Dred Scott v. Sandford

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Dred Scott v. Sandford
60 U.S. 393 (19 How. 393) (1857)

DECIDED: March 6, 1857
VOTE
CONCURRING: 7 (Roger B. Taney, James M. Wayne, John Catron, Peter V. Daniel, Samuel Nelson, Robert C. Grier, John A. Campbell)
DISSENTING: 2 (John McLean, Benjamin R. Curtis)
OPINION OF THE COURT: Taney
CONCURRING OPINION: Wayne
CONCURRING OPINION: Nelson (Grier)
CONCURRING OPINION: Grier
CONCURRING OPINION: Daniel
CONCURRING OPINION: Campbell
CONCURRING OPINION: Catron
DISSENTING OPINION: McLean
DISSENTING OPINION: Curtis

Dred Scott's case and his story are often misunderstood by scholars and the public. Scott was not a fugitive slave, as many people believe; rather, he was a slave who attempted to use the legal system to gain his freedom. His case helped shape the political debate of the late last few years before the American Civil War. Ultimately, the case helped lead to the Fourteenth Amendment to the U.S. Constitution, which made all people born in the United States—including African Americans—citizens of the nation. The memory of the case in both law and political culture remains strong, even if many Americans are unaware of what it was actually about or how it turned out.

Scott was born in slavery around 1800. His owner, a Virginian named Peter Blow, moved him to Alabama in 1818 and to St. Louis in 1830. Blow died in 1832, and Scott was sold to Dr. John Emerson, a U.S. Army surgeon. Captain Emerson took Scott with him to military posts in Illinois and the part of the Wisconsin Territory that is now Minnesota. From 1836 to 1838 Scott lived at Fort Snelling, in what is today St. Paul, where he married Harriet Robinson. Before her marriage, Robinson was the slave of Maj. Lawrence Taliaferro, the fort's resident Indian agent. Taliaferro was also a justice of the peace, and in that capacity he performed a wedding service for the couple. The marriage became a significant factor in Scott's claim to freedom because slaves could never be legally married. Scott's lawyers would later argue that he must have been free at the time he was married by a justice of the peace.

Emerson died in 1843, and the Scott family, which now included two daughters, passed into the hands of Emerson's widow, Irene. She hired Scott out, and for a few years he worked in Texas. In 1846 Scott was back in St. Louis, where he tried to buy his freedom from Irene Emerson, but she rejected his offer. Scott then sued for his freedom, based on his residence in the free state of Illinois and the free territory of Wisconsin. As early as 1772 the Court of Kings Bench, in England, had ruled in *Somerset v. Stewart* that a slave became free the moment he set foot in a nonslave jurisdiction. This decision was based on the idea that slavery could exist only by "positive law"—that is, statutory law—and without a law creating slavery, no one could be enslaved.

In 1787 Congress, under the Articles of Confederation, had passed the Northwest Ordinance, which prohibited slavery north and west of the Ohio River. This territory included the future state of Illinois and

part of what became Minnesota. After the Constitution was adopted, the new Congress reaffirmed the provisions of the ordinance. Illinois came into the Union as a free state in 1819. A year later, in the Missouri Compromise, Congress banned slavery north and west of the new state of Missouri. Finally, in 1836, just before Scott was taken to Fort Snelling, Congress passed the Wisconsin Enabling Act, which reaffirmed the provision of the Northwest Ordinance and also applied all of the existing laws of the Michigan Territory to the Minnesota area. One of those laws banned slavery.

DRED SCOTT'S LEGAL ODYSSEY BEGINS

On the basis of pre-Revolutionary English precedent, Illinois law, and a myriad of federal laws, Scott claimed to be free. His claim was strengthened, he argued, by his marriage before a justice of the peace, which was a de facto recognition by his master of his free status. Finally, he claimed freedom under Missouri precedents. Although it was a slave state, Missouri had long accepted the *Somerset* principle that a slave taken to a free state became free. The Missouri Supreme Court had taken this position in *Winney v. Whitesides* (1824) and reaffirmed it in a number of subsequent cases. Based on these precedents, in 1850 a St. Louis court declared Scott free. In *Scott v. Emerson* (1852), however, the Missouri Supreme Court reversed this decision, declaring that it would no longer follow the 1824 precedent. The court's decision was blatantly political. The opinion stated:

> Times are not now as they were when the former decisions on this subject were made. Since then, not only individuals but States have been possessed with a dark and fell spirit in relation to slavery, whose gratification is sought in the pursuit of measures, whose inevitable consequence must be the overthrow and destruction of our Government. Under such circumstances, it does not behoove the State of Missouri to show the least countenance to any measure which might gratify this spirit. She is willing to assume her full responsibility for the existence of slavery within her limits, nor does she seek to share or divide it with others.[1]

The case might have ended here, but about this time Irene Emerson moved to Springfield, Massachusetts, where she married Dr. Calvin C. Chaffee, an active opponent of slavery, who later served two terms in the U.S. House of Representatives, 1855–1859, first as a member of the American Party and then as a Republican. Before marrying Chaffee, Irene transferred ownership of the Scotts to her brother, John F. A. Sanford. (His name was misspelled as Sandford when the case reached the U.S. Supreme Court.) Sanford lived in New York City but had business interests in Missouri. Scott sued Sanford in federal court, under diversity jurisdiction. Scott argued that he was a citizen of Missouri and therefore could sue Sanford, a citizen of New York, in federal court.

In response, Sanford presented a plea in abatement—a plea to end the suit—arguing that Scott could not sue in federal court because, in language later picked up by the U.S. Supreme Court, Dred Scott "is not a citizen of the State of Missouri, as alleged in his declaration, because he is a negro of African descent; his ancestors were of pure African blood, and were brought into this country and sold as negro slaves."[2] Sanford, in effect, argued that blacks could not be considered citizens for purposes of diversity jurisdiction. Judge Robert W. Wells of the U.S. district court rejected this plea. Wells concluded that *if* Scott were free, he had the right to sue in federal court as a citizen of Missouri. This statement did not mean that Wells thought free blacks were full-fledged citizens, but he did think free blacks ought to be able to defend their rights in federal courts. The ruling against Sanford's plea allowed the suit to proceed.

Once he heard the case, however, Wells determined that Missouri law was binding, and, because the state supreme court had ruled against Scott's freedom claim, he must remain a slave. Wells decided the case on the basis of the Missouri Supreme Court's earlier ruling, in effect asserting that each state has the right to determine the status of people within its jurisdiction. Scott claimed he was free because he had lived in

Illinois, and Wells reasoned correctly, based on Supreme Court precedent, that Missouri was free to accept or reject the law of Illinois. Both states were "equal," and therefore one state could not dictate to another what the status of its residents should be. By analogy, Wells applied the same logic to Scott's residence at Fort Snelling: the Wisconsin Territory could not dictate to Missouri how it should treat people within its borders.

Judge Wells's analysis was generally consistent with nineteenth-century constitutional thought and theory. In reaching this conclusion, however, Wells ignored the federal aspect of the case. Illinois and Missouri were coequal partners in the Union, but the laws of both states were subordinate to the U.S. Constitution and to the acts of Congress implementing the Constitution. Article VI says, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Although he did not explicitly say so, Wells in effect held that Missouri had the right to overturn or at least ignore a series of federal laws, including the Missouri Compromise and the Wisconsin Enabling Act, which made slavery illegal where Scott had lived and presumably made him free.

Had Sanford lost ownership of Scott, he probably would have appealed the ruling on the plea in abatement, but, because he retained his property, he had no reason to appeal any part of the lower court decision. Scott won on the issue of the plea in abatement, and he naturally did not appeal that part of Judge Wells's decision. He did, however, appeal the ruling that he was not free under the Missouri Compromise.

U.S. SUPREME COURT DECISION

The appeal reached the Court in late 1854, but it could not be placed on the docket until the following term, which began in December 1855. The Court heard arguments in February 1856 but did not give a decision at that time. Instead, it scheduled reargument for the December 1856 term. Abraham Lincoln and other Republicans would later claim that the delay was part of a deliberate conspiracy to overturn the Missouri Compromise, force slavery into the territories, and elect Democrat James Buchanan president. During his campaign for the Senate in 1858, Lincoln suggested that the Court did not dare strike down the Missouri Compromise before the 1856 presidential election and delayed by scheduling reargument in order to decide the case after the election. On March 6, 1857, two days after Buchanan was inaugurated as president, Chief Justice Taney announced the opinion of the Court. Speaking for a 7–2 majority, Taney rejected Scott's suit. Even though the issue of the plea in abatement was not technically before the Court, the Supreme Court decision focused on both the plea in abatement—that is, the right of blacks to sue in federal court—and the constitutionality of the Missouri Compromise. The Court asked two questions. First, did Scott, or any black, have the right to sue in federal court as a citizen of a state? Second, did Congress have the power to prohibit slavery in the territories and thereby emancipate slaves brought into the territories?

Chief Justice Taney held that Congress had no power to pass general laws to regulate the territories. He also held that the Missouri Compromise unconstitutionally deprived southerners of their property in slaves without due process of law or just compensation, in violation of the Fifth Amendment. By implication, this also meant that no territorial legislature could ban slavery in a federal territory. This part of the ruling undermined the concept of "popular sovereignty" that the leading northern Democrat, Sen. Stephen A. Douglas of Illinois, had developed as a way of solving the problem of slavery in the western territories. Under *Dred Scott,* slavery would be legal in all the federal territories and could be prohibited only at statehood. This aspect of the decision shocked northerners, who had long seen the Missouri Compromise as a central piece of legislation for organizing the settlement of the West and for accommodating differing sectional interests. It also shocked many northern Democrats, who had supported opening up the Kansas and Nebraska territories to slavery under popular sovereignty.

Taney also denied that blacks could ever be citizens of the United States, declaring:

> 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, 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.[3]

Ignoring the fact that free black men in most of the northern states, as well as North Carolina, could vote at the time of the ratification of the Constitution, Taney declared that blacks

> 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 the instrument provides 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 Government might choose to grant them.[4]

According to Taney, blacks were "so far inferior, that they had no rights which the white man was bound to respect."

Justices McLean and Curtis wrote lengthy dissents, disputing Taney's conclusions point by point. They stressed black participation in the Revolution and black voting at the time of the adoption of the Constitution. They reminded the Court that the first Congress had readopted the Northwest Ordinance, which implied that the Framers of the Constitution believed Congress had the power to prohibit slavery from the territories.

RESPONSES TO THE DECISION

The public responses to the decision were tied to the politics of the 1850s. Before 1850 slavery was not allowed in the territories west and north of Missouri. Congress had not yet decided the status of slavery in the territories acquired from Mexico after the 1846–1847 war. The Compromise of 1850 allowed slavery in these newly acquired territories, while admitting California into the Union as a free state. Meanwhile, the Whig Party was soundly beaten in the 1852 election and virtually disappeared. In 1854 the Democrats, firmly in control of Congress and the White House, passed the Kansas-Nebraska Act, which allowed slavery into the territory immediately west of Missouri. This law was designed to placate the southern wing of the party, which insisted that slaveholders have access to new territories in the West. According to the Kansas-Nebraska Act, the settlers of the territories would decide for themselves, under a theory called popular sovereignty, whether slavery would be legal in a particular territory. At first glance, popular sovereignty seemed to be the essence of democracy because it allowed settlers to decide if they wanted slavery. But northerners argued that southerners, with their numerous slaves, would present unfair competition to free labor. Furthermore, many northerners argued that the Missouri Compromise was a fundamental, almost sacred, compact for the preservation of sectional harmony, and it was morally and politically wrong to repeal it.

The primary engineer of the Kansas-Nebraska Act was Senator Douglas, who claimed that he did not care whether slavery was voted up or down; he only was interested in allowing the settlers to decide the matter. His real goal was to build a railroad from Chicago to California, and the best way to do that was through Missouri and Kansas. He therefore wanted Kansas opened to settlement, and he wanted southern support for his railroad. In the North the reaction to the Kansas-Nebraska Act led to the formation of the

This parody of the 1860 presidential contest highlights the impact of *Dred Scott v. Sandford* (1857), in which the Court ruled that neither the federal government nor territorial governments could prohibit slavery in the territories. Here the four candidates dance with partners representing their supporters, while Scott, a former slave, plays the fiddle. Clockwise, starting at the upper left, Southern Democrat John C. Breckinridge dances with Democratic incumbent James Buchanan, depicted as a goat or (as he was nicknamed) "Buck"; Republican Abraham Lincoln prances arm-in-arm with a black woman, a reference to his abolitionist supporters; Constitutional Union party candidate John Bell dances with an Indian brave, perhaps an allusion to Bell's Native American interests; and Stephen A. Douglas dances with an Irishman. —Library of Congress.

Republican Party, which was dedicated to stopping the spread of slavery into the West. In 1856 this brand-new party nearly won the presidency, but the victory went to James Buchanan, a Pennsylvania "doughface" Democrat. (The doughfaces were northerners who consistently voted with the South on issues involving slavery.)

Even before the decision in *Dred Scott* was announced, Buchanan and other Democrats were laying the groundwork for supporting it. At his inauguration Buchanan and Taney had a brief conversation—in full view of the audience—just before Buchanan gave his inaugural address. In that address, delivered just two days before Taney announced his opinion, Buchanan said that the issue of slavery in the territories was "a judicial question, which legitimately belongs to the Supreme Court of the United States," one, he noted, that would "be speedily and finally settled." Buchanan pledged to "cheerfully submit" to this decision, as he believed "all good citizens" would.

Many Republicans would later charge that in that brief conversation Taney violated Court ethics by telling Buchanan what the Court would decide, so that the pro-slavery Buchanan could support the decision in his inaugural address. There is no record of what Taney said to Buchanan in that whispered conversation on the podium, but it is clear that Buchanan already knew what the decision would be. Well before the inauguration, Justice Robert Grier, another Pennsylvania doughface, told president-elect Buchanan

how the Court would rule. Buchanan, therefore, could safely endorse the forthcoming decision in his inaugural address.[5]

Southerners and conservative northern Democrats rallied to the *Dred Scott* decision. Since 1854 northern Democrats had faced fierce competition from the Republican Party, whose main platform was opposition to new slave states and to slavery in the territories. Taney's opinion, holding that Congress could not ban slavery in the territories, undermined the whole purpose of this party. Democrats cheered the decision as providing a constitutional argument against the Republicans. Democrats also hoped the decision would end all discussion of slavery in the territories and move politics away from this divisive issue.

Not surprisingly, the southern press praised the decision. The New Orleans *Daily Picayune,* a Whig paper, gleefully noted that the decision was the cause for "bitter comment in the anti-slavery journals" because it marked "the overthrow" of the "favorite theories and upset their political plans." The paper said the decision "gives the sanction of established law, and the guarantees of the constitution" to the South while being "a heavy blow to Black Republicanism."[6] The more states rights–oriented Richmond *Enquirer* declared that with this decision, "The *nation* has achieved a triumph, *sectionalism* has been rebuked, and abolitionism has been staggered and stunned."[7] The Charleston *Mercury* noted that the Supreme Court had never been "the special guardian of State Rights and the interests of the South," and therefore it felt the *Dred Scott* decision was greeted with "exaggerated effect of surprise." The paper approved the decision, but correctly predicted that it would "precipitate rather than retard" what would be "the final conflict between Slavery and Abolitionism." The *Mercury* was not as sanguine as other papers supporting the decision, perhaps because sentiment in South Carolina was already deeply hostile to the Union. Moreover, the paper doubted that northerners, especially Republicans and abolitionists (and the paper made no distinction between the two) would accept the decision.[8]

Most northern Democratic papers were delighted with the decision. The *Pittsburgh Post,* for example, declared that the Republicans were "very busy in hunting up an issue on which to contend with the Democrats in the next election" because the *Dred Scott* decision had taken away their main platform plank. This Democratic paper believed that "nothing can be made out of it [the decision] as a political issue. It is law, and cannot be reversed by any other tribunal."[9] On March 11, 1857, the New York *Journal of Commerce* told its readers that the issues in the case were "now decided on authority which admits no appeal or question." A day later the paper declared that "the so called Republican Party is only another name for Revolution and anarchy."

The *Washington Union,* which was closely tied to the Buchanan administration, was delighted with the result. The paper, like other Democratic papers, believed the decision would cripple the Republicans by taking their main issue—slavery in the territories—out of the political debate. The *Union* declared its belief "that this decision will meet a proper reception from the great mass of our intelligent countrymen; that it will be regarded with soberness and not with passion; and that it will thereby exert a mighty influence in diffusing sound opinions and restoring harmony and fraternal concord throughout the country." The paper reported that the Court had "settled the vexed constitutional question as to the power of Congress over Territories [by concluding that the power] is entirely independent of the legislative branch of the government. It is elevated above the schemes of party politics, and shielded alike from the effects of sudden passion and of popular prejudice."[10]

Northern Democrats, like their papers, hoped the decision would end the debate over slavery in the territories and destroy the new Republican Party. While running for reelection to the U.S. Senate in 1858, Stephen Douglas asserted, "The right and province of expounding the Constitution, and construing the law, is vested in the judiciary established by the Constitution." Unlike his opponent, Abraham Lincoln, Douglas declared, he had "no warfare to make on the Supreme Court." Douglas was also happy to endorse the Court's holding that free blacks could never be citizens of the United States. On July 9 he asserted:

> I am opposed to negro equality. I repeat that this nation is a white people—a people composed of European descendants—a people that have established this government for themselves and their posterity, and I am in favor of preserving not only the purity of the blood but the purity of the government from any mixture or amalgamation with inferior races.[11]

Not surprisingly, most northern papers—all that were not tied to the Buchanan administration—were hostile to the decision. The *New York Tribune,* the nation's leading Republican paper, responded to the decision with outrage, calling Taney's opinion "wicked," "atrocious," and "abominable" and a "collation of false statements and shallow sophistries." Editor Horace Greeley thought Taney's decision had no more validity than the opinions which might be expressed in any "Washington bar-room."[12] He even published a pamphlet edition of Taney's opinion and the Curtis dissent to help the Republican cause. The *Chicago Tribune* declared that Taney's statements on black citizenship were "inhuman dicta."[13]

Republican politicians launched unrelenting attacks on Taney's opinion. Many focused on the brief conversation that Taney had with Buchanan at the inauguration. Republicans publicly speculated that in this conversation Taney had told Buchanan what the Court was about to decide. Sen. William Henry Seward, R-N.Y., later claimed that the "whisperings" between Taney and Buchanan were part of a conspiracy to hang "the millstone of slavery" on the western territories.[14] Only a few minutes after the exchange, Buchanan urged the nation to accept and support the forthcoming decision in *Dred Scott.* Seward, Lincoln, and other Republicans insisted that Taney had told Buchanan how the Court would decide the case.

The most famous, and effective, attack on the decision came from Lincoln, who on June 16, 1858, launched his 1858 Senate bid with the now-famous "House Divided" speech, saying, "I believe this government cannot endure permanently, half slave and half free." He claimed that the *Dred Scott* decision was part of a long-term conspiracy to force slavery on the North and warned that continued Democratic rule would soon lead to a nationalization of slavery. Lincoln told his fellow Republicans, "We shall *lie down* pleasantly dreaming that the people of *Missouri* are on the verge of making their state *free;* and we shall *awake* to the *reality,* instead that the *Supreme* Court has made *Illinois* a *slave* state." Lincoln was convinced that the "logical conclusion" of *Dred Scott* was "What one master might lawfully do with Dred Scott, in the free state of Illinois, every master might lawfully do with any other *one,* or *one thousand* slaves in Illinois, or in any other free state."[15] Lincoln lost the election, but not the cause. In an 1859 speech he warned that some future Supreme Court case would be like a "second Dred Scott decision" and would make "slavery lawful in all the States."[16]

Lincoln was not alone in articulating this fear. In 1859 Gov. Salmon P. Chase, R-Ohio, who would become chief justice after Taney's death, predicted that if the Democrats won the presidency in 1860 there would be a new decision, allowing slavery in the North "just as after the election of Mr. Buchanan, the Dred Scott." Chase asked, "What will the decision be?"

> It will be just as they claim, that they can take their slaves into New York over the railroads of New Jersey, through Pennsylvania and through Ohio, Indiana, Illinois . . . to any state of the North, and that they can hold them there during all the time that it is convenient for them to be passing through. In other words, it is a decision in favor, not of the African slave trade, but of the American slave trade, to be carried on in the free states.[17]

The Springfield, Massachusetts, *Republican* asked, "If slavery is a national institution, recognized, protected, and carried into the territories, why does not the same authority recognize, protect, and carry it into all the several states?"[18]

Perhaps the most interesting critique of the decision came from the black abolitionist Frederick Douglass. Earlier in his career Douglass had refused to vote and denounced politics. But by 1857 he was actively

involved in antislavery politics and at least sympathetic to the Republican Party. In 1860 he would grudgingly vote for Lincoln and in 1864 enthusiastically endorse him.

For Douglass, the opinion was both an outrage and a call to increase efforts to end slavery. In an 1857 speech he argued that this "judicial incarnation of wolfishness" made his hopes "brighter" than ever before. He argued that this "open, glaring, and scandalous tissue of lies" found in the decision would serve the cause of liberty in the long run. He declared that "we, the abolitionists and colored people, should meet this decision, unlooked for and monstrous as it appears, in a cheerful spirit. This very attempt to blot out forever the hopes of an enslaved people may be one necessary link in the chain of events preparatory to the downfall and complete overthrow of the whole slave system."[19] He used the decision to denounce the followers of the abolitionist William Lloyd Garrison, who argued that the Constitution was proslavery and therefore abolitionists should reject political action. Garrisonians argued for northerners to secede from the Union. To the contrary, Douglass argued that the Constitution was not proslavery and that Taney's opinion was wrong and should be overturned by a combination of political action and appeals to God and conscience.

> Such a decision cannot stand. God will be true though every man be a liar. We can appeal from this hell-black judgment of the Supreme Court, to the court of common sense and common humanity. We can appeal from man to God. If there is no justice on earth, there is yet justice in heaven. You may close your Supreme Court against the black man's cry for justice, but you cannot, thank God, close against him the ear of a sympathizing world, nor shut up the Court of Heaven. All that is merciful and just, on earth and in Heaven, will execrate and despise this edict of Taney.[20]

Douglass's rhetoric may seem overblown, but his predictions proved to be remarkably accurate. In less than four years Lincoln was elected president on a platform that promised to reject Taney's conclusions and guarantee that slavery would be excluded from the territories. Southern secession and civil war followed, and that in turn ended slavery.

IN THE COURT OF HISTORY

Frederick Douglass had found a reason for hope in the decision. He understood that the decision would push the nation closer to brink of disaster, which he believed would end slavery. He displayed remarkable optimism. He told a New York audience: "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." Douglass believed that the decision would raise "the National Conscience." Moreover, he saw in the decision the beginning of the great cataclysm that could destroy slavery:

> 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 this 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.[21]

The change Douglass called for came more quickly than he could have imagined. On June 19, 1862, President Abraham Lincoln signed legislation ending slavery in the territories. Despite Taney's assertions that Congress could not take this action, Congress and the president did so. Congress also outlawed slavery in the District of Columbia. On January 1, 1863, Lincoln issued the Emancipation Proclamation, which led to slavery's demise in most of the Confederacy. Slavery no longer had a special constitutional protection;

indeed, it had almost no protection at all, as U.S. soldiers had already ended it for many thousands. In addition, before the war was over, more than 200,000 black men had served in the army and navy. Too old to serve himself, Douglass personally recruited more than 100 blacks in upstate New York, including his two sons. In his newspaper, Douglass "issued a stirring call, 'Men of Color, to Arms!' " People who were written out of the Constitution in 1857 helped rewrite the constitutional arrangements only a few years later. In early 1865 Congress passed, and sent to the states, the Thirteenth Amendment, which says: "Neither slavery nor involuntary servitude . . . shall exist within the United States." A year later Congress passed the Fourteenth Amendment. Ratified in 1868, the amendment made all people born in the United States citizens of the state in which they lived as well as citizens of the nation. *Dred Scott v. Sandford* was now a dead letter.

Although Scott did not live to see the demise of the case that bore his name, he did attain freedom. Shortly after the decision, the sons of his first owner, Peter Blow, purchased Scott and his family and emancipated them. Scott remained a free man, and something of a celebrity from May 26, 1857, until his death on February 17, 1858.

Chief Justice Taney died on October 12, 1864, without seeing the undoing of his judicial handiwork. By then he surely understood the depth of his failure in *Dred Scott.* His decision had put in motion forces that ended the controversy over slavery in the territories, but not in the way he wanted.

In February 1865 the Senate debated a bill to appropriate money to honor Taney. The Senate bill would have provided money for a bust of the late chief justice to be placed with busts of all other deceased justices. This honor was considered pro forma: no justice had ever been denied his place in the pantheon of American jurists.

But no other justice was like Roger B. Taney, who, at the time of his death, was denounced and vilified. Sen. Charles Sumner, R-Mass., opposed having a bust of Taney placed alongside the other departed justices. Sumner argued, "If a man has done evil during his life he must not be complimented in marble." Sumner noted that England had never honored the hated Chief Justice Jeffries, "famous for his talents as for his crimes." Like Jeffries, Taney had been "the tool of unjust power." Neither deserved honor. Taney had "administered his last justice wickedly, and degraded the judiciary of the country, and degraded the age." He was not to be remembered by a marble bust; rather, Taney was to be dealt with in the works of scholars. There, Sumner confidentially predicted "the name of Taney is to be hooted down the page of history."[22]

In the years since Sumner gave this speech, Chief Justice Taney's reputation has fluctuated. He was on the Court for nearly thirty years and wrote many important opinions. Much of his jurisprudence on economic issues is highly regarded by many scholars. But, in the end, his reputation, and that of the antebellum Court, turns on *Dred Scott v. Sandford.*

NOTES

1. *Scott v. Emerson,* 15 Mo. 576, at 586 (1852).
2. *Dred Scott v. Sandford,* 60 U.S. 393 (19 How. 393), at 394 (1857).
3. Ibid., at 403.
4. Ibid., at 405–406.
5. Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), 473 passim. See also Paul Finkelman, *Dred Scott v. Sandford: A Brief History with Documents* (Boston: Bedford Books, 1997), 46–47.
6. New Orleans *Daily Picayune,* March 21, 1857.
7. *Richmond Enquirer,* March 21, 1857.
8. Charleston *Mercury,* April 2, 1857.
9. *Pittsburgh Post,* March 17, 1857.
10. *Washington Union,* March 12, 1857.
11. Quoted in Paul M. Angle, *Created Equal? The Complete Lincoln-Douglas Debates of 1858* (Chicago: University of Chicago Press, 1958), 24 (as quoted in Finkelman, *Dred Scott v. Sandford,* 201.

12. *New York Tribune,* March 7, 1857.
13. *Chicago Tribune,* March 12, 1857, as quoted in Fehrenbacher, *Dred Scott Case,* 417.
14. *Congressional Globe,* 35th Cong., 1st sess., 941, quoted in Fehrenbacher, *Dred Scott Case,* 473.
15. Quoted in Angle, *Created Equal?* 1–9.
16. "Speech at Columbus, Ohio," Collected Works, 9 vols., ed. Roy P. Basler (New Brunswick: Rutgers University Press, 1953–1955) 3:404.
17. *New York Evening Post,* August 31, 1859.
18. *Springfield Republican,* October 12, 1857.
19. Frederick Douglass, Speech to American Abolition Society, May 11, 1857, in Finkelman, *Dred Scott v. Sandford,* 169–181.
20. Ibid.
21. Ibid.
22. *Congressional Globe,* 38th Cong., 2d sess., February 23, 1865, 1012–3.