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The Thirteenth, Fourteenth and Fifteenth Amendments and the Dred Scott Decision: An Unlikely Stop on the Way to Citizenship

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by J. Robert Osborne

On March 6, 1857 the Supreme Court of the United States announced its decision in the Dred Scott v. Sandford case. In the majority opinion Chief Justice Taney was attempting to once and for all deny the status of citizen under the United States Constitution for African Americans, slave or free, and leave it to individual states to determine the status of African Americans. He was seeking to exclude African Americans from the sovereignty granted citizens under the Constitution, regardless of a person's free or slave status, from all Constitutional protections by saying that they never were protected by the Constitution. Those protections that Taney said were denied African Americans were subsequently provided by the Thirteenth, Fourteenth and Fifteenth Amendments soon after the Civil War ended.

As Chief Justice of the Supreme Court, his overt denial of national sovereignty for African Americans finally put to paper what had been left unsaid for over two hundred years, that there was no possibility of the assumption of citizenship for African Americans under the Constitution. Up until Taney's searing words the references to the political status of people referred to as negro among other terms had all been indirect and not specifically nominative in the two national documents of governance, the Articles of Confederation and the United States Constitution. Slavery flourished where cotton was grown under that same Constitution. Taney made the question unavoidable and it is that event that forced the members of Congress, President Lincoln and then President Johnson and eventually the Supreme Court to acknowledge the political presence of millions of people and their full rights to citizenship of the United States.

When the states that became the Confederacy seceded in late 1860 and early 1861 there were only four states left in the Union where slavery was legal. In early 1862, the United States Congress began to deliberate in earnest the need for end of slavery in the states that had seceded. The Union was not going to remain uncommitted to the rights of African Americans and President Lincoln issued his own Emancipation Proclamation on January 1, 1863 freeing forever the people enslaved in the territory still occupied by the Confederate States of America. The status of freed men and women still needed to be addressed by the national government. Lincoln had committed the United States Army to their protection as part of the Emancipation Proclamation but there was clearly a need to formally end slavery in all states and grant full rights to the very people that Taney had denied.

Before Lincoln was assassinated the Thirteenth Amendment had been proposed abolishing the institution of slavery in the United States. After his death and during Reconstruction the Fourteenth and then the Fifteenth

Amendment were proposed and also ultimately ratified. The rights of former slaves and freedmen and women were not only added to protection by the United States Constitution but all states were also prohibited from abridging the "privileges and freedom or immunities of citizens of the United States" because "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States whereof they reside." The Fourteenth Amendment went further and prohibited any State from depriving any person of life, liberty, or property without due process of law as well as equal protection under the law." If Taney hadn't gone so far to articulate the exclusion of "former Africans and their descendants" then there may not have been such a comprehensive response as to the citizenship of those people he sought to exclude.

This curriculum unit is designed so that teachers can use the Supreme Court Decision as a link that links the ending of the first year of United States History that ends with the Civil War in New Haven with the beginning of the second year of United States History that begins with Reconstruction. The opinion of Chief Justice Roger Taney denying any hope of citizenship to all African Americans in 1857 was not only a precipitating event leading to the Civil War but its utter exclusion motivated the constituencies that opposed slavery to make sure that the people excluded by Taney and the Supreme Court would have those rights and that they would be protected by the three amendments to the Constitution that came from 1865 until 1870.

One of the larger issues that is impossible to fully delineate in this unit is the whole question of defining citizenship. The United States has had a very long and confused history of multiple definitions of what basic civil rights are after those seemingly protected by the Bill of Rights and an equally lengthy multifaceted history of trying to define what the term "citizen" actually means. There can be some additional lessons built around the issue of citizenship, Federal vs. State and the rights that should never be denied but somehow often are under the law of the land, the United States Constitution of seven Articles and twenty seven Amendments.

The Historical Context of Slavery in America Before the Constitution

Slavery was an elusive institution to define legally for early Americans. It evolved socially and economically as a local phenomenon and it became entrenched in certain areas of colonial America before there ever was a thought about the possibility of a national and independent government. The laws that governed it were local and the greatest authority responsible for those laws would have been the colonial legislatures and royal governors.

The institution of the plantation with slave labor was imported from the sugar islands of the Caribbean and supplied by the Atlantic Slave Trade. The men and women of African ancestry that worked as slaves on the plantation were thought of as someone else's property with limited rights and maximum accountability. The first consideration legally was to the rights of the slave owner and not the slave. The economic investment in a human being as a source of labor prioritized the retention of the slave and the return of the enslaved person if they sought to runaway to freedom. The other legal requirement for maintaining the plantation system was to construct a legal framework that had maintaining the public safety in case of slave rebellion as its first priority. Any rights of the slave were subsumed in meeting the two goals and in fact slaves were prevented from learning to read and to legally marry in order not to reduce their value as to a potential sale at anytime.

As slavery waxed and waned in different areas and immigrants of African ancestry came to America the freemen or non-slave Black population grew. Because dark skin color was associated with slavery the colonists of European descent were often suspicious of the free status of men and women who could have been enslaved and escaped. Papers were often required to prove manumission and status and the civil rights of freemen were precarious as opposed to those people of European descent. In the northern colonies the number of freemen, though relatively small, far exceeded the number of slaves after a time and in the southern colonies the number of slaves was much larger and far exceeded the small number of freemen.

Slavery was legal in all thirteen English colonies before the colonies declared their independence from Great Britain. Eventually, seven of the original colonies outlawed slavery but six retained it as an institution right up to the Civil War. When Thomas Jefferson, a slave owner, wrote the Declaration of Independence there was no reference to slavery although the document itself was to declare the independence of American colonists from Great Britain. Jefferson had written a short paragraph holding the King responsible for the institution of slavery in America but it was excluded at the behest of Southern slaveholders. The rights of man were not extended to the slaves in America. During the Revolutionary War, the British offered freedom, sanctuary and a rifle to any slave that would leave the plantation and fight for the British army. The British government saw the irony in the American slave owners claiming to be politically oppressed while economically, socially and legally oppressing the slaves they "owned".

The Second Continental Congress governed America throughout the Revolution and created the first national government according to The Articles of Confederation. During the time of the Articles prior to the adoption of the Constitution the Land Ordinance of 1785 and the Northwest Ordinance of 1787 established the process for land owned by the national government to be divided and sold and they established requirements for statehood. Congress declared that there was not to be slavery in the prospective states of the Northwest Territory, (then territory that became Ohio, Indiana, Illinois, Michigan and Wisconsin).

The Dred Scott Story and How It Became a Supreme Court Case

Dred Scott was born a slave sometime around 1800 in Virginia, owned by a family named Blow. They moved to Alabama and raised cotton before Dred and his owner, Peter Blow ended up in St. Louis, Missouri around 1830 where his master bought a boardinghouse. Mr. Blow died in 1832 shortly after his wife had died and the estate of Mr. Blow sold Dred Scott sometime in 1833. His new owner was Dr. John Emerson who was a surgeon in the Army. He was assigned first to Fort Armstrong in Illinois and then Fort Snelling in the Wisconsin Territory where Dred met and married Harriet Robinson. So far, Dred Scott, always a slave, had lived in three different slave states and one state and one territory where slavery had been abolished by the tenets of the Missouri Compromise of 1820 and the state and territorial legislatures.

Dr. Emerson was then transferred back to St. Louis in 1837 and then to Fort Jessup in Louisiana. He didn't like Louisiana and asked for a transfer with his new wife to Fort Snelling again. Dr. Emerson was then transferred to Florida and in 1842 he left the army and returned to St. Louis. He died in Iowa in 1843. The Scotts had returned with him to St. Louis and after he died they sued for their freedom because they had lived in territory where there was no slavery. That started the legal case that eventually found its way to the Supreme Court even though at that time the courts were generous in granting freedom to those slaves that had resided in free territory before they returned to the slave state of Missouri. (1)

The first time Dred Scott lived in free territory was in 1834 and it was a very different America at that time than it would be in 1846 when he filed his lawsuit. Twelve years had gone by and the tensions over the future of slavery in the territories the United States was acquiring were intensifying. Texas had joined the Union in 1845 and though few realized it at that time it would be the last state where slavery was legalized to be admitted to the Union. The United States was also about to go to war with Mexico in 1846 when the case started.

The Legal Path to the Supreme Court

On April 6, 1846 the Scotts case against the widow of Emerson was filed with the Missouri Circuit Court. There was uncertainty of who actually owned the Scotts and the case was decided in favor of Mrs. Emerson. In 1847, the attorneys for Scott asked for a new trial and added two more defendants to their case, a Mr. Russell and the brother of Mrs. Emerson, Mr. John Sanford (when the case was sent to the Supreme Court a clerk accidentally added a "d" to his name and Sanford became Sandford). The Scotts were granted a retrial but it was delayed by an appeal by the defendants and by the judicial system until 1850. It was now four years after the case was started and the national debate over the Compromise of 1850 was in full swing. Vast amounts of new territory had been acquired out West as a result of the Mexican American War and the Fugitive Slave Act of 1793 was about to be strengthened.

This time the jury found in favor of granting the Scotts their freedom but Mr. Sanford appealed the decision to the Missouri Supreme Court where it took another two years for the case to be heard. 1852 was also the years that the book, "Uncle Tom's Cabin" by Harriet Beecher Stowe became a national best seller.

The makeup of the Missouri Supreme Court had changed and the verdict in favor of Scott by the lower court was overturned. John Sandford had now moved to New York State and Scott's attorneys then filed a new case in Federal Court claiming that because Scott still lived in Missouri and he was suing a resident of another state that the Diversity of Citizenship clause in the Constitution called for Federal courts to decide cases between people from two different states. The judge that heard that case accepted it on its merits and then ruled, once again, in favor of Mr. Sandford. Scott's attorneys then filed an appeal to the United States Supreme Court.

The Supreme Court and the Dred Scott Decision

The Dred Scott Case reached the Supreme Court docket in late 1854 and for some reason the case wasn't argued before the Court until 1856. It was now 22 years since Scott had first lived in a free territory and his case hadn't been resolved. There was a Presidential election that year and the Democratic candidate James Buchanan became the fifteenth President of the United States. Congress passed the Kansas-Nebraska Act in 1854 and now "Popular Sovereignty" was the means for a territory to have its voters decide if they would apply for admission to the Union as a slave or free state. "Bloody Kansas" was suffering from a bitter controversy over the prospect of slavery and John Brown and his sons were fighting for the cause to end slavery there.

In 1856, Roger Taney of Maryland (a slave state) was the Chief Justice of the Supreme Court having succeeded Chief Justice John Marshall in that position when Marshall died in 1835. He was part of a majority of Justices from the South on the Court at that time. As the Attorney General in the early 1830s under President Andrew Jackson he had been dismissive towards the rights of negroes in his writings. Dred Scott, a slave, was having his case decided by judges from the part of the country where slavery was part of the fabric of life.

There are many rumors and speculations to this day about the conduct of the Justices and the President during the deliberations and many possible compromises failed before Chief Justice Roger Taney issued the majority opinion of the Supreme Court in the Dred Scott v. Sandford case. There were five legal questions to be decided in the case:

- 1) Did Dred Scott have the right as a citizen to sue in Federal Court?
- 2) If the Scotts were granted legal standing, were they citizens?
- 3) Did the Supreme Court acknowledge the Missouri Supreme Court decision?
- 4) If not, had the Scott's proven they were free under Missouri statute?
- 5) Was the Missouri Compromise that had Congress set the limits on where slavery was allowed valid under the United States Constitution? (2)

Somehow this relatively simple legal request for freedom had acquired legal and political importance far in excess of its humble beginnings.

The Majority Opinion as Expressed by Chief Justice Roger Taney

On March 6, 1857 almost eleven years after the Scotts had filed their case for the granting of freedom the Supreme Court issued its decision. Chief Justice Roger Taney read his decision to the Court, the Scotts and the attorneys and general public present. It was a crushing legal blow to Dred Scott himself and to the lives of African Americans, slave or free, in America and to all those that supported equality in the granting of civil rights and the end of slavery.

The Chief Justice asked this question:

"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." (3)

He answered this question and another when he stated:

"The question before us is, whether the class of persons described in abatement compose a portion of this people (citizens), 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 remain 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." (4)

In the opinion of the Supreme Court, negroes, "emancipated or not", were not citizens, they had not been included under the sovereignty of the Constitution and they could not claim any of the rights and privileges of citizens. The opinion also prohibits any rights granted by a particular State from governing the rights granted by another State. Taney then seeks to refer to the Declaration of Independence and its omission of any mention of negroes as further proof that when the Declaration, and later, the Constitution, did not acknowledge negro persons as part of the people then they were not considered as citizens at the nation's founding.

Taney's claim of disconnection from sovereignty as granted by the Constitution for all negroes was supported by the lines quoted below to attempt to explain why the Founding Fathers had not considered them worthy of any specific reference but as persons:

"They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations, and so far inferior, that they had no rights which the white man was bound to respect, and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at the time fixed and universal in the civilized portion of the white race." (5)

Taney's words, and some of the words expressed in other opinions supporting the decision are clearly dismissive of any possibility of change in status for negroes because the Constitution, as written, is the law of the land and that in the Court's opinion is the primary reason that their status will not change. His reasoning seems to be that if the negro is not specifically mentioned in either the Declaration of Independence or United States Constitution and that the negro was held as inferior at the time by the white man than there is no reason to think that the negro was not excluded by omission intentionally.

The dissent of Justice John Curtis carefully refutes Taney's arguments for exclusion and argues that the Constitution actually is the very instrument that grants the rights of citizenship to negroes. He cites the five states that had extended citizenship to negroes as proof that it was legal under the Constitution to do so. He then goes one step farther, and examines the question of citizenship itself and the rights of the States.

"One may confine the right of suffrage to white male citizens, another may extend it to colored persons and females, one may allow all persons above a prescribed age to convey property and transact business, another may exclude married women. But whether native-born women, or persons under age, under guardianship because insane or spendthrifts, be excluded from voting or holding office, or allowed to do so, I apprehend no one will deny that they are citizens of the United States. Besides, this clause of the Constitution does not confer on the citizens of one State, in all other States, specific and enumerated privileges and immunities."
(6)

Curtis is saying that States can include or exclude whoever they may decide to, but that doesn't mean that if two or more States are not in concurrence on that question, that citizens in either State have any more, or less right, to retain their citizenship. That State power, granted under the Constitution, therefore protects the citizenship and rights of the negroes in the five states he mentions and that is proof that negroes have been granted the rights of citizen under the Constitution. His opinion is a strong one in refuting Taney's opinion, that there are two distinct forms of citizenship, Federal and State, but it was one of only two dissenting opinions.

As to the denial of the status of citizen to negroes, the prevailing argument was that it was not the intent of the United States Constitution to grant sovereignty and the rights of citizenship to negroes and that precludes Dred Scott, or any other negro, from being granted the right to sue in Federal Court. Negroes did not have the legal status of citizen, it was unclear what their status was, and they did not have the protection of the privileges and immunities of the Constitution and the Bill of Rights. Then Taney offered an even longer opinion

on the conclusion that the limiting of slavery's expansion by Congress in the Missouri Compromise of 1820 was unconstitutional. The combination of these two conclusions from the United States Supreme Court in the Dred Scott decision in March of 1857 caused a storm of controversy and a further exacerbation of sectional tension. The South felt that slavery was vindicated and the North and African Americans were angry because they resented that fact and the accompanying further denigration of the rights of slaves and emancipated people. Both camps were forced to look to the Constitution as the vehicle for retaining the institution of slavery or abolishing it. Many people that wanted to end slavery stated to conclude that the amending of the Constitution was the only way to end slavery and protect the rights of those that were no longer enslaved and free.

The Impact of the Dred Scott Decision, the Civil War and the Amending of the Constitution

After the Dred Scott Decision was published and the majority opinion as written by Chief Justice Roger Taney was made public there was a veritable cataclysm of reaction from across the political spectrum and across the different parts of the then United States. It became the topic of conversation as proslavery people claimed that it once and for all vindicated the institution of slavery and the rights of slaveholders while excluding all blacks from the protection of the United States Constitution. Antislavery people were energized in their efforts to end slavery because the Taney Court had, in their eyes, sought to institutionalize slavery and encourage its growth into new territories. In 1857, as tensions were increasing, it became the political spark that was a major topic of the Lincoln Douglas Debates and it inspired John Brown to repudiate its findings in the Constitution he had prepared after the slave revolt he called for was successful. It was the topic of endless debates in the halls of the United States Congress and it became the rallying point for the Republican Party's opposition to the spread of slavery and its support of Abraham Lincoln as its Presidential Candidate in 1860 against a badly splintered remnant of the once nationally powerful Democratic Party.

What had become clear to most Americans was that the future role of the civil and political rights of blacks in this country was at stake and that the Supreme Court had come down on the side that wanted to limit or eliminate the possibility of those rights ever being realized. The South saw the decision as a victory and an endorsement of its way of life and the continuance of the institution of slavery. The Chief Justice of the Supreme Court had expressed what had been unexpressed, the Negro had no rights that a white man was obligated to acknowledge. If the rest of the Union couldn't accept that then they were prepared to go their own way. Many Northerners did not embrace that certitude but they were wary of extending any rights as a nation to the inhabitants of America whose ancestors were forced to come to this country from Africa as slaves. Those that opposed slavery saw the words of Taney as the proof that they needed to intensify their efforts to end slavery and address the future of blacks in this country whenever slavery was ended.

The continuing reaction to the decision was intense and powerful from all sides and it evolved in many different ways. Some of the proponents of slavery, and its expansion, saw the Dred Scott Decision as an endorsement of the enslavement of Negroes as it existed in fifteen different states and its refutation of the Missouri Compromise as the opening of the door to the expansion of slavery into the territories of the United States. They also chose to see the decision as vindication for their way of life and economic viability that was

not a part of everyday life in many parts of America.

Opponents of slavery slaves and freedmen and supporters of the Republican Party saw it as a threat to the nation because it seemed to suggest that there was no place for the negro but enslavement and that slavery would continue to be part of the national political, moral and economic future. "It is not too much to say that this decision revolutionizes the Federal Government, and changes entirely the relation which Slavery, has hitherto held towards it. Slavery is no longer local: it is national," wrote the New York Daily News. This reaction, as well other statements of concern by Republicans, were criticized by many Democrats and slavery supporters as dangerous and disrespectful of the political and judicial process under the United States Constitution. The New York Journal Commerce reported,

"Our republican friends have fairly raised the standard of resurrection, and are giving us the higher law in all its moods and tenses with a vengeance. They declare in every way shape that the decision in the Dred Scott case is not law, that the Judges who decided it don't know what law means, that their decision is absurd and nonsensical, oppressive and tyrannical, that nobody is bound by it, that nobody ought to obey it, and finally, that it should not be submitted toThe long and short of it is, that the so called Republican Party is only another name for Revolution and anarchy." (7)

The rhetoric was divisive, as the Dred Scott decision became the center of the national debate about its future, the future of slavery and the rights of Negroes, emancipated or enslaved. In the Lincoln Douglas Debates in Illinois the Dred Scott decision was one of the primary points of contention. Lincoln attacked the decision while Douglas supported it and then accused Lincoln of supporting equal rights for Negroes. Even though Douglas opposed the "Lecompton Constitution" for Kansas because it defied popular sovereignty with its call for legalizing slavery in Kansas, he steadfastly supported the Dred Scott decision and forced Lincoln to address the question of the rights of the Negro. In his book, *The Fiery Trial, Abraham Lincoln and American Slavery*, Eric Foner writes on page 95: "But the decision inspired him to elaborate his views on a subject he had said very little, the place of blacks in American society. Lincoln knew this question carried an explosive political charge. Soon after the Court issued its ruling, Stephen Douglas delivered impassioned speeches proclaiming that the Declaration of Independence and the Constitution had been written for whites and charging that Republicans who opposed the Dred Scott decision favored "perfect and absolute equality of the races."

Later on Foner, characterizes Lincoln's willingness to address the rights of the Negro and black citizenship

instead of the politically less volatile slavery expansion issue: "He denied that Taney had presented a plausible account of the founders racial outlook. Free blacks, he pointed out, echoing Justice McLean's dissent, had voted in several states at the time the Constitution was ratified, indicating that they were then viewed as part of the body politic. Taney, moreover, was "grossly incorrect" to imply that the "public estimate of the negro" had improved since the revolutionary era; "in fact the change between then and now is decidedly the other way." (8)

In his House Divided speech that he gave to begin his campaign for the Senate in Illinois, prior to the debates Lincoln attacked the Dred Scott decision as part of a conspiracy of Douglas, Presidents Pierce and Buchanan and Chief Justice Taney. Foner continues then with this thought: "Already, the Supreme Court had denied blacks the protection of the Constitution's comity clause requiring states to accord citizens of other states the same rights as their own. It had ruled that slavery could not be barred from any territory and that Scott's temporary residence in the free state of Illinois had not made him free. The final step would be a ruling that a master could lawfully bring his slaves into any free state for any length of time he desired. Once the Dred Scott decision had been "apparently indorsed by the people" (presumably by Douglas's reelection), such a ruling would be inevitable. "We shall lie down, Lincoln warned, 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 as made Illinois, a slave state." (9)

The prospect that the future President of the United States described was very much in the minds of many. The Supreme Court, the upholders of the Constitution as the law of the land, had endorsed the rights of the slaveholders and denied the rights of the enslaved and that had emboldened the South. John Brown, wrote his Constitution for the new state he hoped to create for former slaves he sought to encourage to rebel referred directly to the Dred Scott case.

"Whereas, Slavery throughout its entire existence in the United States, is none other than the most barbarous, unprovoked, and unjustifiable war of one portion of its citizens against another portion, the only condition of which are perpetual imprisonment, and hopeless servitude, or absolute extermination in utter disregard and violation of those eternal and self-evident truths as set forth in our Declaration of Independence: Therefore: We, the citizens of the United States and the oppressed people, who, by a recent decision of the Supreme Court (Dred Scott) are declared to have no rights which the white man is bound to respect, together with all the other people degraded by the laws thereof, do, for the time being, ordain and establish for ourselves the following Provisional Constitution and ordinances, the better to protect our people, property, lives and liberties that govern our actions."
(10)

In less than two years, Lincoln was elected, eleven states had seceded and formed the Confederate States of America taking the institution of slavery with them, but leaving four states, the Border states behind where slavery was legal, the Union had shrunk from 37 states to 26 and there were approximately 500,000 blacks left both free and slave within the Union. The rights and citizenship of those people and prospectively the enslaved people of the Confederacy had yet to be defined.

From the early stages of the war it was evident that as Federal troops captured Confederate territory and slaves were no longer held in slavery the Federal Government knew that it would have to have a policy for dealing with recently freed former slaves. At first, they sent them back to their owners but quickly the military, General Butler in particular, seized upon the idea that as potential aid to the enemy in the form of their labor that they should be prevented from working and instead place in Contraband Camps as confiscated property. Their tie to their former servitude was severed and the numbers grew as the Federal troops took more territory but their future had yet to be decided. They were in a form of economic and political limbo without any clear path to freedom.

In 1862, members of Congress first talked about emancipating the slaves and ending their servitude. By September 22, 1862 Lincoln was convinced that emancipation was the right way to go and he announced that on January 1, 1863 he would issue a military order that would free the slaves, now and forever, that were still held in Confederate territory, or hostile territory. The slaves in territory no longer hostile, or the slaves in the border states, were not emancipated by the Emancipation Proclamation. It was another step toward ending slavery if the North won the war and it got the Congress talking about what would happen when the war was over. By August of 1863 it seemed more likely that the war would be won by the North and serious debate started over permanently ending slavery for all and then how to address the issues brought out in the Dred Scott case, what were the rights of freemen going to be since slavery would no longer be legal and how to protect those rights. From the Dred Scott case and the willingness of the Supreme Court to support slavery there were few anti slavery people that felt the President's Emancipation Proclamation or an Act of Congress (like the Missouri Compromise) would be enough. Chief Justice Taney had taken the question of negro rights back to the Constitution and any possible rectifying of that question would require a Constitutional Amendment. In a sense, Roger Taney and the Court had created avoid and made it very clear to all that the best scenario for change would be the Constitution itself.

After Lincoln and the Republican Party won the election of 1864 the President and the leaders in the House and Senate could see more clearly the challenge before them. Slavery would only end with a Constitutional Amendment. Something would have to be done to protect the rights of the four and a half million about to be newly freed people and the South would have to be restored to the Union. Even for Lincoln after his management of the war and the nation it was a daunting task. Without him, it became a national nightmare. After Lincoln was assassinated and the war was over, the new President Andrew Johnson started encouraging the former Confederate states to return on pretty much their own terms to the Union. Almost immediately, the first governments of the former Confederate states started passing Black Codes to limit the rights of the negroes to be freed, or already free from servitude. The Thirteenth Amendment, ending slavery, was ratified in 1865 and it was clear to the recently freed people in the South that their freedom was already under attack.

President Johnson's racist views and southern sympathies antagonized the Republicans in Congress, particularly Thaddeus Stevens, the Speaker of the House, and he got Congress to pass The Civil Rights Act of 1867 to protect the rights of the freed people and then Johnson vetoed the Bill. Eventually the veto was overridden but that veto galvanized the radical Republicans in the country to pass a much more restrictive Reconstruction Bill to be imposed on the South and assign a committee to draft the 14th Amendment to bring

the rights of citizen to all people born in the United States or naturalized under the protection of the United States. Federal troops were dispatched to the five reconstruction zones in the South to insure compliance by the former Confederate states and local governments.

When the Fourteenth Amendment was passed and ratified in 1868 it became the Constitutionally legal protection of individual rights in the United States. Sections Two, Three and Four were written to address the specific situation the country faced at the Amendment's Ratification but Section One is still one of the primary legal mechanisms today in the protection of equal rights for all the people. After Grant was elected in 1868 and he successfully lobbied for the passage of the Fifteenth Amendment in 1869 giving the vote to all former and free male blacks in the United States, Grant was pleased that the legacy of Dred Scott had been altered forever. In his book, *The Day Freedom Died*, the historian Charles Lane wrote this:

"Grant's enthusiasm for the Fifteenth Amendment, though, went beyond expediency. When it won ratification on February 3, 1870 he exulted that the people had completed the eradication of the notorious Dred Scott decision, handed down by the Supreme Court in 1857, which had declared that neither slaves nor free men of color could be citizens of the United States. He called the amendment, "a measure of grander importance than any other one act of the kind from the foundation of our free government to the present day."

(11)

Curriculum Unit

Introduction

I have been teaching United States History 1 for the last seven years and for an additional three years before that. One of the most challenging aspects of teaching that course is how to establish a meaningful context for understanding the impact of slavery in America on the nation and the peoples of that nation from all backgrounds. We tell the story of Africans in the United States by teaching about slavery. We need to establish different perspectives on the early African American experience as freemen and also examine how the states and national government struggled with the implications of having millions of the population trapped in enslavement while their labor built the economy.

The "Middle Passage" brought Africans acculturated in Africa to the New World where they learned that they were now property to be enslaved and renamed. As one of my students said, "I get it. When my ancestors got on the boat they were Africans and when they landed in the New World they were niggers." That was the beginning for many slaves and the students of today don't understand the historical context well enough to establish perspective about what happened regardless of how they see themselves and imagine what was happening in many parts of the Americas in the past. The Atlantic Slave Trade was a major economic force and at the same time a powerful producer of human misery.

Telling this story is hampered by the differential in original materials between the relatively voluminous written artifacts of the enslavers and the much smaller library of written accounts describing what the enslaved and former slaves experienced. Equiano, Frederick Douglass and Solomon Northrop wrote down what they had seen and lived as eyewitnesses to read about and later Alex Haley's research and book "Roots" helped me to teach the sophomores I taught from a perspective closer to what may have been experienced by

Blacks in this country during slavery.

There are many important factors, thoughts and opinions that are important but they are also often ambiguous, contradictory and confusing that sophomores studying the early years of the United States through 1865 find it a real challenge to establish a meaningful understanding of the historical context of the time. Slavery existed in America from the 1600s until after the Civil War and all three of the founding documents of this country ignored it's presence or made veiled references to its particularities (particularly in the Constitution) except to utilize the presence of non voting slaves for purposes of establishing political power for the economic and political elite, not for the enslaved.

Most of my teaching about slavery in America has been about the cultural, social, moral and economic aspects of slavery and how people of those times acted and adjusted to the oppressive powerlessness and relentlessness of life as a slave. Since Blacks were excluded from most political and judicial positions in most colonies and then states there hasn't been a way to tie together the many issues of property, human rights, states rights, the expansion of slavery until this course. This course has provided the legal background needed to add the Law, the Judicial Process and the Supreme Court to what I have been teaching. It is a way to bring the continuity of a structured institution and its processes where the issues of slavery and manumission were examined away from the plantation to the historical context of what was happening to Blacks, enslaved and free in Antebellum America. For me, the culmination of this course is the critical relationship between the Majority Opinion in the Dred Scott v. Sandford Case before the Supreme Court on the Lack of Citizenship Rights for all Blacks as expressed by Chief Justice Roger Taney in bringing about the Thirteenth, Fourteenth and Fifteenth Amendments that sought to establish the very rights denied by the Supreme Court.

Lesson Plans

I plan to teach this unit to 10th Grade Honors Classes Next Year.

The classes meet every other day for 82 minutes.

I plan to take five full classes and the accompanying homework assignments to present and complete the unit itself.

It will be critical to provide the historical context to the students.

Throughout the course I plan to be providing the suitable historical context and buildup for this unit to be fully effective.

Goals for the Curriculum Unit:

- 1) To increase students' understanding of how the Supreme Court has worked historically.
- 2) To help students develop a greater understanding of race and slavery in America.
- 3) To improve students' appreciation of the legal and political relationships between the Federal Government and the States during the Antebellum Period in America.
- 4) To understand the particulars of the Supreme Court Case, Dred Scott v. Sandford and the potential impact of the Majority Opinion as expressed by Chief Justice Taney.

5) For students to realize that the exclusion of rights for all African Americans by Justice Taney created the impetus to legally define the rights of former slaves and freemen immediately after the conclusion of the Civil War.

Lesson One:

The teacher will start the first lesson with a Thought Question, (A Question Designed to Encourage Students to Think About the Question and Reflect Before They Answer by Writing what They Actually Think and Not What they Think the Teacher Wants Them to Know) that will ask the students to reflect on their Rights and where they may have come from?

Then there will be an opportunity to collect those thoughts and put them together on the Black Board to form a collective statement.

The students will then be given the two-page historical context background and they will read along as the teacher and other students take turns reading it.

Then there will be an extended discussion about the role of slavery in early America, the economic success of producing cotton with slave labor and the political obstacles that kept slavery protected as an Institution in many states in the growing United States.

The class will end with the teacher giving a concise description of the particulars of the Dred Scott v. Sandford Case that will be structured to inform the students of the key issues of the case, how it moved through the courts and when it was decided.

The students will write at least a three paragraph essay on what they think the outcome should be and why for homework. That will be the first assessment in the unit and it will help the teacher gauge what the students are thinking and how well they understand what has transpired in class.

Lesson Two:

The students will be asked to read excerpts from the Dred Scott Majority Opinion written by Chief Justice Taney and the Dissent by Justice Curtis.

At the beginning of class the class will be broken up into four groups. In one group, representatives of a slave state will discuss the pros and cons of both opinions and assess the possible impact.

Another group, representative of a state without slavery will do the same from their perspective.

The third group, representative of a territory where slavery is still a possibility will do the same from their perspective.

The fourth group, representative of cotton buyers from New England and England will also do the same from their perspectives.

After a discussion each group will elect two representatives to offer the group perspective and then participate in an exchange of perspectives with the representatives from the other groups.

In the last 15 minutes, each student will offer an individual analysis of the opinions themselves, the

perspectives of their groups and the class exchange. (Second Assessment)

The teacher will move from student to student assessing and suggesting and the students will then complete what they have started as homework for the next class.

After the second lesson the teacher can reflect on these questions listed below to stimulate their own thinking on this topic.

Questions:

- 1) How to most effectively tell the story of slavery from the state and national perspectives?
- 2) How to link the denial of rights to African Americans to the denial of rights of Native Americans and others less initially politically acceptable peoples?
- 3) How to find the balance between the details of the Dred Scott Case, the decision and the process of adopting the Amendments that came after the Civil War?

Lesson Three:

This lesson will be about the events leading up to the Civil War, the role of the Dred Scott Case in that lead up and what the situation was in June of 1861 when the eleven Confederate States had seceded from the United States and formed their own country. What were the major issues for each of the following right at the beginning of the Civil War?

- 1) The Cotton Plantation Owners in the Deep South
- 2) The Slaves on those Plantations
- 3) President Abraham Lincoln of the United States
- 4) President Jefferson Davis of the Confederate States of America
- 5) A Leader in the United States Congress
- 6) A Cotton Clothing Mill Owner in Lowell, Massachusetts
- 7) The Governor of Maryland, a Border State
- 8) A Farmer in Tennessee
- 9) An Immigrant Recently Arrived in New York City

In groups of three, students will brainstorm and share ideas about what the best course of action might be for the person they chose and what obstacles and decisions their person should anticipate. That will take ten minutes and then each group will in turn visit with two other groups at random for five minutes to share their thoughts and hear from others.

Then each group will highlight by writing on the Board what Conclusions they reached and what did they still wonder about for their person.

The homework for the night would be to collaborate and produce a written detailed list describing in detail what they learned about their own person and then other things they learned about the other groups' people. (Third Assessment)

Lesson Four:

Will start with a brief quiz on the particulars of the Dred Scott Case and the causes of the Civil War. (Fourth Assessment)

After they read the Emancipation Proclamation and before they read the Thirteenth, Fourteenth and Fifteenth Amendment the students will hear a lecture from their teacher on the evolution of thinking towards the creation of the amendments as the war intensified and the losses on both sides mounted, then the Thirteenth Amendment, the assassination of President Lincoln and the contrast between him and his successor, Andrew Johnson and the situation faced by the country after four years of war and division. Special attention should be paid to what the Dred Scott Decision denied the recently freed slaves and how that was going to be overcome.

There will be a class discussion about the situation many different groups of people faced and the class will start to put a list together of the challenges to be met at the end of the War and then during the period of putting the country back together, Reconstruction.

The homework for the students will be to come up with their own list of challenges faced at two points, Right After the End of the War and Lincoln's Assassination and the other during Reconstruction after the Thirteenth Amendment was adopted before the adoption of the Fourteenth and then the Fifteenth Amendment. (Fifth Assessment)

Lesson Five:

There will be two list headings on the Board and after attendance each student in turn will write one of the challenges they anticipated under each heading and initial it. The list will be assessed for originality in determining the challenges faced. (Sixth Assessment)

There will be a class discussion about the challenges faced before the students are asked to read the Fourteenth and Fifteenth Amendments.

They will then listen to the story from the teacher of how the Civil Rights Act of 1867, The Radical Reconstruction Bill was passed, the writing and adoption of the Fourteenth Amendment and what it set out to do and finally the Fifteenth Amendment.

Students will then write a question or questions they have after the unit is almost over and then they will read a question and call on a volunteer from the class that wants to try and answer the question asked. That should lead to some interesting exchanges and discussions.

The Final Homework for this lesson and the Curriculum Unit and the basis of the Seventh Assessment will be a five paragraph essay in which each student speculates about what is to come as a result of the three Amendments to the Constitution that came in order to establish the rights of former slaves to fill the void left by the opinion of Chief Justice Taney in the Dred Scott Decision. Will the Amendments protect the rights of people? What do they accomplish and what is missing?

Appendix

This curriculum unit will complete the first year of United States History I as required by Hill Regional Career Magnet High School and the New Haven Board of Education.

Since New Haven Follows the Connecticut Frameworks (Social Studies Curriculum Framework) the following Standards will apply:

CCSSELA-Literacy RH.9-10.1

CCSSELA-Literacy RH.9-10.2

CCSSELA-Literacy RH.9-10.3

CCSSELA-Literacy RH.9-10.4

CCSSELA-Literacy RH.9-10.5

CCSSELA-Literacy RH.9-10.6

CCSSELA-Literacy RH.9-10.7

CCSSELA-Literacy RH.9-10.8

CCSSELA-Literacy RH.9-10.9

CCSSELA-Literacy RH.9-10.10

The Three Amendments to the Constitution 1865-1870

Thirteenth Amendment (Proposed and Ratified in 1865)

Section 1

Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2

Congress shall the power to enforce this act by appropriate legislation.

Fourteenth Amendment (Proposed in 1866, Ratified in 1868)

Section 1

1 All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside.

2 No State shall make or enforce any law which shall abridge the the privileges or immunities of citizens of the United States;

3 nor shall any State deprive any person of life, liberty or property without due process of law;

4 nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being 21 years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3

No person shall be a Senator, or Representative in Congress, or elector of President or Vice-President, or hold any office, civil or military, under

the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of the State legislature, or as an executive or judicial of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress, may by a vote of two-thirds of each house, remove such disability.

Section 4

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing the insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid or insurrection or rebellion against the United States, or any claim for the loss of emancipation of any slave; but all such debts shall be held illegal and void.

Section 5

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Fifteenth Amendment (Proposed in 1869, Ratified in 1870)

Section 1

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude.

Section 2

The Congress shall have the power to enforce this article by appropriate legislation.

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