Constitutional Law Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Dred Scott v. Sandford (1857): *Slavery, Due Process, the Missouri Compromise*Mr. Faulhaber Class Period: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**This case explores the**[**legal concept**](http://landmarkcases.smartsitecms.com/legal-concepts)**of due process.**

In 1834, Dred Scott, an enslaved person, was purchased in Missouri and then brought to Illinois, a free (non-slave) state. He later moved with his enslaver to present-day Minnesota, where slavery had been recently prohibited, and then back to Missouri. When his enslaver died, Scott sued the widow to whom he was left, claiming he was no longer an enslaved person because he had become free after living in a free state. At a time when the country was in deep conflict over slavery, the Supreme Court decided that Dred Scott was not a “citizen of the state” so it had no jurisdiction in the matter, but the majority opinion also stated that Dred Scott was not a free man.

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| David Blight on the Dred Scott decision |   |
| **Q: Please discuss the significance of the Dred Scott decision.** |
| David BlightDavid W. BlightProfessor of History and Black StudiesAmherst College | **A:**The significance of the Dred Scott decision is that it comes in the wake of Bleeding Kansas, it comes three years after the Kansas-Nebraska Act. The country has now struggled for three years to understand the implications of popular sovereignty in the West and how the West would be settled, free or slave. And now this case of old Dred Scott finally gets to the Supreme Court, and the Supreme Court says not only did Dred Scott not have the right to even sue in a federal court because he's black and [not] a citizen, but it goes one step further. It goes for a much broader decision, and in Chief Justice Taney's words, blacks had no rights which whites had to recognize.In the wake of the Dred Scott decision, spring of 1857, to be black in America was to live in the land of the Dred Scott decision, which, in effect, said, "You have no future in America." So, for the next three to three and a half years, down to the outbreak of the Civil War -- and we must remember, nobody knew that war was coming when it was coming -- to be black in America in the late 1850s was to live in a land that said you didn't have a future.In the North, legislatures and Republican politicians responded to the Dred Scott decision by questioning whether this was a Supreme Court decision that they should abide by -- one of the issues that was clearly at stake in the Lincoln-Douglas debates. Stephen Douglas pressed Lincoln on this, of course, and Lincoln, in effect, ultimately said that the Republican Party would remain hostile to the Dred Scott decision.The Dred Scott decision did cause a genuine level of despair in northern black communities by the summer of 1856, and for some years after that. In speech after speech, in 1857 and '58, Frederick Douglass would do his customary thing: He would begin with hope in his speech, but he usually ended his speeches in 1857 and '58 with that Biblical line that said, uh, "I walk by faith and not by sight." He was struggling by that point to make the argument to his fellow blacks that they had a future in America. That period between 1857 and the outbreak of the war in 1861 is a time of increasing desperation among northern black leadership. They begin to struggle even with each other over how to define their futures. They have bitter debates over immigration schemes and whether to stay in America, whether to join this Republican Party, or find some way to join it, whether to organize even some kind of third political party movement. There had been a movement in the '50s called the Radical Abolition Party. It's a desperate time for black leaders because they've been told now that their people have no future in the country, and their struggle now is to define a future.The Dred Scott decision, the birth of the Republican Party, this whole new political crisis over slavery, is also important in the South among slaves themselves. We have plenty of evidence that shows us that, beginning in 1856, with the presidential election campaign of 1856, and again in '58 Congressional elections, and certainly in 1860, there's a lot of reaction in the Southern white press, saying that slave owners should keep their slaves away from political meetings, because the more slaves gather around these political meetings, the more they're going to become aware of the political crisis over slavery.And from 1856 to the outbreak of the Civil War, there's a great deal of talk in the southern press about what were called "insurrection scares". There were insurrection scares particularly in Texas in 1860. Now, often these were plots about which people knew next to nothing. These were fears as much as they were reality. But there's no question that among the slaves in the South, in certain areas, they were becoming completely aware that there was a larger political crisis out there in the land over them, over slavery. |

***BACKGROUND SUMMARY: Read and Highlight or Underline the Following Information***

Had he filed his lawsuit a few years earlier, Dred Scott probably never would have become a giant figure in U.S. history. Many people in Scott's position had won their lawsuits in state trial courts. However, by the time Scott's case made it to trial, U.S. political sentiments had changed and it took 11 years for his case to reach the Supreme Court of the United States. The Court's decision in *Dred Scott* v. *Sandford* remains among its most controversial.

Slavery was at the root of Dred Scott's case. He sued his master to obtain freedom for himself and his family. The argument he used was that because he had lived in a territory where slavery was illegal, he could never again be enslaved. This was a doctrine that was recognized in common law for centuries in Europe. In the state where he filed his suit, Missouri, many people in his situation had sued their masters for their freedom and won.

Dred Scott was born a slave in Virginia around 1799. In 1834, Dr. John Emerson, a surgeon in the U.S. army, bought Scott in Missouri and moved him to Illinois. Illinois was a free state. In 1836, Scott and Emerson moved to Fort Snelling, in present-day Minnesota. In the Missouri Compromise of 1820, Congress had prohibited slavery in the area that included Fort Snelling. Emerson bought a slave named Harriet and Scott married her in 1836. In 1838, Emerson and the Scotts moved back to Missouri. The Scotts had two daughters, Eliza, born around 1843, and Lizzie, born around 1850.

Emerson died in 1843 and he left his possessions, including the Scotts, to his widow, Irene. They lived in St. Louis, Missouri. In 1846, Dred Scott asked Mrs. Emerson if he could work for money. If he could earn and save money, he could buy his freedom from Mrs. Emerson. According to Scott, she refused.

Scott sued Mrs. Emerson for "false imprisonment" and for battery. It was common for slaves who had been taken to free land to sue their masters and win their freedom. Scott sued Mrs. Emerson, claiming that Emerson held him illegally. Scott claimed that he had become a free man as soon as he lived in a free territory or state and then was taken against his will to a slave territory or state. In 1847, Emerson was able to win in Missouri Circuit court on a technicality; Scott's lawyers failed to prove to the jury that Emerson was holding Scott as a slave. Scott's lawyers successfully argued for a retrial with additional witnesses that could prove Emerson's ownership of Scott.

By the time the case went to trial in 1850, Mrs. Emerson had moved to Massachusetts and left John F.A. Sanford, her brother, in charge of her financial matters, including the Scott case. The jury agreed that Scott and his family should be free because of the doctrine "once free, always free." Sanford, acting for his sister, appealed to the Missouri Supreme Court. In 1852, two of the three judges found in favor of Mrs. Emerson and John Sanford. The decision consciously reversed earlier precedent. The newly elected proslavery justice, William Scott, wrote the decision, arguing that states like Missouri must have the power to refuse to enforce the laws of other states. Thus, regardless of wherever else Scott had been with his master, slavery was legal in Missouri.

Dred Scott's lawyers could have appealed the decision to the Supreme Court of the United States, but they feared that a majority of the justices would simply endorse the state court decision without considering its merits. By 1853, John Sanford was legally recognized as the owner of the Scotts. Sanford had moved to New York, leaving the Scotts in Missouri. Since federal courts settle the dispute between citizens of different states, Scott was able to sue Sanford in federal court in a new case. A clerk mistakenly added a letter to Sanford's name, so the case permanently became *Dred Scott* v. *John F. A. Sandford*.

In 1854, the U. S. Court for the District of Missouri heard the case. Judge Robert W. Wells rejected Sanford's assertion that Scott could not sue because he was not a citizen. However, the judge instructed the jury that, as the Missouri Supreme Court had said, Scott was subject only to the laws of Missouri. The jury found for Sanford. Scott then appealed to the Supreme Court of the United States.

Unfortunately for Scott, the political divisions over slavery worsened from the time that his case first came to trial in 1847 through 1857 when the Supreme Court of the United States finally announced its decision. Events of this period that increased conflicts included the passage of the Fugitive Slave Act (1850), publication of *Uncle Tom's Cabin (1852)*, enactment of The Kansas-Nebraska Act (1854), violence in "bleeding Kansas" (1856), and Representative Brooks's beating of Senator Sumner in the U.S. Senate (1856). Like almost all people of their time, the justices had strong personal views about slavery. One justice, Peter V. Daniel of Virginia, supported slavery so much that he even refused to travel north of the Mason-Dixon line into a free state. Some historians believe that Chief Justice Taney hoped that his decision in the Dred Scott case would help prevent, not create future disputes over slavery.

Classifying Arguments in the Case: Read through each argument and decide whether it supports Dred Scott's side in favor of his freedom (DS) or Sanford's position in favor of Scott's continued slavery (SAN).

1. The Missouri Compromise of 1820 outlawed slavery forever in certain areas. Dred Scott's owner took him to these free areas. Thus, Scott became free forever.

2. Dred Scott is not a citizen because if he were he would be entitled to all of the privileges and immunities of a citizen, one of which is the right of free movement. It is clear that the laws governing slavery do not permit this, thus he cannot be a citizen.

3. Even before the Constitution, some states allowed blacks to vote. The Constitution does not say explicitly that blacks cannot be citizens.

4. It was law in many states and had been common law in Europe for centuries that a slave who legally traveled to a free area automatically became free.

5. In the case of *Strader* v. *Graham* (1850), the Supreme Court of the United States heard the case of three slaves who had been taken from Kentucky to Indiana and Ohio and then back to Kentucky. The Court declared that the status of the slave depended on the laws of Kentucky, not Ohio.

6. The Constitution recognized the existence of slavery. Therefore, the men who framed and ratified the Constitution must have believed that slaves and their descendants were not to be citizens.

7. The Missouri Compromise of 1820 that outlawed slavery in some future states was unconstitutional because Congress does not have the authority to deny property rights of law-abiding citizens. Thus, Scott was always a slave in areas that were free.

8. At the time of the Dred Scott case, women and minors could sue in federal court even though they could not vote.

**“We think they [people of African ancestry] 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.”**
 - Chief Justice Taney, speaking for the majority

***Key Excerpts from the MAJORITY OPINION: Read and Highlight or Underline the Following Information***

**The decision was 7 to 2. Chief Justice Roger B. Taney delivered the opinion of the Court**

.. 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, guarantied by that instrument 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 they [people of African ancestry] are not [citizens], 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.

. . . [T]he legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

For if they were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police regulations which they considered to be necessary for their own safety. It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased...to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State.

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 territory ceded by France, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of Missouri. 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.

There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way, except by the admission of new States. That power is plainly given; and if a new State is admitted, it needs no further legislation by Congress, because the Constitution itself defines the relative rights and powers, and duties of the State, and the citizens of the State, and the Federal Government. But no power is given to acquire a Territory to be held and governed permanently in that character.

. . . [I]t may be safely assumed that citizens of the United States who migrate to a Territory belonging to the people of the United States, cannot be ruled as mere colonists, dependent upon the will of the General Government, and to be governed by any laws it may think proper to impose. The principle upon which our Governments rests is the union of States, sovereign and independent within their own limits in . . . their internal and domestic concerns, and bound together as one people by a General Government, possessing certain enumerated and restricted powers, delegated to it by the people of the several States. . . .

But the power of Congress over the person or property of a citizen can never be a mere discretionary power under our Constitution and form of Government. The powers of the Government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself. And when the Territory becomes a part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it. It enters upon it with its powers over the citizen strictly defined, and limited by the Constitution, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a Government and sovereignty. It has no power of any kind beyond it; and it cannot, when it enters a Territory of the United States, put off its character, and assume discretionary or despotic powers which the Constitution has denied to it.

. . . [T]he rights of private property have been guarded with . . . care. Thus the rights of property are united with the rights of person, and placed on the same ground by the fifth amendment to the Constitution, which provides that no person shall be deprived of life, liberty, and property, without due process of law. And an act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offence against the laws, could hardly be dignified with the name of due process of law.

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.

But there is another point in the case which depends on State power and State law. And it is contended, on the part of the plaintiff, that he is made free by being taken to Rock Island, in the State of Illinois, independently of his residence in the territory of the United States; and being so made free, he was not again reduced to a state of slavery by being brought back to Missouri.

. . . [I]n the case of *Strader et al.* v. *Graham* . . . the slaves had been taken from Kentucky to Ohio, with the consent of the owner, and afterwards brought back to Kentucky. And this court held that their status or condition, as free or slave, depended upon the laws of Kentucky, when they were brought back into that State, and not of Ohio. . . .

So in this case. As Scott was a slave when taken into the State of Illinois by his owner, and was there held as such, and brought back in that character, his status, as free or slave, depended on the laws of Missouri, and not of Illinois.

Upon the whole, therefore, it is the judgment of this court, that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is used in the Constitution; and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it. Its judgment for the defendant must, consequently, be reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction.

**QUESTIONS TO CONSIDER**

1 Why did Dred Scott he sue the Emersons and John Sanford? Summarize the basic argument that Scott's lawyers used to support his case.

2. Did Dred Scott have reason to believe that he would win his case? Why or Why not? How do you think the bitter political climate of the day affected Dred Scott's chances of winning his case?

3. Why does Chief Justice Taney believe that Dred Scott is not a citizen of the United States? Why is this issue important for the case?

4. What is Chief Justice Taney's reasoning for declaring that the Missouri Compromise is unconstitutional? Why is this issue important for the case?