

The *Dred Scott* Case: Judicial Opinions and Lincoln's Speech on it (April 26, 1857)

The Dred Scott decision was a complicated multi-part case that became one of the most important in history. Among the issues was whether blacks could be citizens of the United States or not. (This mattered in deciding whether Scott could file a lawsuit in federal court). Chief Justice Taney argued that they could not be, a point contested by both of the dissenters as well as anti-slavery politicians like Republican Senate candidate Abraham Lincoln, who argued Taney had distorted or ignored evidence from the Founding to make the ruling. The decision and its political aftermath exacerbated the increasing tensions over slavery that ultimately resulted in the Civil War, and it was officially overturned after the conclusion of the Civil War through the ratification of the 14th Amendment.

The relevant sections from the judicial opinions, as well as Lincoln's speech on Dred Scott from his Senate race against Stephen Douglas, are printed below.

***Dred Scott v. Sandford*, March 6, 1857**

CHIEF JUSTICE TANEY delivered the opinion of the Court

.....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, 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?

It will be observed that the plea applies to that class of persons only whose ancestors were negroes of the African race, and imported into this country and sold and held as slaves. The only matter in issue before the court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State in the sense in which the word "citizen" is used in the Constitution of the United States.

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.... had no rights or privileges but such as those who held the power and the Government might choose to grant them.

It is not the province of the court to decide upon the justice or injustice, the policy or impolicy, of these laws. The decision of that question belonged to the political or lawmaking power, to those who formed the sovereignty and framed the Constitution. The duty of the court is to interpret the instrument they have framed with the best lights

we can obtain on the subject, and to administer it as we find it, according to its true intent and meaning when it was adopted.

...[W]e must not confound the rights of citizenship which a State may confer within its own limits and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all of the rights and privileges of the citizen of a State and yet not be entitled to the rights and privileges of a citizen in any other State. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its rights. But this character, of course, was confined to the boundaries of the State, and gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States.

Nor have the several States surrendered the power of conferring these rights and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or anyone it thinks proper, or upon any class or description of persons, yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them. The Constitution has conferred on Congress the right to establish a uniform rule of naturalization, and this right is evidently exclusive, and has always been held by this court to be so. Consequently, no State, since the adoption of the Constitution, can, by naturalizing an alien, invest him with the rights and privileges secured to a citizen of a State under the Federal Government, although, so far as the State alone was concerned, he would undoubtedly be entitled to the rights of a citizen and clothed with all the rights and immunities which the Constitution and laws of the State attached to that character.

It is very clear, therefore, that no State can, by any act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It cannot make him a member of this community by making him a member of its own. And, for the same reason, it cannot introduce any person or description of persons who were not intended to be embraced in this new political family which the Constitution brought into existence, but were intended to be excluded from it.

...It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted. And in order to do this, we must recur to the Governments and institutions of the thirteen colonies when they separated from Great Britain and formed new sovereignties, and took their places in the family of independent nations. We must inquire who, at that time, were recognised as the people or citizens of a State whose rights and liberties had been outraged by the English Government, and who declared their independence and assumed the powers of Government to defend their rights by force of arms.

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show that neither the class of persons who had been imported as slaves nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

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. But the public history of every European nation displays it in a manner too plain to be mistaken.

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. He was bought and sold, and treated as an ordinary article of merchandise and traffic whenever a profit could be made by it. 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.

[Taney then goes through the history of several states at the time of the constitutional ratification and after in order to demonstrate unequal and discriminatory laws against blacks which Taney says is proof they were not citizens of those states.]

The language of the Declaration of Independence is equally conclusive: It begins by declaring that, "[w]hen in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect for the opinions of mankind requires that they should declare the causes which impel them to the separation."

It then [says]: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them is life, liberty, and the pursuit of happiness; that to secure these rights, Governments are instituted, deriving their just powers from the consent of the governed."

The general words above quoted would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But it is too clear for dispute that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration, for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been

utterly and flagrantly inconsistent with the principles they asserted, and instead of the sympathy of mankind to which they so confidently appealed, they would have deserved and received universal rebuke and reprobation.

Yet the men who framed this declaration were great men -- high in literary acquirements, high in their sense of honor, and incapable of asserting principles inconsistent with those on which they were acting. They perfectly understood the meaning of the language they used, and how it would be understood by others, and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which, by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery. They spoke and acted according to the then established doctrines and principles, and in the ordinary language of the day, and no one misunderstood them. The unhappy black race were separated from the white by indelible marks, and laws long before established, and were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection....

No one of that race had ever migrated to the United States voluntarily; all of them had been brought here as articles of merchandise. The number that had been emancipated at that time were but few in comparison with those held in slavery, and they were identified in the public mind with the race to which they belonged, and regarded as a part of the slave population rather than the free. It is obvious that they were not even in the minds of the framers of the Constitution when they were conferring special rights and privileges upon the citizens of a State in every other part of the Union....[W]hen 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 legislation of the States therefore shows, in a manner not to be mistaken, the inferior and subject condition of that race at the time the Constitution was adopted, and long afterwards, throughout the thirteen States by which that instrument was framed; and it is hardly consistent with the respect due to these States, to suppose that they regarded at that time, as fellow-citizens and members of the sovereignty, a class of beings whom they had thus stigmatized; whom, as we are bound, out of respect to the State sovereignties, to assume they had deemed it just and necessary thus to stigmatize, and upon whom they had impressed such deep and enduring marks of inferiority and degradation; or, that when they met in convention to form the Constitution, they looked upon them as a portion of their constituents, or designed to include them in the provisions so carefully inserted for the security and protection of the liberties and rights of their citizens. It cannot be supposed that they intended to secure to them rights, and privileges, and rank, in the new political body throughout the Union, which every one of them denied within the limits of its own dominion.

...[I]t cannot be believed that the large slaveholding States regarded them as included in the word citizens, or would have consented to a Constitution which might compel them to receive them in that character from another State. For if they were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the

operation of the special laws and from the police regulations which they considered to be necessary for their own safety. It would give to persons of the negro race, who were recognised as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State.

It is impossible... to believe that the great men of the slaveholding States, who took so large a share in framing the Constitution of the United States, and exercised so much influence in procuring its adoption, could have been so forgetful or regardless of their own safety and the safety of those who trusted and confided in them...

JUSTICE McLEAN wrote a dissenting opinion.

... Several of the States have admitted persons of color to the right of suffrage, and, in this view, have recognised them as citizens, and this has been done in the slave as well as the free States. On the question of citizenship, it must be admitted that we have not been very fastidious. Under the late treaty with Mexico, we have made citizens of all grades, combinations, and colors. The same was done in the admission of Louisiana and Florida. No one ever doubted, and no court ever held that the people of these Territories did not become citizens under the treaty. They have exercised all the rights of citizens, without being naturalized under the acts of Congress....

In the formation of the Federal Constitution... slaves were referred to as persons, and in no other respect are they considered in the Constitution.... we know as a historical fact that James Madison, that great and good man, a leading member in the Federal Convention, was solicitous to guard the language of that instrument so as not to convey the idea that there could be property in man.

I prefer the lights of Madison, Hamilton, and Jay as a means of construing the Constitution in all its bearings, rather than to look behind that period into a traffic which is now declared to be piracy, and punished with death by Christian nations. I do not like to draw the sources of our domestic relations from so dark a ground. Our independence was a great epoch in the history of freedom, and while I admit the Government was not made especially for the colored race, yet many of them were citizens of the New England States, and exercised, the rights of suffrage when the Constitution was adopted, and it was not doubted by any intelligent person that its tendencies would greatly ameliorate their condition...

Many of the States, on the adoption of the Constitution, or shortly afterward, took measures to abolish slavery within their respective jurisdictions, and it is a well known fact that a belief was cherished by the leading men, South as well as North, that the institution of slavery would gradually decline until it would become extinct. The increased value of slave labor, in the culture of cotton and sugar, prevented the realization of this expectation....

But if we are to turn our attention to the dark ages of the world, why confine our view to colored slavery? On the same principles, white men were made slaves. All slavery has its origin in power, and is against right....

JUSTICE CURTIS wrote a dissenting opinion.

... [T]he question is whether any person of African descent, whose ancestors were sold as slaves in the United States, can be a citizen of the United States. If any such person can be a citizen, this plaintiff has the right to the judgment of the court that he is so, for no cause is shown...why he is not so, except his descent and the slavery of his ancestors.

The first section of the second article of the Constitution uses the language, "a citizen of the United States at the time of the adoption of the Constitution." One mode of approaching this question is to inquire who were citizens of the United States at the time of the adoption of the Constitution.

Citizens of the United States at the time of the adoption of the Constitution can have been no other than citizens of the United States under the Confederation. By the Articles of Confederation, a Government was organized, the style whereof was "The United States of America." This Government was in existence when the Constitution was framed and proposed for adoption, and was to be superseded by the new Government of the United States of America, organized under the Constitution. When, therefore, the Constitution speaks of citizenship of the United States existing at the time of the adoption of the Constitution, it must necessarily refer to citizenship under the Government which existed prior to and at the time of such adoption....

To determine whether any free persons, descended from Africans held in slavery, were citizens of the United States under the Confederation, and consequently at the time of the adoption of the Constitution of the United States, it is only necessary to know whether any such persons were citizens of either of the States under the Confederation at the time of the adoption of the Constitution.

Of this there can be no doubt. At the time of the ratification of the Articles of Confederation, all free native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, though descended from African slaves, were not only citizens of those States, but such of them as had the other

necessary qualifications possessed the franchise of electors, on equal terms with other citizens....

I shall not enter into an examination of the existing opinions of that period respecting the African race, nor into any discussion concerning the meaning of those who asserted, in the Declaration of Independence, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. My own opinion is that a calm comparison of these assertions of universal abstract truths and of their own individual opinions and acts would not leave these men under any reproach of inconsistency; that the great truths they asserted on that solemn occasion, they were ready and anxious to make effectual, wherever a necessary regard to circumstances, which no statesman can disregard without producing more evil than good, would allow; and that it would not be just to them nor true in itself to allege that they intended to say that the Creator of all men had endowed the white race, exclusively, with the great natural rights which the Declaration of Independence asserts...

Did the Constitution of the United States deprive them or their descendants of citizenship?

That Constitution was ordained and established by the people of the United States, through the action, in each State, of those persons who were qualified by its laws to act thereon in behalf of themselves and all other citizens of that State. In some of the States, as we have seen, colored persons were among those qualified by law to act on this subject. These colored persons were not only included in the body of "the people of the United States" by whom the Constitution was ordained and established, but, in at least five of the States, they had the power to act, and doubtless did act, by their suffrages, upon the question of its adoption. It would be strange if we were to find in that instrument anything which deprived of their citizenship any part of the people of the United States who were among those by whom it was established.

I can find nothing in the Constitution which.... deprives of their citizenship any class of persons who were citizens of the United States at the time of its adoption, or who should be native-born citizens of any State after its adoption, nor any power enabling Congress to disfranchise persons born on the soil of any State, and entitled to citizenship of such State by its Constitution and laws. ...[U]nder the Constitution of the United States, every free person born on the soil of a State, who is a citizen of that State by force of its Constitution or laws, is also a citizen of the United States...

Though... I do not think the enjoyment of the elective franchise essential to citizenship, there can be no doubt it is one of the chiefest attributes of citizenship under the American Constitutions, and the just and constitutional possession of this right is decisive evidence of citizenship...

It has been often asserted that the Constitution was made exclusively by and for the white race. It has already been shown that, in five of the thirteen original States, colored

persons then possessed the elective franchise, and were among those by whom the Constitution was ordained and established. If so, it is not true, in point of fact, that the Constitution was made exclusively by the white race. And that it was made exclusively for the white race is, in my opinion, not only an assumption not warranted by anything in the Constitution, but contradicted by its opening declaration that it was ordained and established by the people of the United States, for themselves and their posterity. And as free colored persons were then citizens of at least five States, and so in every sense part of the people of the United States, they were among those for whom and whose posterity the Constitution was ordained and established...

And when a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution; we are under the government of individual men who, for the time being, have power to declare what the Constitution is according to their own views of what it ought to mean. When such a method of interpretation of the Constitution obtains, in place of a republican Government, with limited and defined powers, we have a Government which is merely an exponent of the will of Congress, or, what in my opinion would not be preferable, an exponent of the individual political opinions of the members of this court.

Abraham Lincoln, speech on Dred Scott decision, April 26, 1857

...I have said, in substance, that the *Dred Scott* decision was, in part, based on assumed historical facts which were not really true; and I ought not to leave the subject without giving some reasons for saying this; I therefore give an instance or two, which I think fully sustain me. Chief Justice Taney, in delivering the opinion of the majority of the Court, insists at great length that negroes were no part of the people who made, or for whom was made, the Declaration of Independence, or the Constitution

[Chief Justice Taney] plainly assumes, as a fact, that the public estimate of the black man is more favorable now than it was in the days of the Revolution. This assumption is a mistake. In some trifling particulars, the condition of that race has been ameliorated; but, as a whole, in this country, the change between then and now is decidedly the other way; and their ultimate destiny has never appeared so hopeless as in the last three or four years. In two of the five States-New Jersey and North Carolina-that then gave the free negro the right of voting, the right has since been taken away; and in a third-New York-it has been greatly abridged; while it has not been extended, so far as I know, to a single additional State, though the number of the States has more than doubled. In those days, as I understand, masters could, at their own pleasure, emancipate their slaves; but since then, such legal restraints have been made upon emancipation, as to amount almost to prohibition. In those days, Legislatures held the unquestioned power to abolish slavery in their respective States; but now it is becoming quite fashionable for State Constitutions to withhold that power from the Legislatures. In those days, by common consent, the spread of the black man's bondage to new

countries was prohibited; but now, Congress decides that it will not continue the prohibition, and the Supreme Court decides that it could not if it would.

In those days, our Declaration of Independence was held sacred by all, and thought to include all; but now, to aid in making the bondage of the negro universal and eternal, it is assailed, and sneered at, and construed, and hawked at, and torn, till, if its framers could rise from their graves, they could not at all recognize it.

Chief Justice Taney.... admits that the language of the Declaration is broad enough to include the whole human family, but he and Judge Douglas argue that the authors of that instrument did not intend to include negroes, by the fact that they did not at once, actually place them on an equality with the whites. Now this grave argument comes to just nothing at all, by the other fact, that they did not at once, or ever afterwards, actually place all white people on an equality with one or another. And this is the staple argument of both the Chief Justice and the Senator, for doing this obvious violence to the plain unmistakable language of the Declaration.

I think the authors of that notable instrument intended to include all men, but they did not intend to declare all men equal in all respects. They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness, in what respects they did consider all men created equal-equal in "certain inalienable rights, among which are life, liberty, and the pursuit of happiness."

This they said, and this meant. They did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor yet, that they were about to confer it immediately upon them. In fact they had no power to confer such a boon. They meant simply to declare the right, so that the enforcement of it might follow as fast as circumstances should permit. They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere. The assertion that "all men are created equal" was of no practical use in effecting our separation from Great Britain; and it was placed in the Declaration, nor for that, but for future use. Its authors meant it to be, thank God, it is now proving itself, a stumbling block to those who in after times might seek to turn a free people back into the hateful paths of despotism. They knew the proneness of prosperity to breed tyrants, and they meant when such should re-appear in this fair land and commence their vocation they should find left for them at least one hard nut to crack.

Lincoln's speech found at: <https://teachingamericanhistory.org/library/document/speech-on-the-dred-scott-decision/>