

discharges the loose expectation of his speech, now upon her representative, and then upon her people. . . . [I]t is against the [free-soil majority in] . . . Kansas that sensibilities of the Senator are particularly aroused. . . .

The contest, which, beginning in Kansas, reaches us will be transferred soon from Congress to that broader stage,

where every citizen is not only spectator, but actor; and to their judgment I confidently turn. To the people, about to exercise the electoral franchise, in choosing a Chief Magistrate of the Republic, I appeal, to vindicate the electoral franchise in Kansas. Let the ballot-box of the Union . . . protect the ballot-box in that Territory.

---

### Questions

1. According to Sumner, why did the Slave Power no longer support the “popular sovereignty” solution to the question of the extension of slavery?
  2. Read Sumner’s comments about Senator Butler from the perspective of Representative Preston Brooks. How had Sumner challenged the honor of his uncle?
  3. What is the political intent of Sumner’s speech? Whom does he expect to agitate with his heated remarks? To what purpose?
- 

## 13-10 The *Dred Scott* Decision (1857)

In his inaugural address on March 4, 1857, President James Buchanan announced that the constitutional issues associated with the struggle between proslavery and antislavery forces in Kansas would soon be “speedily and finally settled” by the judicial branch of the federal government. Two days later the Supreme Court announced its decision in the case of *Dred Scott v. Sandford*, which the Court had accepted for review in 1854. Scott had been the slave of Dr. John Emerson, a surgeon in the U.S. Army. While on active duty, Emerson had taken Scott to Illinois in 1834 and to the upper Louisiana Purchase territory in 1836 and then had returned to Missouri. Slavery had been excluded in Illinois by the Northwest Ordinance of 1787 and from the upper Louisiana Purchase territory by the Missouri Compromise of 1820. In his suit Scott claimed to have been freed by reason of his residence in free territory (see text pp. 390–391). The Supreme Court’s decision came in nine separate decisions, two in dissent. But it was the wide-ranging opinion of Chief Justice Roger B. Taney that was popularly considered the decision of the Court. Taney had been in correspondence with Buchanan before the president’s inaugural address. In his decision Taney endeavored to provide a final settlement to the question of slavery.

Source: *Dred Scott v. Sandford*, 19 How. 393 (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. . . .

The words “people of the United States” and “citizens” are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power

and conduct the government through their representatives. They are what we familiarly call the “sovereign people,” and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? 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, yet

remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them. . . .

In discussing this question, we 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 [Scott] 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. . . .

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.

The question then arises, whether the provisions of the constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embraced the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endue him with the full rights of citizenship in every other State without their consent? Does the constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

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 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.

We proceed . . . to inquire whether the facts relied on by the plaintiff entitled him to his freedom. . . .

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 anyone who is held as a slave under the laws of any one of the states.

The counsel for the plaintiff has laid much stress upon that article in the Constitution which confers on Congress the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States"; but, in the judgment of the Court, that provision has no bearing on the present controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged to, or was claimed by, the United States and was within their boundaries as settled by the [1783] treaty with Great Britain and can have no influence upon a territory afterward acquired from a foreign government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more. . . .

. . . It 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 rest, and upon which alone they continue to exist, 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, and exercising supreme authority within the scope of the powers granted to it, throughout the dominion of the United States. A power, therefore, in the general government to obtain and hold colonies and dependent territories, over which they might legislate without restriction, would be inconsistent with its own existence in its present form. Whatever it acquires, it acquires for the benefit of the people of the several states who created it. It is their trustee acting for them and charged with the duty of

promoting the interests of the whole people of the Union in the exercise of the powers specifically granted. . . .

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. . . .

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.

---

### Questions

1. What did the Court decide about whether a slave had standing to sue in a federal court?
2. If the Court lacked jurisdiction, why do you think Chief Justice Taney went ahead and dealt with the merits? Why did he not just say: "This Court lacks jurisdiction; case dismissed"?
3. What status does Taney say slaves enjoyed at the time the Constitution was adopted?

### Questions for Further Thought

1. The passage of the Fugitive Slave Act in 1850 (Document 13-6) and the Supreme Court's 1857 *Dred Scott* decision (Document 13-10) had disturbing implications for Salmon Chase's argument (Document 13-4) about the relationship of the federal government to slavery. In what ways did antislavery forces respond to these reverses?
2. In the debate over the status of slavery in the territories that shattered the Second Party System, all sides appealed to the Constitution as legitimizing the validity of their position. From your reading of Documents 13-6 through 13-10 as well as Documents 13-4 and 13-5, what were the specific constitutional issues in question, and how did the different participants in the debate argue their case?
3. Do you think that by the 1850s, northerners like Chase (Document 13-4) and Sumner (Document 13-9) and southerners like Calhoun (Document 13-5) and Taney (Document 13-10) were able to understand one another's positions concerning slavery? Had the political debate in the United States become so polarized that rational discussion on the topic of slavery was impossible?

---

## Abraham Lincoln and the Republican Triumph, 1858–1860

By 1858 the Republican Party had effectively become the major vehicle of opposition to the still-dominant Democrats, supplanting the Whigs and the short-lived, anti-immigrant American ("Know-Nothing") Party. The Republicans, though, were an exclusively northern party; indeed, by building its appeal around opposition to the Slave Power, the Republican Party was as much antisouthern as antislavery. The Democratic Party, on the other hand, spanned the two sections; while southerners dominated its councils and the administration of President James Buchanan, the party retained considerable northern support. Its foremost figure was Senator Stephen A. Douglas of Illinois, the champion of popular sovereignty in Kansas and Nebraska.