

Topic:

Slavery and the Law: From Indentured Servitude to Dred Scott

Time:

1-2 class periods

Historical

Period:
Colonial - 1857

Core:

US I 6120 - 0804 & 0901
US II 6250 - 0103
Gov. 6210 - 0202

Objectives: Students will:

1. Understand the roots of slavery in colonial America.
2. Know the legal status of blacks from the colonial period to the Civil War.
3. Gain increased awareness of the legal necessity for the Thirteenth and Fourteenth Amendments.

Procedure:**Eighth Grade Level**

1. Distribute Handout 1. Have students read the introductory material and case. Discuss the questions.
2. Distribute Handout 2. Read the case, asking students to identify the important facts, issues, and arguments in the case. (See "The Case Study Method" in the introductory section of this manual.) Discuss the questions.
3. As a follow-up, have students write "letters to the editor" describing their views of the *Scott* decision.

Advanced Level

1. Distribute Handout 1. Have students read the introductory material and case. Discuss the questions.
2. Distribute Handout 3. Read the case, asking students to identify the important facts, issues, and arguments in the case. Discuss the questions.
3. After discussing Handout 3, divide the class into groups of three. Within each group, assign one student to be a Supreme Court Justice, one the attorney for Dred Scott, and one the attorney for Sanford.
4. Allow five minutes for the attorneys to prepare. You may distribute Handout 4 to all students to assist them in their preparation, or use it only as a guide in the discussion preceding the simulation. Scott's attorneys should argue first, followed by Sanford's attorneys. The Justice will then deliberate and render a decision.

NOTE: At this point, students should understand "due process." A brief explanation is given in Handout 6.

5. Have the groups enact the simulation simultaneously.

Handouts/Worksheets:

1. "From Indentured Servitude to Slavery"
2. The Dred Scott Case
3. *Dred Scott v. Sanford* (1857)
4. Arguments for Plaintiff and Defendant
5. Decision: *Dred Scott v. Sanford*
6. Due Process -- In a Nutshell

Author: *Law in U. S. History*, Smith

Procedure continued

6. Ask the Justices to announce their decisions and give their reasoning. Record the decisions on the board.
7. Distribute Handout 5. Read and discuss the Supreme Court decision, examining how it is similar or different from the student justices' opinions. Ask the students why the case became "another cause of Civil War."

FROM INDENTURED SERVITUDE TO SLAVERY

During the colonial period, even before the Mayflower landed at Plymouth Rock, black Africans were brought to the New World. For more than 200 years, hundreds of thousands of Africans were purchased by slave traders and brought to America by force. At first, they became indentured servants, which means they worked for an owner for a number of years and then were set free.

Some black indentured servants earned their freedom and became owners of land in the early colonies. A few owned hundreds of acres of land and had servants of their own. Many indentured blacks, however, became slaves. Some blacks were being held by their owners for life as early as 1640. They were not able to win their freedom in the courts. Others were forced to serve added time because of laws they had broken. This was done as a punishment for running away from their masters.

Two cases, which span a period of almost 200 years, show how the courts interpreted the status of two black men — John Punch and the well-known Dred Scott.

THE CASE OF JOHN PUNCH AND JAMES GREGORY (1640)

James Gregory and John Punch were servants of Hugh Gwyn. Punch was a black man; James Gregory was a white Scotchman. They worked on their master's plantation in Virginia. In the summer of 1640, they ran away together to Maryland. Their master wanted to capture them and sell them in Maryland. He had no use for servants who ran away. They might run away again.

The colonial government of Virginia said no. It ordered Hugh Gwyn to go to Maryland, capture his servants, and bring them back to Virginia. The government wanted to punish these runaways and make examples of them. Runaway servants were a big problem in colonial Virginia.

The General Court of Virginia heard the cases of James Gregory and John Punch. The court ruled that both were guilty. It ordered thirty lashes for each man. Each had time added to his term of indenture. James Gregory had to serve his master an extra year. He also had to serve the colony for three years when he had finished serving his master. His punishment was harsh. Four years of extra service was a lot. But the punishment of John Punch, the black servant, was much worse. He was sentenced to serve his master for life!

Questions for Discussion

1. Why do you think John Punch was punished more severely than James Gregory? Was his offense any worse than Gregory's?
2. Why was it possible for colonial courts to punish blacks more harshly than whites? Would it be possible today in America? Why?
3. How did cases like that of John Punch help bring about slavery in America?

FREEDOM FOR AMERICANS -- EXCEPT BLACKS

John Punch was made a slave by the court of Virginia. He became his master's property for life. Cases like that of John Punch show how black people were changed from indentured servants to slaves. Soon the laws of Virginia began making all blacks slaves. After 1670, all new blacks brought to the colony by ship were made slaves. After 1682, all new blacks — even those who came by land — became slaves in Virginia.

Such slave laws spread throughout the colonies. Slavery was common by the time of the American Revolution. Southern landowners and businessmen made money by buying, shipping, and selling slaves. The men who signed the Declaration of Independence all knew about slavery. In fact, some of them owned slaves. Others were against slavery.

The man chosen to write the Declaration of Independence in 1776 was Thomas Jefferson of Virginia. He later became our third President. In the Declaration, he wrote that all men have the right to be free. But the Founding Fathers did not believe this applied to slaves.

Jefferson was one who owned slaves. He had some doubts about slavery and felt the slave trade was wrong. But the Declaration of Independence, a proud statement of freedom, did not speak out against slavery itself. It said nothing against a white man's owning a black man.

In 1787, the U. S. Constitution went even further. The new nation's basic set of laws did not mention "slaves" or "slavery" by name, but the subject came up in three places. Each time, the Constitution accepted the idea of slavery.

In the mid-1800's, slavery became an issue which was to lead to civil war. One slave, Dred Scott, took his fight against slavery all the way to the Supreme Court.

HANDOUT 2

THE DRED SCOTT CASE

Dred Scott was a black man. He was born in the Southern state of Virginia. His parents were slaves. They were owned by another person, a white man. Dred Scott, too, was the man's slave. The laws of Virginia said that all the children of slaves were also slaves.

When his master, or owner, moved to Missouri, Dred Scott went with him. The slave had no choice. He had to go wherever and do whatever his owner wanted. In Missouri — as in Virginia — it was not against the law to own slaves. Missouri was a “slave state.”

Later Dred Scott was sold to another man. The next owner, a doctor, took his slave to Illinois. In this Northern state, it was against the law to own slaves. Illinois was a “free state.” The doctor and Dred Scott lived there for two years. Then they moved for a year to a “free” territory in the North. Finally, the doctor returned to Missouri, bringing his slave with him.

After the doctor died, Dred Scott's new owners tried to help him win his freedom. Of course, they could have freed him themselves, but they hated slavery — that is, the owning of slaves. They wanted to attack the laws that made slavery possible. So they helped Dred Scott take his case to court. In court, they said the slave had lived in a “free” territory, where slavery was against the law. They argued this had made him a free man.

Dred Scott's court battle lasted 11 years. He went from one court to another. Finally, in 1857, the case came before the United States Supreme Court.

The Supreme Court ruled against Dred Scott. It said he was a slave. Chief Justice Roger B. Taney said that slaves were not citizens of the United States, so they could not ask federal courts to free them. And, said Taney, Dred Scott was not freed by moving, for a time, with his master to a “free” territory.

Questions for Discussion

1. Why did Dred Scott's new owners take his case to court to win his freedom rather than just freeing him themselves?
2. What was the Supreme Court's decision in the Dred Scott case? According to Chief Justice Taney, could slaves ever be free? Who could free them?

DRED SCOTT v. SANFORD (1857)

Dred Scott was a slightly built, rather sickly black slave who belonged to Dr. Emerson, a U. S. Army doctor who was stationed in Missouri. In 1834, Dr. Emerson was transferred to a military post in Illinois, where slavery was against state law. Dr. Emerson took Dred Scott with him, and they lived there two years. Then, Dr. Emerson was transferred to Fort Snelling in which is now Minnesota; that was north of the line where Congress, in 1820, had said slavery was illegal. Almost three years later, Dr. Emerson went back to Missouri, taking Dred Scott with him.

In 1846, Scott sued for his freedom in a Missouri state court, saying he thought that his life for several years in a free state or free territory made him a free man and a citizen. He won his case, but the Missouri Supreme Court changed the decision and said he was still a slave. By this time, Dr. Emerson had died, and friends of Dred Scott who hated slavery decided to help Scott and also strike a blow against slavery. They arranged for Scott to be sold to John Sanford, a citizen of the state of New York, and a person who hated slavery. Sanford could simply have freed Dred Scott, but both Scott and Sanford wanted the Supreme Court to answer their questions about slavery. Thus, Scott sued his new owner in a federal trial court, using as his reason his living in a free state and free territory. Dred Scott lost. He then asked the Supreme Court to take the case. By the time all the legal work was over, it was 1857, and the Civil War was only three years away. The nation was already torn apart over the issues that led to the war. Slavery was one of those issues. The Dred Scott case became one of the most famous decisions of the United States Supreme Court because of the times.

Dred Scott's lawyers argued that residence in a free state or a free territory freed any slave and that once freed, an ex-slave automatically became a citizen. This was important because if Scott were not a citizen, he had no right to sue in the federal court. The argument of those who supported slavery was that Dred Scott was "property" and that the Fifth Amendment said property could not be taken away from a person without due process of law. To them, this meant that Congress had no right to pass the Missouri Compromise because, by prohibiting slavery, it took away a man's property (his slaves). They also argued that Dred Scott had no real right to sue in a federal court because the Negroes in America were never intended to be citizens. They were able to point out that the Constitution even recognized the fact of slavery in three separate places and that the Constitution had not been amended.

What do you think?

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Questions for Discussion

1. Can you find three references to slavery in the Constitution? Check Article I, Section 2, Clause 3; Article I, Section 9, Clause 1; and Article IV, Section 2, Clause 3. Do any of these references help in deciding this case?
2. Do you think Dred Scott was a citizen of Missouri? Of the United States?
3. What do you think “citizenship” means?
4. What bearing should the Fifth Amendment’s guarantee that no person be deprived of property without due process of law have on this case?
5. What questions must the Supreme Court answer to decide this case?
6. In what way is this case an example of Justice Brennan’s observation that “the Supreme Court is called upon to face the dominant social, political, economic, and even philosophical issues that confront the nation”?

HANDOUT 4

ARGUMENTS FOR PLAINTIFF AND DEFENDANT

Issue 1: IS DRED SCOTT A CITIZEN OF THE UNITED STATES?

Argument for Plaintiff, Dred Scott

- a. Scott lived in Illinois, a state which prohibited slavery.
- b. Scott lived in Fort Snelling, in the territory where Congress had prohibited slavery by the Missouri Compromise of 1820. He lived in this territory as a free man.
- c. When Scott returned to live in Missouri, he returned as a free man. Because he was a free man, the Constitution of that state made him a citizen of Missouri.
- d. If Scott were a citizen of Missouri, he was a citizen of the United States.

Argument for Defendant, John Sanford

- a. In the Declaration of Independence, the phrase “all men are created equal” did not apply to slaves because they were considered property.
- b. Article I, Section 9, Clause 1 of the Constitution of the United States gives the people the right to import slaves until 1808.
- c. Article IV, Section 2, Clause 3 of the Constitution says that the states pledge to deliver runaway slaves.
- d. Because of these clauses, the Constitution recognizes slaves to be property and not members of the political community.
- e. Furthermore, Article I, Section 8, Clause 4 of the Constitution says that Congress has the power to make rules for naturalization. Therefore, Congress, not states, decides who shall be citizens of the United States.
- f. Because of the Declaration of Independence, the Constitution, and the power of Congress to decide citizenship, Dred Scott is not a citizen of the United States.

Issue 2: DOES DRED SCOTT HAVE THE RIGHT TO SUE IN FEDERAL COURTS?

Argument for Plaintiff, Dred Scott

- a. Scott is a citizen of Missouri.
- b. Sanford is a citizen of New York.
- c. Article III, Section 3, Clause 1 of the Constitution says that the courts of the United States shall hear cases “between citizens of different states.”
- d. Because of this clause in the Constitution, Scott has a right to sue Sanford in the courts of the United States.

Argument for Defendant, John Sanford

- a. Only citizens of the United States may sue in its courts.
- b. “Citizen” in the Constitution was not meant to apply to slaves.
- c. Dred Scott is not a citizen and cannot sue in federal courts.

Issue 3: DOES THE CONSTITUTION OF THE UNITED STATES GIVE CONGRESS THE POWER TO MAKE LAWS, LIKE THE MISSOURI COMPROMISE OF 1820, WHICH PROHIBIT SLAVERY IN THE TERRITORIES?

Argument for Plaintiff, Dred Scott

- a. Article IV, Section 3, Clause 2 of the Constitution says that Congress has the power to “dispose of and make all needful rules and regulations respecting the territory or another property belonging to the United States.”
- b. This clause gives Congress the power to acquire territory and to govern that territory until it becomes a state.
- c. The Constitution does not say what power Congress may have over people or property in that territory.
- d. Therefore, Congress may pass laws like the Missouri Compromise of 1820.

Argument for Defendant, John Sanford

- a. Article IV, Section 3, Clauses 1 and 2 of the Constitution give Congress the power to keep territories until such time as they can become self-governing and can enter the Union.
- b. Territories are not the same as colonies. Territories may someday become states. Congress may not rule territories as if they were colonies.
- c. Amendment V to the Constitution says that no person “shall be deprived of . . . property without due process of law.” Slaves are property.
- d. Congress may not take a person’s property without due process. The Missouri Compromise deprives people of their property without due process. In passing laws like the Missouri Compromise, Congress is imposing its will on territories, something the Constitution did not intend. The Missouri Compromise is, therefore, unconstitutional.
- e. Note: Your argument(s) should explain the legal phrase “due process.” (See Handout 6.)

DECISION
DRED SCOTT v. SANFORD

In 1857, the Supreme Court ruled that Scott was still a slave; that is, property, not a citizen of the United States. Therefore, he did not have the right to sue for his freedom in the federal courts. Insofar as the Missouri Compromise deprived slave owners of their property when they traveled into areas where slavery was prohibited, the Compromise was an unconstitutional violation of the Fifth Amendment. Congress had no power to ban slavery in the territories of the United States. The Court said:

An act of Congress which deprives a citizen of his liberty or property, without due process of law, 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.

The Chief Justice emphasized that the Constitution had recognized slavery. He was joined by two other justices in the view that slaves “had no rights or privileges but such as those who held the power and the government might choose to grant them.”

Many people had hoped the Supreme Court would settle the slavery issue with its ruling in this case. Of course, it did not. Public reaction to the decision was stormy. The Dred Scott case was not a solution to the slavery controversy; instead, it was another cause of the Civil war.

DUE PROCESS -- IN A NUTSHELL

The due process concept appears significantly in two places in the United States Constitution.

The Fifth Amendment: No person shall be . . . deprived of life, liberty or property without due process of law

The Fourteenth Amendment: No State shall . . . deprive any person of life, liberty or property without due process of law

The Constitution tries to promote and guarantee justice by insisting that government follow due process (fair procedures) when dealing with citizens. These procedures do help prevent unreasonable actions and decisions by the government; they do not promise that the results will seem absolutely fair or completely to the citizens' liking.

At minimum, due process means that a citizen must have some **notice** of what the government plans to do and be given a chance to comment on the action. Aside from the nearly-always-demanded notice requirement, due process is a flexible idea. In addition to notice and an opportunity to tell one's side of the story, due process may include, depending on the situation:

1. A hearing before an impartial person.
2. Representation by an attorney.
3. Calling witnesses in one's behalf.
4. Cross-examination of witnesses.
5. A written decision with reasons based on the evidence.
6. A written copy of the proceeding and a chance to appeal the decision.

Remember, the law sets out the minimum due process requirements — no government within the United States can offer less, but many agencies offer more or greater due process protections in certain situations.