

Overview of *Dred Scott v. Sandford* (1857)

Dred Scott v. Sandford occupies a unique place in the annals of American history — that of the Supreme Court’s worst decision. Ever. Disgracing the very idea of democracy, the 1857 ruling stripped freed slaves of citizenship, invalidated the Missouri Compromise of 1820, and officially defined slaves as “property” under the Fifth Amendment. While the decision is primarily known for its racial animus, constitutional hogwash, and egregious holdings, it also had the adverse effect of splitting the court. Indeed, in a sign of just how divisive *Dred Scott* was, nine separate opinions were issued — one by each justice. And in many ways, the Court’s deep schism reflected a broader reality; *Dred Scott* ripped apart an already-divided country, pushing the United States towards a civil war that seemed all the more imminent with each passing day.

Facts of the Case

Dred Scott was born a slave in the early 1800s. In 1834, Scott’s owner — a Missouri resident named John Emerson — took Scott to Fort Armstrong, a military base in the free state of Illinois. Two years later, Emerson and Scott relocated to Fort Snelling, a military post in the territory of Upper Louisiana. Under the Missouri Compromise, slavery was prohibited in this territory.

While at Fort Snelling, Scott was married to a slave named Harriet. In 1838, Scott and Harriet returned to the state of Missouri, and Emerson died soon thereafter. Emerson’s widow inherited the two slaves, and in due time, they became the property of her brother: John Sanford.¹

In 1846, Scott launched what would become an epic and ill-fated battle for freedom. Citing his multi-year residency in both a free state and a free territory, Scott argued that he was a free man. Though Scott’s case was not airtight, legal scholars believed that he was on solid footing. After all, for dozens of years, Missouri courts had stood by a simple doctrine: once free, always free.

But in a shocking turn of events, the Missouri Supreme Court ruled against Scott. Overturning decades of well-established precedent and succumbing to pro-slavery forces, the state’s highest court explained that “times are not now as they were when the former decisions were made.”

Given the immutability of the state court’s decision, Scott decided to take the fight to federal court. He appealed to the Missouri circuit court under the Constitution’s diverse-citizenship clause, which allows citizens of one state to sue citizens of another state in federal court. The Circuit Court accepted the case in 1854 but ruled against Scott. He appealed the decision, and the

¹ Those with a particularly keen eye for detail will notice that the name of Scott’s new owner (Sanford) differs slightly from the name of the defendant (Sandford) in the decision. Historical evidence suggests that, due to a typographical error on the part of a court clerk, an additional “d” was unknowingly added to Sanford’s name. The result: Sanford’s name is permanently misspelled in the records of the Supreme Court.

Supreme Court agreed to hear the case. The case was argued twice before the Supreme Court (once in 1856 and once in 1857), and during oral arguments, three primary questions emerged:

1. Could a Black person (such as Scott) be a U.S. citizen and therefore sue in federal court?
2. Did Congress have the constitutional authority to ban slavery in a federal territory, as it had done in the Missouri Compromise of 1820?
3. Did Scott's prolonged stay in a free state (and a free territory, for that matter) free him?

The Majority Opinion (Chief Justice Taney)

Reviled for its heinous verdict and scorned for its bogus reasoning, the majority opinion in Dred Scott lives on in infamy. Most notably, the decision found that all Black people in America are ineligible for U.S. citizenship. But that wasn't all. The decision also deemed the Missouri Compromise unconstitutional, pointing to the Fifth Amendment's protection of property, which (according to the majority) includes slaves. And in a final, crushing blow, the decision defers to the Missouri courts on the question of Scott's freedom, sending him back into slavery.

- I. The decision begins with the issue of citizenship. "The question," Chief Justice Taney writes, "is simply this: can a negro whose ancestors were imported into this country and sold as slaves become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen, one of which rights is the privilege of suing in a court of the United States?"
 - A. The answer, for Taney, is an emphatic no. The Chief Justice argues that America's founders did not consider Black people as eligible for U.S. citizenship. For example, while the Declaration of Independence says that "all men are created equal," this doesn't actually mean "all" men. Rather, those who wrote this text "perfectly understood the meaning of the language they used...and they knew that it would not in any part of the civilized world be supposed to embrace the negro race." Taney then applies this logic to the Articles of Confederation, the Constitution, and state constitutions.
- II. Theoretically, this should have put the matter to rest. After all, according to Taney's twisted logic, Scott was not a citizen of the United States, meaning he had no right to sue in federal court. But Taney decides to keep going. He spends the next 21 pages assessing the constitutionality of the Missouri Compromise, ultimately determining that Congress never had the authority to prohibit slavery in a federal territory in the first place.

- A. The rationale here is grounded in the Constitution’s Fifth Amendment. That Amendment provides that no person is to “be deprived of life, liberty, or property, without due process of law.” Slaves, Taney explains, fall within “property” afforded by the Fifth Amendment. He concludes that “the act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States...is not warranted by the Constitution, and is therefore void.”
- III. Finally, Taney addresses the question of Scott’s freedom — a question to which he devotes just one page. In it, he says that the majority will defer to the Missouri courts on the matter. As a result, “it is now firmly settled...that Scott and his family upon their return were not free, but were, by the laws of Missouri, the property of the defendant.”

The Dissent (Justice Curtis)

While two dissents are issued in Dred Scott, Justice Curtis’ is widely accepted as the primary one. Citing reams of historical evidence, Curtis explains that Black inhabitants of free states do, in fact, qualify as U.S. citizens. What’s more, the majority’s decision to invalidate the Missouri Compromise was wrong on two fronts, for it both exceeded the Court’s authority and disregarded the text of the Constitution. Scott, therefore, is not just a free man — he is also a U.S. citizen.

- I. Following the Chief’s example, Justice Curtis opens his dissent with the question of Scott’s citizenship — that is, “whether any person of African descent...can be a citizen of the United States.” He observes that Article II, Section 1 of the Constitution refers to “a citizen of the United States at the time of the adoption of the Constitution.” Given this language, Curtis thus posits “one mode of approaching this question, [which] is to inquire who were citizens of the United States at the time of the adoption of the Constitution.”
 - A. And on this question, Curtis writes, “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...citizens of those States” Given this undisputed fact, Curtis continues, “my opinion is that, under the Constitution...every free person born on the soil of a State, who is a citizen of that State by force of its Constitution or laws, is also a citizen of the United States.”
- II. At this point, Curtis briefly but powerfully criticizes Taney’s decision to strike down the Missouri Compromise, blasting the move as “an exertion of judicial power [that] transcends the limits of the authority of the court.” After all, if the majority truly believed that Scott was not a citizen of the United States, they would have lacked jurisdiction to reach a decision on the merits of the case — but that is precisely what they did!

- III. Curtis, however, believes the Court does have jurisdiction, so he addresses the merits of the case. With respect to the Missouri Compromise, his rationale is simple. Article IV, Section 3 of the Constitution states that “the Congress shall have the Power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.” This provision clearly gives Congress the power to legislate in federal territories — and that power, Curtis argues, undeniably includes legislation that prohibits, expands, or otherwise pertains to the institution of slavery.
- A. As for Taney’s argument about the Fifth Amendment, Curtis contends that “Slavery, being contrary to natural right, is created only by municipal law.” In other words, slavery is not something that exists in nature; it is a legal construct. And if slavery is a legal construct, then it can only be present in those places with laws that explicitly allow for its existence. Thus, when Scott was voluntarily taken by his owner into a free territory and a free state, he was released from servitude.

Ramifications of the Decision

It would be an understatement to say that *Dred Scott v. Sandford* was a harmful Supreme Court decision. Calamitous, disastrous, cataclysmic — these adjectives paint a more accurate picture of the ruling’s scope and impact. After all, aside from sending Dred Scott back into slavery (though he was, admittedly, freed soon thereafter), the decision banned all Black Americans from acquiring U.S. citizenship. In fact, it would take a civil war and two constitutional amendments to reverse the damage done to Black Americans in *Dred Scott*.

In the legal world, the decision was equally pernicious. The Court’s constitutional gymnastics made a mockery of the law and caused irreparable harm to the institution; in the 1920s, Chief Justice Charles Evan Hughes wrote that the decision marked the Court’s greatest “self-inflicted wound,” noting that it took well over a generation for the Court to reclaim its legitimacy.

Perhaps the only person to find a silver lining in the decision was Frederick Douglass. Northern newspapers blasted the “five slaveholders and two doughfaces” in the majority for their “inhuman dicta,” but Douglass was more optimistic. “My hopes were never brighter than now,” he declared in a lecture, explaining that the decision “is a means of keeping the nation awake on the subject.” In the long term, Douglass’ prediction proved correct; the decision reinvigorated Republican political efforts, and it provided Abraham Lincoln with potent ammunition in the Lincoln-Douglas debates the following year. In this regard, *Dred Scott* is somewhat responsible for Lincoln’s meteoric rise to the presidency. Nevertheless, the fact remains that *Dred Scott* set the country on a path to civil war. The decision marked a nadir for the Court, and it left behind a stain on American democracy that remains to this day.