

Power of a Dissenting Opinion: Dred Scott Assignment

Investigate the infamous 1857 Supreme Court Case Dred Scott v. Sandford. It is important to not only read the majority opinion of court cases, but sometimes the dissenting opinion is worth reading as well. It can provide insight to the constitutionality of future issues and conflicts. In this particular case, read the dissenting opinion and answer the following questions.

1. On what key points does Justice McLean disagree with Chief Justice Taney?
 - a. Chief Justice Taney did not believe that citizens were citizens solely of a state, but were instead only conferred citizenship, national citizenship, by Congress and the Federal Government. As such, when it came to Article III, no person of descent of an American slave was a citizen or had ever been a citizen. McLean, rather, argued that the Founding Fathers did not promote slavery, and neither did the Constitution, slavery simply being an institution. As the Constitution's language was guarded against mentioning slavery, McLean contended that one was a citizen of a state and therefore a citizen of the United States if they were born a free person upon the soil of a state.
2. What examples does Justice McLean use to demonstrate that Scott has the right to sue in court?
 - a. "Being born under our Constitution and laws, no naturalization is required, as one of foreign birth, to make him a citizen. The most general and appropriate definition of the term citizen is 'a freeman.' Being a freeman, and having his domicile in a State different from that of the defendant, he is a citizen within the act of Congress, and the courts of the Union are open to him." Being born within the United States as well as being free makes the man a freeman who is therefore entitled to use of the Court system. Very much does McLean contend that naturalization is something that is only to be utilized for foreigners; all those who are born within the borders of the United States of America are entitled to the rights and protections of the Constitution and her laws. McLean also argues that any individual with a permanent domicile in the State under whose laws his rights are protected may sue in Court because women and minors are also allowed to sue in Federal Court.
3. In his decision, Chief Justice Taney declared the Missouri Compromise unconstitutional. How does Justice McLean deal with this argument in his dissent?
 - a. The Missouri Compromise, in McLean's estimation, does not conflict with the ordinance of 1787 and should therefore remain valid. The Compromise did not forcefully take property or power away from slave-owners, only stating that slavery could not be practiced within free states. It is not the power or responsibility of the courts to control the discretion which Congress may exercise in its establishment of territorial governments, and therefore no distinction should be drawn between the territorial governments of the time within which the Compromise was passed and the territorial governments of now.