

ESSENTIAL CIVIL WAR CURRICULUM

The Dred Scott Case

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Dred Scott might have remained as obscure to history as any among the hundreds of other people who, held in slavery during the hundred years before he took action, went into court to contest the lawfulness of their enslavement. But he did not. His was one of the few such cases to go into federal court, let alone the U.S. Supreme Court, and his action coincided with a political context in the 1850s in which national politics affected the outcome in state court and, moreover, appeared to turn on the outcome at the nation's high court. His freedom suit in local court became a Supreme Court case that addressed such big questions as whether black residents of the United States could be citizens and whether Congress could ban slavery in U.S. territories.

Dred Scott was born a slave, probably in Southampton County, Virginia, around the year 1800. His master, Peter Blow, took Scott to Alabama in 1818 and then to Missouri in 1830, where Blow died in 1832. By sometime in 1833, he had been purchased by Dr. John Emerson, a surgeon with the U.S. Army. The two soon moved to Fort Armstrong, in Illinois, where they spent two and a half years, and then to Fort Snelling, a remote spot in Wisconsin Territory, where they spent two more years. While at Fort Snelling, Dred Scott married Harriet Robinson, also born a slave in Virginia. Her owner, Lawrence Taliaferro, the Indian agent at the fort, was also a justice of the peace and performed the marriage ceremony. Harriet took up residence at the fort with her new husband, but then Emerson moved to Louisiana and for some months rented out his two slaves back in Wisconsin Territory. In subsequent years, the Scotts lived and worked in Louisiana, Texas, and then Missouri. By 1846, the couple had two young daughters, and in April that year they sued for their freedom—or, rather, he for his and she for hers and that of their two children.

The Scotts brought what looked like very winnable cases. People held in slavery had successfully brought suits for freedom in Massachusetts in the 1780s, where, on the basis of language in the new state's new constitution, judges ruled them free and thereby brought an end to slavery in that state; in Maryland and Virginia during and after the American Revolution, where judges often ruled in their favor on the basis of their being descended in the female line from a woman who herself, either because she was white in Maryland or Indian in Virginia, should not have been held in slavery; and in Mississippi, Louisiana, and elsewhere—including Missouri—on the basis of their having lived and worked for an extended time in a free state or territory. That last rationale governed the

Scotts and made them hopeful of gaining their freedom. Slavery had been excluded in Illinois by the Northwest Ordinance and in Wisconsin Territory under the Missouri Compromise. Dred Scott would no doubt have come by his freedom had he sued while he was still in Illinois, Wisconsin Territory, or Louisiana, and Harriet too would likely have won at an earlier time. As for why they had not mounted such an effort much earlier, it can only be surmised that neither of them understood until 1846 that a freedom suit was an option they could and should pursue.

The couple met with various delays, however. At trial in June 1847, Dred Scott lost when he could not prove that the person he was suing, Irene Emerson (the doctor's widow), actually claimed to own him. Before a second trial could take place in December 1847, her attorneys contested the action, but in June 1848 the Missouri Supreme Court sided with the Scotts that they could go forward with their suits. The trial finally took place in January 1850, and the court found the Scotts free on the basis of their previous residence in a free state, Illinois, and a free territory, Wisconsin. Irene Emerson appealed this outcome to the Missouri Supreme Court, and this time, in March 1852, the state's highest court sided with her by a 2–1 majority decision. Writing for the Missouri Supreme Court, and reversing more than a quarter-century of Missouri law, the chief justice mused about how “the times are not now as they were” and ruled against the Scotts. Meanwhile, the Scotts were in the custody of the local sheriff, who hired them out, collected the proceeds, and kept that money in escrow pending a determination as to whether it belonged to the Scotts, if they were free, or, if they were not, to their owner.

The couple next took their case into the federal court system, where they were suing John Sanford (whose name would be misspelled in the record as Sandford), the brother of Mrs. Emerson and executor of his estate. Or at least they tried to sue him. First, the federal district judge, Robert W. Wells, had to determine whether Scott had standing to bring the action, whether the federal court had jurisdiction to hear it. The issue had to do with what is called “diversity jurisdiction,” with one party to the dispute, in this case Scott, a citizen of one state, and the other party a citizen of another state—John Sanford was a citizen of New York (and Irene was by this time a citizen of Massachusetts, having married a man from there). Sanford argued that Scott, regardless of whether he was free or a slave, was no citizen of Missouri and therefore had no standing, and the court no jurisdiction. The judge ruled Scott a citizen—that is, not a slave—for purposes of bringing his legal action to challenge his enslavement. But at trial in May 1854, Judge Wells ruled that Missouri law must govern the outcome, and the Missouri Supreme Court had provided an authoritative ruling on what the law of the State of Missouri was. The outcome in federal court therefore hinged on, and upheld, the state court ruling, even if that court had ruled in 1852 in a manner contrary to what would almost surely have been the outcome there just a few years earlier. The Scotts, all four of them, were still slaves.

The Scotts appealed their case to the U.S. Supreme Court in December 1854. During the eight years from their first going to court in 1846 to the time they appealed to the U.S. Supreme Court, consider what had been going on in American politics. In 1846,

during the war with Mexico over Texas and the Southwest, Congress had considered, and the House of Representatives had actually passed, a bill that would ban the expansion of slavery into any new territories acquired from Mexico. In 1850, Congress had passed a stronger Fugitive Slave Act as part of the Compromise of 1850. In 1854, the Kansas–Nebraska Act had undone the Missouri Compromise’s delineation of a northern boundary in the West beyond which southern slavery could not expand. Time and again, slavery had emerged as a highly dangerous issue in national politics. Time and again, compromise had been reached, always with a tilt—certainly from a northern perspective—toward the interests of southern slaveholders.

The Supreme Court heard oral arguments in the *Dred Scott* case in February 1856 and then heard a re-argument on two central issues in December 1856. By then, the Scotts had been in one court or another for ten years. On March 6, 1857, the Court issued its ruling. Rather, all the justices wrote individual opinions, and over all they were divided 7–2; what Chief Justice Roger B. Taney wrote more or less stood for the Court majority.

Was *Dred Scott* a citizen? No, insisted Taney. Did Congress have authority over the territories such that it could legislate a ban on the expansion of slavery? Again, no. Here the chief justice famously said about black residents of the American colonies and then the states at the time of the American Revolution and the U.S. Constitution that, in accordance with the “fixed and universal” opinion of white Americans, they were “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.”

For antislavery white northerners, the *Dred Scott* decision took the place of the Kansas-Nebraska Act as the symbol of proslavery power and the primary reason to run a Republican candidate, and hope to win, in the 1860 presidential election. When Abraham Lincoln and Stephen A. Douglas squared off in Illinois in 1858 as to who should be elected to the U.S. Senate, the *Dred Scott* ruling proved to be a key issue. In 1860, the Republican platform spoke of *Dred Scott* as putting forth a “new dogma” and a “dangerous political heresy.” And a leading assessment of *Dred Scott* in the North was that Chief Justice Taney had overstepped his authority in ruling against Congress’s authority to curtail the expansion of slavery—it was *obiter dictum*, not necessary for resolving the matter before the Court—for if Scott was not a citizen, and could not bring his freedom suit into federal court, then his bid for freedom ended there, and the Court had no need to press on and address further questions regarding the law of slavery.

Proslavery spokesmen, for their part, expressed their delight and their relief. For generations, slavery had been a chronically dangerous issue in American public life, and now at last it was settled—settled, that is, on proslavery terms. In South Carolina, the Charleston *Daily Courier* celebrated the Court’s twin rulings, that “the Missouri Compromise is unconstitutional” and that “free negroes have no rights as citizens.” In Illinois, Stephen A. Douglas had no quarrel with either the Supreme Court’s resolution of

the issue of slavery or the Court's opposition to black citizenship. "I am in favor," he said, "of preserving not only the purity of the blood, but the purity of the government from any mixture or amalgamation with inferior races."

Much of the Dred Scott decision—the core issues of slavery's expansion and black citizenship—was soon overturned. Victorious in the 1860 elections, the Republicans enacted a bill in June 1862 that declared a ban on slavery in any territories—not just a ban on the expansion of slavery into new territories—in the West. Between the Emancipation Proclamation in January 1863 and ratification of the Thirteenth Amendment in December 1865, slavery was declared abolished everywhere in the nation. The Civil Rights Act of 1866 declared African Americans, or at least all those who had been born in the United States, to be citizens of their state and of the nation; and the Fourteenth Amendment, ratified in 1868, put that language in the U.S. Constitution. By 1868, indeed, black men were voting in all eleven former Confederate states, and the Fifteenth Amendment, ratified in 1870, said no state could use race as the basis for denying any man the right to vote.

As for Chief Justice Taney's observations about white attitudes and state laws that denied black Americans anything approaching legal equality—the opinions and beliefs he had voiced and validated as a key basis for his ruling in the case—the Supreme Court's much later ruling, in *Brown v. Board of Education* (1954), almost a century after *Dred Scott*, called for an end to racial discrimination under the law, certainly in elementary and secondary public schooling and soon in various other venues. But during that century, the attitudes and beliefs Taney had displayed lived on, as resistance to the Fourteenth and Fifteenth Amendments persisted, and both were often very narrowly construed, especially in the South.

What of Dred Scott, his wife Harriet, and their two daughters, Eliza and Lizzie? Dr. Emerson's widow had married a New Englander, Massachusetts Congressman Calvin Chaffee, whose antislavery credentials were compromised by his connection to his wife's slaves in St. Louis. He found a buyer in the sons of Peter Blow, Dred Scott's original owner, who bought the couple and their children and, in May 1857, freed them. For her part, however, the new Mrs. Chaffee demanded that the Scotts' income—that is, the net proceeds of their having been hired out—over the preceding decade be turned over to her. So they became free not long after the Supreme Court denied their freedom suit, and Mr. Scott lived out his remaining life a free man, though he died in September 1858.

With their daughters finally free, no longer did Mr. or Mrs. Scott have to worry about their being sold into slavery in the Deep South. When slavery ended everywhere across the United States in 1865, no longer did Harriet Scott have to worry about her daughters' being kidnapped and sold back into slavery. In 1866 they all became citizens, and Harriet lived her last ten years a citizen. Her daughter Eliza married and had children, and eventually a great-granddaughter of Harriet and Dred Scott, Lynne Madison Jackson, founded the Dred Scott Heritage Foundation. As for Lizzie, she lived long enough to gain the right to vote herself, and then on down to the end of World War II—to

nearly the eve of the Supreme Court's newly expansive reading of the Fourteenth Amendment's requirement regarding equality under the law in *Brown v. Board of Education*.

Dred Scott

Born	probably Southampton County, Virginia, probably around 1800
Died	September 1858, St. Louis, Missouri
Buried	Calvary Cemetery, St. Louis, Missouri
Father	Unknown
Mother	Unknown
Career Milestones	1846 the Scotts begin their quest for freedom in the Missouri Court system March 6, 1857 Ruling by Supreme Court Justice Roger B. Taney in the Dred Scott Case May 1857 Emancipation of Scott and his family by his legal owners The Blow family
