Garden State CLE Presents:

The FIVE Worst SCOTUS Decisions in the History of the Universe

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Lesson Plan

Case Selection Criteria

In every term, there will be one or two decisions from the United States Supreme Court that will provoke firestorms of intense passions on behalf of people who agree or disagree with the majority's ruling. However, to constitute a really bad decision, two factors are of importance:

1) Passage of time – It is only through time that the true, catastrophic impact of a decision on the people of the United States can be gauged with any level accuracy and context. Each of the cases selected for this review is at least 50 years old.

2) Level of impact: What were the results of a particular opinion in terms of lives ruined, lives lost, treasure squandered and basic civil liberties being trampled?

Although there may be many potential candidates among the Court's terrible decisions, the five cases selected here meet the above criteria.

Dredd Scott vs. Sanford, 60 U.S. 393(1857)

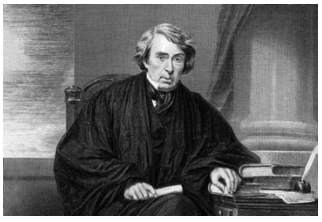
Introduction

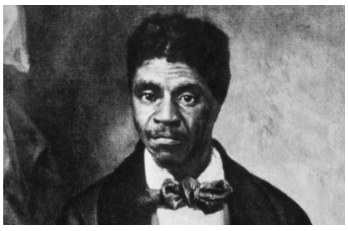
Everything about this case is wrong, starting with its caption, which mistakenly misspells the name of the respondent (Sanford). It is a decision that is so bad that it took three amendments to the United States Constitution (13th, 14th and 15th) to make sure it was dead and buried.

The history about the role and status of Black people in the United States by Chief Justice Roger Taney is shocking and hurtful to a modern-day audience. It is also inaccurate and mischaracterizes history.

Based upon the purported lack of jurisdiction, the case should have been resolved in one paragraph….but a quick resolution was not the intended goal of the majority; rather it was something much more devious and politically motivated.

It would be an overstatement to argue that the *Dredd Scott* decision caused the Civil War. However, it certainly foreclosed resort to the judiciary as a way of resolving the disputes which resulted in the commencement of hostilities in 1861.





The Decision

The Court's intention in Dred Scott was to transform a pure political issue into settled law. Using the so-called "originalist" doctrine to interpret the Constitution, Chief Justice Taney wrote the majority opinion and ruled that:

African-Americans are not citizens of the United States and have no rights privileges or immunities under federal law. Accordingly, the jurisdictional claim based upon diversity fails because Scott is not a citizen of the United States. [Note: As a slave, Dred Scott was not even a citizen of Missouri, a slave State.]

It is difficult at this day to realize the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken. They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion. Dred Scott vs. Sandford, 60 U.S. 393, 407(1857).

This narrow issue should have settled the controversy for Dred Scott, but the majority went on to rule on a wide variety of extraneous issues with an eye toward resolving the issues related to the expansion of slavery, including:

The Missouri Compromise is unconstitutional in that it violates the 5th Amendment's due process clause. [Note that this statute had already been repealed by the Kansas-Nebraska Act].

It endorsed the view that slaves could be brought into new territories regardless of popular sovereignty.

Catastrophic Impact

Trigger the panic of 1857, resulting in a run-on northern banks and the failure of all the railroad companies that had lines running east and west.

The case made any level of political compromise on this issue of the expansion of slavery impossible due to the interpretation of the 5th Amendment due process clause.

Split the Democratic Party in such a way that it guaranteed the election of the Republicans in 1860.

Elevated Lincoln to national status as a result of the Lincoln-Douglas debates on this issue.

It outraged northerners while providing encouragement and legal support for southern slave interests.

In combination, these effects hastened the beginning of the Civil War.

The opinion had the net effect of continuing the bondage of Dred Scott.

Dred Scott was subsequently repurchased by the sons of his original owner, Peter Blow and was immediately emancipated. He died a free man in 1858.

Final Thoughts

Dred Scott is not taught in Law School or mentioned in standard constitutional law texts and few lawyers have any knowledge of it. There is a reason for this:

The case holds up a mirror to us as Americans from which see view an historical image of which we are deeply ashamed.

But as lawyers and judges, it is a cautionary tale that demonstrates what can happen when:

The judicial branch takes on political questions;

The ethical requirements of judicial process are not followed;

The concept of judicial restraint and narrow grounds is ignored.

Plessy vs. Ferguson, 163 U.S. 537(1896)

Introduction

A statute passed by the Louisiana Legislature in 1890 entitled the Separate Car Act required that white and Black passengers travel in separate train cars. Homer Plessy was a young civil rights activist of the era who, with the support of his civil rights advocacy organization, volunteered to violate the law by purposefully entering and traveling a train car reserved for white passengers. In other words, he volunteered to be the subject in a test case. On June 7, 1892, he was arrested for this offense, posted bail and was bound over for trial.

Homer Plessy's defense at trial was based upon the argument in a pretrial motion that the separate car act violated the equal protection clause 14th Amendment to the U.S. Constitution.

Because of the federal, constitutional issue in the case, the matter was ultimately appealed to the US Supreme Court which heard oral argument some 4 years later. The Court ruled that the statute did not violate the 14th Amendment in that the statute in question called for equal but separate accommodations for Black passengers.

The decision in Plessy triggered a widespread push to enact statutes that would serve to lawfully separate the races. These were known as Jim Crow laws.

Catastrophic Impact

The suffering engendered Jim Crow laws reached all phases of American social, political and civil life for Black Americans. Perhaps its most destructive impact was in the field of education where separate but equal schools the rule of the day. In point of fact, the beginning of the end of Jim Crow laws occurred in 1954 in the landmark decision of Brown v. Board of Education, 347 U.S. 483 (1954) reversing the 1896 holding in Plessy. Even then, it took many additional years for Congress to enact civil rights laws that would finally address and abolish the laws of the Jim Crow era. In the interim, the impact of Jim Crow continued unabated in much of the South.

Lochner vs. New York, 198 U.S. 45(1905)

Introduction

This case placed into focus the purported freedom to contract under the Due Process Clause of the 14th Amendment with the inherent police powers of the state to regulate health, safety and welfare.

Lochner involved a local dispute between small-time bakery owners, mostly former bakery employees themselves, who felt put-upon by the bakers' union, and a bakers' union dominated by individuals of German descent struggling mightily to combat competition from workers from other ethnic groups. That this dispute has taken on mythic proportions as a battle between "capital" and "labor" bespeaks the tendency of academics to write their own ideological preoccupations into constitutional history.

At issue was a comprehensive statute that imposed health and safety regulations for the bakery industry in New York. One of the provisions limited the work hours of bakery employees to 10 hours per day and 60 hours per week.

In a 5-4 decision, majority struck down the New York statute as a violation of the 14th Amendment. The Court concluded that the Act was really a "labor law" that could not be justified under the police power.

> The general right to make a contract in relation to his business is part of the liberty of the individual protected by the Fourteenth Amendment to the Federal Constitution. Under that provision, no State can deprive any person of life, liberty or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this amendment unless there are circumstances which exclude the right.
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> Lochner, 198 U.S. at 53

The majority reasoned that:

> Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week. ... The [Bakeshop] act is not, within any fair meaning of the term, a health law, but is an illegal interference with the rights of individuals, both employers and employees, to make contracts regarding labor upon such terms as they may think best, or which they may agree upon with the other parties to such contracts.
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> Lochner, 198 U.S. at 57, 61.

> It is also urged ... that it is to the interest of the State that its population should be strong and robust, and therefore any legislation which may be said to tend to make people healthy must be valid as health laws, enacted under the police power. ... Scarcely any law but might find shelter under such assumptions, and conduct, properly so called, as well as contract, would come under the restrictive sway of the legislature. Not only the hours of employees, but the hours of employers, could be regulated, and doctors, lawyers, scientists, all professional men, as well as athletes and artisans, could be forbidden to fatigue their brains and bodies by prolonged hours of exercise, lest the fighting strength of the State be impaired.
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> Lochner, 198 U.S. at 60–61.

> It is impossible for us to shut our eyes to the fact that many laws of this character, while passed under what is claimed to be the police power for the purpose of protecting the public health or welfare, are, in reality, passed for other motives. (i.e., redistribution of wealth).
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> Lochner, 198 U.S. at 64.

Analysis and Discussion

This decision has been described as one of the most condemned cases in U.S. history, ranking with Dredd Scott, Plessy and Korematsu as examples of how judges should not behave.

See law review article by David Bernstein on the centennial of Lochner at:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=918404

Korematsu vs. United States, 323 U.S. 214(1944)

Introduction

The First "Strict Scrutiny" Case

The petitioner, an American citizen of Japanese descent, was convicted in a federal district court for remaining in San Leandro, California, a 'Military Area', contrary to Civilian Exclusion Order No. 34 of the Commanding General of the Western Command, U.S. Army, which directed that after May 9, 1942, all persons of Japanese ancestry should be excluded from that area. No question was raised as to petitioner's loyalty to the United States. The Circuit Court of Appeals affirmed,[1] and the importance of the constitutional question involved caused us to grant certiorari.

It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.

[We] are unable to conclude that it was beyond the war power of Congress and the Executive to exclude those of Japanese ancestry from the West Coast war area at the time they did. True, exclusion from the area in which one's home is located is a far greater deprivation than constant confinement to the home from 8 p.m. to 6 a.m. Nothing short of apprehension by the proper military authorities of the gravest imminent danger to the public safety can constitutionally justify either. But exclusion from a threatened area, no less than curfew, has a definite and close relationship to the prevention of espionage and sabotage. The military authorities, charged with the primary responsibility of defending our shores, concluded that curfew provided inadequate protection and ordered exclusion.

Explicitly overruled in Trump v. Hawaii, 585 U.S. ___(2018)

> [The] dissent invokes Korematsu vs. United States. Whatever rhetorical advantage the dissent may see in doing so, Korematsu has nothing to do with this case. The forcible relocation of U.S. citizens to concentration camps, solely and explicitly on the basis of race, is objectively unlawful and outside the scope of Presidential authority. But it is wholly inapt to liken that morally repugnant order to a facially neutral policy denying certain foreign nationals the privilege of admission. The entry suspension is an act that is well within executive authority and could have been taken by any other President—the only question is evaluating the actions of this particular President in promulgating an otherwise valid Proclamation.
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> The dissent's reference to Korematsu, however, affords this Court the opportunity to make express what is already obvious: Korematsu was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—"has no place in law under the Constitution."

Buck vs. Bell, 274 U.S. 200(1927)
Introduction

This 8-1 decision by Oliver Wendell Holmes has never been explicitly overruled and presumably is still good law to this day.

(However, contrast Skinner vs. Oklahoma, 316 U.S. 535(1942) dealing with a mandatory sterilization statute of male habitual criminals which was struck down on equal protection grounds.)

The case comes here upon the contention that the statute authorizing the judgment is void under the Fourteenth Amendment as denying to the plaintiff in error due process of law and the equal protection of the laws.

Carrie Buck is a feeble-minded white woman who was committed to the State Colony above mentioned in due form. She is the daughter of a feeble-minded mother in the same institution, and the mother of an illegitimate feeble-minded child. She was eighteen years old at the time of the trial of her case in the Circuit Court in the latter part of 1924. An Act of Virginia approved March 20, 1924 (Laws 1924, c. 394) recites that the health of the patient and the welfare of society may be promoted in certain cases by the sterilization of mental defectives, under careful safeguard, etc.; that the sterilization may be effected in males by vasectomy and in females by salpingectomy, without serious pain or substantial danger to life; that the Commonwealth is supporting in various institutions many defective persons who if now discharged would become a menace but if incapable of procreating might be discharged with safety and become self-supporting with benefit to themselves and to society; and that experience has shown that heredity plays an important part in the transmission of insanity, imbecility, etc.

In view of the general declarations of the Legislature and the specific findings of the Court obviously we cannot say as matter of law that the grounds do not exist, and if they exist they justify the result. We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. Three generations of imbeciles are enough.