

Classifying Arguments Activity

Dred Scott v. Sandford (1857)

After reading the **background, facts, issue, and constitutional provisions and law**, read each of the arguments below. These arguments come from the briefs submitted by the parties in this case. If the argument supports the petitioner, Dred Scott (appealing his lawsuit for his freedom), write **D** on the line after the argument. If the argument supports the respondent, Sandford (claiming Scott was still an enslaved person), write **S** on the line after the argument. Work in your groups. When you have finished, determine which argument for each side is the most persuasive and be ready to give your reasons.

Arguments

1. The Constitution recognized the existence of slavery, particularly in the Three-Fifths Compromise. By classifying enslaved people differently than free individuals, the Framers must not have intended for those who are enslaved to be considered citizens. _____
2. Many states had laws that said when an enslaved person was moved to a free state, they became free. During this time there was a doctrine that said, “once free, always free.” _____
3. Under the Missouri Compromise all states and territories north of the boundary were free states. The Wisconsin Territory was free under this law. Illinois was a free state as a result of the Northwest Ordinance. When Emerson took Scott to Illinois, Scott became free and could not be re-enslaved when he went back to a slave state. Thus, Scott became free forever. _____
4. One of the rights guaranteed by the Constitution is the right of free movement, meaning citizens can travel wherever they want within the United States. Enslaved people obviously do not have the right to travel where they want; therefore, they cannot be citizens. _____
5. The Missouri Compromise was unconstitutional. The Fifth Amendment to the U.S. Constitution prohibits the government from taking away a person’s property without due process. This means that a person has the right to fair judicial hearings before their property is taken away. Therefore, the enslaved people owned by Emerson could not be taken away without due process because they were considered property. _____
6. The Constitution does not explicitly state that Black people—either enslaved or free—cannot be citizens. Scott was born in the United States, which makes him a citizen. _____

Dred Scott v. Sandford (1857)

Argued: February 11–18, 1856

Decided: March 6, 1857

Background

In the early 1800s, tensions were growing between states that supported slavery and those that opposed it. In 1803, France sold 828,000 square miles of land to the United States. This acquisition of land, called the **Louisiana Purchase**, nearly doubled the size of the country. As new states were created on the new land, tensions increased and debate emerged about whether the states should allow slavery.

By 1819, the United States was composed of 22 states. Of these states, 11 were slave states that allowed slavery, and 11 were free states that prohibited slavery. When Missouri asked to be admitted as a slave state, Congress was unsure of what to do. The Southern states wanted Missouri and the rest of the land from the Louisiana Purchase to be admitted as slave states to increase their political power. At the same time, the Northern states wanted the land to be admitted as free states due to their own desire for political power and their moral concerns about slavery.

In response, Congress created the **Missouri Compromise** in 1820. The law stated that Missouri would be admitted to the United States as a slave state, and Maine would be admitted as a free state at the same time to maintain the delicate political balance. The Missouri Compromise also established that all new states to the north of an imaginary line, known as the 36°30' north parallel, would be free states. This law was very controversial because the Southern states did not like that Congress was passing laws limiting slavery, and they worried Congress might eventually try to ban slavery altogether.

Facts

Dred Scott was an enslaved person who was owned by an Army surgeon named John Emerson. They resided in Missouri, which was a slave state. In 1834, the Army sent Emerson to Illinois, which was a free state, and then to the Wisconsin Territory where slavery was prohibited by the Missouri Compromise. In 1837, the Army reassigned Emerson to Louisiana, which was a slave state, and Emerson sent for Scott to join him. In 1840, Emerson's wife returned to St. Louis with Scott and the other enslaved people owned by her husband.

Emerson died in 1843, leaving all his property to his wife. Because enslaved people were considered property, Mrs. Emerson now owned Scott and his family. Scott tried to purchase his freedom from Mrs. Emerson, but she refused. In 1846, Scott sued her for his freedom in Missouri Circuit Court. He based his argument on the Missouri Compromise, which prohibited slavery in Illinois. Scott argued that when Emerson brought Scott and his family to Illinois, they became free and could not be re-enslaved when they returned to Missouri. A jury in the Circuit Court decided Scott's

arguments were valid and that he should go free. The Missouri State Supreme Court overturned that decision declaring that Scott was still enslaved.

Mrs. Emerson left Scott with her brother, John Sanford—for whom this case is named. However, due to a clerical error, Sanford's name was misspelled in court records as Sandford. In 1853, Scott once again sued for his freedom, this time in federal court. The court applied Missouri state law and concluded that Scott was still enslaved. Scott asked the Supreme Court of the United States to hear his case, and it agreed.

Issue

Is Dred Scott, a person who was born enslaved but later taken by his owner to live in a free state and a free territory, considered a citizen of the United States, and is he entitled to the rights and privileges guaranteed by the Constitution?

Constitutional Provisions and Law

- **Fifth Amendment to the U.S. Constitution**

“No person shall...be deprived of life, liberty, or property, without due process of law.”

- **Article I, Section 2 of the U.S. Constitution**

“Representation and direct Taxes shall be apportioned among the several States ... according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons... and excluding Indians not taxed, three fifths of all other Persons.”

Article I, Section 2 sets out how the members of the U.S. House of Representatives will be chosen. It states that the number of representatives each state gets will be determined by adding together the number of free people and three-fifths of all enslaved people residing within the state's boundaries. This is known as the **Three-Fifths Compromise**.

- **Article IV, Section 2 of the U.S. Constitution**

“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several states.”

This section is known as the **Privileges or Immunities Clause**. It is often interpreted to guarantee the right to travel between the states. It also ensures that states cannot discriminate against citizens of other states.

- **Missouri Compromise (1820)**

“Section 8. That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude... slavery and involuntary servitude... is hereby, forever prohibited. Provided always, That any person

escaping into the same... such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labour or services as aforesaid.”