

Amistad and *Dred Scott*—A Comparative Activity

For use in conjunction with “Amistad: The Federal Courts and the Challenge to Slavery,” by Bruce A. Ragsdale, available at <http://www.fjc.gov/history/home.nsf>. A unit in the Teaching Judicial History Project, developed by the Federal Judicial Center in partnership with the American Bar Association’s Division for Public Education.

Activity Objectives

Through a comparison of Supreme Court decisions in the *Amistad* and *Dred Scott* cases, students will gain an understanding of the legal protections of slavery in the United States before the Civil War and the limited opportunities to challenge a slave’s legal status.

Essential Questions

- On what legal grounds could enslaved persons seek their freedom in the federal courts?
- Justice Story said that the Mende had a right to challenge the claims alleging that they were the slaves of the Spanish planters. What was the basis of that right? What did Dred Scott and his lawyers say was the basis of his right to sue for his freedom?
- Could the *Amistad* opinion have served as a precedent in favor of Dred Scott’s suit for freedom?
- If the *Amistad* case had entered the federal courts following the *Dred Scott* decision, would the district court of Connecticut have had jurisdiction to hear the response of the Mende?
- The *Amistad* and *Dred Scott* cases attracted public interest and reflected intense debates about slavery in the United States. Do the decisions reflect those debates? How might the decisions have affected public opinion of the federal courts?

Legal Issues Raised by the *Amistad* and *Dred Scott* Cases

The *Amistad* and *Dred Scott* cases presented the federal courts with questions about when slavery was protected under the Constitution and the laws of the United States and when enslaved persons had a legal right to challenge their bondage.

Estimated Time Frame

Four 50-minute class periods.

Recommended Prep Work

Teachers should review “*Amistad: The Federal Courts and the Challenge to Slavery*,” by Bruce A. Ragsdale (available at <http://www.fjc.gov/history/home.nsf>).

Make copies for all students of the following:

- Comparative T-chart
- Justice Story’s opinion
- Chief Justice Taney’s opinion

Description of the Activity

Activity Overview

This activity focuses on the Supreme Court’s rulings on slavery in two cases. Students will read a comparative chart of the two cases and then read excerpts from the Supreme Court opinions in the *Amistad* and *Dred Scott* cases. Students will then discuss how the two opinions answered questions about the right to be represented in court and the right to challenge status as a slave.

Introduction (1 day)

Provide students with brief overviews of each of the cases up to the point that they reached the Supreme Court. Background on the Mende and the *Amistad* case is provided in “*Amistad: The Federal Courts and the Challenge to Slavery*,” by Bruce A. Ragsdale, especially “The *Amistad* Case: A Brief Narrative” (pp. 1–5) and Legal Questions before the Federal Courts (pp. 13–17). (*Note*: Page numbers above refer to the PDF version of “*Amistad: The Federal Courts and the Challenge to Slavery*,” by Bruce A. Ragsdale, available online at <http://www.fjc.gov/history/home.nsf>.)

Many sources on the *Dred Scott* case are available, including the short essay by Walter Ehrlich in *The Oxford Companion to the Supreme Court of the United States*, second edition, Kermit L. Hall, editor in chief (New York: Oxford University Press, 2005): 887–89.

Distribute the T-chart comparing the legal questions and arguments in both cases.

Group Work and Discussion (2 days)

Begin with the *Amistad* case.

1. Divide the class into small groups to read the *Amistad* opinion and to complete the accompanying Reading and Analysis Guide.
Debrief as a whole class, reviewing responses and clarifying information.

2. Reform small groups (same or different students) to read the *Dred Scott* opinion and to complete the accompanying Reading and Analysis Guide.
Debrief as a whole class, reviewing responses and clarifying information.

Wrap-up Discussion (1 day)

Address the essential questions presented at the beginning of this curriculum.

Assessment

Ask students to write an essay on one of the essential questions, making sure that they address both of the cases.

Collect and analyze the worksheets.

Alternative Modalities and Enrichment Activities

- Write a statement by Chief Justice Roger Taney explaining why he supported both the *Amistad* and *Dred Scott* decisions.
- Research other legal suits brought by enslaved persons to secure their freedom.
- Research newspaper reaction to both cases.

Involving a Judge

Among the many criticisms of Taney's decision in *Dred Scott* was that he attempted to use the case to settle broad political disputes about slavery in the territories. Invite a judge to discuss how the courts decide what issues should be addressed in a decision. What are the risks of offering sweeping decisions that reach beyond the specifics of the case?

Standards Addressed

U.S. History Standards (Grades 5–12)

Era 4—Expansion and Reform (1801–1861)

Standard 2D: The student understands the rapid growth of “the peculiar institution” after 1800 and the varied experiences of African Americans under slavery.

Standard 4: The sources and character of cultural, religious, and social reform movements in the antebellum period.

Standards in Historical Thinking

Standard 2: Historical Comprehension

- A. Identify the author or source of the historical document or narrative and assess its credibility.

- C. Identify the central question(s) the historical narrative addresses.
- D. Differentiate between historical facts and historical interpretations.

Standard 3: Historical Analysis and Interpretation

- A. Compare and contrast differing sets of ideas, values, etc.
- B. Consider multiple perspectives.
- E. Distinguish between unsupported expressions of opinion and informed hypotheses grounded in historical evidence.

Standard 5: Historical Issues-Analysis and Decision-Making

- A. Identify issues and problems in the past and analyze the interests, values, perspectives, and points of view of those involved in the situation.
- D. Evaluate alternative courses of action, keeping in mind the information available at the time, in terms of ethical considerations, the interests of those affected by the decision, and the long- and short-term consequences of each.
- F. Evaluate the implementation of a decision by analyzing the interests it served; estimating the position, power, and priority of each player involved; assessing the ethical dimensions of the decision; and evaluating its costs and benefits from a variety of perspectives.

Amistad and Dred Scott Comparative

How the Cases Entered the Federal Courts

Amistad: The Mende, represented by abolitionist lawyers, filed in the U.S. district court for Connecticut a response to the several claims on them as the property of Spanish planters resident in Cuba. The response asserted that the Mende had been kidnapped and sold as slaves in Cuba, in violation of a Spanish law that prohibited the importation of slaves, and that therefore they were not slave property but rather legally free individuals. The response also said that the Mende were acting on their natural right to liberty when they took control of the ship *Amistad* and attempted to return to their families in Africa or to reach a free country.

Dred Scott: In a U.S. circuit court, Dred Scott and his wife Harriet sued John Sanford, who claimed to be the owner of them and their children, for assault and battery, based on Sanford's detainment of them as his slaves. Scott asserted that he and his family were free because a previous owner had transported him to territories in which Congress had prohibited slavery and to Illinois, where slavery was illegal. Scott had earlier brought a similar challenge in the Missouri state courts, and the state supreme court denied him his freedom. Scott was able to bring a federal suit because Sanford was a citizen of New York while the Scotts remained resident in Missouri. When the jury in the federal circuit court declared Sanford not guilty, thus affirming the legal status of the Scotts as slaves, Scott's lawyers appealed the case to the Supreme Court of the United States.

Questions Before the Courts

Amistad: The district court and the Supreme Court needed to determine if the Mende on the *Amistad* were the legal property of the Spanish planters who had purchased them at a slave market in Havana or if the Mende had been sent to Havana from Africa and sold in violation of the Spanish law prohibiting the importation of African slaves. If the Mende were not Spanish property, were they free individuals, as asserted by their response? If the Mende were slave property, was the United States obliged by treaty to return them to the Spanish planters, and was the Navy crew that took possession of the *Amistad* entitled to a payment (salvage award) for rescuing property that otherwise would have been lost at sea?

Dred Scott: Chief Justice Taney, in his decision in *Scott v. Sandford*, said the two questions before the courts were: Did the U.S. circuit court have jurisdiction in the case? If so, did the court make the right decision? To decide these questions, the Court needed to address the right of Scott to sue in a federal court and the le-

gal effect of transporting a slave to a territory or state in which slavery was prohibited. Taney also addressed questions about the federal government's authority to restrict slavery in the territories.

Legal Arguments in Court

Amistad:

1. The Mende who testified in court and their lawyers asserted that all of the Mende on the *Amistad* had been kidnapped in Africa, illegally imported into Cuba, and sold with false certificates alleging that they had been born into slavery in Cuba or imported before Spain outlawed the importation of African slaves.
2. The attorneys for the U.S. government argued that the Spanish planters had submitted documents proving that the Mende were legal slaves and that the treaty between Spain and the United States required the return of all legal Spanish property that was rescued from robbers or pirates at sea and brought into a U.S. port. The U.S. attorneys also argued that the federal courts had an obligation to regard slaves as property if slavery was protected by a nation's laws.

Dred Scott:

1. Lawyers for Dred Scott argued that Scott's residence in Illinois resulted in his freedom, as recognized in earlier Missouri court decisions. They also argued that Congress had broad authority to legislate for the territories and that the prohibition of slavery was not an infringement on the property rights of slaveholders, who willingly moved to a territory in which slavery was illegal. Scott's lawyers offered evidence that African Americans had long been considered citizens for the purpose of defending civil rights in court, even if they were excluded from political citizenship.
2. The lawyers for Sanford argued that African Americans were not citizens of Missouri and thus not able to bring suit in a Missouri federal court; that the Missouri Compromise restrictions on slavery were unconstitutional; that Dred Scott's owner was never a permanent resident of Illinois; and that even if the move to free territory made Scott free, his return to a slave state made him a slave again.

Amistad, Supreme Court Opinion (excerpts)

Justice Joseph Story delivered the Supreme Court's opinion in the Amistad case on March 9, 1841, and instructed the circuit court in Connecticut to free the Mende captives. Story was joined by six other justices; Justice Henry Baldwin dissented without comment. (Justice Philip Pendleton Barbour died before oral arguments in the Amistad were complete.) In addition to the opinion of the Court, the nineteenth-century reports of Supreme Court cases included extensive summaries of the oral arguments, which were submitted to the Court reporter by the lawyers. The following excerpts are from Story's opinion and explain the Court's rulings on the most important issues in the case.

THE AMISTAD, 40 U.S. 518 (1841)

(Text is from XV Peters 518)

The AMISTAD.

UNITED STATES, Appellants, v. The LIBELLANTS AND CLAIMANTS of the SCHOONER AMISTAD, her tackle, apparel and furniture, together with her cargo, and the AFRICANS mentioned and described in the several libels and claims, Appellees.

January Term, 1841

Before entering upon the discussion of the main points involved in this interesting and important controversy, it may be necessary to say a few words as to the actual posture of the case as it now stands before us. In the first place, then, the only parties now before the court on one side, are the United States, intervening for the sole purpose of procuring restitution of the *property* as Spanish *property*, pursuant to the treaty, upon the grounds stated by the other parties claiming the *property* in their respective libels. The United States do not assert any *property* in themselves, or any violation of their own rights, or sovereignty or laws, by the acts complained of. They do not insist that these negroes have been imported into the United States, in contravention of our own slave trade acts. They do not seek to have these negroes delivered up for the purpose of being transported to Cuba as pirates or robbers, or as fugitive criminals found within our territories, who have been guilty of offences against the laws of Spain. They do not assert that the seizure, and bringing the vessel, and cargo, and negroes into port, by Lieutenant Gedney, for the purpose of adjudication, is a tortious act. They simply confine themselves to the right of the Spanish claimants to the restitution of their *property*, upon the facts asserted in their respective allegations.

In the next place, the parties before the Court, on the other side, as appellees, are Lieutenant Gedney, on his libel for salvage, and the negroes, (Cinque, and

others,) asserting themselves, in their answer, not to be slaves, but free native Africans, kidnapped in their own country, and illegally transported by force from that country; and now entitled to maintain their freedom.

No question has been here made, as to the proprietary interests in the vessel and cargo. It is admitted that they belong to Spanish subjects, and that they ought to be restored. The only point on this head is, whether the restitution ought to be upon the payment of salvage or not? The main controversy is, whether these negroes are the *property* of Ruiz and Montez, and ought to be delivered up; and to this, accordingly, we shall first direct our attention.

If these negroes were, at the time, lawfully held as slaves under the laws of Spain, and recognised by those laws as *property* capable of being lawfully bought and sold; we see no reason why they may not justly be deemed within the intent of the treaty, to be included under the denomination of merchandise, and, as such, ought to be restored to the claimants: for, upon that point, the laws of Spain would seem to furnish the proper rule of interpretation. But, admitting this, it is clear, in our opinion, that neither of the other essential facts and requisites has been established in proof; and the onus probandi of both lies upon the claimants to give rise to the *casus foederis*. It is plain beyond controversy, if we examine the evidence, that these negroes never were the lawful slaves of Ruiz or Montez, or of any other Spanish subjects. They are natives of Africa, and were kidnapped there, and were unlawfully transported to Cuba, in violation of the laws and treaties of Spain, and the most solemn edicts and declarations of that government. By those laws and treaties, and edicts, the African slave trade is utterly abolished; the dealing in that trade is deemed a heinous crime; and the negroes thereby introduced into the dominions of Spain, are declared to be free. Ruiz and Montez are proved to have made the pretended purchase of these negroes, with a full knowledge of all the circumstances. And so cogent and irresistible is the evidence in this respect, that the District Attorney has admitted in open Court, upon the record, that these negroes were native Africans, and recently imported into Cuba, as alleged in their answers to the libels in the case. The supposed proprietary interest of Ruiz and Montez, is completely displaced, if we are at liberty to look at the evidence or the admissions of the District Attorney.

If then, these negroes are not slaves, but are kidnapped Africans, who, by the laws of Spain itself, are entitled to their freedom, and were kidnapped and illegally carried to Cuba, and illegally detained and restrained on board the Amistad; there is no pretence to say, that they are pirates or robbers. We may lament the dreadful acts, by which they asserted their liberty, and took possession of the Amistad, and endeavored to regain their native country; but they cannot be deemed pirates or robbers in the sense of the law of nations, or the treaty with

Spain, or the laws of Spain itself; at least so far as those laws have been brought to our knowledge. . . .

It is also a most important consideration in the present case, which ought not to be lost sight of, that, supposing these African negroes not to be slaves, but kidnapped, and free negroes, the treaty with Spain cannot be obligatory upon them; and the United States are bound to respect their rights as much as those of Spanish subjects. The conflict of rights between the parties under such circumstances, becomes positive and inevitable, and must be decided upon the eternal principles of justice and international law. If the contest were about any goods on board of this ship, to which American citizens asserted a title, which was denied by the Spanish claimants, there could be no doubt of the right of such American citizens to litigate their claims before any competent American tribunal, notwithstanding the treaty with Spain. A fortiori, the doctrine must apply where human life and human liberty are in issue; and constitute the very essence of the controversy. The treaty with Spain never could have intended to take away the equal rights of all foreigners, who should contest their claims before any of our courts, to equal justice; or to deprive such foreigners of the protection given them by other treaties, or by the general law of nations. Upon the merits of the case, then, there does not seem to us to be any ground for doubt, that these negroes ought to be deemed free; and that the Spanish treaty interposes no obstacle to the just assertion of their rights.

There is another consideration growing out of this part of the case, which necessarily rises in judgment. It is observable, that the United States, in their original claim, filed it in the alternative, to have the negroes, if slaves and Spanish *property*, restored to the proprietors; or, if not slaves, but negroes who had been transported from Africa, in violation of the laws of the United States, and brought into the United States, contrary to the same laws, then the Court to pass an order to enable the United States to remove such persons to the coast of Africa, to be delivered there to such agent as may be authorized to receive and provide for them. At a subsequent period, this last alternative claim was not insisted on, and another claim was interposed, omitting it; from which the conclusion naturally arises that it was abandoned. The decree of the District Court, however, contained an order for the delivery of the negroes to the United States, to be transported to the coast of Africa, under the act of the 3d of March 1819, ch. 224. The United States do not now insist upon any affirmance of this part of the decree; and in our judgment, upon the admitted facts, there is no ground to assert that the case comes within the purview of the act of 1819, or of any other of our prohibitory slave trade acts. These negroes were never taken from Africa, or brought to the United States in contravention of those acts. When the Amistad arrived she was in possession of the negroes, asserting their freedom; and in no sense could they possibly intend to import themselves here, as slaves, or for sale as slaves. In this view of the matter,

that part of the decree of the District Court is unmaintainable, and must be reversed.

The view which has been thus taken of this case, upon the merits, under the first point, renders it wholly unnecessary for us to give any opinion upon the other point, as to the right of the United States to intervene in this case in the manner already stated. We dismiss this, therefore, as well as several minor points made at the argument.

As to the claim of Lieutenant Gedney for the salvage service, it is understood that the United States do not now desire to interpose any obstacle to the allowance of it, if it is deemed reasonable by the Court. It was a highly meritorious and useful service to the proprietors of the ship and cargo; and such as, by the general principles of maritime law, is always deemed a just foundation for salvage. The rate allowed by the Court, does not seem to us to have been beyond the exercise of a sound discretion, under the very peculiar and embarrassing circumstances of the case.

Upon the whole, our opinion is, that the decree of the Circuit Court, affirming that of the District Court, ought to be affirmed, except so far as it directs the negroes to be delivered to the President, to be transported to Africa, in pursuance of the act of the 3d of March 1819; and, as to this, it ought to be reversed: and that the said negroes be declared to be free, and be dismissed from the custody of the Court, and go without day.

*The Amistad Decision by Justice Joseph Story—
Reading and Analysis Guide*

Answer the following questions by quoting directly from the decision and by putting the quotation in your own words:

1. Who does Story identify as the parties to the case before the Supreme Court and what do they claim?

Quotation:

Your own words:

2. What does Story consider the most important question before the Court?

Quotation:

Your own words:

3. Under what conditions should the Mende captives be returned to the claimants?

Quotation:

Your own words:

4. What would prevent the Court from ordering the return of the Mende captives to the claimants?

Quotation:

Your own words:

5. What is the Court's decision regarding the Mende's claim to freedom?

Quotation:

Your own words:

6. Under what laws is the status of the Mende determined?

Quotation:

Your own words:

7. Does Story affirm the decision of the U.S. district court?

Quotation:

Your own words:

Glossary

a fortiori	for an even stronger reason
casus foederis	literally, "case of the alliance." A casus foederis is a situation triggering action under a treaty.
libels	plaintiff's written statement in a case under admiralty law
onus probandi	burden of proof
remanded	return case to a lower court with instructions for further action to be taken
tortious act	constituting a tort, a wrongful act for which monetary compensation can be sought by the injured party in civil law

Dred Scott v. Sandford (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, 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 . . .

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. . . .

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?

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts.

It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognised as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guarantied to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the Constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States . . .

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 . . .

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 . . .

But there are two clauses in the Constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the Government then formed.

One of these clauses reserves to each of the thirteen States the right to import slaves until the year 1808, if it thinks proper . . . And by the other provision the States pledge themselves to each other to maintain the right of property of the master, by delivering up to him any slave who may have escaped from his service, and be found within their respective territories . . .

The only two provisions which point to them and include them, treat them as property, and make it the duty of the Government to protect it; no other power, in relation to this race, is to be found in the Constitution; and as it is a Government of special, delegated powers, no authority beyond these two provisions can be constitutionally exercised. The Government of the United States had no right to interfere for any other purpose but that of protecting the rights of the owner, leaving it altogether with the several States to deal with this race, whether emancipated or not, as each State may think justice, humanity, and the interests and safety of society, require. The States evidently intended to reserve this power exclusively to themselves . . .

And upon a full and careful consideration of the subject, the court is of opinion, that, upon the facts stated . . . Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts; and, consequently, that the Circuit Court had no jurisdiction of the case, and that the judgment on the plea in abatement is erroneous . . .

We proceed, therefore, 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 any one 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 treaty with Great Britain and can have no influence upon a terri-

tory afterwards 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 . . .

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. It cannot create for itself a new character separated from the citizens of the United States, and the duties it owes them under the provisions of the Constitution. The Territory being a part of the United States, the Government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out; and the Federal Government can exercise no power over his person or property, beyond what that instrument confers, nor lawfully deny any right which it has reserved . . .

These powers, and others, in relation to rights of person, which it is not necessary here to enumerate, are, in express and positive terms, denied to the General Government; and the rights of private property have been guarded with equal 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 . . .

It seems, however, to be supposed, that there is a difference between property in a slave and other property, and that different rules may be applied to it in expounding the Constitution of the United States. And the laws and usages of nations, and the writings of eminent jurists upon the relation of master and slave and their mutual rights and duties, and the powers which Governments may exercise over it, have been dwelt upon in the argument.

But in considering the question before us, it must be borne in mind that there is no law of nations standing between the people of the United States and their

Government, and interfering with their relation to each other. The powers of the Government, and the rights of the citizen under it, are positive and practical regulations plainly written down. The people of the United States have delegated to it certain enumerated powers, and forbidden it to exercise others. It has no power over the person or property of a citizen but what the citizens of the United States have granted. And no laws or usages of other nations, or reasoning of statesmen or jurists upon the relations of master and slave, can enlarge the powers of the Government, or take from the citizens the rights they have reserved. And if the Constitution recognises the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction, or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the Government.

Now, as we have already said in an earlier part of this opinion, upon a different point, the right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every State that might desire it, for twenty years. And the Government in express terms is pledged to protect it in all future time, if the slave escapes from his owner. This is done in plain words — too plain to be misunderstood. And no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

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.

[Document Source: 19 Howard (1857), 393.]

*The Dred Scott Decision by Chief Justice Taney—
Reading and Analysis Guide*

Answer the following questions by quoting directly from the decision and by putting the quotation in your own words:

1. What does Chief Justice Taney identify as the question before the Court?

Quotation:

Your own words:

2. On what grounds does Taney determine whether or not African Americans can be citizens of the United States and thus entitled to sue in a federal court?

Quotation:

Your own words:

3. What evidence does Taney present to prove that African Americans, whether slave or free, were not part of the “political community” at the founding of the federal government?

Quotation:

Your own words:

4. What is the Court’s decision regarding Scott’s right to sue?

Quotation:

Your own words:

5. After denying that Dred Scott had any right to sue in a federal court, Taney proceeded to rule on the substance of Scott's suit. Why?

Quotation:

Your own words:

6. On what grounds does Taney rule that the Missouri Compromise's prohibition of slavery in the northern half of the Louisiana Purchase was unconstitutional?

Quotation:

Your own words:

7. What constitutional protections of slave property does Taney identify? Under the Constitution, according to Taney, is there a difference between slave property and other kinds of property?

Quotation (find 2 paragraphs):

Your own words:

Glossary

comity of states	mutual recognition among states of one another's laws
plaintiff in error	person appealing a lower court decision, now referred to as "Appellant"
plea in abatement	plea to suppress or make null and void the decision of the U.S. Circuit Court upholding the Missouri Supreme Court's ruling that Scott is a slave
privileges and immunities	what citizens can do and what they are protected from