

CITIZEN OR SLAVE

THE DRED SCOTT DECISION, 1857

with an introduction by

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Overview of the *Dred Scott* Case

Dred Scott gave his name to what has become the most infamous Supreme Court decision in American history, yet many Americans are unaware of his story. Even those who think they know the Dred Scott case often misunderstand the complexity of the litigation over slavery and the significance of the decision. No single exhibit or brief essay can ever sort out all of the issues, errors, and myths that have surrounded the man and his lawsuit, but it remains an enduring obligation to try to do so. No introduction to American constitutional history can begin without confronting the legacy of Dred Scott.

Naturally, the story begins in mystery. We don't know when Dred Scott was born. We are not even sure that was always his name. What we do know is that a slave was born in Virginia around 1800 who sometime early in his life became the property of southern planter Peter Blow. Like many southerners, Blow and his family kept moving westward, from Virginia to Alabama before eventually settling in St. Louis, Missouri. At some point in the early 1830s, an army surgeon named John Emerson bought Dred Scott from the Blows and took him to a posting in the free state of Illinois. Later, Dr. Emerson brought Scott to Fort Snelling in what was then the Wisconsin Territory (in present-day Minnesota), where slavery was supposedly prohibited. There Dred Scott married a young slave named Harriet Robinson, who also became Emerson's property. Eventually, the Scotts had two daughters and, after some traveling between Missouri, a slave state, and the free territory where their master was stationed, returned to St. Louis. There they were retained as slaves but were hired out to others as servants or laborers. Emerson died in 1843, but his widow, Irene, continued to own the Scotts and to hire them out.

In 1846, Dred and Harriet Scott finally decided to challenge their enslavement, filing what were called freedom suits with the St. Louis Circuit Court, claiming "false imprisonment" because, by the prevailing judicial interpretation known in legal circles as "once free, always free," slaves who actually resided in (rather than simply "sojourned" through) free states or territories were not supposed to be returned to slavery. Dred Scott had lived for years as Emerson's slave in both a free state and free territory. Harriet Scott had lived as Emerson's slave in free territory. Irene Emerson, John Emerson's widow and the Scotts' legal owner at the time of the lawsuit, fought these claims through her attorneys. Freedom suits were unusual but not altogether unknown during this era of increasing legal and political wrangling over the institution of slavery. The Scotts' case, however, was extraordinary because after eleven years of hearings and appeals the issue reached all the way to the U.S. Supreme Court.

In Missouri, *Scott v. Emerson* was tried twice (with the Scotts losing the first round on a technicality, but winning the second trial in 1850). Emerson appealed this second verdict to the state Supreme Court where in 1852 a divided panel threw out decades of "once free, always free" precedents, declaring the Scotts to be still enslaved.

The national climate had changed between the two trials in 1850 and 1852. Widespread northern resistance to the 1850 Fugitive Slave Act angered southerners and created a new,

hardened attitude toward legal claims about freedom. Undaunted, Dred Scott entered the federal court system, now suing Irene Emerson's brother, John Sanford, a New York resident whom Scott claimed was acting as his family's new owner. Freedom suits were generally state or local matters in the nineteenth century, but a case involving litigants from different states could be subject to federal jurisdiction. A subsequent error by a court clerk turned the case into what has since become known as *Dred Scott v. Sandford*.

Scott remained unfazed by the increasing costs of his litigation because he had gained invaluable aid along the way from the children of his former owner, Peter Blow. Remarkably, the Blows, particularly son Taylor Blow, had been helpful with recruiting lawyers, meeting court costs, and providing the Scotts with moral support. The Blow children had grown up with Dred Scott and they saw him in some way as family. The Blow family's evolving attitude toward slavery also illustrates the complicated moral dilemma posed by the peculiar institution. Despite this extraordinary support, however, Scott lost in U.S. Circuit Court. This time, he was the one to appeal the ruling, sending the case to the U.S. Supreme Court in December 1854. This was a period of intense political ferment over slavery, exacerbated by the repeal of the Missouri Compromise in May 1854 and the ongoing, widely publicized battles over fugitive slaves such as Anthony Burns. The Republican Party emerged at this moment, committed to the containment of slavery and determined to wrest national power away from southern Democrats. The nation's highest tribunal proceeded to hear and re-hear oral arguments before finally announcing their decision in March 1857. The long delay was caused in part by some complicated jurisdictional issues, but mainly by the caution of the nine justices who were fully aware that a decision in this case might affect the heated national debate over the future of slavery.

The sweeping majority opinion read by Chief Justice Roger Taney on March 6, 1857 struck the nation like a thunderbolt. Few observers actually expected a slave to win a freedom suit in a southern-dominated Supreme Court, but most anticipated that the tribunal would focus on the important but narrowly tailored issue of comity, or relations among states. The most pressing question for the federal judiciary appeared to be whether a state law could be enforced within another state's jurisdiction. In other words, could the state of Missouri be made to honor Illinois or Wisconsin law about the status of slaves who had resided or sojourned in their jurisdiction but had since returned to Missouri? The Missouri state supreme court had already settled the issue of Scott's fate under their state laws—he and his family would remain slaves regardless of where they had previously lived. But would the federal bench now attempt to enforce other states' laws inside Missouri? Assuming the answer would have been a resounding "no" (based upon what was known as the principle of "reversion"), the Dred Scott case would have disappeared rather quickly as a major national concern. Justice Samuel Nelson of New York actually began drafting such a majority opinion in mid-February 1857.

Yet Chief Justice Taney's lengthy opinion (which ultimately reached fifty-four pages) barely mentioned reversion and instead focused on two other fundamental issues: could blacks, whether slaves or free, ever achieve U.S. citizenship—and thus have standing to sue in federal court?; and, could Congress legally prohibit slavery in the territories—as it had done with the Missouri Compromise in 1820? To both questions, Taney's answer was no. Somehow in the few weeks between Nelson's draft and Taney's ruling, the political dynamic within the Supreme Court had been utterly transformed. The decision to invalidate

the Missouri Compromise marked the first time in American history that the Supreme Court ruled an entire federal statute to be unconstitutional. The first example of federal judicial review, the famous case of *Marbury v. Madison* (1803), had been far more limited in its scope and infinitely defter in its political calculations. The *Dred Scott* decision, on the other hand, was a stunning declaration of judicial supremacy and utterly oblivious of the rising power of the Republicans. Private letters exchanged between President-elect James Buchanan, a Democrat, and members of the court during those critical weeks reveal that everyone in Washington felt immense pressure to hear the Supreme Court's views on the escalating national debate. In particular, Taney, an aging but still widely respected jurist, wanted to settle the agitation and strike a decisive blow in support of what he considered to be the longstanding national compact protecting slavery.

Instead, what Taney produced was a convoluted, bigoted, and bitterly partisan opinion that attracted majority backing from his Court but alienated large sections of the northern public. Taney's version of early American history denied blacks practically any legal rights, and his self-serving constitutional interpretations, while couched in strict constructionist terms, were transparent in their political goal of destroying the basis for the new Republican Party. Without hesitation, the Republicans mounted a furious political counter-attack on the verdict that culminated with their victory in the 1860 election, the subsequent secession of southern states, and ultimately, the Civil War. Few court decisions have created such intense reactions.

Despite the grave political consequences of the case, Dred and Harriet Scott found a much quieter resolution for themselves. Irene Emerson had married a man who opposed slavery and her brother, John Sanford, was dying, so regardless of the verdict she decided to arrange for the Scotts' release. Three months after the Supreme Court's ruling, the Scotts were transferred to Taylor Blow, who then set the family free. Dred Scott worked as a porter at a local hotel before he died in September 1858. After her emancipation, Harriet Scott was employed as a washerwoman in the city of St. Louis, but beyond that her fate remains uncertain (though there are still direct descendants of the Scotts living in the St. Louis area).

The constitutional legacy of the case has also been long lasting. Abraham Lincoln's disdain for Roger Taney helped fuel his decision in 1861 to ignore the Chief Justice's objections to his policy of suspending civil liberties. Republicans on Capitol Hill not only supported their president, but also succeeded later in "packing" the court during the war by expanding its size temporarily to ten justices. The constitutional system endured—but just barely. After the war's conclusion, Republicans endorsed critical changes to the Constitution, adding the 13th, 14th, and 15th amendments, which thoroughly repudiated Chief Justice Taney's views on black citizenship. This new birth of freedom, however, was shortlived. A changing political climate finally eroded public support for equality and led to a new era of segregation and discrimination. During the modern civil rights era, the specter of *Dred Scott* and the failed promise of emancipation loomed large over officials in Washington, many of whom were determined to recover the lost hope of national equality. In our era, political figures and legal scholars still routinely invoke *Dred Scott* to criticize a Supreme Court they feel has become too assertive or political in its actions. Thus, after more than 150 years, *Dred Scott*, the man and the Supreme Court decision, are still very much alive in American culture.

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Timeline of the Dred Scott Case

- c. 1800**
Dred Scott, a slave, is born in Virginia and becomes the property of Peter Blow.
- 1820**
March 6: The Missouri Compromise bans slavery in former Louisiana Purchase territories north of the southern boundary of the new state of Missouri.
- 1824**
Winny v. Whitesides establishes the “once free, always free” doctrine for freedom suits in Missouri.
- 1830**
Blow family moves to St. Louis, Missouri.
- c. 1833**
Army surgeon John Emerson purchases Dred Scott and brings him to Fort Armstrong, Illinois.
- 1836**
Rachael v. Walker determines an army officer cannot argue “necessity” in a freedom suit even though he was sent to free territory by the army rather than by choice.
Emerson brings Dred Scott to Fort Snelling, Wisconsin Territory (present-day Minnesota).
- c. 1837**
Dred Scott marries Harriet Robinson.
- 1838-42**
Emerson transfers between several assignments, and the Scotts reside in both free territory and in the slave state of Missouri.
- 1843**
John Emerson dies. His widow, Irene Emerson, becomes owner of Dred and Harriet Scott and their first daughter, Eliza.
- 1846**
April 6: Dred and Harriet Scott file separate freedom suits in St. Louis circuit court.
- 1847**
June 30: Judge Alexander Hamilton rules against the Scotts based on a technicality.
December 2: Judge Hamilton grants the Scotts a new trial. Emerson’s attorneys lose appeal.
- 1850**
January 12: The second trial begins in St. Louis circuit court. Jurors find for the Scotts. Emerson appeals.
February 12: All litigants in the cases of *Dred Scott v. Emerson* and *Harriet Scott v. Emerson* agree to proceed with the Dred Scott case alone since the issues involved are “identical.”
- September 9-18: Congress passes the Compromise of 1850, including the Fugitive Slave Act.
- 1852**
March 22: In a 2-1 decision, Missouri supreme court rules against Dred Scott, reversing precedents in place since *Winny v. Whitesides* (1824).
- 1853**
November 2: Attorneys for Dred Scott file suit in U.S. Circuit Court against John F.A. Sanford, Irene Emerson’s brother and Dred Scott’s then-owner.
- 1854**
May 15: Dred Scott loses in U.S. Circuit Court and appeals case to U.S. Supreme Court on the grounds that the jury instructions were invalid.
May 30: Kansas-Nebraska Act repeals the Missouri Compromise and threatens to extend slavery.
December 30: Attorneys for Dred Scott file an appeal to the U.S. Supreme Court.
- 1856**
February 11: The Supreme Court hears the first oral arguments in *Dred Scott v. John F.A. Sandford*.
November 4: Democrat James Buchanan elected president.
December 15: The Supreme Court hears additional oral arguments in the *Dred Scott* case.
- 1857**
February 14: Associate Justice Samuel Nelson drafts a majority opinion that would have decided the *Dred Scott* case on narrow grounds.
February 23: Justice Robert Grier writes a letter to President-elect James Buchanan describing the internal deliberations of the Court.
March 4: James Buchanan is inaugurated president and urges the nation to respect the verdict in the *Dred Scott* case, “whatever this may be.”
March 6: Chief Justice Roger Taney’s majority opinion in the *Dred Scott* case rules against the slave while also declaring that blacks cannot be citizens of the U.S. and Congress cannot prohibit slavery in the federal territories. Justices Benjamin Curtis and John McLean dissent.
- 1858**
May 26: The Scotts are freed by Taylor Blow, who had purchased them from Irene Emerson Chaffee.
June 16: Abraham Lincoln refers to the *Dred Scott* decision in his “House Divided” speech in Springfield, Illinois.
September 17: Dred Scott dies in St. Louis.