

Abraham Lincoln – Speech on the *Dred Scott* Decision

June 26, 1857

In his speech on the Dred Scott decision, delivered three months after the Supreme Court handed down its ruling in the case, Abraham Lincoln set forth why he thought the Court's decision was erroneous and why he thought it legitimate to criticize the decision. Recall that the Court's decision in Dred Scott was only the second time the Supreme Court had declared a federal law unconstitutional. Lincoln's references to "Judge Douglas" are to Stephen Douglas, the sitting Senator of Illinois. Lincoln would lose his campaign for Douglas's Illinois Senate seat in 1858 but defeat Douglas (and others) in the 1860 campaign for President.

. . . And now as to the Dred Scott decision. That decision declares two propositions—first, that a negro cannot sue in the United States courts; and secondly, that Congress cannot prohibit slavery in the Territories. It was made by a divided court—dividing differently on the different points. Judge Douglas does not discuss the merits of the decision, and in that respect I shall follow his example, believing I could no more improve on McLean and Curtis than he could on Taney.

He denounces all who question the correctness of that decision, as offering violent resistance to it. But who resists it? Who has, in spite of the decision, declared Dred Scott free, and resisted the authority of his master over him?

Judicial decisions have two uses: first, to absolutely determine the case decided; and secondly, to indicate to the public how other similar cases will be decided when they arise. For the latter use, they are called "precedents" and "authorities."

We believe as much as Judge Douglas (perhaps more) in obedience to and respect for the judicial department of government. We think its decisions on constitutional questions, when fully settled, should control not only the particular cases decided, but the general policy of the country, subject to be disturbed only by amendments of the Constitution, as provided in that instrument itself. More than this would be revolution. But we think the Dred Scott decision is erroneous. We know the court that made it has often overruled its own decisions, and we shall do what we can to have it overrule this. We offer no resistance to it.

Judicial decisions are of greater or less authority as precedents according to circumstances. That this should be so, accords both with common-sense and the customary understanding of the legal profession.

If this important decision had been made by the unanimous concurrence of the judges, and without any apparent partisan bias, and in accordance with legal public expectation, and with the steady practice of the departments throughout our history, and had been in no part based on assumed historical facts, which are not really true; or if wanting in some of these, it had been before the court more than once, and had there been affirmed and reaffirmed through a course of years,—it then might be, perhaps would be factious, nay, even revolutionary, not to acquiesce in it as a precedent.

But when, as is true, we find it wanting in all these claims to the public confidence, it is not resistance, it is not factious, it is not even disrespectful to treat it as not having yet quite established a settled doctrine for the country. . . .

Chief Justice Taney says:

"It is difficult at this day to realize the state of public opinion, in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted."

And again, after quoting from the Declaration, he says:

"The general words above quoted would seem to include the whole human family, and if they were used in a similar instrument at this day, would be so understood."

In these the Chief Justice does not directly assert, but plainly assumes as a fact, that the public estimate of the black man is more favourable now than it was in the days of the Revolution. This assumption is a mistake. In some trifling particulars the condition of that race has been ameliorated; but as a whole, in this country, the change between then and now is decidedly the other way; and their ultimate destiny has never appeared so hopeless as in the last three or four years. In two of the five States—New Jersey and North Carolina—that then gave the free negro the right of voting, the right has since been taken away; and in a third—New York—it has been greatly abridged: while it has not been extended, so far as I know, to a single additional State, though the number of the States has more than doubled. In those days, as I understand, masters could, at their own pleasure, emancipate their slaves; but since then such legal restraints have been made upon emancipation as to amount almost to prohibition. In those days legislatures held the unquestioned power to abolish slavery in their respective States; but now it is becoming quite fashionable for State constitutions to withhold that power from the legislatures. In those days, by common consent, the spread of the black man's bondage to the new countries was prohibited; but now Congress decides that it will not continue the prohibition, and the Supreme Court decides that it could not if it would. In those days our Declaration of Independence was held sacred by all, and thought to include all; but now, to aid in making the bondage of the negro universal and eternal, it is assailed and sneered at, and construed, and hawked at, and torn, till, if its framers could rise from their graves, they could not at all recognize it. All the powers of earth seem rapidly combining against him. Mammon is after him; ambition follows, philosophy follows, and the theology of the day is fast joining in the cry. They have him in his prison-house; they have searched his person, and left no prying instrument with him. One after another they have closed the heavy iron doors upon him; and now they have him, as it were, bolted in with a lock of a hundred keys, which can never be unlocked without the concurrence of every key; the keys in the hands of a hundred different men, and they scattered to a hundred different and distant places; and they stand musing as to what invention, in all the dominions of mind and matter, can be produced to make the impossibility of escape more complete than it is. It is grossly incorrect to say or assume that the public estimate of the negro is more favourable now than it was at the origin of the government. . . .

Chief Justice Taney, in his opinion in the Dred Scott case, admits that the language of the Declaration is broad enough to include the whole human family; but he and Judge Douglas argue that the authors of that instrument did not intend to include negroes, by the fact that they did not at once actually place them on an equality with the whites. Now this grave argument comes to just nothing at all, by the other fact that they did not at once, nor ever afterward, actually place all white people on an equality with one another. And this is the staple argument of both the

Chief Justice and the senator, for doing this obvious violence to the plain, unmistakable language of the Declaration.

I think the authors of that notable instrument intended to include all men, but they did not intend to declare all men equal in all respects. They did not mean to say that all were equal in colour, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness in what respects they did consider all men created equal,—equal with "certain inalienable rights, among which are life, liberty, and the pursuit of happiness." This they said, and this they meant. They did not mean to assert the obvious untruth that all were then actually enjoying that equality, nor yet that they were about to confer it immediately upon them. In fact, they had no power to confer such a boon. They meant simply to declare the right, so that the enforcement of it might follow as fast as circumstances should permit.

They meant to set up a standard maxim for free society, which should be familiar to all and revered by all,—constantly looked to, constantly laboured for, and, even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colours everywhere. The assertion that "all men are created equal," was of no practical use in effecting our separation from Great Britain; and it was placed in the Declaration, not for that, but for future use. Its authors meant it to be as, thank God, it is now proving itself, a stumbling-block to all those who in after times might seek to turn a free people back into the hateful paths of despotism. They knew the proneness of prosperity to breed tyrants, and they meant, when such should reappear in this fair land and commence their vocation, that they should find left for them at least one hard nut to crack. . . .