

Abortion's Dred Scott Moment

Overreach in New York and Virginia has inspired a backlash across the country.



By Cardinal Timothy Dolan

My former home of St. Louis boasts, as one of its historical gems, the Old Courthouse. Countless important moments in American history took place in the 19th-century building. Admittedly, St. Louisans don't brag about its connection to one of the most notorious and degrading legal decisions in American history.

It was at this courthouse that two slaves, Dred Scott and his wife, Harriet, began a more than decade long legal saga in 1846. The two argued that, having lived for a significant time in free states, they could not be re-enslaved. After the case wound through the Missouri legal system, the Supreme Court ruled in *Dred Scott v. Sandford* (1857).

In a particularly vicious decision, the court held that the Scotts were not human persons, and thus had no rights. The 7-2 opinion said the Constitution's framers considered blacks to be an "inferior class of beings who had been subjugated by the dominant race." The court held that the law must therefore continue to treat African-Americans as "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." The institution of slavery outlived Scott, and in the eyes of the law he remained the chattel of his master.

This decision, according to Civil War scholar Shelby Foote, backfired. Slave owners were subject to a public outcry as they were forced to admit the logical corollary of slavery: The slave was not human, but property, with no rights. Even those defending slavery thought again, admitting that their argument had gone too far. The ruling emboldened abolitionists, re-energizing their decades-old project to defend the human rights of the black slave.

In the past few weeks, as the constant debate around abortion has become especially heated, I've continually thought about Dred Scott. Like slavery did 150 years ago, abortion has deeply divided the U.S. and raised fundamental questions about the nature of our society.

Last month New York Gov. Andrew Cuomo signed into law the Reproductive Health Act—grisly legislation that permits abortion in many cases up to the moment of birth. It eliminates legal penalties on abortionists who allow an aborted baby, who somehow survives the scalpel, vacuum and dismemberment, to die. It also permits these perilous procedures to take place without a physician present. This was perhaps expected in a state completely dominated by a party that has become increasingly intolerant of pro-life Americans.

Yet a similar bill was introduced in purple Virginia and gruesomely defended by the ostensibly moderate Gov. Ralph Northam. This bill was killed in committee, suggesting many Americans are nauseated by abortion-on-demand. Indeed, a Marist College survey last month showed that 75% of Americans—and 61% of those identified as “pro-choice”—want some form of restrictions on abortion. Is the U.S. having a Dred Scott moment on abortion?

Even some defenders of abortion acknowledge they may have gone too far. See the repugnance expressed at New York's governor celebrating the morbid bill with a party. He also ordered the Freedom Tower to be illuminated in pink—shining on the names of 11 pregnant women who perished with their preborn babies on 9/11. A former Virginia governor and a sitting U.S. senator from the Old Dominion, both staunch abortion supporters, disavowed the radical bill in their state. It seems that some abortion supporters no longer hope it is safe, legal and rare. Rather, it's celebrated, unregulated and frequent.

The most destructive war in U.S. history settled the questions raised by Dred Scott. The U.S. won't go there on abortion—God forbid. But the horror of New York's extremism and Virginia's flirtation with the same will spur determined but temperate resistance.

For instance, left and right can work together for more accessible adoption policies. Conservatives should be more willing to support financial assistance and counseling for struggling expectant moms before and after birth. Liberals should acknowledge the reasonableness of restrictions on abortions of viable babies. Add in conscience protection for health-care providers who find abortion repugnant, and these policies would form a great start.

I won't rest until all life is protected from the womb to the tomb, but right now I will at least work hard to enact these reforms as soon as possible. It could help the fever here in this country go down some.

Maybe those politicians who passed the law in New York and tried to do the same in Virginia unintentionally did the country a favor. Today more Americans are admitting, “My God, that's sure not what we wanted. Doesn't the baby have any rights?” Perhaps soon, some of many saved babies could be named Dred or Harriet Scott.

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