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# Race, Slavery, and the Constitution

The spread of slavery during the early nineteenth century divided the nation and so fanned the flames of sectionalism that the United States was able to remain united only by careful political compromise between North and South. The Missouri Compromise of 1820 admitted Maine, a free state, and Missouri, a slave state, to the Union about the same time, thus preserving the balance between the two sections; it also barred slavery from all territories north of a line (36°30′N) drawn westward from Missouri's southern border. The Compromise of 1850 admitted California as a free state but organized New Mexico and Utah on the principle of popular sovereignty, with slavery left to the inhabitants' decision.

In 1854 Congress violated the Missouri Compromise line. By the Kansas-Nebraska Act of that year, sponsored by Illinois Senator Stephen A. Douglas, who wanted settlers to decide whether or not to have slavery, territory north of 36°30′N was opened to slavery on a "local option" basis. The result was a bloody conflict in Kansas between free-soil settlers opposed to slavery there and those favoring slavery. In 1857, moreover, Chief Justice Roger B. Taney's opinion in the *Dred Scott* case placed the Supreme Court squarely behind the institution of slavery. (A Missouri slave, Dred Scott, had sued his master for freedom, basing his case on the fact that they had lived for a time in free territory.) Speaking for the majority of the justices, Taney announced that blacks could not be American citizens and that Congress could not prohibit slavery even in territories under its direct jurisdiction. The *Dred Scott* decision made all previous compromises over slavery unconstitutional. It also exacerbated sectional tensions. Proslavery Southerners were anxious to extend slavery into new areas; antislavery Northerners were just as determined to do all they could to prevent the further expansion of human bondage despite the Court's ruling. Even Northerners who were not abolitionists opposed Taney's decision. They did not like the idea of Southerners bringing their slaves into the federal territories.

Roger Taney was born in 1777 in Maryland, where he practiced law for a time and then entered politics. An early supporter of Andrew Jackson, he became attorney general in 1831 and helped draft Jackson's mes-

sage to Congress in 1832 vetoing the recharter bill for the Bank of the United States. In 1836 Jackson made Taney chief justice of the Supreme Court. Taney's major opinion before *Dred Scott* was an antimonopoly decision in the *Charles River Bridge* case in 1837. After the *Dred Scott* decision, Taney's prestige declined rapidly, and it all but disappeared after the Republican victory in 1860. He died in Washington four years later.

Scott himself became free because his master died, and the widow married an abolitionist who arranged for Scott's freedom. Scott became a hotel porter in St. Louis and died there of tuberculosis a year after the Supreme Court decision.

**Questions to Consider.** The *Dred Scott* decision purports to cite historical facts as well as to advance opinions about those facts. How accurate is Taney's statement that American blacks had never possessed any of the rights and privileges the U.S. Constitution confers on citizens? Why did he make a careful distinction between the rights of citizenship that a state may confer and the rights conferred by the federal Constitution? Note that Taney insisted that Dred Scott, not being a citizen, was "not entitled to sue in the courts." If he believed this, why did he agree to rule on the case at all? Was he correct in saying that when the nation was founded "no one thought of disputing" the idea that "the negro might justly and lawfully be reduced to slavery"? Do you think his reference to the constitutional provision permitting the slave trade until 1808 strengthened his arguments? Note that in order to find the Missouri Compromise unconstitutional, Taney maintained that the clause in the Constitution giving Congress power to regulate the federal territories applied only to territories belonging to the United States at the time the Constitution was adopted. Do you think he made a convincing case for this assertion? Would Taney's insistence that Congress cannot prohibit slavery in the federal territories logically apply to whites as well as blacks?

## *Dred Scott* v. *Sanford* (1857)

ROGER B. TANEY

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

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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 in the cases specified in the Constitution. . . .

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are 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 question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embraced the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endue him with the full rights of citizenship in every other State without their consent. Does the Constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts. . . .

It is difficult at this day to realize the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted. . . .

They had for more than a century before been regarded as beings of an inferior order; and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. . . . This opinion was at that time

fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion. . . .

But there are two clauses in the Constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the Government then formed.

One of these clauses reserves to each of the thirteen States the right to import slaves until the year 1808, if he thinks it proper. And the importation which it thus sanctions was unquestionably of persons of the race of which we are speaking, as the traffic in slaves in the United States had always been confined to them. And by the other provision the States pledge themselves to each other to maintain the right of property of the master, by delivering up to him any slave who may have escaped from his service, and be found within their respective territories. . . . And these two provisions show, conclusively, that neither the description of persons therein referred to, nor their descendants, were embraced in any of the other provisions of the Constitution; for certainly these two clauses were not intended to confer on them or their posterity the blessings of liberty, or any of the personal rights so carefully provided for the citizen. . . .

Indeed, when we look to the condition of this race in the several States at the time, it is impossible to believe that these rights and privileges were intended to be extended to 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 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.

The counsel for the plaintiff has laid much stress upon that article in the Constitution which confers on Congress the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," but, in the judgment of the court, that provision has no bearing on the present controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged to, or was claimed by, the United States, and was within their boundaries as settled by the treaty with Great Britain

and can have no influence upon a territory afterwards acquired from a foreign Government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more. . . .

If this clause is construed to extend to territory acquired by the present Government from a foreign nation, outside of the limits of any charter from the British Government to a colony, it would be difficult to say, why it was deemed necessary to give the Government the power to sell any vacant lands belonging to the sovereignty which might be found within it; and if this was necessary, why the grant of this power should precede the power to legislate over it and establish a Government there; and still more difficult to say, why it was deemed necessary so specially and particularly to grant the power to make needful rules and regulations in relation to any personal or movable property it might acquire there. For the words, *other property* necessarily, by every known rule of interpretation, must mean property of a different description from territory or land. And the difficulty would perhaps be insurmountable in endeavoring to account for the last member of the sentence, which provides that "nothing in this Constitution shall be so construed as to prejudice any claims of the United States or any particular State," or to say how any particular State could have claims in or to a territory ceded by a foreign Government, or to account for associating this provision with the preceding provisions of the clause, with which it would appear to have no connection. . . .

The rights of private property have been guarded. . . . 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. . . . An Act of Congress which deprives a person 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 offense against the laws, could hardly be dignified with the name of due process of law. . . .

It seems, however, to be supposed, that there is a difference between property in a slave and other property, and that different rules may be applied to it in expounding the Constitution of the United States. And the laws and usages of nations, and the writings of eminent jurists upon the relation of master and slave and their mutual rights and duties, and the powers which governments may exercise over it, have been dwelt upon in the argument.

But . . . if the Constitution recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction, or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the Government.

Now . . . 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

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. . . . 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.