Under the leadership of Chief Justice John Marshall, the Supreme Court defined its role in the United States government. Marshall’s rulings in several cases that the national law was in all instances the dominate law. The state law had to give way to the national law. The Supreme Court had the power to determine what the Constitution meant. Even though Marshall seemed to secure the supremacy of the Supreme Court and national laws, his precedent Roger B. Taney threatened to undo his work.

Chief Justice Taney was appointed by Andrew Jackson because of his state’s rights stance. He made several rulings that took power away from the federal government. However, Chief Justice Taney will be remembered for his ruling in the case of *Dred Scott v. Sandford*. Taney held that African Americans were not citizens and the Missouri Compromise of 1820 was unconstitutional.

Some make the argument that Chief Justice Taney represented judicial activism. Judicial activism is when the court uses its power to influence policy. Judicial activism is a controversial issue. Those who support it believe that it is the role of the federal government to change policy that discriminates. Critics argue that the court oversteps its role when it challenges state and federal law. *Dred Scott v. Sandford* is an example of judicial activism.

**National Standards:** (Based on Advanced Placement United States’ Government)

IV. Institutions of National Government: The Congress, the Presidency, the Bureaucracy, and the Federal Courts
Objectives:

1. Students will be able to identify and explain the term judicial activism.
2. Students will be able to use the *Dred Scott* case as an example of judicial activism.
3. Students will be able to identify other cases in which the United States’ Supreme Court was criticized for its use of judicial activism.

Time Frame:

Two 90 minute periods or four 45 minute periods.

Background

In 1846, Dred Scott was a slave lining in St. Louis. He had been the slave of Doctor John Emerson, an army surgeon. After the death of John Emerson, Scott sued for his freedom. In 1847, his case went to trial, he lost on a technical ground. In 1850, the Missouri Supreme Court granted Scott a new trial. He and his family won their freedom. The Missouri Supreme Court reversed the decision two years later (Finklemen, 3-4).

Dred Scott turned to the federal courts for help. In 1854, the United States Circuit Court of Missouri upheld Scott’s right to sue, but denied his freedom. The case was then heard by the United States Supreme Court. It is there that Chief Justice Roger B. Taney declared: “(1) that no blacks could ever be a citizen of the United States and thus blacks could not sue in Federal Courts, and (2) that Congress did not have the power to prohibit slavery in federal territories and thus the Missouri Compromise of 1820 was unconstitutional, as were other restrictions on slavery in the territories” (Finklemen, 4). This ruling ignited the already heated debate on slavery and states’ rights.

The story of Dred Scott had numerous implications. In his fight for freedom, Dred Scott highlighted the antebellum tension over slavery. The case also represented the important role the
United States Supreme Court plays in interpreting the Constitution and federal law, and limits og its power to resolve political problems (Finklemen, 2). “Judges who cite *Dred Scott* today see the decision as the product of an overly ideological and reactionary judge” (Finklemen, 5). *Dred Scott* can be interpreted as an example of judiciary activism.

**Procedures:**

I. Establish Historical Context
   A. Students will be out in groups of 3-4 and be asked to review Handout A on judicial activism and George Bush’s comments on Dred Scott.
   B. After reading Handout A, students will return to seats and the class will have a discussion on their responses to the questions.
   C. Students will then take a few PowerPoint notes on the responsibility of the judiciary.

II. Reviewing Different Constitutional Perspectives
   A. Students will be given background on the Dred Scott case. Handout B. They will answer the questions that following the reading.
   B. Students will then be divided into four groups. Those groups will look at the different perspectives that they justices had in deciding the case.
   C. After reviewing the materials students will report to the class their findings.
   D. Other groups will fill in the graphic organizer with the information.

III. Reviewing the Case
   A. Students will then review the Majority and Dissenting arguments of the Dred Scott case.
   B. Students will determine which arguments were used to support their opinions.
   C. Students will answer the questions that go along with the readings
   D. Students will report back to the class on what their findings were.

IV. Assessment
   A. Students will determine whether or not they believe that the Dred Scott case was an example of judicial activism.
   B. In the response they will have to find a current example of judicial activism and decide if they believe judicial activism is the appropriate response by the Supreme Court.
Answer the Following Questions:

1. What do you think the cartoonist means by judicial activism?
2. Why would conservatives be against it?
3. Who is the group at the bottom?
4. What are they advocating for?
5. What issues might arise from a judicial activists take on major contemporary legal issues like gay marriage, medical marijuana use, etc.?
Bush's Comments on the Dred Scott Case

MICHAELSON: Mr. President, if there were a vacancy in the Supreme Court and you had the opportunity to fill that position today, who would you choose and why?

Bush responded with the following:

"I would pick somebody who would not allow their personal opinion to get in the way of the law. I would pick somebody who would strictly interpret the Constitution of the United States."

"Let me give you a couple of examples, I guess, of the kind of person I wouldn't pick.

I wouldn't pick a judge who said that the Pledge of Allegiance couldn't be said in a school because it had the words "under God" in it. I think that's an example of a judge allowing personal opinion to enter into the decision-making process as opposed to a strict interpretation of the Constitution."

"Another example would be the Dred Scott case, which is where judges, years ago, said that the Constitution allowed slavery because of personal property rights."

"That's a personal opinion. That's not what the Constitution says. The Constitution of the United States says we're all -- you know, it doesn't say that. It doesn't speak to the equality of America."

"And so, I would pick people that would be strict constructionists. We've got plenty of lawmakers in Washington, D.C. Legislators make law; judges interpret the Constitution."

Answer the Following Questions:

1. What do you think George Bush meant by "I would pick people that would be strict constructionists"?
2. Have you heard the phrase "strict construction" before?
3. How would you interpret the phrase strict construction?
4. Do you think that strict construction is possible?
5. What issues might arise from a strict constructionist take on major contemporary legal issues like gay marriage, medical marijuana use, etc.?
6. What is "precedent"?
7. How do you think judicial decisions should be made? On what basis?

**Dred Scott v. Sandford**

**Background Summary & Questions**

Had he filed his lawsuit a few years earlier, Dred Scott probably never would have become a giant figure in U.S. history. Many people in Scott's position had won their lawsuits in state trial courts. However, by the time Scott's case made it to trial, U.S. political sentiments had changed and it took 11 years for his case to reach the Supreme Court of the United States. The Court's decision in *Dred Scott v. Sandford* remains among its most controversial.

Slavery was at the root of Dred Scott's case. He sued his master to obtain freedom for himself and his family. The argument he used was that because he had lived in a territory where slavery was illegal, he could never again be enslaved. This was a doctrine that was recognized in common law for centuries in Europe. In the state where he filed his suit, Missouri, many people in his situation had sued their masters for their freedom and won.

Dred Scott was born a slave in Virginia around 1799. In 1834, Dr. John Emerson, a surgeon in the U.S. army, bought Scott in Missouri and moved him to Illinois. Illinois was a free state. In 1836, Scott and Emerson moved to Fort Snelling, in present-day Minnesota. In the Missouri Compromise of 1820, Congress had prohibited slavery in the area that included Fort Snelling. Emerson bought a slave named Harriet and Scott married her in 1836. In 1838, Emerson and the Scotts moved back to Missouri. The Scotts had two daughters, Eliza, born around 1843, and Lizzie, born around 1850.

Emerson died in 1843 and he left his possessions, including the Scotts, to his widow, Irene. They lived in St. Louis, Missouri. In 1846, Dred Scott asked Mrs. Emerson if he could work for money. If he could earn and save money, he could buy his freedom from Mrs. Emerson. According to Scott, she refused.

Scott sued Mrs. Emerson for "false imprisonment" and for battery. It was common for slaves who had been taken to free land to sue their masters and win their freedom. Scott sued Mrs. Emerson, claiming that Emerson held him illegally. Scott claimed that he had become a free man as soon as he lived in a free territory or state and then was taken against his will to a slave territory or state. In 1847, Emerson was able to win in Missouri Circuit court on a technicality; Scott's lawyers failed to prove to the jury that Emerson was holding Scott as a slave. Scott's lawyers successfully argued for a retrial with additional witnesses that could prove Emerson's ownership of Scott.

By the time the case went to trial in 1850, Mrs. Emerson had moved to Massachusetts and left John F.A. Sanford, her brother, in charge of her financial matters, including the Scott case. The jury agreed that Scott and his family should be free because of the doctrine "once free, always free." Sanford, acting for his sister, appealed to the Missouri Supreme Court. In 1852, two of the three judges found in favor of Mrs. Emerson and John Sanford. The decision consciously reversed earlier precedent. The newly elected proslavery justice, William Scott, wrote the
decision, arguing that states like Missouri must have the power to refuse to enforce the laws of other states. Thus, regardless of wherever else Scott had been with his master, slavery was legal in Missouri.

Dred Scott's lawyers could have appealed the decision to the Supreme Court of the United States, but they feared that a majority of the justices would simply endorse the state court decision without considering its merits. By 1853, John Sanford was legally recognized as the owner of the Scotts. Sanford had moved to New York, leaving the Scotts in Missouri. Since federal courts settle the dispute between citizens of different states, Scott was able to sue Sanford in federal court in a new case. A clerk mistakenly added a letter to Sanford's name, so the case permanently became Dred Scott v. John F. A. Sandford.

In 1854, the U.S. Court for the District of Missouri heard the case. Judge Robert W. Wells rejected Sanford's assertion that Scott could not sue because he was not a citizen. However, the judge instructed the jury that, as the Missouri Supreme Court had said, Scott was subject only to the laws of Missouri. The jury found for Sanford. Scott then appealed to the Supreme Court of the United States.

Unfortunately for Scott, the political divisions over slavery worsened from the time that his case first came to trial in 1847 through 1857 when the Supreme Court of the United States finally announced its decision. Events of this period that increased conflicts included the passage of the Fugitive Slave Act (1850), publication of Uncle Tom's Cabin (1852), enactment of The Kansas-Nebraska Act (1854), violence in "bleeding Kansas" (1856), and Representative Brooks's beating of Senator Sumner in the U.S. Senate (1856). Like almost all people of their time, the justices had strong personal views about slavery. One justice, Peter V. Daniel of Virginia, supported slavery so much that he even refused to travel north of the Mason-Dixon line into a free state. Some historians believe that Chief Justice Taney hoped that his decision in the Dred Scott case would help prevent, not create future disputes over slavery.

Questions to Consider

1. Dred Scott was the plaintiff (the person who sued the defendant) in this case. Why did he sue the Emersons and John Sanford? What was his goal?
2. Summarize the basic argument that Scott's lawyers used to support his case. Did Dred Scott have reason to believe that he would win his case?
3. Why was a new case brought to the federal court system? What circumstances made the case a federal question?
4. How do you think the bitter political climate of the day affected Dred Scott's chances of winning his case?

Street Law Landmark Cases: Background Summary. 25 August 2011
Group 1: The Strict Construction Argument:

Judicial Questions:

1. Did Scott have the right to sue?
2. Was Scott free as a result of living in a state and territory where slavery was illegal?
3. Was it constitutional for the Congress to limit slavery in the territories? (Discuss the Missouri Compromise briefly.)

Answer the 3 judicial questions using strict construction theory only. The relevant articles of the Constitution are as follows:

Article 1, Section 2: "Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons."

Article 1, Section 9: "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person."

Article 4, Section 1: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

Article 4, Section 2: "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

Article 4, Section 2: "No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."
Article 4, Section 3: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."

Article 6, Section 2: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."
The Precedent Argument:

Judicial Questions:

1. Did Scott have the right to sue?
2. Was Scott free as a result of living in a state and territory where slavery was illegal?
3. Was it constitutional for the Congress to limit slavery in the territories? (Discuss the Missouri Compromise briefly.)

Answer the 3 judicial questions based on precedents set by the Supreme Court or applicable state rulings in cases that dealt with similar judicial issues occurring before 1857. State any inconsistencies between the precedents, if found.

Rachel v. Walker (1836 Missouri Supreme Court case) -- Missouri's case law prior to the Dred Scott case showed that in the cases where slave owners took slaves to free territory and then returned to the slave state, the slaves were actually emancipated upon arrival in the free state. This was based on an informal legal precedent called "comity" (one court recognizing the jurisdiction of another.) This particular case determined that even an officer residing on a military post in a free state was obligated to follow that state's rules.

U.S. v. The Amistad (1841 U.S. Supreme Court case) -- In this case, kidnapped Africans were transported from Guinea to Cuba on a Portuguese slave ship in violation of Spanish laws forbidding the international slave trade. The slaves were sold to two Spaniards who were overpowered by the Africans while transporting them on the Amistad. The Africans were attempting to return to Africa, but the ship landed near Long Island, New York and they were taken to New London, Connecticut. The Supreme Court ruled in favor of the Africans stating that there was no evidence that the Africans were in fact slaves (they found that the documents that the Cubans had given were falsified.) However, even though the Court did rule in the Africans favor, they did not use the language of the defense argument which stated that because the Africans were brought into the free states of New York and Connecticut they were legally free.

Prigg v. Pennsylvania (1842 U.S. Supreme Court case) -- This case dealt with the constitutionality of personal liberty laws in free states. In this case Pennsylvania's 1826 law was used to prosecute a slave-catcher (Prigg) who had taken Margaret Moran to Maryland without the required "certificate of removal." The Supreme Court held that the Pennsylvania act was unconstitutional and that a master had the right to recapture runaway slaves based on common law or because of the fugitive-slave clause in the Constitution. (The basis of the right of recapture was disputed by the judges.)

Strader v. Graham (1851 U.S. Supreme Court case) -- In that case two slave musicians were taken into Ohio and then later escaped from Kentucky to Canada. The slave-owner captured them back and it was argued in court that they were freed the minute they set foot on free soil. The Kentucky Court of Appeals decided in favor of the slave-owner (it was really a suit for
damages by the slave-owner against the men who had abetted their escape.) The Supreme Court dismissed the case stating it lacked jurisdiction because the Northwest Ordinance did not apply to Ohio because it was superseded by state law, thus the case did not present a federal question. Taney's opinion in this case outlined the idea that once the slaves were returned to Kentucky, Kentucky law applied and Ohio law could not be considered.
The Natural Law Argument:

Judicial Questions:

1. Did Scott have the right to sue?
2. Was Scott free as a result of living in a state and territory where slavery was illegal?
3. Was it constitutional for the Congress to limit slavery in the territories? (Discuss the Missouri Compromise briefly.)

Answer the 3 judicial questions based on "natural law" which is a "theory that some laws are basic and fundamental to human nature and are discoverable by human reason without reference to specific legislative enactments or judicial decisions."

Many anti-slavery activists argued that slavery was against natural law. The Supreme Court used natural law principles ("the general principles of right and wrong") to condemn the international slave trade in the 1822 case of United States v. La Jeune Eugenie.

U.S. v. La Jeune Eugenie

Justice Joseph Story ruled in a circuit court case of 1822 that the African slave trade violated natural law and international law, and that the federal courts had the authority to confiscate ships employed in that trade.

Story’s decision came in a case before the U.S. Circuit Court for Massachusetts, where he presided as the circuit justice. The crew of a U.S. revenue cutter captured the ship La Jeune Eugenie off the coast of West Africa and transported it to Boston on the suspicion that it was an American ship engaged in the slave trade. The revenue cutter’s crew claimed an award available under the law prohibiting the slave trade with Africa. The French consul in Boston and the French owners of the ship submitted claims for the return of the vessel.

Story determined that La Jeune Eugenie was French-owned, but he refused to return the ship to those owners because they clearly had been involved in the slave trade. Story declared that the African slave trade violated natural law, international law, and the enacted laws of almost every nation in Europe as well as those of the United States. Unless the African slave trade were specifically protected by a nation’s laws, the federal courts had the authority to hear cases involving foreign citizens who participated in the trade and to order the confiscation of property used in the trade. Story agreed to President Monroe’s request for delivery of La Jeune Eugenie to the French government so that the courts of that nation could examine the owners’ involvement in the slave trade.

http://www.fjc.gov/history/home.nsf/page/tu_amistad_questions.html
The Declaration of Independence Argument:

Judicial Questions:

1. Did Scott have the right to sue?
2. Was Scott free as a result of living in a state and territory where slavery was illegal?
3. Was it constitutional for the Congress to limit slavery in the territories? (Discuss the Missouri Compromise briefly.)

Answer the 3 judicial questions based on the following statement in the Declaration of Independence:

"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 these are Life, Liberty and the pursuit of Happiness"
**Constitutional Arguments**

As your classmates report on their findings fill in the following chart. Make sure you are specific and do not be afraid to ask questions about their perspective.

<table>
<thead>
<tr>
<th>Argument</th>
<th>Did Scott have the right to sue?</th>
<th>Was Scott free as a result of living in a state/territory where slavery was illegal?</th>
<th>Does Congress have the constitutional right to limit slavery in the territories?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Strict Construction Argument</strong></td>
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<tr>
<td><strong>Precedent Argument</strong></td>
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<tr>
<td><strong>Natural Rights Argument</strong></td>
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<tr>
<td><strong>Declaration of Independence Argument</strong></td>
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</tbody>
</table>
Justice McLean wrote the dissenting opinion.

. . . He [Scott] is averred to have had a negro ancestry, but this does not show that he is not a citizen of Missouri, within the meaning of the act of Congress authorizing him to sue in the Circuit Court. It has never been held necessary, to constitute a citizen within the act, that he should have the qualifications of an elector. Females and minors may sue in the Federal courts, and so may any individual who has a permanent domicile in the State under whose laws his rights are protected, and to which he owes allegiance.

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.

In the discussion of the power of Congress to govern a Territory, in the case of the Atlantic Insurance Company v. Canter, (1 Peters, 511; 7 Curtis, 685,) Chief Justice Marshall, speaking for the court, said, " . . . the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the fact that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory; whichever may be the source whence the power is derived, the possession of it is unquestioned."

If Congress may establish a Territorial Government in the exercise of its discretion, it is a clear principle that a court cannot control that discretion. This being the case, I do not see on what ground the act [Missouri Compromise] is held [by the Supreme Court majority's opinion in the Scott case] to be void. It did not purport to forfeit property, or take it for public purposes. It only prohibited slavery; in doing which, it followed the ordinance of 1787.

Now, if a slave abscond, he may be reclaimed; but if he accompany his master into a State or Territory where slavery is prohibited, such slave cannot be said to have left the service of his master where his services were legalized. And if slavery be limited to the range of the territorial laws, how can the slave be coerced to serve in a State or Territory; not only without the authority of law, but against its express provisions? What gives the master the right to control the will of his slave? The local law, which exists in some form. But where there is no such law, can the master control the will of the slave by force? Where no slavery exists, the presumption, without regard to color, is in favor of freedom. Under such a jurisdiction, may the colored man be levied on as the property of his master by a creditor? On the decease of the master, does the slave descend to his heirs as property? Can the master sell him? Any one or all of these acts may be
done to the slave, where he is legally held to service. But where the law does not confer this power, it cannot be exercised.

. . . Does the master carry with him the law of the State from which he removes into the Territory? and does that enable him to coerce his slave in the Territory? Let us test this theory. If this may be done by a master from one slave State, it may be done by a master from every other slave State. This right is supposed to be connected with the person of the master, by virtue of the local law. Is it transferable? May it be negotiated, as a promissory note or bill of exchange? If it be assigned to a man from a free State, may he coerce the slave by virtue of it? What shall this thing be denominated? Is it personal or real property? Or is it an indefinable fragment of sovereignty, which every person carries with him from his late domicile? One thing is certain, that its origin has been very recent, and it is unknown to the laws of any civilized country. . . .

Questions to Consider

1. On what key points does Justice McLean disagree with Chief Justice Taney?
2. What examples does Justice McLean use to demonstrate that Scott has the right to sue in court?
3. In his decision, Chief Justice Taney declared the Missouri Compromise unconstitutional. How does Justice McLean deal with this argument in his dissent?
Dred Scott v. Sandford

Key Excerpts from the Majority Opinion

The decision was 7 to 2. Chief Justice Roger B. Taney delivered the opinion of the Court.

. . . 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.

We think they [people of African ancestry] are not [citizens], 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.

. . . [T]he 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.

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 recognized as citizens in any one State of the Union, the right to enter every other State whenever 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.

The act of Congress, upon which the plaintiff relies, declares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in all that part of the territory ceded by France, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of Missouri. And the difficulty which meets us at the threshold of this part of the inquiry is, whether Congress was authorized to pass this law under any of the powers granted to it by the Constitution; for if the authority is not given by that instrument, it is the duty of this court to declare it void and inoperative, and
incapable of conferring freedom upon any one who is held as a slave under the laws of any one of the States.

There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way, except by the admission of new States. That power is plainly given; and if a new State is admitted, it needs no further legislation by Congress, because the Constitution itself defines the relative rights and powers, and duties of the State, and the citizens of the State, and the Federal Government. But no power is given to acquire a Territory to be held and governed permanently in that character.

. . . [I]t may be safely assumed that citizens of the United States who migrate to a Territory belonging to the people of the United States, cannot be ruled as mere colonists, dependent upon the will of the General Government, and to be governed by any laws it may think proper to impose. The principle upon which our Governments rests is the union of States, sovereign and independent within their own limits in . . . their internal and domestic concerns, and bound together as one people by a General Government, possessing certain enumerated and restricted powers, delegated to it by the people of the several States. . . .

But the power of Congress over the person or property of a citizen can never be a mere discretionary power under our Constitution and form of Government. The powers of the Government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself. And when the Territory becomes a part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it. It enters upon it with its powers over the citizen strictly defined, and limited by the Constitution, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a Government and sovereignty. It has no power of any kind beyond it; and it cannot, when it enters a Territory of the United States, put off its character, and assume discretionary or despotic powers which the Constitution has denied to it.

. . . [T]he rights of private property have been guarded with . . . care. Thus the rights of property are united with the rights of person, and placed on the same ground by the fifth amendment to the Constitution, which provides that no person shall be deprived of life, liberty, and property, without due process of law. And an act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offence against the laws, could hardly be dignified with the name of due process of law.

Upon these considerations, it is the opinion of the court that the act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory; even if they had been carried there by the owner, with the intention of becoming a permanent resident.
But there is another point in the case which depends on State power and State law. And it is contended, on the part of the plaintiff, that he is made free by being taken to Rock Island, in the State of Illinois, independently of his residence in the territory of the United States; and being so made free, he was not again reduced to a state of slavery by being brought back to Missouri.

... In the case of Strader et al. v. Graham ... the slaves had been taken from Kentucky to Ohio, with the consent of the owner, and afterwards brought back to Kentucky. And this court held that their status or condition, as free or slave, depended upon the laws of Kentucky, when they were brought back into that State, and not of Ohio. ...

So in this case. As Scott was a slave when taken into the State of Illinois by his owner, and was there held as such, and brought back in that character, his status, as free or slave, depended on the laws of Missouri, and not of Illinois.

Upon the whole, therefore, it is the judgment of this court, that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is used in the Constitution; and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it. Its judgment for the defendant must, consequently, be reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction.

Read the judgment in the Supreme Court case Dred Scott v. John F. A. Sandford, March 6, 1857 from the National Archives.

Questions to Consider

1. Why does Chief Justice Taney believe that Dred Scott is not a citizen of the United States? Why is this issue important for the case?
2. What is Chief Justice Taney's reasoning for declaring that the Missouri Compromise is unconstitutional? Why is this issue important for the case?
3. Does Chief Justice Taney agree with the doctrine "once free, always free?" Explain.
4. Since Chief Justice Taney first determined that Dred Scott did not have standing to sue in federal court (and therefore that the federal court system had no jurisdiction in this case), do you think Chief Justice Taney had authority to comment on the constitutionality of the Missouri Compromise? Why or why not?
5. Why do you suppose Chief Justice Taney extended his opinion to address the constitutionality of the Missouri Compromise?
Ms. Annicelli

AP Government

Judicial Activism in Dred Scott and Today

After reviewing the material you must write a 3-5 paragraph essay answering the following question:

Do you believe that judicial activism is a positive or negative for the U.S. government?

In your answer you must include:

- Definition of judicial activism (in your own words)
- Details from the Dred Scott v. Sandford
- 1-2 Contemporary decisions
Bibliography


