

Gilder Lehrman Institute
The Role of the Supreme Court in United States History
Dred Scott v. Sandford
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Guiding Question: To what extent did the *Dred Scott v. Sandford* decision worsen the sectional tensions that led to the Civil War?

Main Ideas:

- Students will understand the causes of the tension between the North and South.
- Students will understand why the Dred Scott Case made political compromise less likely.
- Students will understand the decision rendered in Dred Scott.
- Students will understand how the election of 1860 reflected the tensions between North and South.
- Students will know what the Missouri Compromise was and how it attempted to resolve the differences between the North and South.
- Students will know what the Compromise of 1850 was and how it contributed to the tension between the North and South.
- Students will know the Kansas Nebraska Act and why it angered many northerners.
- Students will understand Popular Sovereignty.

Student Assessment

Using the documents and your knowledge of the time period answer the following question:

To what extent did the Dred Scott decision worsen the growing tension between the North and South in the 1850's? To what extent were other factors a cause of the growing tension?

Historical Background

Just as Ralph Waldo Emerson had feared, the Mexican War proved to be "the arsenic that will poison us" as the acquisition of the Mexican Cession provoked heated debate over the status of slavery in the territories taken from Mexico. The so-called Compromise of 1850 was an attempt to settle that question, but sectional tensions soon reemerged. Many northerners never accepted the terms of the new Fugitive Slave Act. Publication of Harriet Beecher Stowe's *Uncle Tom's Cabin* in 1852 provoked outrage in the South. Stephen A. Douglas continued to champion the notion of Popular Sovereignty as the best hope for peaceful settlement of the question. In 1854 he won passage of the Kansas-Nebraska Act--legislation that repealed the prohibition of slavery north of 36° 30', brought the demise of the Whig Party, and led to emergence of the antislavery Republican Party. Popular Sovereignty suffered a painful death in Kansas as pro and antislavery forces poured into the new territory and often resorted to violence in an effort to promote their views. "Bleeding Kansas" -- as it came to be known-- was soon joined by "Bleeding Sumner" when the abolitionist senator from Massachusetts was bloodied by a southern congressman in the Senate chamber.

Into this volatile climate the Dred Scott decision was rendered. Dred Scott was a slave whose Missouri owner moved to the free state of Illinois and the newly created Wisconsin Territory (where slavery was prohibited under the terms of the Missouri Compromise) before moving back to Missouri in the early 1840s. Years later, Scott sued for his freedom because he had resided in a free territory and similar cases had been won in the past. After a series of conflicting opinions in lower courts, Scott's case came before the Supreme Court in 1856. In a 7-2 decision handed down in March 1857, the Supreme Court ruled against Scott. In his majority opinion, Chief Justice Taney claimed that Scott was not, by definition, a citizen of the United States and that his case therefore had no standing. Rather than leaving it at that, however, Taney went on to find that the Missouri Compromise had been unconstitutional on the grounds that it had violated the Fifth Amendment property rights of southerners.

#1. Excerpts from Taney's majority opinion in *Dred Scott v. Sandford* (March 1857)

The question 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 to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.

We think ... not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them.

The act of Congress, upon which the plaintiff relies, declares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in all that part of the [Louisiana Purchase that includes what is now Minnesota] And the difficulty which meets us at the threshold of this part of the inquiry is, whether Congress was authorized to pass this law under any of the powers granted to it by the constitution; for if the authority is not given by that instrument, it is the duty of this court to declare it void and inoperative, and incapable of conferring freedom upon any one who is held as a slave under the laws of any one of the States....

The 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.

Upon these considerations, it is the opinion of the court that the act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory; even if they had been carried there by the owner, with the intention of becoming a permanent resident.

Citation: *Dred Scott v. Sandford*, Howard, Benjamin C. Reports of Cases Argued and Adjudged in The Supreme Court of the United States. December Term, 1856. (Washington, D.C., 1857.)

Critical Thinking Questions

1. According to the Supreme Court, why couldn't Congress prohibit slavery in the territories?
2. Are you persuaded by Justice Taney's explanation of why African Americans could not be considered citizens? If so, why? If not, why not?
3. Do you believe that Congress was justified in trying to prevent the spread of slavery into the territories?
4. Was the question of slavery one that the people of the territories should have determined for themselves or should they defer to the federal government?

#2: Frederick Douglass: Speech on the Dred Scott Decision (May 14th 1857)

This infamous decision of the Slaveholding wing of the Supreme Court maintains that slaves are within the contemplation of the Constitution of the United States, property; that slaves are property in the same sense that horses, sheep, and swine are property; that the old doctrine that slavery is a creature of local law is false; that the right of the slaveholder to his slave does not depend upon the local law, but is secured wherever the Constitution of the United States extends; that Congress has no right to prohibit slavery anywhere; that slavery may go in safety anywhere under the star-spangled banner; that colored persons of African descent have no rights that white men are bound to respect; that colored men of African descent are not and cannot be citizens of the United States.

You will readily ask me how I am affected by this devilish decision – this judicial incarnation of wolfishness? My answer is, and no thanks to the slaveholding wing of the Supreme Court, my hopes were never brighter than now.

I have no fear that the National Conscience will be put to sleep by such an open, glaring, and scandalous tissue of lies as that decision is, and has been, over and over, shown to be.

The Supreme Court of the United States is not the only power in this world. It is very great, but the Supreme Court of the Almighty is greater. Judge Taney can do many things, but he cannot perform impossibilities. He cannot bale out the ocean, annihilate the firm old earth, or pluck the silvery star of liberty from our Northern sky. He may decide, and decide again; but he cannot

reverse the decision of the Most High. He cannot change the essential nature of things – making evil good, and good evil.

....

The American people have made void our Constitution by just such traditions as Judge Taney and Mr. Garrison have been giving to the world of late, as the true light in which to view the Constitution of the United States. I shall follow neither. It is not what Moses allowed for the hardness of heart, but what God requires, ought to be the rule.

It may be said that it is quite true that the Constitution was designed to secure the blessings of liberty and justice to the people who made it, and to the posterity of the people who made it, but was never designed to do any such thing for the colored people of African descent.

This is Judge Taney's argument, and it is Mr. Garrison's argument, but it is not the argument of the Constitution. The Constitution imposes no such mean and satanic limitations upon its own beneficent operation. And, if the Constitution makes none, I beg to know what right has anybody, outside of the Constitution, for the special accommodation of slaveholding villainy, to impose such a construction upon the Constitution?

The Constitution knows all the human inhabitants of this country as "the people." It makes, as I have said before, no discrimination in favor of, or against, any class of the people, but is fitted to protect and preserve the rights of all, without reference to color, size, or any physical peculiarities. Besides, it has been shown by William Goodell and others, that in eleven out of the old thirteen States, colored men were legal voters at the time of the adoption of the Constitution.

In conclusion, let me say, all I ask of the American people is, that they live up to the Constitution, adopt its principles, imbibe its spirit, and enforce its provisions.

Citation: The Frederick Douglass Papers at the Library of Congress accessed at <http://memory.loc.gov/cgi-bin/ampage?collId=mfd&fileName=21/21039/21039page.db&recNum=24>

Critical Thinking Questions

1. Why is Douglass optimistic about the long-term prospects of abolition despite the Court's ruling in the *Dred Scott* case?
2. What methods does Douglass encourage antislavery forces to use in their efforts to challenge the Court's ruling?
3. Assess the validity of Douglass claim that the Constitution makes "no discrimination in favor of, or against, any class of the people?"
4. Why does Douglass refer to the fact that in eleven of the original thirteen states African-Americans had voting rights in the late eighteenth century?

#3: *Richmond Enquirer*: editorial "Supreme Court vs. The Abolitionists" (March 13th 1857)

Abolitionism, from its earliest inception to this passing hour, in all its efforts and alms, has ever been based upon assumptions of an authority paramount to the Constitution, advocated with arguments teeming with treason, and enforced by means regardless of recognized rights and

the laws of the land. -- It has, however, always clamored loudly for liberty and equality, and justice among men. Uplifting their hand in holy horror, its designing demagogues have been wont to shriek and wail, rave and storm, and impiously appeal to Heaven by turns, as they impose upon the popular mind of the North with their perverted portraiture of Southern slavery, contemptible caricatures of Southern society, and harrowing calumnies upon Southern character. . . . And, now, that the Supreme Court of the United States -- the accredited interpreter of the Constitution and arbiter of disagreements between the several States -- after the most profound research, thorough investigation of facts and analysis of principle, after deep deliberation, impartially and without prejudice; now, that this august tribunal has declared a calm conviction, sustained with irrefragable reasoning, which not only annihilates the superstructure but also *destroys the foundation* of the theory upon which their warfare has been waged against the institutions of the South, they are completely taken aback, nonplused and bewildered, confounded and confused.

. . . .

To contend now that the General Government has jurisdiction over the domestic affairs of the States, that Congress has the right to mark out the limits or to interfere with its expansion into the territories, North or South, East or West, is to defy the Constitution, to repudiate the decrees of the highest judicial tribunal of the nation, to inculcate treason, to defame the guardian genius of liberty, to despoil our household gods with unholy hands, and to strike with parricidal poniard at the heart of the country. -- That all these outrages upon patriotism, liberty and law, will be perpetrated, we have indubitable evidence, in the defiance, the indignant denunciations, the anathemas and opprobrium hurled at and heaped upon the Supreme Court of the United States, by the anti-slavery press. Since its decision in the Dred Scott case, with the exception of the two dissenting Judges, that body has been assailed with the venom of vipers, and abused with all the balderdash of Billingsgate. In the insanity of their anger and agony, the Abolitionists are uttering curses deep and loud, tearing their hair, indulging in all sorts of grimaces and throwing themselves into every imaginable attitude of contortion.

We are really apprehensive that there will be an epidemic of apoplexy amongst them, unless they find in a few days, some safety-valve for their pent-up mortification and rage. The decision of the Dred Scott case has alarmingly aggravated the effects of "negrophobia." Some means must be devised to cool the of those who are affected with it, or there will either be a tremendous bursting of blood vessels, or all the insane asylums in Yankeedom will be inadequate for the accommodation of its victims.

. . . .

The decision in the Dred Scott case must be a *finality*, so far as the federal legislation on the institution of slavery is concerned. The fact has gone forth, the Constitution has been construed, and Congress must conform. Abolitionism must now unmask, and wage its warfare openly and above board against the government *per se* or bow to its behests and pass off the stage. Which alternative it will adopt, it needs no seer to say.

Citation: "Supreme Court vs. The Abolitionists," *Richmond Enquirer*, 13 March 1857 accessed at <http://history.furman.edu/editorials/see.py?sequence=dsmenu&location=Dred%20Scott%20Decision&ecode=vareds570313a>

Critical Thinking Questions

1. Is the author correct in the assertion that abolitionists have been "taken aback, nonplused and bewildered, confounded and confused" by the Dred Scott decision?
2. To what extent does author believe the Dred Scott decision will bring a resolution to the sectional crisis of the 1850s?
3. How does the editorial challenge Douglass' interpretation of the role of the Constitution in the debate over slavery?
4. What do the Douglass and *Richmond Enquirer* documents what do these two documents suggest about the chances of a political resolution to the sectional crisis in the late 1850s?

#4: Lincoln's "House Divided" speech, 1858 Illinois Senate debates between Lincoln and Douglas

Mr. President and Gentlemen of the Convention:

If we could first know where we are and whither we are tending, we could better judge what to do and how to do it. We are now far into the fifth year since a policy was initiated with the avowed object and confident promise of putting an end to slavery agitation. Under the operation of that policy, that agitation has not only not ceased but has constantly augmented. In my opinion, it will not cease until a crisis shall have been reached and passed. "A house divided against itself cannot stand." I believe this government cannot endure, permanently, half slave and half free. I do not expect the Union to be dissolved; I do not expect the house to fall; but I do expect it will cease to be divided. It will become all one thing, or all the other. Either the opponents of slavery will arrest the further spread of it and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push it forward till it shall become alike lawful in all the states, old as well as new, North as well as South. ...

Citation: Reprinted from *Annals of America*. © 1968,1976 Encyclopedia Britannica, Inc. PBS. "Lincoln's House Divided Speech." PBS: Africans in America. <http://www.pbs.org/wgbh/aia/part4/4h2934.html> (accessed July 22, 2009).

Critical Thinking Questions

1. What policy is Lincoln referring to when he talks about the agitation over slavery increasing rather than decreasing in spite of its purpose of resolving the slavery issue? (Hint: Do the Math)
2. What evidence of agitation would Lincoln most likely be referring to?
3. Even as a Republican, Lincoln didn't take a strong stand against slavery or the Dred Scott decision in this speech. Why might that be so?
3. Lincoln mentions the Lecompton Constitution. What is it and why is it relevant to the other issues Lincoln discusses?

#5: The Freeport Doctrine

The next question propounded to me by Mr. Lincoln is, Can the people of a Territory in any lawful way, against the wishes of any citizen of the United States, exclude slavery from their limits prior to the formation of a State constitution? I answer emphatically, as Mr. Lincoln has heard me answer a hundred times from every stump in Illinois, that in my opinion the people of a Territory can, by lawful means, exclude slavery from their limits prior to the formation of a State constitution. It matters not what way the Supreme Court may hereafter decide as to the abstract question whether slavery may or may not go into a Territory under the Constitution, the people have the lawful means to introduce it or exclude it as they please, for the reason that slavery cannot exist a day or an hour anywhere, unless it is supported by local police regulations. Those police regulations can only be established by the local legislature; and if the people are opposed to slavery, they will elect representatives to that body who will by unfriendly legislation effectually prevent the introduction of it into their midst. If, on the contrary, they are for it, their legislation will favor its extension. Hence, no matter what the decision of the Supreme Court may be on that abstract question, still the right of the people to make a Slave Territory or a Free Territory is perfect and complete under the Nebraska bill. I hope Mr. Lincoln deems my answer satisfactory on that point.

Citation: Encyclopaedia Britannica. "Freeport Doctrine." Encyclopaedia Britannica.
<http://www.britannica.com/EBchecked/topic/2186/Freeport-Doctrine> (accessed July 22, 2009).

Critical Thinking Questions:

1. Under the Freeport Doctrine, how could people in a territory provide for the existence of slavery?
2. What might have been Douglas's political goal in taking the position of popular sovereignty in the fact of the Dred Scott ruling?
3. Why might the Freeport Doctrine have ruined Douglas's chances in the 1860 presidential election?
4. For what possible reason did non-abolitionist white settlers not favor slavery in the territories?

#6: "The Political Quadrille" cartoon of the 1860 Presidential Election



In this cartoon, the four candidates in the presidential election of 1860 dance with members of their supposed respective constituencies. The music is fiddled by Dred Scott, the former slave whose suit precipitated the court's decision. Scott sits on a chair at center. In the upper left is Southern Democrat John C. Breckinridge. He is paired with Democratic incumbent and ally James Buchanan, depicted as a goat or (as he was nicknamed) "Buck." At the upper right Republican Abraham Lincoln prances arm-in-arm with a black woman. At lower right Constitutional Union party candidate John Bell dances with an Indian brave. This pairing is puzzling but may allude to Bell's brief flirtation with Native American interests. At lower left Stephen A. Douglas dances with a ragged Irishman.

Citation: Rickey, Mallory & Company, "The Political Quadrille," cartoon, Abraham Lincoln's Classroom, http://www.lincolnsclassroom.org/Cartoon_com (accessed July 22, 2009).

Critical Thinking Questions:

1. What is the cartoonist's opinion of the 1860 election?
2. Who are the four candidates represented in the cartoon and what party do they represent?
3. Each of the candidates is "dancing" with someone. What do you think the individual dancing partners represent?
4. Why is Dred Scott the central figure that all of the candidates are "dancing around"? What does the author of the cartoon suggest regarding the influence of the Dred Scott decision?