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**A House Divided: HD (41): The
Determined Mr. Taney – III**

Lead: One hundred and fifty years ago the Republic was facing its greatest crisis. This continuing series examines the American Civil War. It is "A House Divided."

Intro: *A Moment in Time* with Dan Roberts.

Content: For twenty-eight years Roger Brooke Taney served as Chief Justice of the United States. As Andrew Jackson's Secretary of the Treasury, he helped destroy the Second Bank of the United States

and remained hostile to corporate interests throughout his career, but his life's main focus was to protect slavery and those southern values which he saw as uniquely connected to that evil and corrupt institution. When the case of Dred Scott came before the Court, Taney set out to build a wall between blacks, slave and free, and the rights and protections of the federal constitution.

In the decision, he spent an inordinate amount of time asserting that blacks were sub-human, were not potential U.S. citizens and had never been intended by the framers to have legal claims white men had any obligation to respect. The two

dissenting justices and subsequent scholarly research has proven Taney's assertions to be utterly and emphatically false. Blacks had been citizens of the states since before the beginning of the Republic and the Constitution clearly confirms that state citizens are U.S. citizens. On this, he carried the day in the Court, but convinced almost no one of the veracity of his opinions.

On the issue of Dred Scott's claim that temporary residence in free territory made him free, Taney slapped that aside with little attempt at proving his point. He chose to accept those instances of case law precedent that denied that temporary residence in free

territory transformed a black slave into a freeman. Mr. Taney has spoken, Dred Scott is a slave.

Congress' power to regulate or prohibit slavery in territories involved much more Taney labor but in an intellectually vacuous fashion. He based his argument on the Fifth Amendment's protection of property rights without due process. Slaves were property, after all. The two dissenting justice swept aside his faulty reasoning with case after case of Congress' regulation of slavery, by due process, often with the framers present and favorably participating. Congress was not unlawfully appropriating property when it regulated slavery in the

territories. No slave-owner had his property expropriated or was denied the right to take his property into a free state. The property was still his, if he could hold on to it in the face of hostility by the residents of said state or territory. Taney's opponents asserted that Federal law could not be bent to force lovers of freedom to cooperate in a system they loathed. This failure to support and protect slavery drove southerners into a paroxysm of anger and resentment and eventually out of the Union.

Ironically, the determined Mr. Taney, despite all he could do to protect his beloved southland and the institution that so completely

defined it, would administer the oath of office to President-elect Abraham Lincoln. The latter's equally ferocious determination would crush the south and wipe slavery off the North American continent.

Many legal scholars affirm that Taney was a competent jurist and good administrator. His vigorous defense of the writ of *habeas corpus* during the Civil War has been counted as an important resistance to executive presumption and authority, even in times of rebellion and during a national emergency. Yet, his legacy will forever be associated with and stained by *Dred Scott* and his ideological, sectional,

political and emotional defense of the indefensible institution of slavery.

In Richmond Virginia, this is Dan Roberts.

Resources

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