

The Death of Taney

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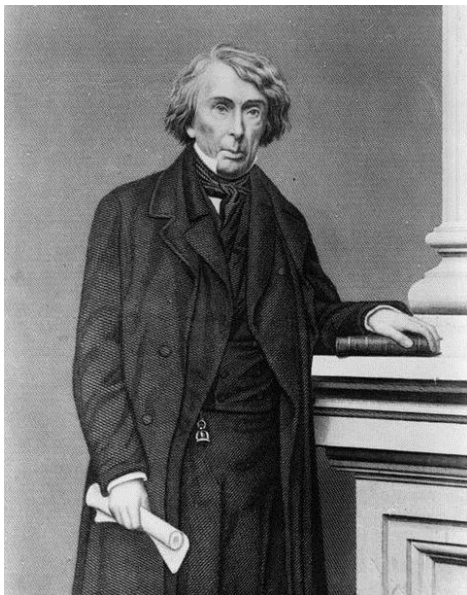
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On Oct. 12, 1864, President Abraham Lincoln must have breathed a bit easier.

Not because the war was over — it would last another six months. Not because he had been re-elected — the election remained nearly a month away. And not because Gen. William T. Sherman had begun his decisive march through Georgia — the general was still holding Atlanta. While much remained unsettled, Lincoln's achievements as president seemed more secure that autumn day because the president learned that his old nemesis Roger B. Taney, the Maryland-born chief justice of the Supreme Court, had died.

Ever since Taney had handed down the Supreme Court's decision in *Dred Scott v. Sandford* in 1857, he and Lincoln had been bitter rivals. Taney was a well-known defender of slavery, a bias he showed most famously in that case, when the court attempted to resolve, once and for all, the contentious issue of slavery in federal territories. Taney and six other justices had done so by ruling squarely on the side of slaveholders; according to Taney, slaveholding was a constitutional right, one with which neither Congress nor a territorial legislature could interfere.

Lincoln, who by then had served in Congress but was now back in Illinois, working as a politically active lawyer, disagreed strongly with the decision, and his opposition to *Dred Scott* fueled his political rise in the North. When he ran for Congress the next year, he debated the matter fiercely with his Democratic opponent, Stephen Douglas. Lincoln strongly implied that Taney, Douglas and other leaders had conspired to spread slavery throughout the land. And in 1860, Lincoln ran on a Republican Party platform that denounced the *Dred Scott* ruling as “a dangerous political heresy.”



Chief Justice Roger B. Taney Library of Congress

Lincoln finally confronted Taney, whose own dislike of the new president was well known, at his inauguration. In what must have been one of the most awkward moments in American political history, on March 4, 1861, the 83-year-old chief justice (whom Andrew Jackson had appointed 25 years before) administered the presidential oath of office to Lincoln. What must they have been thinking?

With Taney seated nearby on the platform, Lincoln used his Inaugural Address to question the finality of decisions of the Supreme Court. The president argued that if important questions of national policy were left to unelected judges, “the people will have ceased to be their own rulers.”

Despite the new president’s jab at the justices, Lincoln soon learned that the Supreme Court could serve to advance his own positions. One vacancy on the court already existed at the time of Lincoln’s inauguration, as Justice Peter V. Daniel of Virginia had passed away in 1860. Almost immediately after Lincoln assumed office, two more positions opened. In early April, Justice John McLean died, and just a few weeks later — after the war began — Justice John A. Campbell of Alabama resigned to serve the Confederacy.

Lincoln made good use of these opportunities to fill seats on the court with those who supported his bold use of executive power to preserve the Union. Congress helped. In 1863, lawmakers added another circuit to the federal court system, and thereby added another justice to the Supreme Court. For the first and only period in its history, the Supreme Court would have 10 members (by 1869, the number had settled at nine). Lincoln’s appointments — Noah Swayne of Ohio, David Davis of Illinois, Samuel Miller of Iowa and Stephen Field of California — gradually transformed the high court. Taney remained chief justice, but it was largely Lincoln’s Supreme Court.

During the war, Lincoln’s justices proved reliable friends of administration policy. Although Taney had continued to joust with Lincoln early in his term over the president’s decision to suspend the privilege of the writ of habeas corpus, the increasingly Unionist and Republican court gave Lincoln an important victory in 1863 in a case involving the constitutionality of Lincoln’s order blockading Southern ports.

By far the most revolutionary and controversial use of executive power exercised by Lincoln was the Emancipation Proclamation, which he signed on Jan. 1, 1863. Justified under the president’s powers as commander in chief as “a fit and necessary war measure,” the proclamation claimed to free all slaves in those areas of the country “in rebellion against the United States.”

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A skilled lawyer, Lincoln thought that the president’s power to end slavery rested on a more solid constitutional foundation than any act of Congress. But he could not be sure. Nor could he be assured of the fate of the proclamation when the war ended, for he had justified it as a war measure. Even in wartime, Taney surely would have attempted to strike down the Emancipation Proclamation, if a case had come to the court.

So when Lincoln learned that the aged chief justice had passed away, the president must have gained some peace of mind. A few days after Taney’s death, Lincoln attended a simple funeral ceremony at the chief justice’s rented home in Washington. But those who needed to worry less

about appearances had already hailed the chief justice's passing. "Providence has given us a victory in the death of Chief Justice Taney," wrote Senator Charles Sumner, Republican of Massachusetts, in a letter to Lincoln on the day Taney died. "It is a victory for Liberty and the Constitution."

Taney's death allowed Lincoln to nominate the longtime abolitionist-lawyer (and Lincoln's former Treasury secretary) Salmon P. Chase of Ohio to the chief justiceship. Although Chase and Lincoln had not always gotten along, the president was confident in Chase's rock-solid commitment to abolition. Chase's appointment meant that half of the court owed their positions to Lincoln, while only four justices remained from the seven-justice Dred Scott majority.

Several weeks later, Lincoln would devote his efforts to passing the 13th Amendment, a "King's Cure," as he described it, for the evils of slavery. In the meantime, Lincoln had already managed to succeed in putting in place a backup plan in the event that the amendment failed: He had secured control of the Supreme Court.

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Timothy S. Huebner is the Sternberg Professor of History and the chairman of the Department of History at Rhodes College.