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Eric Pelfrey*

The Supreme Court ruling in Scott v. Sanford put an official stamp of approval on the practice of slavery. Reactions to the decision not only led the nation to civil war, but systematically undermined the rule of law in America.

From a historical perspective, it is evident that the laws of society in America and the framework of the legal system in which they function are not immutable, but change within the context of contemporary developments. At times, popular forces in American society and politics have twisted, bent, evaded, and ignored legal statute—so long as they have been able to muster majority support. The case of Scott v. Sanford serves as a glaring example of such a pivotal moment of change. On March 5, 1857, the "rule of law" met the "rule of the majority" in pre-Civil War America and the law lost. Whether or not we justify the reaction to Dred Scott from a modern perspective, the Dred Scott decision—and the period of controversy which followed—should be remembered as a moment in our past when the Supreme Court was silenced and America chose to abolish slavery rather than abide by Constitutional mandate. The result became a key factor influencing Southern secession and served to ignite already polarized factions into civil war.

Background

Dred Scott was born around 1800 as a little-known slave in Virginia. The property of his master Peter Blow, Scott traveled to Alabama and then in 1830 to St. Louis, where Blow subsequently died. Army surgeon Dr. John

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Emerson then purchased Scott and took him into the free state of Illinois and later to Fort Snelling in the Minnesota Territory (now Wisconsin) on official assignment. Emerson was transferred in 1836 to St. Louis, Missouri, and then farther south to Louisiana, leaving Scott behind to marry Harriet Robinson, also a slave. A little over a year later, Emerson summoned Scott and his wife to reunite with him, and the couple traveled unaccompanied over one thousand miles to meet their master. Emerson died in 1843 and left the Scotts to his widow, a resident of St. Louis, who hired them out to an army captain and other locals. It was during this stay in St. Louis that Scott sought freedom for himself and his wife and offered to pay Emerson's widow, Irene, three hundred dollars to free them. When she refused, Scott filed suit in a local St. Louis court. Although he filed suit in Missouri, a slave state, the merit of his legal action was based upon his extended stay in Illinois and the Minnesota Territory. In Illinois, state law forbade slavery and the Missouri Compromise had banned slavery forever in the northern territory of Minnesota. Extended residence in these free states and territories, he believed, should make him a free man.

The District Court in St. Louis ruled against Scott in June 1847. The court cited a technicality: in the milieu of changing ownership and interstate residence, Scott couldn't officially prove that Harriet and he were Emerson's property. Scott appealed and the following year the Missouri Supreme Court ordered that the case be retried. In an 1850 retrial, the Circuit Court in St. Louis granted the Scotts freedom, but Emerson appealed the decision and returned to the Missouri Supreme Court. At this point, Irene Emerson turned the responsibility of the case over to her brother, John F. A. Sanford of New York, who acted on her behalf. The Missouri Supreme Court subsequently reversed the lower court's decision, holding that Scott was still a slave.

Simultaneously, Scott (with support from the family of his first owner, John Blow) had filed suit against Sanford in U.S. Circuit Court for battery and wrongful imprisonment and asked for nine thousand dollars in damages. More than gaining remuneration for damages, the charges were an attempt to get a federal court and jury to recognize Scott's freedom. In bringing suit against Sanford, a resident of New York, Scott ensured that the case would have to ultimately be decided in federal, not state, courts. Additionally,

1 Scott v. Sanford, 60 U.S. 393 (1853).
Sanford, who was controlling Scott, would have been committing wrongful imprisonment if Scott were indeed free, which is why the case was brought against Sanford rather than Scott's actual owner, Irene Emerson. In addressing the issue of jurisdiction, Scott argued "in diversity," claiming that he was a citizen of Missouri and the defendant was a citizen of New York. Sanford disagreed in a "plea of abatement," claiming that Scott, because he was black, could not be a citizen of Missouri and that the federal court had no jurisdiction. The Circuit Court rejected the plea of abatement, accepting that, even if Scott did not have full legal or political rights, he had the ability to bring suit in federal court. The case thus went to trial in May 1854, with the jury being ordered to determine Scott's status by Missouri law. His status as a slave having then already been decided by the Missouri Supreme Court, Scott was unable to avail himself of his prior ability to declare his freedom in Illinois, and Sanford won the case.

By this time the nation was experiencing an increasing level of controversy over the spread of slavery into the territories. Scott's case, which stretched over a decade of litigation, seemed a textbook attempt to legally solve the slavery question and as a test case on slavery became a fixture of national attention. With the added pro-bono help of a Washington-area lawyer with strong ties to Missouri, the case was successfully appealed to the United States Supreme Court and slated for the December 1855 term.

**Precedent**

The South strongly believed that slavery was constitutional long before Scott's case appeared on the Supreme Court docket. The South had developed an interpretation of the Constitution that denied the prohibition of slavery in all its forms, a view of the Constitution that transcended the forces of the legislative and executive branches. According to historian Arthur Bestor, the Southern interpretation "wiped out every policy-making function of the federal government where slavery was concerned" because it

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1. An aspect of federal jurisdiction that allows citizens of different states to sue each other in federal court in some circumstances.
3. *Id.* at 176.
limited the powers of Congress to simply providing for and protecting the practice, but no impact in deciding its permanence. Southerners, by 1857, had built upon legal cornerstones a constitutional bulwark in defense of slavery. In decades following the signing of the Constitution, the government had consistently confirmed that slaves were to be treated as property. Both the federal government and the Supreme Court had confirmed this interpretation. The constitutional defense had served Southerners well, and they truly believed in the veracity of the argument as voiced by their most gifted orators: John C. Calhoun and Alexander Hamilton Stephens.

From the beginnings of American nationalism, the Southern states boldly protected the institution of slavery as a constitutional right. Although the Constitution did not specifically prohibit nor endorse slavery, it created a loose framework within which the practice would be allowed to thrive. By interpretation, the Constitution's Three-Fifths Compromise was an endorsement of slavery. While a political measure meant to use the slave population to benefit the Southern states' representation in Congress, the Compromise was at the same time a clear constitutional statement on the disenfranchisement of blacks: a slave was not to be counted as a full "person." In addition, the Constitutional Convention hammered out clauses concerning the slave trade and the treatment of fugitive slaves. The Constitution prohibited Congress from outlawing the Atlantic slave trade for twenty years. While the measure did stop the flow of incoming slaves, it was a clear recognition of the institution of slavery. The Fugitive Slave Clause required the return of runaway slaves to their owners. Under the clause, the federal government was given power to put down domestic rebellions, including slave insurrections. These stipulations on slavery, ratified by each of the Northern states as well, were seen by Southerners as the North's tacit approval of the practice. Although Northern antislavery sentiment was already a force in 1787, Northern delegates to the Constitutional Convention saw the inclusion of slavery as necessary to establish a strong union. Without these specific protections of slavery, Southern states would not have endorsed the federal charter nor joined the union of states. John Rutledge of South Carolina made this sentiment clear when he rebutted Northern moralist attacks on slavery. "Religion and humanity have nothing to do with this question," he insisted. He claimed

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1 Don F. Fehrenbacher, Sectional Crisis and Southern Constitutionalism, 135 (1989).
that unless regulation of slavery was left to the states, the Southern states "shall not be parties to the union."3

Based upon the outcomes of the Constitutional Convention, the South would build upon a constitutional defense of slavery for seventy years. Despite conflicts with Northern constitutional theorists, Southern leaders held strong to the idea that, through broad interpretation, the Constitution did indeed protect slavery. Southerners saw specific legal and legislative examples before 1857 as cementing this constitutional right. Southern leader Alexander H. Stephens viewed a congressional resolution in 1790 as an initial federal defense of the practice. Stephens related "a petition invoking the Federal authorities to take jurisdiction of [slavery], with a view to the ultimate abolition of this Institution...was sent to Congress." He said, "This movement was checked by the resolution to which the House of Representatives came...[which declared] that Congress have no authority to interfere in the emancipation of slaves, or in the treatment of them within any of the States; it remaining with the several States alone to provide any regulations therein, which humanity and true policy may require.”

Southerners also drew upon courtroom precedent to cement the constitutionality of slavery. In 1837, Edward Prigg, a runaway slave in York County, Pennsylvania, had been abducted and beaten in an effort to bring her back to her master. The State had convicted Prigg on assault and kidnapping charges, which he appealed on grounds of the federal Fugitive Slave Clause. In 1843, the Supreme Court acquitted Prigg and asserted the federal government’s protection of the rights of slave owners to redeem their property. The Washington Daily Union would claim that, by way of Prigg v. Pennsylvania, "Congress had the constitutional power to legislate for the return of fugitive slaves," and that “learned tribunals in various States have concurred in that decision, and the unimpassioned judgment of the people approves of it.” Senator Judah P. Benjamin, a Louisiana

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3 S. Mintz, The Constitution and Slavery, University of Houston, 6.

4 Alexander H. Stephens, A Constitutional View of the late War Between the States, 28 (1870).

5 Id.

6 Bester at 52.
Democrat, saw larger implications in the case. "Although the suit was in the name of an individual, really it was the rights of Maryland that were concerned, and it was the State of Maryland that was interested in the decision. . . . Every judge on the bench gave his decision in that case. Every judge on the bench concurred in the decision." To Benjamin and others in the South, *Prigg v. Pennsylvania* cemented the Fugitive Slave Clause as a fundamental article of the Constitution because it acknowledged the federal government’s legal responsibility to protect slavery and the rights of the slave owner.\(^{11}\)

As the slavery debate heated up, Southerners came to rely upon the judiciary to hold against shifting influences in Congress. Slavery, in the Southern mind, was not debatable, but a God-given, constitutionally protected right. Only the judicial branch could be counted on to protect it. Antislavery sentiment, by 1857, was increasing in the Senate and was already strong in the House, where a clear Republican majority could already be assembled.\(^{12}\) Despite a history of proslavery supporters in the White House, Southerners realized that the executive branch could not be trusted in the long run to protect slavery. Thus, the Southern constitutional view would have to eliminate the policy-making powers of Congress as far as slavery was concerned. Congress would be delegated administration of slavery's ways and means, but, because the Constitution protected the practice, its powers would not include deliberation upon the ends thereof.\(^{13}\) The courts, therefore, in responding only to the Constitution and not changing attitudes of the republic, stood in Southern eyes as stoic defenders of slavery as an “inalienable” property right. In the end, the federal judiciary would be left to actively protect slavery.

Awaiting the *Dred Scott* decision, Southern leaders were confident that their constitutional rights to slavery would be safeguarded. In the waning years of the 1850s, they clung to this as their last defense against the encroachment of abolitionism.

The Supreme Court in the 1850s was a rock of constitutional (and Southern) conservatism. At its head sat Chief Justice Roger Brook Taney.

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\(^{11}\) *Id.* at 65.

\(^{12}\) Fehrenbacher at 135.

\(^{13}\) Bestor at 177.

\(^{11}\) *Id.* at 176.
approaching his twentieth year on the bench as Chief Justice, and his
eightieth birthday. Born and educated in Maryland, Taney was a strong
conservator of the traditional values advocated by his Southern culture. Taney
rose quickly through the legal and political ranks, serving in the Maryland
House of Representatives and as Attorney General of Maryland and later
the United States under President Andrew Jackson. The Senate confirmed
his appointment as Chief Justice of the Supreme Court in 1836. A staunch
Democrat, Taney was a key supporter of Jackson's fight against the Bank of the
United States, yet strictly defended the individual's right to property. Northern
political forces were critical of Taney's appointment, and the Senate had de­
bated for three months before confirming it. Republican Northerner Daniel
Webster had commented at the time of his appointment that "the pure ermine
of the Supreme Court is sullied by the appointment of that political hack,
Roger B. Taney." 

Restructuring of the federal court system in March 1836 added two new judicial circuits in the southwest and two Associate Justices,
also appointed by Jackson. The Court entered a new era, favoring the
conservative Democrats. Regarding slavery, Taney and his court would be labe­
ed with a Southern bias. Seven of the nine justices were appointed by
Southern presidents in favor of slavery. Of the seven, five justices (Wayne,
Catron, Daniel, Nelson, and Campbell) were from families who had owned
slaves. Only two of the four Northern justices stood against slavery
(McLean, an acknowledged abolitionist, and Curtis, also antislavery, but in
more moderate tones). The other two Northerners were conservative, states­
rights democrats.15

Opinion across the states on the slavery issue was not as decided as in
the Supreme Court. When the Court prepared to pronounce its decision
in the early months of 1857, the Union had been boiling in a state of political
upheaval. Sectional conflict over slavery had been building to some ex­tent
since the signing of the Constitution, but controversy over recent
territorial acquisitions had added fuel to the fire. In the eyes of the public,
the 1820 Missouri Compromise had attempted to mend the widening gap

11 Supreme Court Historical Society, Taney Court,
http://www.supremecourthistory.org/02_history/subs_history/02_c05.html (last
visited March 2005).
between slave and free states, but had failed miserably. Additionally, the 1846 Wilmot Proviso had enraged Southerners particularly, striking into them a fear that abolitionist forces were gaining momentum in the territories. The Compromise of 1850 followed and left the country again in a state of disagreement, as both North and South felt the concessions therein too dear to part with. Furthermore, the Kansas–Nebraska Bill of 1854 had left the door open to slavery in the territories by calling for a popular vote on the issue among residents of the territory. In response, both pro- and antislavery radicals stormed into the territories to “cushion” the vote in their favor and created a political frenzy of foul play and bloodshed, known as “Bleeding Kansas.” Another divisive issue arising in 1854, and an event which would form the prelude to the Dred Scott controversy, was the formation of the Republican Party, whose abolitionist political designs Southerners would interpret as a direct assault on their rights. The nation, embattled over the slave issue, set its eyes on the case of Dred Scott. Northerners and Southerners, Democrats and Republicans, stood in anticipation of what would be the first definitive word on the constitutionality of slavery.

16 The Missouri Compromise called for a legislative trade-off in that Maine would be admitted to the Union as a free state, so long as Missouri would be admitted as well and allowed to draft its own constitution (which, based on the population of Missouri, would undoubtedly protect slavery). After two attempts to pass the bill through congress, Missouri was admitted to the Union and allowed to sponsor slavery, but only south of 36°30.

17 The Wilmot Proviso, first suggested on Aug. 8, 1846, in the House of Representatives, would have outlawed slavery in any territory acquired from Mexico by the United States as a result of the recently begun Mexican–American War. Southerners saw property rights to slaves as protected under the Constitution and opposed any limit on the right to take slaves into the territories. Proslavery factions gave strong opposition to the Proviso and it was never passed.

18 The Compromise of 1850 was an attempt to balance sectional interests in the slavery issue by addressing territories acquired during the Mexican–American War (1846–48). Through a series of five separate pieces of legislation, California was admitted as a free state. Texas received financial compensation for relinquishing claim to lands west of the Rio Grande, the United States territory of New Mexico (including present-day Arizona and Utah) was organized without any specific prohibition of slavery, the slave trade (but not slavery itself) was abolished in Washington, D.C., and the Fugitive Slave Law was passed, requiring all U.S. citizens to assist in the return of runaway slaves.
Decision

In anticipation of Dred Scott, political leaders expressed a readiness to accept the Supreme Court's verdict on slavery as decisive and binding. Outspoken Illinois Republican Abraham Lincoln, tired of what he viewed as the Democrats' artificial construction of the Constitution, expressed his view that the "Supreme Court of the United States is the tribunal to decide such questions, and we will submit to its decisions; and if you [Democrats] do also, there will be an end to the matter." In Illinois, Republican Abraham Lincoln, the "true decisio of the constitutional point... I am willing to leave that to the Supreme Court of the United States." Senator Stephen A. Douglas, a Northern Democrat, retreated as well to the idea that the Court held the last word in the slavery debate. "If the Constitution carries slavery [into the territories]," he said, "... let it go, and no power on earth can take away... The true decision of the constitutional point... I am willing to leave that to the Supreme Court of the United States." Senator Albert G. Brown, a Mississippi Democrat, agreed with his Northern counterparts that slavery was "a question to be decided by the courts, and not by Congress." The American Law Register, a contemporary national legal journal, agreed that the validity of the Court must be upheld. "With all its imagined faults, what is there that can replace [the Supreme Court]? Strip it of its power, and what shall we get in exchange... discord and confusion, statutes without obedience, courts without authority, and anarchy of principles, and a chaos of decisions, till all law at last shall be extinguished by an appeal to arms." Chief Justice Taney read the Court's decision (seven to two in favor of Sanford) on the morning of March 6, 1857. According to the majority opinion, the case had presented two leading questions: first, "had the Circuit Court of the United States jurisdiction to hear and determine the case between these parties?" and secondly, "if it had jurisdiction, is the judgment it has given erroneous or not?" Taney wasted no time in getting to the root of

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21 Id.
the second question. “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?” His answer was clear: Free Negroes were not considered citizens of the United States. Taney cited the Constitution’s definition of a citizen as well as naturalization laws for Indians in support of the Court’s argument that the law recognized blacks as neither born nor naturalized Americans. The African slave, he claimed, was not intended to be embraced by the general clauses of the Declaration of Independence nor the Constitution, and the slave trade and fugitive slave provisions in the Constitution supported this interpretation. Taney further cited state laws passed at the time of the signing of the Declaration and Constitution which supported the fact that, when the Constitution was agreed upon and ratified, “not only were Negroes not citizens, but they were considered as a subordinate and inferior class of being . . . and had no rights or privileges but such as those who held the power and the government might choose to grant them.”

In answering the first question on jurisdiction, the Court’s opinion was equally clear. The Court decided that Scott and his family were, “by the laws of Missouri, the property of the defendant; and that the Circuit Court of the United States had no jurisdiction, when, by the laws of the State, the Plaintiff was a slave, and not a citizen.” Taney again cited the Fugitive Slave and Slave Trade Clauses of the Constitution to support this interpretation. Since Dred Scott was still a slave, he was not entitled to the legal right to sue, and the case was dropped.

The Supreme Court of the United States had spoken: free blacks were not to be enfranchised in the American political body, and slaves were to be considered property. Given the make-up of the Court, and decades of legal precedent in lesser cases, the outcome to that point could have been expected by even the most ardent of Scott’s abolitionist supporters. Yet, the Court hadn’t finished its ruling. Taney, in a bold exercise of judicial review (and to Northern dismay), expanded the verdict to include an answer to the second question posed by the Court, thus encompassing the issue of slavery in the territories. The Missouri Compromise, while allowing slavery in territories

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1 Hopkins at 63.
2 Id.
3 Id. at 71.
south of Missouri, had outlawed it in the Northern territories. Scott, in his suit, had argued that by the Missouri Compromise, residence in Minnesota Territory had made him free. But the Court contended that the act's outlawing of slavery in certain territories violated property rights protected by the Fifth Amendment's Due Process Clause. Slave owners, it said, held the constitutional right to own slaves in whichever territory they resided, and this right had been infringed upon by the Missouri Compromise. Territories, as property of the combined United States, were not sovereign, and Congress was authorized by a vague constitutional passage to "make all needful rules and regulations" on their behalf. Congress, in the Court's narrow interpretation, had no explicit power to outlaw slavery. In fact, the only power possessed by Congress on the matter, Taney argued, was "the power coupled with the duty of guarding and protecting the owner in his rights." The Missouri Compromise, because it outlawed territorial slavery, was ruled unconstitutional by mandate of the Supreme Court.

Public Opinion

Upon Taney's reading of the majority opinion in *Scott v. Sanford*, the South was instantly vindicated after decades of debate. The case, heralded on all sides as the deciding legal word on slavery, substantiated Southern constitutional authority, and Southern reactions to the verdict of the Taney Court were swift and positive in affirming the constitutional legitimization of slavery. Based on their praise of the judiciary, Southerners respected the Court's decision as unbiased truth, elevated above the political strife of the time. For example, the proslavery *Cincinnati Daily Enquirer* reported that the Supreme Court justices, "by virtue of the age, eminent legal attainments of its members, their life tenure, which places them beyond the influence of party feeling, have no motive whatever in the world to bias and corrupt their decision." In agreement with popular Southern views, the Court's judges had no motive for bias to corrupt their decision. The *Washington Daily Union*, another Southern-minded paper, agreed, finding that the Supreme Court was "elevated above the schemes of party politics, and shielded alike

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28 Id.
from the effects of sudden passion and popular prejudice.” Such comments made clear the fact that Southerners saw legitimacy in the decision which transcended popular debate.

In southern eyes, the *Dred Scott* decision had, once again, put an official and lasting stamp of approval on the practice of slavery. Yet, what was even more important to Southerners was the decision’s ruling on the hotly contested issue of slavery in the territories. Taney’s exercise in judicial review delivered a clear verdict in the territorial debate by striking the Missouri Compromise which, through interpretation, would make all such attempts to ban slavery from the territories illegal. Southerners were authoritatively vindicated in believing that the Missouri Compromise, “an act in which the South had allowed itself to strike at its own constitutional equality,” and any such other attempts to restrict territorial slavery were unconstitutional. This not only substantiated the crux of the Southern defense of the constitutionality of slavery, but gave the South a tremendous political advantage in territorial politics. Southerners were ecstatic. “The decision of the Supreme Court,” reported the Charleston Daily Courier, “just pronounced, in the *Dred Scott* case, that the Missouri Compromise is unconstitutional (an opinion we have always entertained and maintained) and that free negroes have no rights as citizens under the Constitution of the United States . . . [The decision] will, we confidently believe, settle these vexed questions forever, quiet the country, and relieve it of abolition agitation, and tend to greatly perpetuate our Union—our Constitutional Union—the greatest political boon ever vouchsafed by God to man.”

Northerners, on the other hand, were not so pleased with the outcome. The Northern response to *Scott v. Sanford* was direct and aggressive in rebutting the legitimacy of the decision. Senator William Pitt Fessenden, a Maine Republican, voiced his disapproval on the Senate floor:

I am bound to render obedience to the Supreme Court of the United States; but when they undertake to settle questions not before them, I tell them those ques-

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* Id.*
According to Fessenden, the Court had overstepped its legal boundaries by inserting a decision which fell outside the boundaries of the case and had therefore given an unwarranted constitutional interpretation. After all, Taney could have stopped his decision at the ruling that Scott, as a slave, had no right to bring suit, and dismissed the case at that point. But the majority opinion took the legal liberty to include a ruling on the issue of territorial slavery. As a result, Fessenden and others thought that the Court had lost its legitimacy as the nation's highest court. Joined by a majority of Republicans in Congress, the Senator attacked the Southern bias of the predominately proslavery court and attempted to render the decision void. Northern leaders felt that the Court had no authority in determining national policy and railed against Taney's declaration on the Missouri Compromise.

In addition, the ruling upset Northern sentiment that slavery, after all, was not a constitutional right to property, but should have been outlawed long before 1857 to support the "all men are created equal" language of the Declaration of Independence. Fessenden, for example, refuted the Southern hold on what he considered a secondary reference in the Constitution to the slave trade and argued against the assumption that slaves be treated as property because of it. Northerners, with the congressional majority, were determined to eliminate slavery in spite of a Supreme Court verdict they saw as tainted. Douglas sought to garner broad support for his presidential campaign. To do so, he drew a middle line in the slavery debate by revoking slavery without directly opposing the Supreme Court's decision. In his "Freeport Doctrine," Douglas claimed that the citizens of a territory opposed to slavery could prevent it through simply not passing police regulations necessary to protect it. "It matters not what way the Supreme Court may hereafter decide as to the abstract question whether slavery may or may not go into a Territory [sic] under the Constitution, the people have the lawful means to introduce it or exclude

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56 Id.
it as they please." Yet Douglas, by skirting the sovereignty of the Supreme Court and manipulating territorial law, also undermined the *Scott v. Sanford* decision. Abraham Lincoln, Douglas's opponent in the Illinois senatorial race, articulated Northern fears by noting that through *Dred Scott*, the practice of slavery could be incorporated into the law books of the states themselves, a reasonable extension of the decision's protection of territorial slavery. Lincoln expressed Northern fears that, through a decision of the Supreme Court, slavery could one day become law in their own states:

Welcome, or unwelcome, such a decision is probably coming, and will soon be upon us.... We shall lie down pleasantly dreaming that the people of Missouri are on the verge of making their State free, and we shall awake to the reality instead, that the Supreme Court has made Illinois a slave State. To meet and overthrow the power of that dynasty is the work now before all those who would prevent that consummation.

Lincoln advocated a radical dismissal of slavery and its constitutional defense by the Southern sector. In fact, Lincoln claimed that if he were elected to Congress, he would vote to stop slavery in spite of the *Dred Scott* verdict. Abraham Lincoln embodied an ever-growing antislavery section of Northern politics which was clear in both dismissing the *Dred Scott* decision and advocating the abolition of slavery.

The results of the *Dred Scott* decision were polarizing in the North. The Democratic Party split between Northern and Southern factions over Douglas's Freeport Doctrine. The Republican Party, at the same time, radicalized as abolitionist factions, gained increasing control. In the election of 1860, not only did the Republicans witness substantial congressional gains, but Lincoln, whose name didn't even appear on most Southern ballots, won the presidency by landslide. Republicans, by 1860, had overruled the legitimacy of the Supreme Court within their own ranks and were primed to push their political agenda into the sectional debate.

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7 id. at 70.
7 id.
7 id. at 73.
Lincoln’s notion that the Republican Party intended to reverse the *Dred Scott* decision would, in fact, come to fulfillment less than two years later. In 1862 Lincoln’s Attorney General, Edward Bates, was questioned as to whether free Negroes could command American vessels, a right reserved to American citizens. In his reply, Bates cited the minority opinion of Justice Curtis in the *Dred Scott* case, “sustaining Negro citizenship” and “dismissing Taney’s remarks as irrelevant and not binding.” Also in 1862, the Republican-controlled Congress effectively struck the majority ruling in *Scott v. Sanford* by passing an act which specifically prohibited slavery in the existing territories, and any territories yet to be formed. Without Southern opposition in Congress, the act easily passed. These outcomes reflect the sincerity and determination of the Republican North to defeat slavery at all costs, which included risking the future legitimacy of Supreme Court decisions.

The aggressive Northern reaction to *Dred Scott* sparked a fearful, agitated response throughout the South. As Southern sectionalists saw it, Northerners were undermining the very fabric of the Constitution by stripping the Supreme Court’s decision of its legitimacy. Southerners reacted quite negatively to the rhetoric of both Lincoln and Douglas following the ruling. Mississippi Senator Albert G. Brown saw both Douglas’ and Lincoln’s designs to devalue the Supreme Court verdict as an indirect violation of his constitutional right to own property in the form of slaves: “I never agreed, after we had established rights [to slavery] by the decision of the Supreme Court, we were to be deprived of those rights by a congressional compromise.” Brown’s fellow Mississippi Democrat, Senator Jefferson Davis, was appalled at Douglas’s stance in particular. Davis attacked Douglas on the Senate floor for his “apostasy” from the Democratic party line and described him as being “full of heresy” for his Freeport Doctrine. Davis even moved to support Douglas’s removal from chairmanship of the Committee on Territories.

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11 Statutes at Large XII, The Dred Scott Decision: Law or Politics?, 109 (Stanley L. Kuder, 1967).
Southerners also saw the Northern response as a direct assault on a clearly defined constitutional right. "The right to have slave property in the territories is not a mere abstraction, without application or practical value," argued the Charleston Mercury, but among a slaveholder's "guarantees of the Constitution." The editorialist further articulated,

When a party is enthroned at Washington, whose creed is, to repeal the Fugitive Slave Laws, the under-ground railroad will become an over-ground railroad. The tenure of slave property will be felt to be weakened; and the slaves will be sent down to the Cotton States for sale, and the Frontier States enter on the policy of making themselves Free States. [sic]"

"The ruin of the South, by the emancipation of her slaves," expressed one Southerner, "is not like the ruin of any other people. It is not a mere loss of liberty . . . it is not a heavy taxation . . . . But it is the loss of liberty, property, home, country—everything that makes life worth having." Furthermore, the South saw the North's dismissal of the Dred Scott ruling not only as a powerful political attack, but a harbinger that the South was losing any foothold it may have maintained in Congress, where Northern Republicans had gained majority control. As Southern lawmakers saw it, the "tyranny of the majority" of Northern antislavery advocates would eventually gain enough political power to subvert Southern institutions. By the late 1850s, Southerners felt that it was only a matter of time before antislavery Republicans gained two-thirds control of the House and Senate, and with the election of 1860, control of the White House. Also, if the North could incorporate antislavery territories into the Union, in spite of Dred Scott, they would gain the three-fourths majority of states necessary to amend the Constitution. This fear of Republican Constitutional revisionism had represented a primary concern among Southern slave interests and underlay the importance of the territorial debate.

By the North's dismissing Dred Scott, Southerners believed that the North had subverted the Supreme Court and the Constitution of the United States.

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16 The Charleston Mercury, Oct. 11, 1860, at 151.
18 Id.
The decision had temporarily given Southerners new political life. Yet after the Northern reaction, they realized the instability of constitutional guarantee. With slavery gone, what else could the North take away? Stephens felt that

the Abolition or Anti-slavery Party under the name of Republican . . . succeeded in the election of the two highest officers of the Government, (in Lincoln as president and Johnson as vice-president) and pledged to carry out their principles, and to carry them out in open disregard of the decision of the Supreme Court, which highest Judicial Tribunal under the Constitution, had by solemn adjudication denied the power of the Federal Government to take such action as the party and its two highest officers stood pledged to carry out.\textsuperscript{a}

To Southerners, the Republican-led attack on their constitutional right to slavery (as supported by \textit{Dred Scott}) necessitated an institutional distrust of the federal government: The Union of States was no longer able and willing to uphold their rights as Americans. The eminent denial of slavery by the federal government would signify not only specific economic loss, but would serve to undermine the stability of Southern society in general and severely weaken the authority of state governments.

Unable to secure what they thought of as inalienable rights through the federal system, Southern leaders resorted to secession. The Congress of South Carolina, in an 1860 “Declaration of the Causes of Secession,” outlined the Northern attack on slavery as its foundational grievance. “Those [Northern] States have assumed the right of deciding upon the propriety of our domestic institutions; and have denied the rights of property established in fifteen of the States and recognized by the Constitution.”\textsuperscript{b}

Since 1787, most Southerners had viewed the Constitution as a legal agreement, a binding contract between the states. The protection of slavery, they asserted, had always been a term in that contract. The \textit{Dred Scott} decision of 1857 was seen as the true voice of the Constitution on slavery, which they felt the nation (North included) was committed to protect and preserve. Jefferson Davis, acting as the voice of the South in Congress, proposed

\textsuperscript{a} Alexander H. Stephens, \textit{A Constitutional View of the late War Between the States}, 28 (1870).
a resolution in the Senate on February 2, 1860, which would serve as a final invitation to the North to right its wrongs in terms of *Dred Scott* adherence and avoid Southern secession. Based on *Scott v. Sanford*, Davis's resolution outlined the constitutionality of territorial slavery and demanded in its fourth article that the federal government take all steps necessary to safeguard slavery in the territories. Yet, Davis's last-resort legislation was more a matter of principle than a specific statute. "Our right is equality and the duty of the general government is to give adequate protection to every constitutional right which was placed under its care," he later told an Alabama congressman. The Northern-controlled Congress obliged Davis's demand, but only after modifying the resolution to read that no "active" act of Congress be required to legislate slavery. By mid-1860, however, the tide of federal politics had already turned against the South, and Republicans began to demand that Congress ban slavery altogether, in spite of *Dred Scott*. Davis and other Southern leaders later resigned, submitting that the North's refusal to acknowledge the South's constitutional equality, in his mind, underlay the crisis.

**Conclusion**

*Dred Scott* was, for Southerners, a line drawn in the sand on slavery. When Northern Republicans responded to *Scott v. Sanford* by designating to ignore or overturn the decision, and gained the political leverage to do so, the North had disregarded a decision of the Supreme Court of the United States and, in Southern eyes, endangered constitutional rights. Senator Stephens of South Carolina declared that "the Constitutional Compact has been deliberately broken and disregarded by these non-slaveholding States . . . [which formed a 'Sectional Combination for the subversion of the Constitution'] and the consequence follows that South Carolina is released from her obligation." In other words, the South chose to secede from the contract between states rather than submit to an abuse of it. *Dred Scott* lay at the heart of Southern secession specifically because it was the sticking point in the section's constitutional defense of slavery. When it went, so did the South.

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* Cooper at 304–305.
* Id. at 306.
* Id.
* Id. at 323.
* Stephens 674 (id. at 675 for citation in brackets.)
Southerners felt they held the constitutional right, and the Supreme Court decision had proven it: The North was not following the rules.

As a result of the *Dred Scott* decision, antislavery forces rose up stronger and succeeded in polarizing the nation, North against slave-holding South. Northern Republicans were determined to eliminate what they saw as a grotesque and un-American institution, while Southerners sought to defend a Supreme Court decision and what they saw as their constitutional rights. With the abolitionist North set more firmly as a result, the *Charleston Mercury* reported that *Dred Scott* was for the South a “victory more fatal, perhaps, than defeat.”

The Supreme Court’s decision in *Scott v. Sanford*, argued through regular legal channels and decided upon the basis of documented constitutional grounds and decades of legal precedent by the highest court of the land, was an official and binding stamp of validity on the legal practice of slavery. Popular opinion—regardless of both contemporary Northern and modern views regarding the morality of slavery—and historical revisionism cannot blur the fact that a decision of the Supreme Court was systematically undermined in favor of majority views. *Dred Scott* should not be considered a black mark on the record of American jurisprudence solely because it upheld the practice of slavery. The nation’s refusal to give *Scott v. Sanford* heed, more than the decision itself, warrants a serious degree of historical self-examination.

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*Don E. Fehrenbacher, *Charleston Mercury*, April 20–21, 1857, 64 (1989).*