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DRED SCOTT AND THE PROBLEM OF CONSTITUTIONAL EVIL

Dred Scott and the Problem of Constitutional Evil concerns what is entailed by pledging allegiance to a constitutional text and tradition saturated with concessions to evil. The Constitution of the United States was originally understood as an effort to mediate controversies between persons who disputed fundamental values and did not offer a vision of the good society. In order to form a “more perfect union” with slaveholders, late eighteenth-century citizens fashioned a constitution that plainly compelled some injustices and was silent or ambiguous on other questions of fundamental rights. This constitutional relationship could survive only as long as a bisectational consensus was required to resolve all constitutional questions not settled in 1787. *Dred Scott* challenges persons committed to human freedom to determine whether antislavery Northerners should have provided more accommodations for slavery than were constitutionally strictly necessary or risked the enormous destruction of life and property that preceded Lincoln’s new birth of freedom.

Mark A. Graber is a professor of government at the University of Maryland, College Park, and a professor of law at the University of Maryland School of Law. He previously taught law and political science at the University of Texas. He is the author of *Transforming Free Speech* (1991), *Rethinking Abortion* (1996), and numerous articles on American constitutional development, law, and politics. His many awards include the Edward Corwin Prize (best dissertation), the Hughes Goessart Prize (best article in the *Journal of the History of the Supreme Court*), and the Congressional Quarterly Prize (best published article on public law). Professor Graber is a member of the American Political Science Association and the American Association of Law Schools. During the 2005/06 academic year, he was head of the Law and Courts section of the American Political Science Association.

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CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press
40 West 20th Street, New York, NY 10011-4211, USA

www.cambridge.org

Information on this title: www.cambridge.org/9780521861656

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First published 2006

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication data

Grabner, Mark A.

Dred Scott and the problem of constitutional evil / Mark A. Graber.

p. cm. – (Cambridge studies on the American Constitution)

Includes index.

ISBN 0-521-86165-9 (hardback)

1. Slavery – Law and legislation – United States – History. 2. Scott, Dred, 1809–1858 – Trials, litigation, etc. 3. Slavery – United States – Legal status of slaves in free states. 4. Constitutional history – United States. I. Title. II. Series.

KF4545.S5G73 2006

342.7308'7 – dc22

2006005050

ISBN-13 978-0-521-86165-6 hardback

ISBN-10 0-521-86165-9 hardback

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*In memory of Julius W. Graber and Jerome D. Frank,
who were for every decent cause long before those causes
were known to be decent*

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I John Brown am now quite *certain* that the crimes of this *guilty land*,
will never be purged *away*, but with Blood.

Shalom rav al yisra'el am'cha tasim l'olam

Grant abundant peace eternally for Israel, Your people

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Acknowledgments

Communities write books. Individuals may type the words, see their name on the front cover, and collect the royalty check, but the ideas they express are derived from and depend upon the communities they inhabit. Although common courtesy requires an author to absolve friends and associates for any mistakes in his work, the strengths and weaknesses of our writings inevitably reflect the strengths and weaknesses of our communities. Whatever virtues and vices you may find in *Dred Scott and the Problem of Constitutional Evil* are virtues and vices that were fostered by the many communities I have been fortunate to inhabit. I am grateful beyond words for the way these communities have helped me discipline my intellectual quirkiness and even more grateful for their forbearance when this intellectual quirkiness manifested itself as neurosis.

Every paragraph in *Dred Scott* is indebted to the growing school of historical institutionalism in political science, history, and law. My ongoing conversations with the exceptionally gifted scholars in that community have enriched my academic and personal life to the point where I might seriously consider remaining in the academy even if offered the opportunity to play point guard for the New York Knicks. Keith Whittington, Mark Tushnet, Sandy Levinson, and Jeff Tulis continually teach me about the crucial importance of the Constitution outside of the courts. Mark Brandon and Howard Gillman continually teach me about the crucial role that constitutional failure plays in American political development. Rogers Smith, Julie Novkov, and Pamela Brandwein continually teach me about the crucial role that race and slavery play in American constitutional development. Ran Hirschl, Sandy Levinson, and Keith Whittington continually teach me about the crucial role constitutional structures play in constitutional development. Paul Frymer, Ron Kahn, Leslie Goldstein, John Brigham, Steve Griffin, Barry Friedman, Christine Harrington, Douglas Grob, Bruce Ackerman, Karen

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Orren, Stephen Skowronek, Ken Kersch, George Lovell, Michael McCann, Gordon Silverstein, Jim Fleming, Linda McClain, Howard Schweber, Donald Downs, Gary Jacobsohn, Neal Devins, Steve Elkin, Scot Powe, Michael Klarman, Jack Balkin, H. W. Perry, Joel Grossman, Judy Baer, Sotirios Barber, and many others continually teach me to think about constitutionalism in ways that were alien to the young would-be scholar who once thought that the only purpose of constitutional argument was to persuade five justices on the Supreme Court. Every thought in this text was inspired by these wonderful and giving scholars. In the case of Sandy Levinson, Howard Gillman, Mark Tushnet, Ran Hirschl, and Keith Whittington, I can no longer tell the difference between my ideas and theirs. I am particularly grateful for the too many times they commented on this manuscript and to such younger scholars as Bradley Hays, Justin Wert, Steve Simon, and Rebecca Thorpe for challenging all of our ideas, for recognizing that their task is to build new paradigms for their generation. *Dred Scott* will be a success in my eyes if readers are convinced that they must read and read carefully the major works of all the scholars mentioned in this paragraph.

My communities at the University of Texas and the University of Maryland contributed greatly to *Dred Scott*. Jim Fishkin, Walter Dean Burnham, Sandy Levinson, and Scot Powe played vital roles in my formative years as a scholar, teaching me about the possibilities of American constitutional development, encouraging me to find my distinctive scholarly voice, and giving me a taste for barbecue at bizarre places. Jon Wilkenfeld, Mark Lichbach, and Steve Elkin of the University of Maryland, College Park, provided crucial guidance and support when we moved back to the East Coast. I am particularly grateful to Dean Karen Rothenberg at the University of Maryland School of Law for her encouragement and summer money, to Dean Richard Boldt for encouragement and ideas and for giving me a second home in Baltimore, and to Deborah Hellman, Jana Singer, Gordon Young, David Bogen, Peter Quint, Maxwell Stearns, David Super, and many other colleagues at the law school for ideas and stimulation. I was also made welcome at numerous other academic communities, whose faculty calmly listened to earlier versions of this book and made exceptionally helpful suggestions. These institutions include the UCLA Law School, Johns Hopkins University, Syracuse University, the University of Texas at Dallas, New York University School of Law, DePaul College of Law, and the University of North Carolina School of Law. The hospitality of these institutions merits mention for being responsible for whatever weight gain I experienced when writing *Dred Scott*. I am also grateful to *Constitutional Commentary* and the *University of North Carolina Law Review* for publishing earlier essays on

Acknowledgments

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themes discussed in this work and for their granting permission to republish parts of those essays here. Maeva Marcus and the Institute for Constitutional Studies deserve special thanks for supporting my scholarship.

The academic publishing community has supported and shaped *Dred Scott* for almost a decade. Malcolm Litchfield, Chuck Myers, and John Tyrneski have always fostered my ambitions and demonstrated the highest professional standards in all our interactions. Lewis Bateman and Cambridge University Press brought those ambitions to fruition. Lewis is a model editor. Under his guidance the reviewing and publication process was handled expeditiously, and more than 50,000 unnecessary words were cut from this manuscript. Both he and Ruth Homingras politely, but firmly, disciplined my writing excesses, allowing me to say the same thing twice and sometimes even thrice but not ten times. Maeva Marcus, Howard Gillman, Mark Tushnet, and Mel Urofsky kindly included this work in their series, “Cambridge Studies on the American Constitution.” Given their reputations and the high standards they demand of authors and reviewers, I look forward to the marvelous works they will publish in the future. Matt Darnell and Vickie Darnell provided quick and first-rate copy-editing and typesetting, respectively. Cynthia Monroe did a wonderful job on the index.

My family is the most important community responsible for this book. For half a century I have been blessed with unbelievably loving and nurturing parents, Anita Wine Graber and Julius W. Graber. They were the first to foster my intellectual quirkiness and be amused by my innumerable neuroses. My spouse, Dr. Julia Bess Frank, who by marriage inherited the responsibility for putting up with both the quirkiness and neurosis, has for more than twenty years been a source of strength, an exceptional editor, and a model of human decency for our children, her students, and her communities. Our children – Naomi, Abigail, and Rebecca – provided much of the research for this book (along with their friends Rebecca Cole and Emily Sutton) and, to the great joy of their father, seem to have inherited a bit of that intellectual quirkiness (I am also to blame for whatever neuroses they exhibit). The last paragraph of this book is written in the hope that our future grandchildren will have the full opportunity to exhibit their intellectual quirkiness and neuroses.