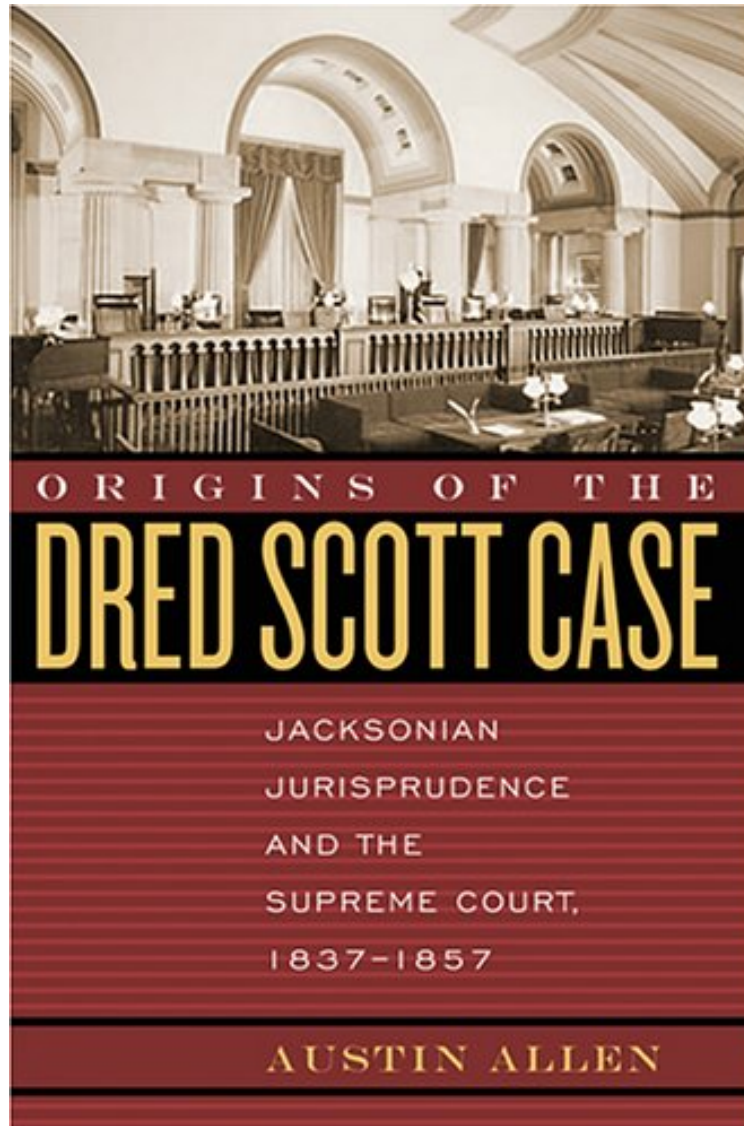


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Origins of the Dred Scott Case: Jacksonian Jurisprudence and the Supreme Court, 1837-1857 (Studies in the Legal History of the South Ser.)

Austin Allen

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Austin Allen : Origins of the Dred Scott Case: Jacksonian Jurisprudence and the Supreme Court, 1837-1857 (Studies in the Legal History of the South Ser.) before purchasing it in order to gauge whether or not it would be worth my time, and all praised *Origins of the Dred Scott Case: Jacksonian Jurisprudence and the Supreme Court, 1837-*

1857 (Studies in the Legal History of the South Ser.):

0 of 0 people found the following review helpful. I thought I knew everything about this decision, but ...By VisitorI thought I knew everything about this decision, but I learned things from this book...A must for the devoted scholar of antebellum America.2 of 2 people found the following review helpful. Commerce, the Taney Court and "Dred Scott"By John G. CollingeAustin Allen's monograph "Origins of the Dred Scott Case: Jacksonian Jurisprudence and the Supreme Court, 1837-1857" is another fine entry in the ongoing Studies in the Legal History of the South. It is not an easy read but rewards the effort. "Origins of the Dred Scott Case" is a close study of the Taney Court's evolving approach to commercial law and that body of law's implications for treating slavery in the Federal judicial system. Allen's central thesis is that Chief Justice Roger Taney and the Dred Scott majority confronted a dilemma. They needed to craft a legal framework that could preserve the newly recognized concept of corporate citizenship but preclude African Americans from asserting citizenship based claims in the Federal courts. The Taney Court majority consistently adhered to the theory of concurrent sovereignty. It recognized the States and the Federal government as independently sovereign within their scope of authority to the exclusion of overlapping authority. Federal authority comprised only powers expressly granted by the Constitution. It did not extend to how states extended rights to residents or maintained order. In *Strader vs. Graham* (1851) Chief Justice Taney held that "every state has the undoubted right to determine the status, or domestic and social condition, of the persons domiciled within its territory." (Origins, p 92) Therefore the Supreme Court had no jurisdiction to review an appeal of a state court's decision determining if one of its residents was a slave or free. The majority employed a narrow reading of constitutions and statutes which disfavored going beyond the text to interpret meaning or intent. At the same time the Taney Court approached judge made law, the common law, as malleable and not binding as precedent. This concept became important in the slavery context after the Court in *Swift vs. Tyson* (1842) created federal judicially crafted commercial common law in diversity of citizenship cases which it quickly applied to corporations. Austin does not explore the argument but it seems implicit that a majority of the Justices conceived the United States as fundamentally a commercial union and viewed creating a framework federal commercial law as consistent with concurrent sovereignty. *Dred Scott* was the first suit asserting a claim of freedom adjudicated by a Federal Court to reach the Supreme Court. This allowed Chief Justice Taney and his majority to accomplish three objectives. They foreclosed African Americans' access to the Federal courts by crafting an extremely narrow concept of federal citizenship limited to whites and not subject to expansion if a state extended rights to black residents. They preserved the standing of corporations by looking to the citizenship, presumptively white, of corporation members. As a result Justices John Campbell and John Catron who were moving toward Justice Peter Daniel's rejection of corporate citizenship dropped their opposition. Finally, via an extremely narrow reading of the Constitution's Needful Rules Clause, Taney assembled a six Justice majority to hold that Congress when organizing territorial governments only had the power to create a government framework, not territorial law. In effect, the majority extended the scope of concurrent authority it recognized the States held to the territories. Allen's focus is on Chief Justice Taney's reasoning to which he contrasts the opposing positions taken by Justices Benjamin Curtis and John McLean. On balance he finds Taney's reading of the Constitution as it stood in 1857 persuasive if politically obtuse. Allen briefly summarizes the testy Taney-Curtis correspondence following Taney's actions to augment his opinion to meet Curtis' dissent. He concludes this may have influenced Curtis' decision to resign but probably was not decisive. Allen does not develop the point but his analysis is suggestive of the impact of transition on the bench. Justice Levi Woodbury's replacement by Curtis substituted for a Justice who almost certainly would have stood with Taney an articulate critic. Justice John McKinley's death in 1852 removed an Alabama Justice untroubled by corporate citizenship. His successor Campbell perceiving a threat to the slave states internal order almost immediately began assembling a potentially powerful dissenting block. It is unlikely that *Dred Scott* would have been decided differently but quite probable the Court would have been less polarized. It is not implausible to imagine more temperate language and a less explosive reaction had Woodbury and McKinley lived.1 of 1 people found the following review helpful. An Analysis that Would Have Resonated in 1890By John AgarA few good insights, but much filler. For example, Allen spends many pages describing how the antebellum Supreme Court made law without noting that the overarching theoretical structure is pretty much the same courts purport to use today. And some of the filler is really awful stuff. Regarding the following, one could, I suppose, spend 20 or 30 pages describing why this is just completely wrong-headed. Or one could simply point out that Allen's rhetoric seems to have been cribbed from the Second International. For example, concerning the decision in *Dartmouth College v. Woodward* (1819), in which the Supreme Court invalidated an attempt by the newly installed "Jeffersonian" legislature in New Hampshire to modify the charter previously granted to Dartmouth, a center of Federalist learning, Allen writes: "Under this newly asserted independence, colleges chartered before 1819 could become centers for the reproduction of an elite hostile to the changes taking place around it. Harvard, with which the ubiquitous [Justice] Story was deeply involved, capitalized on the Dartmouth protections and established itself at the center of an institutional matrix devoted toward the aggrandizement of national power for Boston's elite. More economically oriented corporations played a role in this network, but they comprised only part of the elite's wider

effort to secure their power through these ancient charters."

The Supreme Court's 1857 Dred Scott decision denied citizenship to African Americans and enabled slavery's westward expansion. It has long stood as a grievous instance of justice perverted by sectional politics. Austin Allen finds that the outcome of Dred Scott hinged not on a single issue—slavery—but on a web of assumptions, agendas, and commitments held collectively and individually by Chief Justice Roger B. Taney and his colleagues. Allen carefully tracks arguments made by Taney Court justices in more than 1,600 reported cases in the two decades prior to Dred Scott and in its immediate aftermath. By showing us the political, professional, ideological, and institutional contexts in which the Taney Court worked, Allen reveals that Dred Scott was not simply a victory for the Court's pro-southern faction. It was instead an outgrowth of Jacksonian jurisprudence, an intellectual system that charged the Court with protecting slavery, preserving both federal power and state sovereignty, promoting economic development, and securing the legal foundations of an emerging corporate order—all at the same time. Here is a wealth of new insight into the internal dynamics of the Taney Court and the origins of its most infamous decision.

In this original and provocative look at one of the most important judicial decisions in American history, Austin Allen skillfully re-creates the mid-nineteenth century Supreme Court's intellectual world. For the first time, Allen dissects the internal workings of Roger Taney's Court, showing how the justices constructed a logic parallel but separate from the political controversies that raged outside their Court. This book is indispensable for understanding the intricate connections between Jacksonian democracy, the Supreme Court, and the coming of the Civil War. (Christopher Waldrep author of *The Many Faces of Judge Lynch*) Austin Allen has written an absolutely superb, and original, book that is full of extraordinarily clearly presented insights about the various legal contexts within which the Dred Scott litigation occurred and was decided by the Supreme Court. Anyone interested in the development of American constitutional law and the role of the Supreme Court must read this book. (Sanford Levinson University of Texas School of Law) Austin Allen has found a new and intriguing angle on the infamous Dred Scott case. . . . He explains relatively technical and obscure elements of early nineteenth-century law in an accessible and clear fashion. . . . This book is essential reading for anyone interested in the Dred Scott case, and is quite valuable for anyone interested in the Supreme Court, law, and politics during the Jacksonian era. (Civil War History) This brilliant volume is filled with insight across antebellum legal thought. . . . Everyone working in antebellum legal history needs to engage this book. We will all be grappling . . . with Allen's thoughtful, bold book for the rest of our careers. He has opened Dred Scott again to study and shown us that we have much to learn about the complex relationship of judicial doctrine and proslavery ideology. (Register of the Kentucky Historical Society) Allen has written a fine book: instructive, perceptive, and well researched . . . [Origins of the Dred Scott Case] will not be the last word on the subject, but, from this point forward, it must be part of any intelligent discussion. (American Historical) Allen's well-written book is a fine introduction to Jacksonian jurisprudence and the politics of the Taney court . . . original and informative. (Journal of American History) Here is a wealth of new insight into the internal dynamics of the Taney Court and the origins of its most infamous decision (McCormick Messenger) Makes important contributions this scholarship on sectional controversies in antebellum America. (Law and History) About the Author Austin Allen is an assistant professor of history at the University of Houston, Downtown.