

Handout D: *Dred Scott v. Sanford* (1857) Case Background

The period between the ratification of the Constitution and the Civil War was marked by increased efforts for the abolition of slavery. As the country grew, free states began to outnumber slave states in number and population. The anti-slavery forces gained political strength. The Northwest Ordinance prohibited slavery in the Northwest Territory and established a boundary between free and slave territories. The Missouri Compromise prohibited slavery in a prescribed portion of the former Louisiana Territory. This created vast new territories that would become free states upon admission to the Union.

However, while slave states remained steadfast in their claim that slavery was a state issue, they did help to pass two federal fugitive slave laws, gaining national recognition of their legal rights against abolitionists who helped slaves escape.

Federal law now required the return of the slaves to their owners.

In the midst of this turmoil, Dred Scott, a slave, filed a case in Federal Circuit Court in St. Louis, Missouri. Scott claimed that because he had lived for ten years in both a free state (Illinois) and a free territory (Wisconsin), he had been made a free man. His owner did not deny that Scott and his family had resided in Wisconsin and Illinois, but claimed Scott lacked standing to sue, as he was not a citizen of the United States.

The Court looked at the case in the broadest possible terms, using it as a platform to decide: 1) Did Scott have standing to sue? 2) Were blacks entitled to rights as citizens? 3) Could Congress restrict the rights of states to decide if they would be slave or free?

Handout H: *Dred Scott v. Sanford* (1857), Majority and Dissenting Opinions (7-2)

Dred Scott v. Sanford (1857), Majority Opinion (7-2), Chief Justice Taney

The language of the Declaration of Independence is ... conclusive: ... 'We hold these truths to be self-evident: that all men are created equal.' ... [I]t is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration ... They perfectly understood the meaning of the language they used, and how it would be understood by others; and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which, by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery...

The brief preamble [to the Constitution] ... declares that it is formed by the people of the United States; that is to say, by those who were members of the different political communities in the several States; and its great object is declared to be to secure the blessings of liberty to themselves and their posterity. It speaks in general terms of the people of the United States, and of citizens of the several States, when it is providing for the exercise of the powers granted or the privileges secured to the citizen. It does not define what description of persons are

intended to be included under these terms, or who shall be regarded as a citizen and one of the people...

[T]here are two clauses in the Constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the Government then formed.

[T]he right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every State that might desire it, for twenty years. And the Government in express terms is pledged to protect it in all future time, if the slave escapes from his owner. This is done in plain words—too plain to be misunderstood. And no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

Critical Thinking Questions

1. According to this document, how and why does the Constitution protect slavery?
2. According to this document, why were slaves not considered to be people?

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Dred Scott v. Sanford (1857), Dissenting Opinion, Justice Curtis

[The] question is whether any person of African descent, whose ancestors were sold as slaves in the United States, can be a citizen of the United States. If any such person can be a citizen, this plaintiff has the right to the judgment of the court that he is so, for no cause is shown by the plea why he is not so, except his descent and the slavery of his ancestors...

To determine whether any free persons, descended from Africans held in slavery, were citizens of the United States ... at the time of the adoption of the Constitution of the United States, it is only necessary to know whether any such persons were citizens of either of the States under the Confederation at the time of the adoption of the Constitution.

Of this there can be no doubt. At the time of the ratification of the Articles of Confederation, all free native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, though descended from African slaves, were not only citizens of those States, but such of them as had the other

necessary qualifications possessed the franchise of electors, on equal terms with other citizens...

Did the Constitution of the United States deprive them or their descendants of citizenship?

That Constitution was ordained and established by the people of the United States, through the action, in each State, or those persons who were qualified by its laws to act thereon in behalf of themselves and all other citizens of that State. In some of the States, as we have seen, colored persons were among those qualified by law to act on this subject. These colored persons were not only included in the body of "the people of the United States" by whom the Constitution was ordained and established, but, in at least five of the States, they had the power to act, and doubtless did act, by their suffrages, upon the question of its adoption. It would be strange if we were to find in that instrument anything which deprived of their citizenship any part of the people of the United States who were among those by whom it was established.

Critical Thinking Questions

1. What historical evidence does the author use to support the claim that "colored persons" were citizens?
2. How does this dissent differ from the majority opinion?

Handout I: Speeches on the *Dred Scott* Decision: Frederick Douglass and Abraham Lincoln

Frederick Douglass, Speech on the *Dred Scott* Decision, 1857

I have a quarrel with those who fling the Supreme Law of this land between the slave and freedom ...[The Constitution says] “We, the people”—not we, the white people—not we, the citizens, or the legal voters—not we, the privileged class, and excluding all other classes but we, the people; not we, the horses and cattle, but we the people—the men and women, the human inhabitants of the United States, do ordain and establish this Constitution.

I ask, then, any man to read the Constitution, and tell me where, if he can, in what particular that instrument affords the slightest sanction of slavery?

Where will he find a guarantee for slavery? Will he find it in the declaration that no person shall be deprived of life, liberty, or property, without due process of law? Will he find it in the declaration that the Constitution was established to secure the blessing of liberty? Will he find it in the right of the people to be secure in their persons and papers, and houses, and effects? Will he find it in the clause prohibiting the enactment by any State of a bill of attainder?

These all strike at the root of slavery, and any one of them, but faith-fully carried out, would put an end to slavery in every State in the American Union.

1. According to Douglass, what are the most important guarantees of the Constitution?

Abraham Lincoln, Speech on the *Dred Scott* Decision, 1857

Chief Justice Taney, in delivering the opinion of the majority of the Court, insists at great length that Negroes were no part of the people who made, or for whom was made, the Declaration of Independence, or the Constitution of the United States. ...[T]he Chief Justice does not directly assert, but plainly assumes, as a fact, that the public estimate of the black man is more favorable now than it was in the days of the Revolution. This assumption is a mistake. ... In those days, our Declaration of Independence was held sacred by all, and thought to include all; but now, to aid in making the bondage of the Negro universal and eternal, it is assailed,

and sneered at, and construed, and hawked at, and torn, till, if its framers could rise from their graves, they could not at all recognize it. ...I had thought the Declaration contemplated the progressive improvement in the condition of all men everywhere; but no, it merely “was adopted for the purpose of justifying the colonists in the eyes of the civilized world in withdrawing their allegiance from the British crown, and dissolving their connection with the mother country.” Why, that object having been effected some eighty years ago, the Declaration is of no practical use now—mere rubbish—old wadding left to rot on the battle-field after the victory is won.

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And now I appeal to all—are you really willing that the Declaration shall be thus frittered away?—thus left no more at most, than an interesting memorial of the dead past? ...shorn of

its vitality, and practical value; and left without the germ or even the suggestion of the individual rights of man in it?

- 1. How does Lincoln's reading of the Declaration of Independence differ from Chief Justice Taney's majority opinion?**