The Supreme Court: Citadel of Slavery

Elizabeth Lawson

Prairie Fire Publishing

https://prairiefirepublishing.com/

1st Edition

978-1-300-29249-4

Cover art *Sale of Estates, Pictures and Slaves in the Rotunda, New Orleans; by William Henry Brooke.*

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Among the most pliant and powerful tools of the American slavocracy was the United States Supreme Court. From the floor of Congress, Senator John P. Hale of New Hampshire denounced it as "the citadel of slavery."

Between 1825 and 1858, the highest court rendered eleven[1] decisions reviewing basic principles of the slavery system; each of these decisions was in complete harmony with the interests of slave-owners. That the opinions were, in several instances, mutually contradictory; that justices affirmed what they had previously denied; that they tortured principles of law to make them serve

[1]We shall consider here only cases argued before the full Court, without touching on decisions rendered by individual Supreme Court justices on circuit. The entire machinery of the federal judiciary, however, was, with few exceptions, made to serve the slave-owners.

the convenience of the moment — all this renders untenable the theory of the Supreme Court's political innocence.

Of the eleven decisions touching on slavery, four dealt with the African slave trade; four with federal and state fugitive slave laws; and three with the status of slaves who, though not fugitives, had resided temporarily on free soil. Of this last group of cases that of Dred Scott concerned also the legality of slavery in the vast territory not yet admitted to statehood. The astounding Dred Scott opinion was the culmination, the most rounded expression, of the pro-slavery theories of a court which, in the course of three decades, constructed the legal framework within which the slavocracy could function to best advantage.

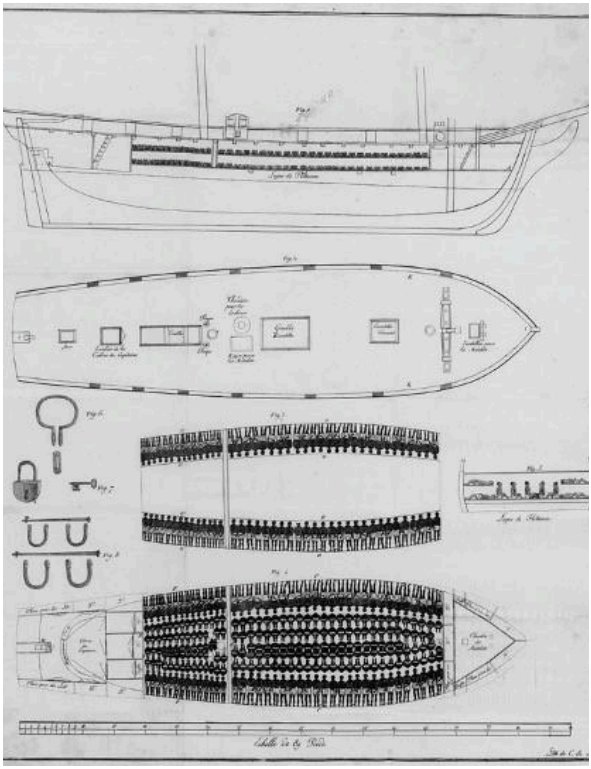
New Hampshire Senator
John Parker Hale

The composition of the court during this period gives evidence of deliberate "packing" by the slaveholders. By the Act of Congress of 1837 — five years after the attempt at nullification by South Carolina marked the slavocracy's political maturity — the free states, with a population of almost 10,000,000, were to have but four circuit courts, while the slave states, with a white population of only 4,500,000, were to have five. Free states admitted to the Union in later years were granted no representation on the Supreme Court.

Through control by the Judiciary Committee of the Senate, there were appointed, for the minority of circuits in free territory, judges who — with a few notable exceptions — reflected the opinions of the Northern commercial and banking aristocracy, in alliance with the slave-owners. Thus, at the time of the Dred Scott decision, five of the justices were Southern Democrats; with them voted two Northern Democrats; and only one Republican and one Northern Whig voiced dissenting opinions.

The first of the cases on the foreign slave trade to come before the court was that of the *Antelope*, brought up for adjudication in 1825. The facts were these: a Venezuelan privateer, the *Arranganta*, secretly fitted out in Baltimore, sailed for Africa to prey upon slavers and capture their cargo for its own profit. Among its victims were a Spanish ship, and an American vessel, the *Antelope*. Subsequently — for reasons not vital to this discussion — all the Negroes were transferred to the hold of the *Antelope*, which then hovered about the southern coast of the United States, hoping to turn a deal in slaves.

The *Antelope*, however, was captured by a United States revenue cutter and taken to the port of Savannah. About 280 Negroes were found on board. The federal government asserted that the Negroes had been brought to the country in violation of the law, and were free. The Circuit Court of Georgia liberated those Negroes originally captured from the American vessel off the African Coast, but awarded others to the Spanish claimants. The government then appealed to the United States Supreme Court.



An Antelope-type ship.

An Act of Congress of 1807 had declared forfeit:

> ...any ship or vessel found hovering near the coast of the United States, having on board any Negro, *mulatto*, or person of color, for the purpose of selling them as slaves.

Ex-President John Quincy Adams, arguing the case for the government in the highest court, pointed out that this act made no distinction as to the national character of the ship. The court, however, chose to base itself rather on a supplementary federal statute of 1820, making the slave trade piracy when carried on by citizens of the United States. It was this last phrase which the court emphasized in its opinion, pronounced by Chief Justice Marshall, restoring to the Spanish Consul the Negroes whom he claimed on behalf of Spanish citizens. It should be noted, in this connection, that Spain had also prohibited the foreign slave trade.

The essence of the decision was, first, that the institution of slavery was legal, and, second, that the nations of the world had not outlawed the slave trade, nor declared it to be piracy, and that it was therefore justified.

> Slavery [said Marshall] has its origin in force; but as the world was agreed that it is a legitimate result of force, the state of things thus produced by general consent cannot be pronounced unlawful.

The Negroes, he explained, had been legally captured in "war'' — a "war" of the white invaders against the natives of Africa. "International law," the opinion stated, "is decidedly in favor of the legality of the slave trade."

That trade might, in consequence, be lawfully carried on by those nations which had not prohibited it; it was not piracy; and the right of visitation and search — by which alone the slave trade could be suppressed — did not exist in times of peace. Marshall took occasion to express regret that in this

litigation "the sacred rights of liberty and of property come in conflict with each other"; the conflict was resolved, nevertheless, in favor of property.

Two years later, the highest court handed down a decision in the case of John Gooding, a notorious slave-trader indicted in Baltimore.

His attorney, Roger B. Taney, later Chief Justice, carried an appeal to the Supreme Court. Taney made no attempt to deny his client's guilt; he based his plea instead on alleged defects in the indictment. By means of hair-splitting legal technicalities, the court found judgment for Gooding. Within little more than a decade, however, the Supreme Court delivered two further decisions touching the African slave trade; one (the *United States vs. Isaac Morris*, 1840) dealt severely with a citizen of the United States who served on board a slaver; the other freed a group of Negroes who, seized in Africa and transported to Cuba, rose in revolt and took possession of the ship.

Chief Justice John Marshall

At first glance, these decisions might be thought to indicate a change of heart by the Supreme Court. But there was, in actual fact, no betrayal of the interests of the slave-owners. As the years passed, the border states, their soil exhausted by slave cultivation, turned more and more to systematic breeding of slaves for market; to them, the importation of African Negroes represented unwelcome competition. To hold the loyalty of the border states, the slavocracy agreed to forego the foreign slave trade. Further, it was to the interests of the wealthiest and most powerful of the slave owners to prevent the glutting of the market and the consequent fall in the value of their property. It was not they, but rather the middle and lower strata among the slave-owners, who voiced the demand for cheap slaves. For these reasons, even the Constitution of the Confederacy, adopted in 1861, continued the prohibition of the African slave trade.

An insurrection of Negroes aboard a Spanish slaver in 1839 resulted in a long judicial controversy, in the course of which