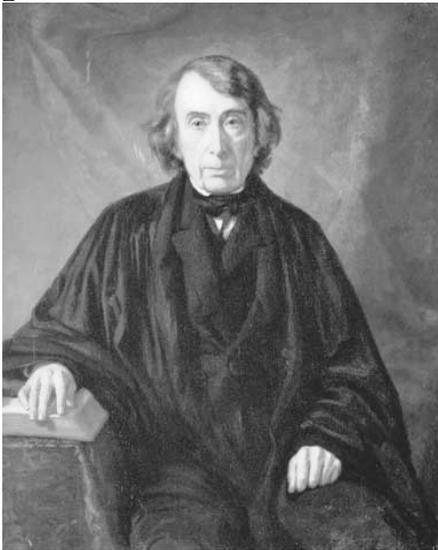
In *Prigg v. Pennsylvania* (1842), the Taney Court agreed to hear a case regarding slavery, slaves, slave owners, and states' rights. It held that the Constitutional prohibition against state laws that would emancipate any "person held to service or labor in [another] state" barred

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

Pennsylvania from punishing a Maryland man who had seized a former slave and her child, and had taken them back to Maryland without seeking an order from the Pennsylvania courts permitting the abduction. In his opinion for the Court, Justice Joseph Story held not only that states were barred from interfering with enforcement of federal fugitive slave laws, but that they also were barred from assisting in enforcing those laws. In a concurring opinion, Taney argued that the constitutional guarantee of slaveholders' rights to ownership and the prohibition in Article IV against preventing slaves' return to their



Source: Collection of the Supreme Court of the United States

masters in Southern states imposed a positive duty on states to enforce federal fugitive slave laws.

The Taney Court also presided over the case of slaves who had taken over the Spanish schooner *Amistad*. Associate Justice Joseph Story wrote the Court's decision and opinion, upholding their right as free men to have defended themselves by attacking the crew and trying to gain freedom. Taney joined Story's unanimous majority opinion but left no written record of his own in regard to the *Amistad* case.

1845–1856

See also: Presidency of James K. Polk, Presidency of Millard Fillmore, and Presidency of Franklin Pierce

In the 1847 License Cases, Taney developed the concept of police power. He wrote that "whether a state passes a quarantine law, or a law to punish offenses, or to establish courts of justice ... in every case it exercises the same power; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion."

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

This broad conception of state power helped to provide a constitutional justification for state governments to take on new responsibilities, such as the construction of internal improvements and the establishment of public schools.

Taney's 1849 majority opinion in *Luther v. Borden* provided an important rationale for limiting federal judicial power. The Court considered its own authority to issue rulings on matters deemed to be political in nature. Martin Luther, a Dorrite shoemaker, brought suit against Luther Borden, a state militiaman because Luther's house had been ransacked. Luther based his case on the claim that the Dorr government was the legitimate government of Rhode Island, and that Borden's violation of his home constituted a private act lacking legal authority. The circuit court, rejecting this contention, held that no trespass had been committed, and the Supreme Court, in 1849, affirmed. The decision provides the distinction between political questions and justiciable ones. Taney asserted that, "the powers given to the courts by the Constitution are judicial powers and extend to those subject, only, which are judicial in character, and not to those which are political." The majority opinion interpreted the Guarantee Clause of the Constitution, Article IV, Section 4. Taney held that under this article Congress is able to decide what government is established in each state. This decision was important, because it is an example of judicial self-restraint. Many Democrats had hoped that the justices would legitimize the actions of the Rhode Island reformers. However, the justices' refusal to do so demonstrated the Court's independence and neutrality in a politically charged atmosphere. The Court showed that they could rise above politics and make the decision that it needed to make.

In 1852, the *Genesee Chief v. Fitzhugh*, dealt with the issue of admiralty jurisdiction. This case regarded a collision that occurred on Lake Ontario in 1847. The propeller of the boat, *Genesee Chief*, struck and sank the schooner, *Cuba*. Suing under the 1845 act that extended

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

admiralty jurisdiction to the Great Lakes, the owners of the Cuba alleged that the negligence of the Genesee Chief caused the accident. Counsel for the Genesee Chief blamed the Cuba and contended that the incident occurred within New York's waters, outside the reach of federal jurisdiction. The key constitutional question was whether the case properly belonged in the federal courts. The case also derived its importance not from the facts of the collision, but about whether admiralty jurisdiction extended to the great freshwater lakes. In England, only tidal rivers had been navigable; hence, in English Law, the Admiralty Courts, which had been given jurisdiction over navigable waters, found their jurisdiction limited to places which felt the effect of the tides of the sea. In the United States, the vast expanse of the Great Lakes and stretches of the continental rivers, extending for hundreds of miles, were not tidal; yet upon these waters large vessels could move, with burdens of passengers and cargo. Taney ruled that the admiralty jurisdiction of the US Courts extends to waters, which are actually navigable, without regard to the flow of the ocean tides. Taney's majority opinion established a broad new definition of federal admiralty jurisdiction. According to Taney, the 1845 act fell within Congress's power to control the jurisdiction of the federal courts. "If this law, therefore, is constitutional, it must be supported on the ground that the lakes and navigable waters connecting them are within the scope of admiralty and maritime jurisdiction, as known and understood in the United States when the Constitution was adopted. "Taney's opinion marked a significant expansion of federal judicial power and an important step in establishing uniform federal admiralty principles. The United States increasingly polarized along sectional lines during the 1850s, with slavery acting as the central source of sectional tension. Taney wrote the majority opinion in the 1851 case of *Strader v. Graham*,

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

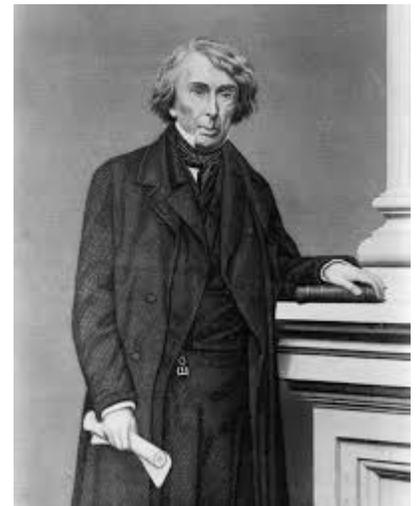
in which the Court held that slaves from Kentucky who had conducted a musical performance in the free state of Ohio remained slaves because they had voluntarily returned to Kentucky. Taney's narrowly constructed opinion was joined by both pro-slavery and anti-slavery justices on the Court. While the Court avoided splitting over the issue of slavery, debates over the status of slavery in the territories, as well as the Fugitive Slave Act of 1850, continued to roil the nation.

Dred Scott decision

Main article: Dred Scott v. Sandford

See also: Presidency of James Buchanan and Origins of the American Civil War

As Congress was unable to settle the debate over slavery, some leaders from both the North and the South came to believe that only the Supreme Court could bring an end to the controversy. The Compromise of 1850 contained provisions to expedite appeals regarding slavery in the territories to the Supreme Court, but no suitable



case arose until Dred Scott v. Sandford reached the Supreme Court in 1856. In 1846, Dred Scott, an enslaved African-American man living in the slave state of Missouri, had filed suit against his master for his own freedom. Scott argued that he had legally gained freedom in the 1830s, when he had resided with a previous master in both the free state of Illinois and a portion of the Louisiana Territory that banned slavery under the Missouri Compromise. Scott prevailed in a state trial court, but that ruling was reversed by the Missouri Supreme Court. After a series of legal maneuvers, the case finally made its way to the Supreme Court in 1856. Although the case concerned the explosive issue of slavery, it initially received relatively little attention from the press and

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

from the justices themselves.

In February 1857, a majority of the judges on the Court voted to deny Scott freedom simply because he had returned to Missouri, thereby reaffirming the precedent set in Strader. However, after two of the Northern justices objected to the decision, Taney and his four Southern colleagues decided to write a much broader decision that would bar federal regulation of slavery in the territories. Like the other Southerners on the Court, Taney was outraged over what he saw as "Northern aggression" towards slavery, an institution that he believed was critical to "Southern life and values." Along with newly-elected President James Buchanan, who was aware of the broad outlines of the upcoming decision, Taney and his allies on the Court hoped that the Dred Scott case would permanently remove slavery as a subject of national debate. Reflecting these hopes, Buchanan's March 4, 1857 inaugural address indicated that the issue of slavery would soon be "finally settled" by the Court. To avoid the appearance of sectional favoritism, Taney and his Southern colleagues sought to win the support of at least one Northern justice to the Court's decision. At the request of Associate Justice John Catron, Buchanan convinced Northern Associate Justice Robert Cooper Grier to join the majority opinion in Dred Scott.

Taney wrote the Court's majority opinion, which he announced on March 6, 1857. He first held that no African-American, free or enslaved, had ever enjoyed the rights of a citizen under the Constitution. He argued that, since the time of the ratification of the Constitution, blacks had been "regarded as beings of an inferior order, altogether unfit to associate with the white race ... and so far inferior, that they had no rights which the white man was bound to respect." To bolster the argument that blacks were widely regarded as legally inferior when the Constitution was adopted, Taney pointed to various state laws, but ignored the fact that five states had allowed blacks to vote in 1788. He

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

next declared that the Missouri Compromise was unconstitutional, and that the Constitution did not grant Congress the power to bar slavery in the territories. Taney argued that the federal government served as a "trustee" to the people of the territory, and could not deprive the right of slave-owners to take slaves into the territories. Only the states, Taney asserted, could bar slavery. Finally, he held that Scott remained a slave. The Dred Scott opinion received strong criticism in the North, and Associate Justice Benjamin Robbins Curtis resigned in protest. Rather than removing slavery as an issue, it bolstered the popularity of the anti-slavery Republican Party. Republicans like Abraham Lincoln rejected Taney's legal reasoning and argued that the Declaration of Independence showed that the Founding Fathers favored the protection of individual rights for all free men, regardless of race. Many Republicans accused Taney of being part of a conspiracy to legalize slavery throughout the United States.

Lincoln's War

Taney's grave in Frederick, Maryland

Running on an anti-slavery platform, Republican nominee Abraham Lincoln won the 1860 presidential election, defeating Taney's preferred candidate, John C. Breckinridge. Several Southern states seceded in response to Lincoln's election and formed the Confederate States of America; the American War began in April 1861 with the Battle of Fort Sumter. Unlike Associate Justice John Archibald Campbell, Taney did not resign from the Court to join the Confederacy, but he believed that the Southern states had the constitutional right to secede and he blamed Lincoln for starting the war. From his position on the Court, Taney challenged Lincoln's more expansive view of presidential and federal power during the Civil War.] He did not get the opportunity to rule against the constitutionality of the Emancipation Proclamation, the

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

Legal Tender Act, or the Enrollment Act, but he did preside over two important Civil War cases.

After secessionists destroyed important bridges and telegraph lines in the border state of Maryland, Lincoln suspended the writ of habeas corpus in much of the state. That suspension allowed military officials to arrest and imprison suspected secessionists for an indefinite period and without a judicial hearing. After the Baltimore riot of 1861, Union officials arrested state legislator John Merryman, who they suspected of having destroyed Union infrastructure. Union officials allowed Merryman access to his lawyers, who delivered a petition of habeas corpus to the federal circuit court for Maryland. In his role as the head of that circuit court, Taney presided over the case of *Ex parte Merryman*. Taney held that only Congress had the power to suspend the writ of habeas corpus, and he ordered the release of Merryman. Lincoln ignored Taney's order and argued that the Constitution did in fact give the president the power to suspend the writ of habeas corpus. Nonetheless, he requested that Congress authorize him to suspend the writ, which it did by passing the Habeas Corpus Suspension Act of 1863.

In 1863, the Supreme Court heard the Prize Cases, which arose after Union ships blockading the Confederacy seized ships that conducted trade with Confederate ports. An adverse Supreme Court decision would strike a major blow against Lincoln's prosecution of the war, since the blockade cut off the crucial Confederate cotton trade with European countries. The Court's majority opinion, written by Associate Justice Grier, upheld the seizures and ruled that the president had the authority to impose a blockade without a congressional declaration of war. Taney joined a dissenting opinion written by Associate Justice Samuel Nelson, who argued that Lincoln had overstepped his authority by ordering a blockade without the express consent of Congress.

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

Death

Taney died on October 12, 1864, at the age of 87. The following morning, the clerk of the Supreme Court announced that "the great and good Chief Justice is no more." He served as chief justice for 28 years, 198 days, the second longest tenure of any chief justice. Taney was nearly penniless by the time of his death, and he left behind only a \$10,000 life insurance policy and worthless bonds from the state of Virginia.

President Lincoln made no public statement in response to Taney's death. Of his cabinet, Lincoln and three members — Secretary of State William H. Seward, Attorney General Edward Bates, and Postmaster General William Dennison — attended Taney's memorial service in Washington. Only Bates joined the cortège to Frederick, Maryland for Taney's funeral and burial at St. John the Evangelist Cemetery. Lincoln appointed Salmon P. Chase, a strongly anti-slavery Republican from Ohio, to succeed Taney.

Legacy

Roger B. Taney statue removed from Mount Vernon Place, Baltimore in August 2017[58]

Roger Taney appears on a 1940 U.S. revenue stamp

Historical reputation

After his death, Taney remained a controversial figure. Secretary of the Navy Gideon Welles spoke for many Northerners when he stated that the Dred Scott decision "forfeited respect for [Taney] as a man or a judge." In early 1865, the House of Representatives passed a bill to appropriate funds for a bust of Chief Justice Taney to be displayed in the Supreme Court alongside those of his four predecessors. In response, Senator Charles Sumner of Massachusetts said:



Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

I speak what cannot be denied when I declare that the opinion of the Chief Justice in the case of Dred Scott was more thoroughly abominable than anything of the kind in the history of courts. Judicial baseness reached its lowest point on that occasion. You have not forgotten that terrible decision where a most unrighteous judgment was sustained by a falsification of history. Of course, the Constitution of the United States and every principle of Liberty was falsified, but historical truth was falsified also.

George Ticknor Curtis, one of the lawyers who argued before Taney on behalf of Dred Scott, held Taney in high esteem despite his decision in Dred Scott. In a volume of memoirs written for his brother Benjamin Robbins Curtis, George Ticknor Curtis gave the following description of Taney:

He was indeed a great magistrate, and a man of singular purity of life and character. That there should have been one mistake in a judicial career so long, so exalted, and so useful is only proof of the imperfection of our nature. The reputation of Chief Justice Taney can afford to have anything known that he ever did and still leave a great fund of honor and praise to illustrate his name. If he had never done anything else that was high, heroic, and important, his noble vindication of the writ of habeas corpus, and of the dignity and authority of his office, against a rash minister of state, who, in the pride of a fancied executive power, came near to the commission of a great crime, will command the admiration and gratitude of every lover of constitutional liberty, so long as our institutions shall endure.

Biographer James F. Simon writes that "Taney's place in history [is] inextricably bound to his disastrous Dred Scott opinion." Simon argues that Taney's opinion in Dred Scott "abandoned the careful, pragmatic approach to constitutional problems that had been the hallmark of [Taney's] early judicial tenure." Historian Daniel Walker Howe writes that "Taney's blend of state sovereignty, white racism, sympathy with

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

commerce, and concern for social order was typical of Jacksonian jurisprudence." Law professor Bernard Schwartz list Taney as one of the ten greatest Supreme Court justices, writing that "Taney's monumental mistake in Dred Scott should not overshadow his numerous accomplishments on the Court. Taney was second only to Marshall in laying the foundation of our constitutional law." Taney's mixed legacy was noted by Justice Antonin Scalia in his dissenting opinion in *Planned Parenthood v. Casey*:

There comes vividly to mind a portrait by Emanuel Leutze that hangs in the Harvard Law School: Roger Brooke Taney, painted in 1859, the 82nd year of his life, the 24th of his Chief Justiceship, the second after his opinion in Dred Scott. He is all in black, sitting in a shadowed red armchair, left hand resting upon a pad of paper in his lap, right hand hanging limply, almost lifelessly, beside the inner arm of the chair. He sits facing the viewer, and staring straight out. There seems to be on his face, and in his deep set eyes, an expression of profound sadness and disillusionment. Perhaps he always looked that way, even when dwelling upon the happiest of thoughts. But those of us who know how the lustre of his great Chief Justiceship came to be eclipsed by Dred Scott cannot help believing that he had that case – its already apparent consequences for the Court, and its soon to be played out consequences for the Nation – burning on his mind.

Memorials

Taney's home, Taney Place, in Calvert County, Maryland, was listed on the National Register of Historic Places in 1972. Another property owned by Taney, called the Roger Brooke Taney House (although he never lived there), is in Frederick, Maryland. The House and its associated outbuildings are not open to the public but are open for tours by appointment. In the past the house the property interpreted the life

Lincoln's suspension of Habeas Corpus is Challenged

27 May 1863

L i n c o l n ' s W a r

of Taney and his wife Anne Key (sister of Francis Scott Key), as well as various aspects of life in early nineteenth century Frederick County". Several places and things have been named for Taney, including Taney County, Missouri, the USCGC Taney (WPG-37), and the Liberty ship SS Roger B. Taney. In 1993, the Roger B. Taney Middle School in Temple Hills, Maryland was renamed for Justice Thurgood Marshall. A statue of Taney formerly stood on the grounds of the Maryland State House, but the state of Maryland removed the statue in 2017. That same year, the Baltimore City Council voted to remove a statue of Taney.

