

Why was Dred Scott important?

The Dred Scott Decision forced the Civil War-- it created a constitutional crisis, and it ruled out political compromise.

Congress was forced to defy the Supreme Court in order to restrict slavery in the territories. The judges had effectively declared the newly-formed Republican Party to be unconstitutional.

Rather surprisingly, the Dred Scott Decision also violated the doctrine of states' rights! The Court declared that free blacks could not be U.S. citizens anywhere, not even in free states! Like slavery, the status of free blacks had previously been a matter for each state to decide. There was no distinction between state and U.S. citizenship-- any citizen of a state was also a citizen of the United States-- until Dred Scott broke this compromise with a national racial policy excluding blacks.

Former slave Frederick Douglass told a New York audience, "my hopes have never been brighter than now." Douglass expected The Dred Scott Decision would raise the "National Conscience" and noted "the Supreme Court of the United States is not the only power in this world."

Abraham Lincoln resolutely opposed the decision. He "refused to obey it as a political rule" saying "in spite of the Dred Scott decision, I would vote that . . . slavery should be prohibited in a new Territory."

To the slave states of the South, Lincoln's 1860 election meant the constitution was worthless, and so they left the union.

The Legacy and Lessons of Dred Scott

1 . The 14th amendment cannot be properly understood without the historical context of Dred Scott. In part, the 14th was needed and originally intended simply to negate The Dred Scott Decision.

2 . The Supreme Court first used the judicial activist doctrine of "substantive due process" in Dred Scott v. Sandford. This doctrine has since been used many times, perhaps most notably in *Lochner v. N. Y.* (1905) (freedom of contract) and *Roe v. Wade* (1973) (right to abortion).

3 . Unlike the highest courts (both U. S. and Missouri), the juries and lower courts practiced judicial restraint and stayed within prior decisions & original intent. In the case of Dred Scott: the higher it went in the courts, the worse the decisions got.

4 . Dred Scott exposed deep flaws in the American political foundation (previously observed by Jefferson & others)--
a. The constitution does not limit the government if it means only whatever the Supreme Court decides.
b. The critical balance of state and federal powers must not ultimately be decided by federal judges.

In Jefferson's view, the people, not the judges, were the ultimate authority of the constitution (to Madison, this was the majority of states); otherwise it becomes a "mere thing of wax in the hands of the judiciary".

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In St. Louis, things to see

The Old Missouri Courthouse

Dred Scott's Gravesite, Calvary Cemetery

The Eugene Field House (Roswell Field, Eugene's father, was one of Scott's lawyers.)

For additional information

Dred Scott v. Sandford: A Brief History with Documents by Paul Finkelman.

Slavery, Law and Politics: The Dred Scott Case by Don Fehrenbacher

Dred Scott's Advocate: A Biography of Roswell M. Field by Kenneth C. Kaufman

Scott v. Sandford 60 U.S. 393 (1857)

Written May, 2000 by Lloyd Sloan, Ballwin, MO in memory of the 1850 St. Louis jury verdict that declared Dred Scott and his family were free. Copyright 2001, Lloyd Sloan

THE DRED SCOTT DECISIONS

1850 Missouri Circuit Court (St. Louis)

1852 Missouri Supreme Court

1854 U. S. Circuit Court (St. Louis)

1857 U. S. Supreme Court

You've heard about **The Dred Scott Decision** and its important role in forcing the Civil War.

Did you know a Missouri jury once decided that Dred Scott, a Negro slave, should be free?

Seven years later the U. S. Supreme Court decided that Dred Scott had "**no rights a white man need respect**".



Dred Scott
(about) 1799 - 1858

Who was Dred Scott?

Dred Scott was born a slave in Virginia about 1799. From 1833 to 1840, Scott lived with his master, army surgeon Dr. John Emerson, on forts in Illinois and the Wisconsin territory and then returned to St. Louis in 1840. When Dr. Emerson died in 1843, his widow inherited Scott.

In 1846, Scott brought suit in Missouri for his own freedom and that of his wife and two daughters, based upon prior residence where slavery was prohibited.

“once free, always free”

Scott had a strong legal case. In *Winny v. Whitesides* (1824), the Missouri Supreme Court had declared a slave free because of residency in the free state of Illinois.

The legal doctrine was “once free, always free”, also known as the Somerset rule from an English case, *Somerset v. Stewart* (1772), in which Lord Mansfield declared slavery was “so odious, that nothing can be suffered to support it, but positive law.” Under the Somerset rule, if once removed from slave laws, then any slave became free.

Even so, in 1847 Scott lost on a “hearsay” technicality. He had no witnesses to prove that he was Mrs. Emerson’s slave!

The 1850 Trial

Scott was granted a re-trial in 1848. After two continuances, and delays from a fire and a cholera epidemic, the second trial began in January 1850.



The Old Courthouse

In 1850, at the old Courthouse in St. Louis, following the doctrine of “once free, always free”, an all-white male jury decided that Dred Scott and his family were free.

“Times are not now as they were when . . .”

In 1852, the Missouri Supreme Court reversed the jury in *Scott v. Emerson*. Overturning numerous precedents, Chief Justice William Scott declared, “Times are not now as they were when former decisions on this subject were made.”

In 1854, Scott brought suit in federal court against John Sanford (of New York), who was Dr. Emerson’s brother-in-law and the executor of his estate.

Judge Robert Wells instructed the jury to follow the Missouri Supreme Court and abandon the “Somerset rule”. The federal trial upheld Scott’s status as a slave, and Scott appealed in December 1854.

The Dred Scott Decision

In February and again in December 1856, the U.S. Supreme Court heard arguments in *Scott v. Sandford*. (Sanford’s name was misspelled with an additional “d”.)

In his 1857 inaugural speech, President Buchanan called the expansion of slavery a “judicial question, which legitimately belongs to the Supreme Court”. Buchanan expected the question would soon “be speedily and finally settled”, and he called on “all good citizens” to “cheerfully submit” to the Court’s decision “whatever this may be”. (In reality, Buchanan already knew the Court’s decision and had actively encouraged it.)



Roger Brooke Taney
1777 - 1864

Two days later, on March 6th, 1857, the Supreme Court delivered a 7-2 decision in *Scott v. Sandford*-- with all nine judges writing separate opinions!

Writing for the Court majority, Chief Justice Taney declared—

1 . Dred Scott had no right to sue, because blacks were not citizens of the United States (even in free states). They were not included in the Constitution or the Declaration of Independence. Blacks had “no rights a white man need respect”.

2 . The Missouri Compromise (1820) was unconstitutional because it prohibited slavery in the territories. An Act of Congress to deprive a citizen of property in slaves merely for entering a territory could “hardly be dignified” as “due process of law” within the 5th amendment.

Epilogue

Soon after the decision, Taylor Blow, son of Scott’s original owner, Peter Blow, purchased Scott and his family in order to free them. (The Blow family had also provided support for Scott’s lawsuits.)

Dred Scott was free from 26th May, 1857 until his death from tuberculosis on 17th September, 1858. His grave is in St. Louis Calvary Cemetery.

In June 1862, Congress and the President ignored The Dred Scott Decision and enacted a law prohibiting slavery in the territories.

Chief Justice Taney died in 1864, and Congress denied funds for a bust honoring Taney in 1865. Senator Sumner of Massachusetts denounced Taney’s Dred Scott Decision as the “incident of our history . . . most deadly in its consequences.”

In 1868, the 14th amendment granted citizenship to any person born in the United States, including Negroes-- thus negating the Dred Scott Decision.