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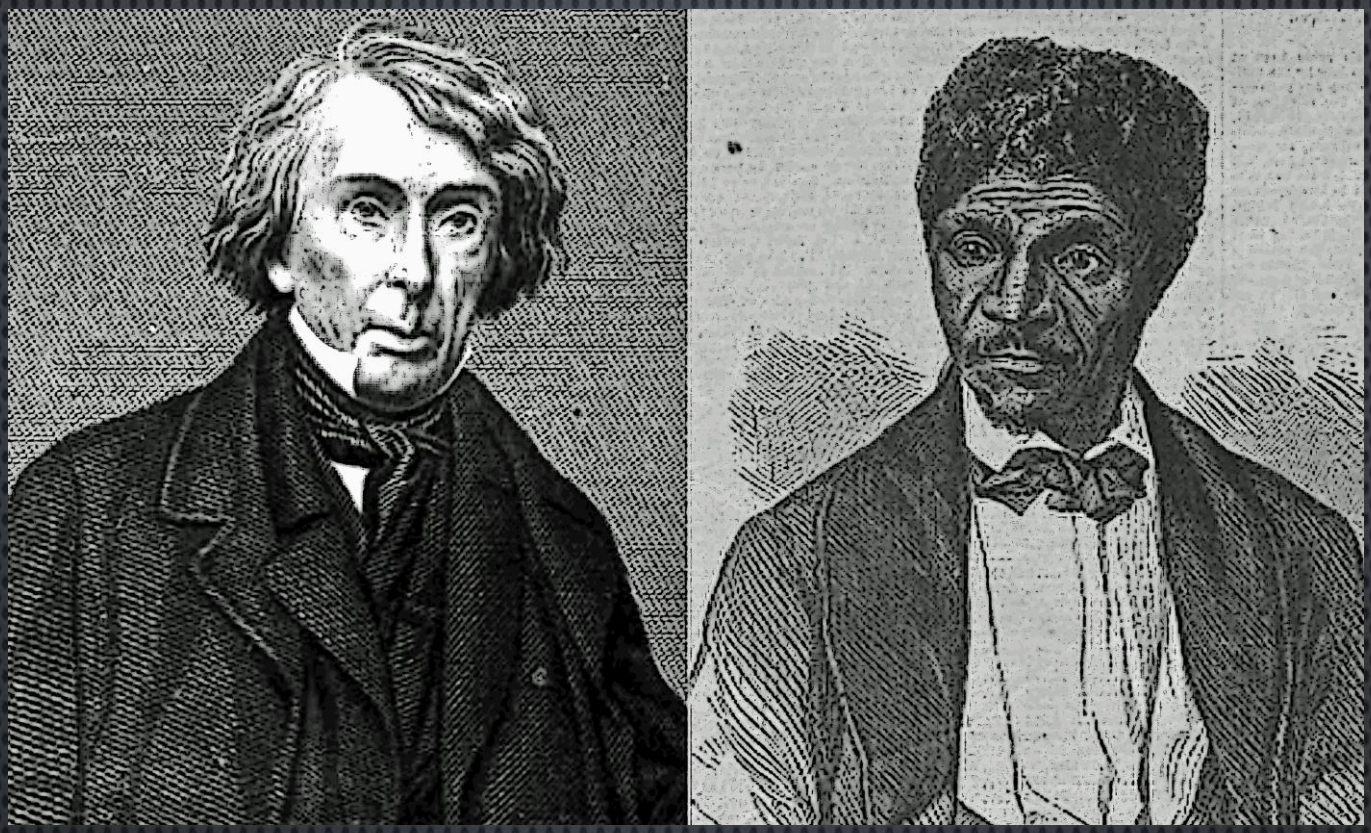

Lawful Extremism

Extremist Ideology and the Dred Scott Decision

J.M. BERGER

NOVEMBER 2023

Middlebury Institute *of*
International Studies at Monterey

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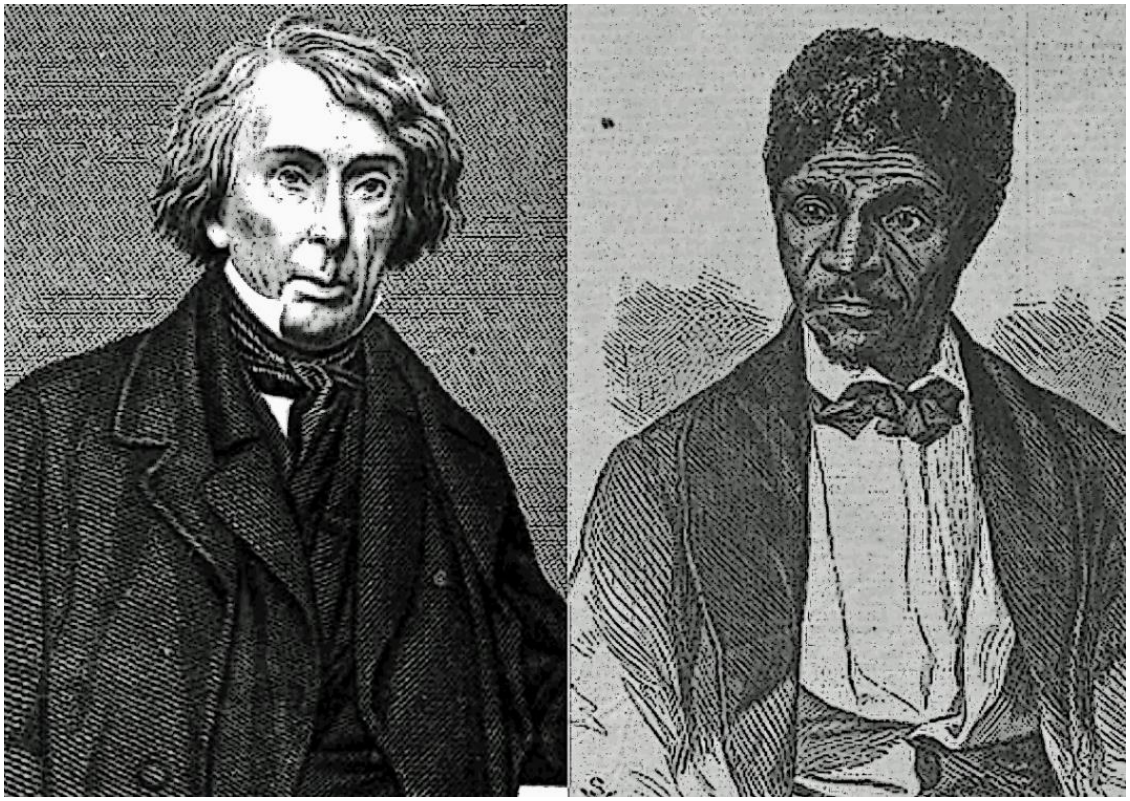

Figure 1: Supreme Court Chief Justice Roger B. Taney, left. Dred Scott, right. Sources: Library of Congress.

J.M. Berger, November 2023

An occasional paper from the Center on Terrorism, Extremism, and Counterterrorism (CTEC) at the Middlebury Institute of International Studies

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Center on Terrorism, Extremism, and Counterterrorism

CTEC is a research center that applies advanced analytical approaches to deepen academic, tech, and policymakers' understanding of challenging emergent extremism threats. Founded in 2018 and based at the Middlebury Institute of International Studies, CTEC researchers mentor the next generation via internship and fellowship opportunities for students in the Middlebury Institute's Nonproliferation and Terrorism Studies degree program. CTEC is a mixed-methods research center, meaning that our experts and students use analytic tradecraft, data science, and linguistics to closely examine extremist patterns and trends. CTEC is poised to remain at the forefront of terrorist threat mitigation as center experts work with legislators, law enforcement entities, and intelligence agencies to build safeguards against emerging risks associated with anti-government extremist actors.

About the Author

J.M. Berger is a writer and researcher focused on extremism as a Senior Research Fellow for the Center on Terrorism, Extremism, and Counterterrorism at the Middlebury Institute of International Studies. His research encompasses extremist and terrorist ideologies and propaganda, including social media and semantic analytical techniques. He is the author of four critically acclaimed books, including *Extremism* (2018) and *Optimal* (2020). Berger is also a research fellow with VOX-Pol and a PhD candidate at Swansea University's School of Law, where he studies extremist ideologies.

Acknowledgements

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Abstract

Can legal codes and court rulings function as extremist ideological texts?

Academics usually define extremism as a set of beliefs that fall outside the norms of the society in which they are situated, but entire societies have at times been organized around recognizably extreme beliefs. This paper will examine the U.S. Supreme Court decision in *Scott v. Sandford*, 60 US 393 (1856), more commonly known as the Dred Scott decision. Widely considered the worst Supreme Court decision of all time, the opinion written by Chief Justice Roger B. Taney decreed that Black people, whether enslaved or free, could never become citizens of the United States and that they had no rights under the Constitution.

This paper will analyze the Dred Scott decision to consider whether and how it implements and institutionalizes many widely recognized tropes of extremist ideology. The paper will conclude with a discussion of empirical frameworks that can enable and empower the study of lawful extremism.

1. Introduction

Few people arguing in good faith would dispute that modern ideological White supremacy is rightly classified as extremism. But that consensus does not extend to historical White supremacy. Ask a scholar of history or extremism whether the practice of chattel slavery in the United States should be considered extremism. The discussion will often include qualifications and complexities, in many cases ending with an answer of "no."

While there is no consensus definition, a plurality of academics define extremism in relative terms—as the opposite of "mainstream," stipulating conditions such as "extreme views and actions which radically diverge from social norms and rules,"[1] "motivated deviance from general behavioral norms,"[2] and "deviancy from a general pattern of behavior or attitude that prevails in a given social context."[3] According to these definitions, ideological White supremacy in 18th and 19th Century America cannot be considered extremist because it was a widespread and dominant belief of the day.

What relativistic scholars may find hard to clearly answer is "precisely when did White supremacy become extremism?" and "if White supremacy is revived as a dominant social norm in the United States in the future, would it stop being extremism, and if so, when?" Relativistic approaches also beg the question: "Whose norms?" In the words of poet and songwriter Oscar Brown Jr.:

> If you truly love your country, love it enough to know the truth about it. And to know the truth about America, surely you have to know the truth about slavery in America. And to arrive at that, you can't just listen to the testimony of the slave master. There's another witness.[4]

Aptly, the relative framing of the word "extremist" originated in the debate over slavery. The English-language word was first popularized by U.S. Senator Daniel Webster, who characterized both pro- and anti-slavery activists as violent extremists in an 1850 speech before the Senate.[5] He did not address the fact that violence—and enslavement is surely violence—was integral to the goals of one side but not the other.

Ideological movements, extremist or otherwise, can seize and lose power many times over the course of their history, while still being recognizably the same type of movement. Consider Nazism, on the political fringes in the 1920s, at its peak in the 1940s, after its downfall in the 1950s, and as it exists today. Within a span of decades, the Nazi Party went from the fringes to the center of German society, and back again. Did the Nazis temporarily stop being "extremist" at some point between 1920 and 1950?

Social Identity Theory (SIT) allows us to consider such movements as categorically continuous regardless of fluctuations in popularity, status, or raw power. SIT offers an alternative framing for the concept of extremism, one based on observed similarities

among movements almost universally understood to be extremist—from neo-Nazis and Christian Identity to al Qaeda and the Islamic State organization, and beyond.

SIT-based definitions of extremism hold that the phenomenon is best understood as a set of beliefs that invariably leads to intergroup conflict. In this paper, I will apply an SIT-based analytical framework to the 1857 U.S. Supreme Court decision in *Scott v. Sandford* (more commonly known as the Dred Scott decision). In doing so, I seek to demonstrate the utility of SIT-based definitions of extremism when analyzing texts that support a dominant political movement and examine whether such a definition improves our understanding of extremism as a broader phenomenon.

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This paper will also compare and contrast majority or dominant extremist movements with minority or fringe extremist movements, interrogating whether their differences justify the classification of historically lawful White supremacy as categorically distinct from modern forms of ideological White supremacy.

The paper will conclude with a discussion of why the idea of "lawful extremism" matters and how it can inform our understanding of current and historical extremist movements.

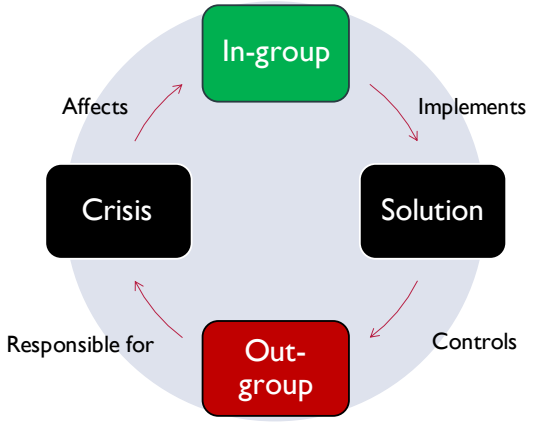


Figure 2: The extremist "system of meaning."

1.1. Terms and definitions

For the purposes of this paper, the following terms and definitions will be used:

- In-group: The group to which one belongs.
- Out-group: A group that is excluded from the in-group.
- Extremism: The belief that an in-group can never be healthy or successful unless it is engaged in hostile action against an out-group.[6]
- Extremist in-group: A specific extremist movement, such as the Ku Klux Klan.
- Eligible in-group: The broad identity to which an extremist movement appeals. For instance, the Ku Klux Klan's eligible in-group would be "White Christian Americans" or "White Protestant Americans," depending on the era.
- System of meaning: In an extremist system of meaning, an eligible in-group is depicted as subject to threat by a crisis that is blamed on an out-group or -groups. The extremist in-group says the crisis can be solved by taking hostile action against the out-group or -groups.[7]
- Lawful extremism: The belief that a legally dominant in-group can never be healthy or successful unless it is engaged in hostile action against a legally marginalized out-group. Lawful extremism is simply a form of extremism that emerges when extremists control a society's cultural and legal levers of power.

Aside from direct quotes, this paper will refer to the key racial identities described in the decision as White people and Black people.

1.2. Methodology

A close reading of the Dred Scott decision and supporting documents was supplemented with analysis using the semantic tool Sketch Engine to identity and quantify conceptual elements of extremist ideologies.

These elements and their related systems of meaning were then analyzed using Linkage-Based Analysis (Ingram, 2016; Berger, 2017).[8] Key social identity concepts found in the text of the majority Dred Scott decision were coded then graphed in NodeXL in order to show whether and how concepts associated with extremism are found in the text and how those concepts and related language link to each other.[9]

While the most quotable portions of the Dred Scott decision concern social identity concepts, including race and the privileges associated with race, the decision also contains a substantial analysis of questions pertaining to jurisdiction and the Constitutionality of the Missouri Compromise. The legal significance of this content will be discussed briefly, but its direct relevance to racial ideology is less clearly enunciated in the text, and those sections of the opinion will not be analyzed in the same detail.

1.3. *Scott v. Sandford*: A brief history

Dred Scott and his wife, Harriet, were enslaved Black people born in Virginia. Their enslaver, John Emerson, traveled with them to the free state of Illinois and the free Territory of Wisconsin (now Minnesota) during the 1830s, where they lived for some time. While traveling, Emerson treated both of them as slaves, potentially in violation of local and federal laws, specifically including the Missouri Compromise of 1820, a federal law primarily intended to maintain a balance in the U.S. Congress between slave states and free states, which banned slavery in U.S. territories north of latitude 36 degrees 30'.

Emerson subsequently moved Dred and Harriet Scott to Louisiana. The couple had two daughters, one of whom was born in free territory. The family was subsequently moved to Missouri, a slave state. In 1846, three years after Emerson's death, Dred Scott tried to buy his family's freedom from Emerson's widow, Eliza. When his offer was rebuffed, Scott attempted to sue for his freedom on the grounds that he and his family had become free during their time living in free territories.

A number of technical factors buttressed Scott's claim, which was not particularly exceptional,[10] although his argument was perceived to be undercut by the fact that he had not contested his enslavement while his family was living in a free territory.[11]

Thousands of other enslaved people had filed such “freedom suits,” often successfully, but Scott’s lawsuit and the subsequent Supreme Court ruling against him and his family became a critical flashpoint in tensions over slavery.[12]

The timeline of the case is as follows:[13]

- 1846: Dred and Harriet Scott file first freedom suit in Missouri state court.
- 1847: Case is thrown out on a technicality and a retrial is ordered.
- 1850: The Scotts win their second freedom suit. Their enslaver appeals to the Missouri Supreme Court.
- 1852: The Missouri Supreme Court overturns the lower court decision and denies the Scotts their freedom.
- 1853-1854: The Scotts file a new case in federal court. Their enslaver argues to throw out the case because Scott is not an American citizen and thus has no standing to sue in federal court. The court allows the suit to proceed but ultimately rules that the Scotts must remain enslaved. The case is again appealed, this time to the U.S. Supreme Court.
- 1857: The Supreme Court issues its ruling.

The Dred Scott decision held that the Missouri Compromise was unconstitutional, that Congress had no authority to ban slavery in U.S. territories, and most significantly that Black people could never be citizens of the United States or enjoy the rights and privileges associated with citizenship.

Eliza Emerson was the defendant in the original case, but she subsequently left Missouri, and the case continued with her brother, John F.A. Sandford, as defendant. Emerson married Massachusetts state representative and abolitionist, Calvin Chaffee, who was apparently unaware that his wife’s family was in court defending the continued enslavement of the best-known enslaved person in America.

Under fire for hypocrisy from his political critics, Chaffee arranged for the Scott family to be freed in 1857, shortly after the decision was issued. Dred Scott died of tuberculosis soon after, in 1858. Harriet Scott lived to see the Civil War and the Constitutional abolition of slavery in America before she died in 1876.

330. Library of Congress LC-USZ62-79305 (entire page)

FRANK LESLIE'S

ILLUSTRATED

NEWSPAPER

No. 82.—VOL. IV.] NEW YORK, SATURDAY, JUNE 27, 1857. [PRICE 6 CENTS.

TO TOURISTS AND TRAVELLERS.

We shall be happy to receive personal narratives, of land or sea, including adventures and incidents, from every person who pleases to correspond with our paper.

We take this opportunity of returning our thanks to our numerous artistic correspondents throughout the country, for the many sketches we are constantly receiving from them of the news of the day. We trust they will spare no pains to furnish us with drawings of events as they may occur. We would also remind them that it is necessary to send all sketches, if possible, by the earliest conveyance.

VISIT TO DRED SCOTT—HIS FAMILY—INCIDENTS OF HIS LIFE—DECISION OF THE SUPREME COURT.

WHILE standing in the Fair grounds at St. Louis, and engaged in conversation with a prominent citizen of that enterprising city, he suddenly asked us if we would not like to be introduced to Dred Scott. Upon expressing a desire to be thus honored, the gentleman called to an old negro who was standing near by, and our wish was gratified. Dred made a rude obeisance to our recognition, and seemed to enjoy the notice we expended upon him. We found him on examination to be a pure-blooded African, perhaps fifty years of age, with a shrewd, intelligent, good-natured face, of rather light frame, being not more than five feet six inches high. After some general remarks we expressed a wish to get his portrait (we had made efforts before, through correspondents, and failed), and asked him if he would not go to Fitzgibbon's gallery and have it taken. The gentleman present explained to Dred that it was proper he should have his likeness in the "great illustrated paper of the country," overruled his many objections, which seemed to grow out of a superstitious feeling, and he promised to be at the gallery the next day. This appointment Dred did not keep. Determined not to be foiled, we sought an interview with Mr. Cross, Dred's lawyer, who promptly gave us a letter of introduction, explaining to Dred that it was to his advantage to have his picture taken to be engraved for our paper, and also directions where we could find his domicile. We found the place with difficulty, the streets in Dred's neighborhood being more clearly defined in the plan of the city than on the mother earth; we finally reached a wooden house, however, protected by a balcony that answered the description. Approaching the door, we saw a smart, tidy-looking negress, perhaps thirty years of age, who, with two female assistants, was busy ironing. To our question, "Is this where Dred Scott lives?" we received, rather hesitatingly, the answer, "Yes." Upon our asking if he was home, she said,

"What white man arter dad nigger for?—why don't white man 'tend to his own business, and let dat nigger 'lone? Some of dese days dey'll steal dat nigger—dat are a fact."

ELIZA AND LIZZIE, CHILDREN OF DRED SCOTT.

DRED SCOTT. PHOTOGRAPHED BY FITZGIBBON, OF ST. LOUIS.

HIS WIFE, HARRIET. PHOTOGRAPHED BY FITZGIBBON, OF ST. LOUIS.

Figure 3: The Scott family, depicted in an 1857 newspaper. Source: Library of Congress.

2. Legal opinions as persuasion

Supreme Court opinions are formalistic documents that establish binding legal precedent with the force of law, but they are also "reasoned arguments intended to persuade," according to Erwin Chemerinsky, dean of the UC Berkeley School of Law. One element of Supreme Court rhetoric is the attempt to make opinions "appear consistent with precedent, even when they are not."[14]

"A crucial part of any rhetorical enterprise is the audience," Chemerinsky notes. "Rhetoric exists to persuade an audience."[15]

Documentary evidence clearly shows that the entire nation was the intended audience for the Dred Scott decision. During the Court's deliberations, President-elect James Buchanan pressured the Court to conclude the case with a sweeping and definitive ruling about slavery, writing to multiple justices to urge a decision that would broadly clarify the status of Black people in America. Scant weeks before the decision was rendered, Justice John Catron wrote to Buchanan that the Court "will decide & settle a controversy which has so long and seriously agitated the country."[16]

While Buchanan's behind-the-scenes maneuvers were kept secret, oral arguments and newspaper coverage made clear the case's broader cultural, political and legal context.[17] Nevertheless, some contemporary observers expected a narrow decision in favor of Sandford, predicated on the fact that Scott had not attempted to litigate his status at the time he was returned to Missouri from Illinois.[18] A number of other legal approaches were available to resolve the case without setting a groundbreaking precedent, had the Court wished to do so.[19]

In the end, the decision was anything but narrow, looking past the question of whether residency in a free state negated an individual's enslavement and reframing the issue far more broadly. Writing for the majority, Chief Justice Roger B. Taney's ruling established with full force of law that Black people, free or enslaved, could not be citizens of the United States and that they were therefore entitled to none of the rights and privileges afforded to citizens under the Constitution.

In a concurring opinion, Justice James M. Wayne wrote that the expanded scope of the decision was necessary to ensure "the peace and harmony of the country" by conclusively resolving the increasingly polarized debate over slavery. The ruling is widely understood to have had the opposite effect, inflaming and accelerating a looming political crisis that would soon culminate in secession and Civil War.[20]

3. Law as ideology

The road from persuasion to ideology is short and straight.

Much has been written about the relationship between law and ideology, with the latter traditionally understood to be "the integrated assertions, theories and aims that constitute a sociopolitical program."[21] Sociopolitical programs necessarily include some mix of persuasion and compulsion in order to align a population's activity. Ideological texts do not typically exist in a vacuum. They are almost always written to persuade large numbers of people to follow certain rules, values, and imperatives.

Law is generally understood to be shaped by ideology in the sense that ideological values obviously influence the authors of law at both legislative and judicial levels. But the law is also commonly understood as a *source* of ideology, since it articulates and structures ideological concepts into real-world applications.[22] The law "embodies and reinforces ideological assumptions about human relations," in the words of race and civil rights scholar Kimberlé Williams Crenshaw.[23]

The Dred Scott majority opinion is an ideological text in every meaningful sense. It proceeds from and articulates a clear and specific White supremacist, anti-Black ideology. While it reflects the pro-slavery ideologies circulating widely in the United States at the time, it also formalizes elements of those ideological strains into binding legal precedent.

Limiting this discussion to the context of extremism as defined in this paper, an extremist ideology can be understood as a text that defines both an in-group and an out-group, and stipulates a program of perpetual hostile action against the out-group.[24] Using this framework, we can clearly identify the extremist ideological dimensions of the majority opinion in *Scott v. Sandford*. In the sections that follow, I will examine the opinion to demonstrate how its rhetorical components match the elements of extremism and the structure of an extremist "system of meaning."

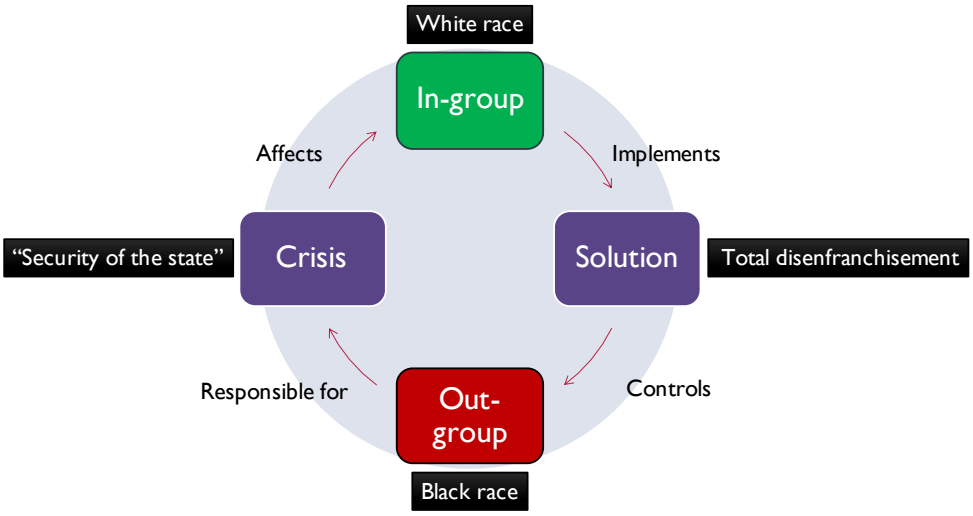


Figure 4: The system of meaning found in the Dred Scott decision.

4. System of meaning

In the Dred Scott decision, Taney argues that his in-group (White American citizens) can only be healthy and secure if all members of an out-group (Black people living in America) are excluded from the rights and privileges of American citizenship.

In an extremist system of meaning, an in-group is perceived to be threatened by a crisis that is attributed to an out-group or -groups. The in-group then tries to solve the crisis by taking hostile action against the out-group or -groups. All of the elements of an extremist "system of meaning" (Ingram, 2016) are found in Taney's opinion. These include:

- In-group: American citizens, a status only available to White people
- Out-group (primary): Black people
- Out-group (secondary): Native Americans
- Crisis: Allowing Black people the rights and privileges of American citizenship would endanger "the peace and safety of … the union"
- Solution/hostile action: Deny Black people all of the rights and privileges associated with citizenship

Taney leverages the specific circumstances of *Scott v. Sandford* to proactively deny all of the rights and privileges of citizenship to all Black people, enslaved and free. In the course of his efforts to defend the legitimacy of the slave state's status quo, Taney authored an ideological document that supported and escalated White nationalism and anti-Blackness.

4.1. In-group and out-group

The Dred Scott decision lays out unambiguous distinctions in legal status and privilege between a White in-group and a Black out-group. In the starkest of terms and backed by the authority of the Court, the opinion ruled that Black people could not enjoy the rights and protections associated with United States citizenship. Drawing on history and precedent, Taney ruled that the role of citizen, as understood during the framing of the Constitution, was reserved exclusively for White people.

"Citizenship at that time was perfectly understood to be confined to the white race," he wrote, describing the White race as "civilized," "free," members of a "free race," and "sovereign" people, or part of the American "sovereignty." Taney noted that while White men enjoy the full range of rights and privileges associated with citizenship, White women and children were also citizens in a more limited sense, entitled to fewer prerogatives than their male counterparts. This lesser tier of citizenship was also denied to Black people under the ruling.

Taney describes Black people more extensively than White people, repeatedly describing Black people as "unhappy," "degraded," "inferior," "subjugated," "subordinate," "unfortunate," and "stigmatized." Several terms are used to refer to Black people throughout the opinion, including "negro," "persons of color," the "African race," "property," and "an ordinary article of merchandise."

Taney defended his assertion that Black people were excluded from citizenship by citing a large body of precedent, summed up in the following, notorious paragraph:

> [Black people] 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.[25]

Taney frames his characterizations as historical, thus superficially disclaiming responsibility for these views, arguing instead that he has faithfully recorded the views of America's founders. This claim is further examined in section 4.4.2. and section 5.

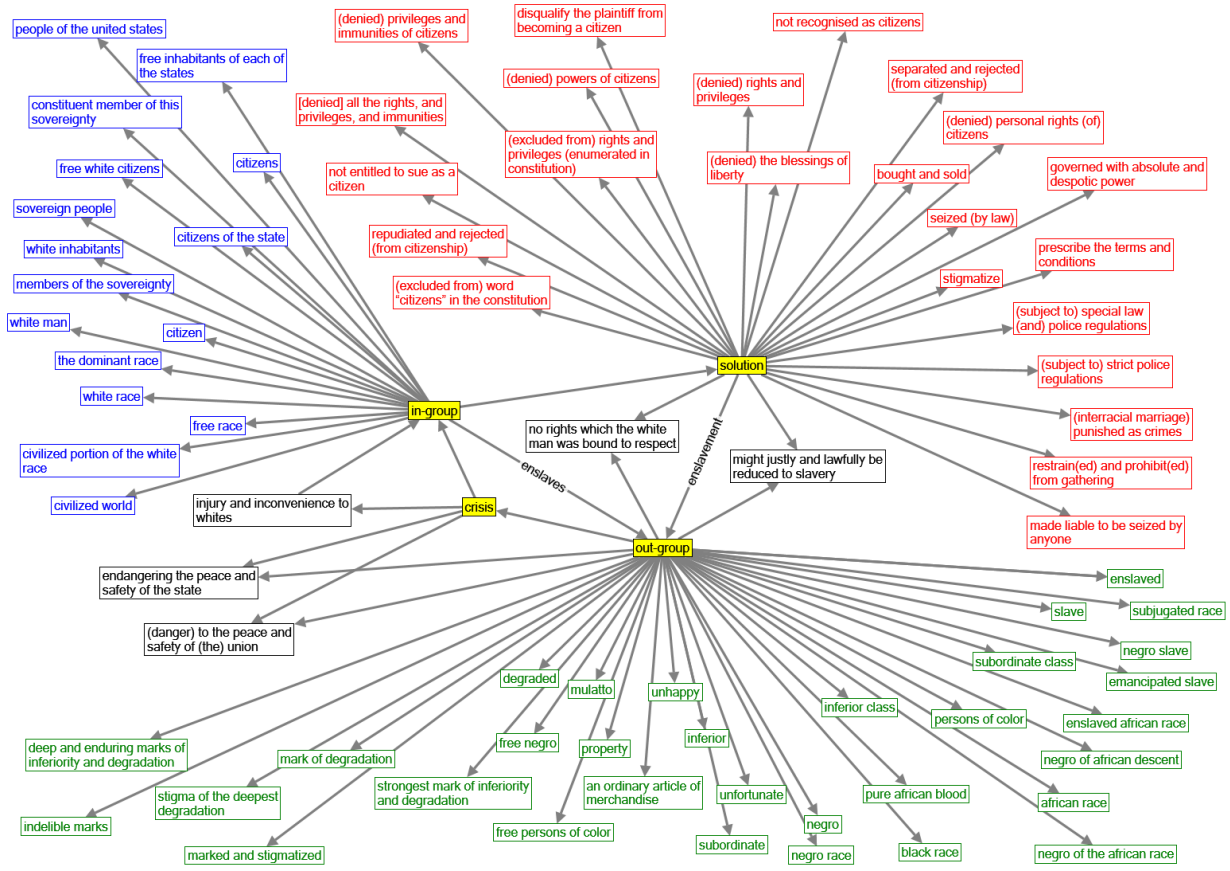


Figure 5: Language from the Dred Scott ruling corresponding to an extremist system of meaning.

4.1.1. Out-group derogation ('marks of degradation')

Social identity theory broadly finds that in-groups tend to engage in out-group derogation, a phenomenon in which members of the in-group view members of an out-group as inferior or threatening.[26] In his decision, Taney returns repeatedly to the theme of out-group "stigmatization," specifically arguing in several different places that Black people bore a "mark of degradation." Examples of this language include:

- "The unhappy black race were separated from the white by indelible marks…"
- "…this mark of degradation was renewed, and again impressed upon the race…"
- "…the strongest mark of inferiority and degradation…"
- "…such deep and enduring marks of inferiority and degradation…"
- "…persons thus marked and stigmatized…"
- "…this stigma of the deepest degradation was fixed upon the whole race…"

The expression "mark of degradation" was used frequently in books and newspapers of the day[27], peaking around 1832 and eventually declining. The phrase was often, but not always, associated with the "mark of Cain," the "curse of Ham" and related religious

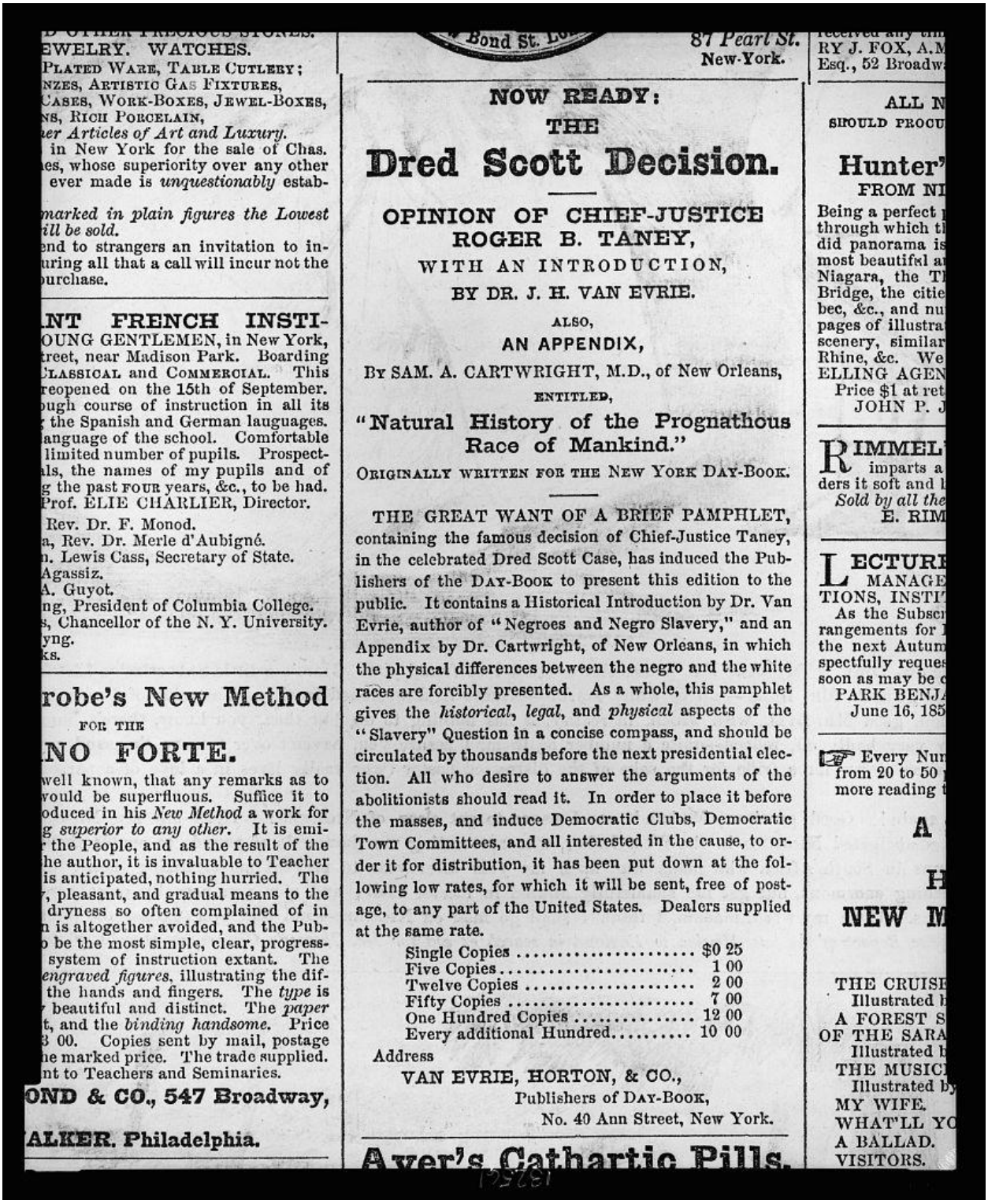
arguments that sought to justify a linkage between Black skin and enslavement.[28] These biblical justifications for the enslavement of Black people, increasingly prominent in the run-up to the Civil War, claimed that God had marked the progenitors of modern Black people with dark skin and had condemned the entire race to enslavement as a punishment for their ancestors' sins.

Taney does not directly cite religious sources in his opinion, but the references to a mark of degradation were likely influenced on some level by these contemporary racist ideas, which frequently appeared in the public debate over slavery.[29] In 1860, Jefferson Davis, then-senator from the state of Mississippi and soon to be president of the Confederacy, summarized one iteration of the blended Cain/Ham theory of race, citing it as explanation of the "inequality of the white and black races." Speaking on the Senate floor, Davis said that Black people had been:

> ...stamped from the beginning, marked in decree and prophecy—the will of God which the puny efforts of many have in vain attempted to subvert—confirmed by history through all its successive stages...

The text of the Dred Scott decision was later printed in a nationally circulated pamphlet that featured an introduction and appendix written by two leading racist ideologues of the day, John H. Van Evrie and Samuel Cartwright (Figure 6). The pamphlet included references to both the "mark of Cain" and the "curse of Ham" theories that Cartwright generally endorsed.[30] The "mark" also served as a synonym for another common expression associating slavery with Black skin—the "badge of degradation," which was less overtly religious in context but strongly associated with slavery and racism.[31]

In addition to the distinct possibility that Taney intended to echo these religious pro-racism narratives, which survive today in a form that is now uncontroversially deemed extremist,[32] it's important to note the timeless quality of the "marks" described in his opinion. The "mark of degradation" is "strong," "deep," "enduring" and "indelible." In extremism, as defined in this paper, the need for hostile action against an out-group (in this case, disenfranchisement and enslavement) is understood to be perpetual because of the out-group's intrinsic qualities.



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BY DR. J. H. VAN EVRIE.
ALSO,
AN APPENDIX,
BY SAM. A. CARTWRIGHT, M.D., of New Orleans,
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"Natural History of the Prognathous Race of Mankind."
ORIGINALLY WRITTEN FOR THE NEW YORK DAY-BOOK.

THE GREAT WANT OF A BRIEF PAMPHLET, containing the famous decision of Chief-Justice Taney, in the celebrated Dred Scott Case, has induced the Publishers of the DAY-BOOK to present this edition to the public. It contains a Historical Introduction by Dr. Van Evrie, author of "Negroes and Negro Slavery," and an Appendix by Dr. Cartwright, of New Orleans, in which the physical differences between the negro and the white races are forcibly presented. As a whole, this pamphlet gives the *historical*, *legal*, and *physical* aspects of the "Slavery" Question in a concise compass, and should be circulated by thousands before the next presidential election. All who desire to answer the arguments of the abolitionists should read it. In order to place it before the masses, and induce Democratic Clubs, Democratic Town Committees, and all interested in the cause, to order it for distribution, it has been put down at the following low rates, for which it will be sent, free of postage, to any part of the United States. Dealers supplied at the same rate.

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MY WIFE.
WHAT'LL YO
A BALLAD.
VISITORS.

Figure 6: An advertisement for a pamphlet version of the Dred Scott decision. Source: Library of Congress

4.1.2. Extremist versus eligible in-groups

While not essential to an extremist framing, modern fringe extremist groups usually present a narrative that differentiates between an *extremist in-group* and an *eligible in-group*, which is a broader group comprised of people who are eligible to join the extremist in-group but are not always aligned with it. For instance, al Qaeda is an extremist in-group, which targets its appeals to an eligible in-group comprised of Sunni Muslims, most of whom do not align with al Qaeda's values. The lines between eligible and extremist in-groups are blurrier when an extremist movement wields power from the center of society.

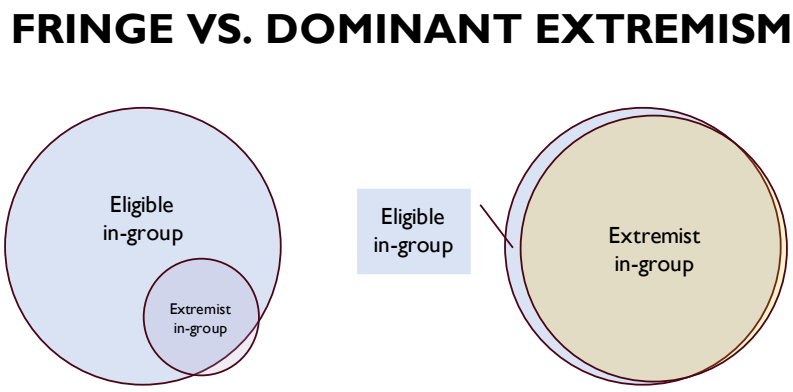


Figure 7: A dominant extremist in-group may control such a large percentage of the eligible in-group that it eclipses the eligible in-group's generic character.

Any ideology inevitably provokes dissent, so the extremist in-group is very rarely able to claim support from 100 percent of its eligible in-group. But dominant extremist movements are dominant; they can claim active support from at least a plurality of the eligible in-group, sometimes even a large majority. Despite this, an extremist in-group remains differentiated from the eligible in-group, with the latter typically defined by traits other than adherence to an extremist system of meaning. Extremists constantly seek to conflate these categories, claiming to be paragons of the eligible in-group type.[33]

The eligible in-group in Taney's decision is comprised of White people, who are specifically eligible to join the in-group of United States citizens. The boundaries of the extremist in-group require some parsing.

Slavery was enshrined in the United States Constitution from the nation's founding, but its inclusion was contested, and the document's final form represented a flawed compromise between pro-slavery and anti-slavery factions. Even White people who strongly opposed slavery, from the time of the framing through the 1850s, were often seen to be ambivalent or conflicted about whether and how their anti-slavery views should become policy.

While we know that many people opposed slavery from the time of the founding and through the Civil War, we don't have good estimates of how many, since modern nationwide polling techniques were not developed until the 20th Century.[34] Many people who opposed slavery were also unambiguously racist, with significant numbers believing Black people should be deported to Africa upon emancipation.[35] We have no concrete data with respect to how many White people believed Black people could be citizens or deserved civil rights. The number was certainly greater than zero but almost equally certainly a minority.[36]

In the absence of more granular detail, we can safely assert that from the nation's founding through the time of the Dred Scott decision and the Civil War, most White American citizens, whether Northern or Southern, benefited from and tolerated the continuation of a national economy, federal government and Constitutional system that not only enabled but protected and privileged the enslavement of Black people.

It's relatively easy to stipulate that an extremist in-group includes those who actively promote an extremist ideology and enforce its tenets. It's less clear how we should think about people who passively support extremism, or those who merely accept it, and there are many degrees of support or acceptance. Some Americans of the period accepted slavery and viewed it favorably. Others claimed to view it unfavorably but declined to actively oppose it for pragmatic political or economic reasons. Many Americans benefited from slavery financially, directly on indirectly, regardless of their views.

While it is not strictly necessary (and may not be possible) to answer this question as a prerequisite to exploring the extremist dimensions of the slave state, one can and should contemplate which White Americans were part of the pro-slavery extremist in-group. There are clear differences between those who actively promote and enforce extremism and those who are born into a fully formed extremist system. But the passive enabling of atrocities is not blameless, and the fact we are prompted to ask these questions at all should—at the very minimum—lead to sober reflection about where America has historically drawn the lines of culpability. In the words of the adage, "The only thing necessary for the triumph of evil is for good men to do nothing."[37]

4.2. Crisis

Consistent with the system-of-meaning framework, Taney stipulates the existence of a crisis that "endanger(s) the peace and safety" of the United States. Taney outlines the consequences of allowing Black people to attain the rights and privileges of federal citizenship. Black citizenship would be "dangerous to the peace and safety of a large portion of the Union," Taney writes, explaining:

> ...For if they were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police regulations which they considered to be necessary for their own safety. It would give to persons of the negro race, who were recognised as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State.

The crisis described by Taney is twofold: First, he seems to object on general principle to the proposition that Black people could or should be allowed to live free, happy lives without being subject to race-specific restrictions. Second, he argues that the existence of fully enfranchised Black people in any part of the United States would foment insurrection among lawfully enslaved Black people in the South.

Aside from this paragraph and a few short allusions of a similar nature, the Taney opinion spends relatively few words articulating a crisis narrative. But the context in which the opinion was written situates the decision as a clear response to what was known then as the "sectional crisis."[38] Escalating legal and political confrontations between anti-slavery states in the North and pro-slavery states in the South were widely (and correctly) perceived to have reached a crisis of such dimensions that it threatened the unity of the United States federal system.

Perhaps seeking to rise above the controversies of the day and write an opinion for the ages, Taney does not directly refer to the sectional crisis, but the sectional context clearly preoccupied everyone involved in the case. During oral arguments, for instance, Scott attorney Montogomery Blair stated plainly that the case revolved around "a sectional question," and contemporary journalists noted using various language that the case "calls up [the] passions of sections."[39] Both before and after the ruling, *Scott v. Sandford* was widely seen by observers as highly relevant to sectional strife.

More explicitly, the concurring opinions in *Scott v. Sandford* refer directly to "sectional divisions" and the threat of "disunion," highlighting the justices' awareness of the crisis and the decision's context. The author of one concurrence, Justice John A. Campbell, who

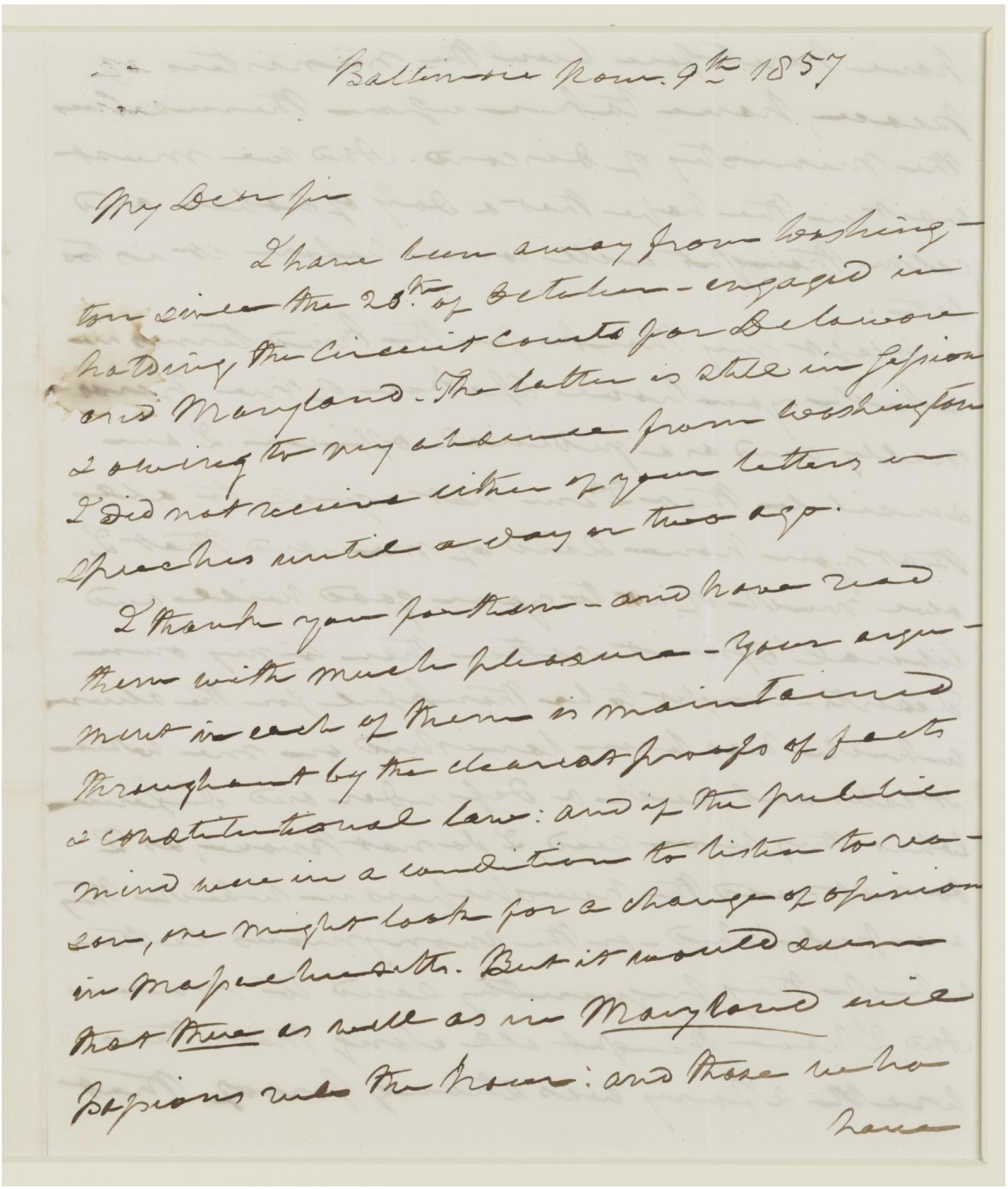
would later defect to the Confederacy,[40] described the crisis much more concretely than Taney, writing that a "patriot of the [American Revolution period] employs the instance to warn us of 'the stealth with which oppression approaches.'" As with American citizenship, Campbell imagined "oppression" as something only White people could experience—in this case "oppression" meant the threat that the White race's absolute right to enslave the Black race might be revoked.

The ruling did not need to fully articulate a crisis narrative bounded by time and place, because no one who read the decision contemporaneously had any illusions about the imperatives that shaped it.

Another concurrence, by slaveholding Justice James M. Wayne,[41] alluded to the sectional crisis in clear, if slightly less explicit terms, stating the case involved "constitutional principles of the highest importance about which there had become such a difference of opinion, that the peace and harmony of the country required the settlement of them by judicial decision." Justice Peter V. Daniel, also strongly pro-slavery, went further still, writing that "there never has been submitted to any tribunal within its limits questions surpassing in importance those now claiming the consideration of this court." Daniel's concurrence mocked the idea that an emancipated Black slave could be "transform(ed) into a being possessing a social, civil, and political equality with a citizen."

While Taney articulates an explicit but narrow crisis with respect to the affordance of rights and privileges to Black people in the United States, the ruling was inescapably situated in the context of the sectional crisis and the looming prospect that the Union might split along the lines of slavery.

Writing on behalf of a powerful status quo social movement, Taney was able to refer to the sectional crisis in tacit and oblique terms because it was universally understood as the context for his opinion. The ruling did not need to fully articulate a crisis narrative bounded by time and place, because no one who read the decision contemporaneously had any illusions about the imperatives that shaped it.



Baltimore Nov. 9th 1857

My Dear Sir

I have been away from Washington ever since the 28th of October - engaged in holding the Circuit Courts for Delaware and Maryland. The latter is still in session owing to my absence from Washington I did not receive either of your letters or speeches until a day or two ago.

I thank you for them - and have read them with much pleasure - Your argument in each of them is maintained throughout by the clearest proofs of facts & constitutional law: and if the public mind were in a condition to listen to reason, one might look for a change of opinion in Massachusetts. But it would seem that there as well as in Maryland wild passions rule the hour: and those who have

Figure 8:A letter from Chief Justice Roger Taney to former Attorney General Caleb Cushing, thanking Cushing for his support of the Dred Scott decision and bemoaning the fact that the American public was seized with "wild passions" and was not "in a condition to listen to reason."

4.3. Solution

The National Archives website incorrectly describes the Dred Scott decision as ruling that "enslaved people were not citizens of the United States and, therefore, could not expect any protection from the federal government or the courts."[42]

The decision did not simply deny the franchise of citizenship to enslaved people. Taney denies the franchise to *all Black people*, using language that explicitly included both enslaved and free people. Taney wrote that "free persons of color were not citizens within the meaning of the Constitution and laws" and not even eligible for the second-class, partially disenfranchised citizenship available to White women and White children.

The only thing required by the Constitution with respect to Black people was to "treat them as property and make it the duty of the Government to protect" the rights of the property owner, Taney wrote.

In Taney's system of meaning, the health and safety of the unitary United States was threatened by a deepening crisis that had divided the nation into pro-slavery and anti-slavery sections, threatening to dissolve the exclusively White sovereignty of the Union. Taney's decision unambiguously supported and entrenched the continuation of the slave state, and enslavement is one definitionally "hostile" action that meets the threshold for extremism and provides a "solution" in the system of meaning.

Going further, Taney ruled in favor of the total disenfranchisement of Black people as a necessary precondition to the continuation of slavery in the United States, which was necessary in turn for the preservation of the Union. Enslavement is a component of the solution, but the solution is even more draconian, ultimately denying even the possibility that any Black person could possess rights or liberty under the Constitution.

4.4. Calls to authority

Taney's lengthy recounting and opinionated interpretation of legal precedent have been criticized for factual errors from the moment the opinion was authored. Dissenting opinions by Justice John McLean and Justice Benjamin Curtis sought to correct Taney's tendentious history of Black citizenship in the United States.[43] Taney's various factual errors will be discussed briefly below. A detailed review of these inaccuracies is beyond the scope of this paper, but it may be useful to briefly consider a pertinent issue in the study of extremist ideologies—verisimilitude, colloquially known as "truthiness."[44]

Extremist ideologies typically include a wide range of historical and pseudo-factual narratives. These narratives may be mostly accurate, objectively false, taken out of context, or grotesquely distorted. For ideological theorists, the question of objective truth

is secondary at best, if not entirely irrelevant. They need only establish enough verisimilitude to inspire a feeling of authenticity among adherents. To accomplish this, ideological theorists rely heavily on two tools—an aura of historicity and an invocation of in-group consensus.

The aura of historicity is created primarily through detail, or what historian Richard Hofstadter refers to as "heroic strivings for 'evidence.'"[45] Most extremist historical and pseudohistorical narratives aim to overwhelm readers with prolific detail in support of their claims, irrespective of whether those details are accurate.[46] This is a tactic of persuasion presented in the guise of objective investigation.

The 25,000 words of Taney's opinion cite legal precedents and purportedly historical facts to "prove" that the Constitution and an associated body of law were intended to deny Black people participation in the franchise of citizenship. His argument is explicitly based on describing the in-group consensus as it existed at the time of America's founding.

Since the entire world is not absolutely knowable, people rely on the consensus judgment of trusted others to confirm or refute aspects of existence about which they may be uncertain. On a fundamental level, human beings determine truth by consensus, a dynamic known as the social construction of reality.[47]

Ironically, the consensus itself is also not absolutely knowable. Consensus is an inherently social construction and thus intimately tied to in-group dynamics. Concretely, when people experience uncertainty, they do not consult all other people for clarification, nor do they consult a random sample. Instead, they seek out the views of people they believe to be most like themselves, people with whom they share some common experience and identity, a tendency known as homophily.[48]

Legal precedent is often a form of consensus construction, but Taney extends himself beyond that context, projecting views of "public opinion" and "common knowledge" to manufacture a narrative of social consensus that serves his purposes. Taney engages directly with the authority of this historical in-group consensus in an effort to support some of the most sweeping and impactful elements of his opinion.

4.4.1. Precedent

As in many major Supreme Court cases, the most important precedent cited by Taney is the U.S. Constitution, which he interprets not just through the text itself, but through an intentionalist originalist legal philosophy, in which a judge attempts to identify the specific intent of the authors of framers.[49]

The Constitution does not include the word “slave,” and it contains no language explicitly referencing race, complicating Taney’s task. For instance, Article 1, Section 9, Clause 1, prohibited the federal government from barring the “importation” of “persons” for 20 years after ratification. While this stipulation does not use the word “slave” or “slavery” and does not explicitly refer to the racial character of persons being imported, Taney reads the clause (accurately, in terms of its historical implementation) as pertaining only to the enslavement of Black people from Africa.

In another example, Article 4, Section 2, Clause 3, states that any “Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall … be delivered up on Claim of the Party to whom such Service or Labour may be due.” Popularly known as the Fugitive Slave Clause, this stipulation prohibited free states from providing a safe harbor to people who had escaped enslavement in another state. Taney again interpreted this clause as racial by implication, despite the fact that it does not specify the race of the enslaved person.

In Taney’s view, “these two provisions show conclusively that neither [Black people] nor their descendants were embraced in any of the other provisions of the Constitution, for certainly these two clauses were not intended to confer on them or their posterity the blessings of liberty, or any of the personal rights so carefully provided for the citizen.”[50]

Taney’s tendentious recounting of precedent adds persuasive weight to his reading of the status quo by exploiting the “system justification” impulse, a common psychological tendency to justify and preserve the legitimacy of social structures as they currently exist.

Going further still, Taney concludes that “it is obvious that [Black people] were not even in the minds of the framers of the Constitution when they were conferring special rights and privileges upon the citizens of a State in every other part of the Union.” In truth, as detailed below, the framers deeply considered and debated such issues, even though they ultimately instituted a structure that permitted racial slavery.

Beyond the Constitution, Taney cites almost 30 specific laws, statutes, court rulings and formal legal or political statements that he argues are pertinent to the question of whether Black people can become citizens, including the Declaration of Independence and the Articles of Confederation (the precursor to the United States Constitution, in effect from 1777 to 1781). The citations include federal and state laws as well as mostly obsolete laws from the colonial era. For the most part, consistent to some extent with an originalist approach, Taney does not cite post-ratification court cases that could support his claims about race as settled law.

Taney's citations function as part of his rhetoric of persuasion. He cites laws and precedents in an effort to unlock historical public opinion about Black people and their rights, an interpretation that he then projects on to the framers of the Constitution specifically. For instance, colonial era laws prohibiting interracial marriage are cited to illustrate the long history of hostility and exclusion practiced by White residents of the North American continent toward Black residents.

Taney's precedents reflect a key difference between lawful extremism and extremism found on the fringes of society. Although his opinion innovates a relatively new legal principle (that Black people cannot be citizens and have no rights), this innovation is reactionary, seen as necessary to preserve the status quo of slavery in America against a progressive anti-slavery threat.

In 1856, slavery and institutional racism were still social and legal norms, despite the growing challenge from anti-slavery and pro-abolition attitudes. Taney's tendentious recounting of precedent adds persuasive weight to his reading of the status quo by exploiting the "system justification" impulse, a common psychological tendency to justify and preserve the legitimacy of social structures as they currently exist.[51]

4.4.2. In-group consensus

Dominant extremist theorists seek to persuade their audiences that the eligible in-group correctly supports their negative view of an out-group or -groups and understands the necessity for hostile action against the out-group or -groups. Appeals to in-group consensus are effective at resolving audience uncertainties, and if the theorist makes a convincing case that the in-group consensus matches the extremist system of meaning, such appeals can also trigger a system justification impulse in their audience.

Written for an eligible in-group audience, Taney's opinion uses precedent to create a narrative about the historical in-group consensus. Precedent here is designed to provide evidence that the historical "American" in-group consensus stands opposed to any enfranchisement of Black people. This position is renewed and extended into the present by the decision itself.

Critically, Taney seeks to reduce uncertainty by discounting contemporary public opinion, which was far from uniform in support of slavery. Although his exploration of in-group consensus is framed as necessary specifically for the sake of interpreting the words found in the Constitution, a relatively common judicial argument, he goes further than the text in seeking to re-establish the authority of the historical consensus as he conceives it:

> 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. But the public history of every European nation displays it in a manner too plain to be mistaken.
>
> 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.

Taney sought to portray the historical in-group (White citizens) as uniform in its disenfranchisement of Black people, through a lengthy recitation of race-based laws and his inference of the popular attitudes behind those laws, focusing especially on states that subsequently outlawed slavery, including Massachusetts and Connecticut.

Specifically, Taney argued that even White citizens who opposed slavery still believed that Black people were inferior and undeserving of full civil rights. This view was "an axiom" and no one "doubt[ed] for a moment the correctness of this opinion." States that turned away from slavery did so because "slave labor was unsuited to the climate and productions of these States," he argued, and not for moral reasons.

If the Founders *had* intended for this language to apply to Black people, Taney wrote, the authors would be hypocrites who "would have deserved and received universal rebuke and reprobation." Since the authors were "great men," they were *ipso facto* incapable of such appalling hypocrisy.

Taney found laws against interracial marriage especially compelling, because they punished not only the bride and groom but anyone who officiated such a ceremony. These laws "are a faithful index to the state of feeling towards the class of persons of whom they speak," Taney wrote, punishing "as crimes not only in the parties, but in the person who joined them in marriage."

A fulsome record of these "fixed and universal" opinions was necessary for Taney to undo the actual language used in the Declaration of Independence ("all men are created equal") and the preamble to the Constitution ("establish Justice" and "secure the blessings of liberty"). These words could not have been meant to include Black people, Taney wrote, because the Founding Fathers "spoke and acted according to the then established

doctrines and principles, and in the ordinary language of the day, and no one misunderstood them."

If the framers *had* intended for this language to apply to Black people, Taney wrote, the authors would be hypocrites who "would have deserved and received universal rebuke and reprobation." Since the framers were "great men," they were *ipso facto* incapable of such appalling hypocrisy. Therefore, they must have intended to exclude Black people from their poetic aspirations, and that intention must have been so obvious that they did not need to say so explicitly. "No one seems to have doubted the correctness of the prevailing opinion of the time," he wrote.

While the purpose of this paper is not to fact-check Taney's ruling, this characterization should not go unchallenged, not least because it highlights the motivated nature of Taney's reasoning. Certainly, few or none of the founders subscribed to a modern view of racial equality, but many of them grappled with these questions and left written records of their reflections. "The moral arguments condemning slavery so obvious to us today did not elude the founders," wrote constitutional law scholar Tania Tetlow in a 2001 paper that explores the contemporaneous debates in some detail and specifically takes issue with Taney's characterization.[52]

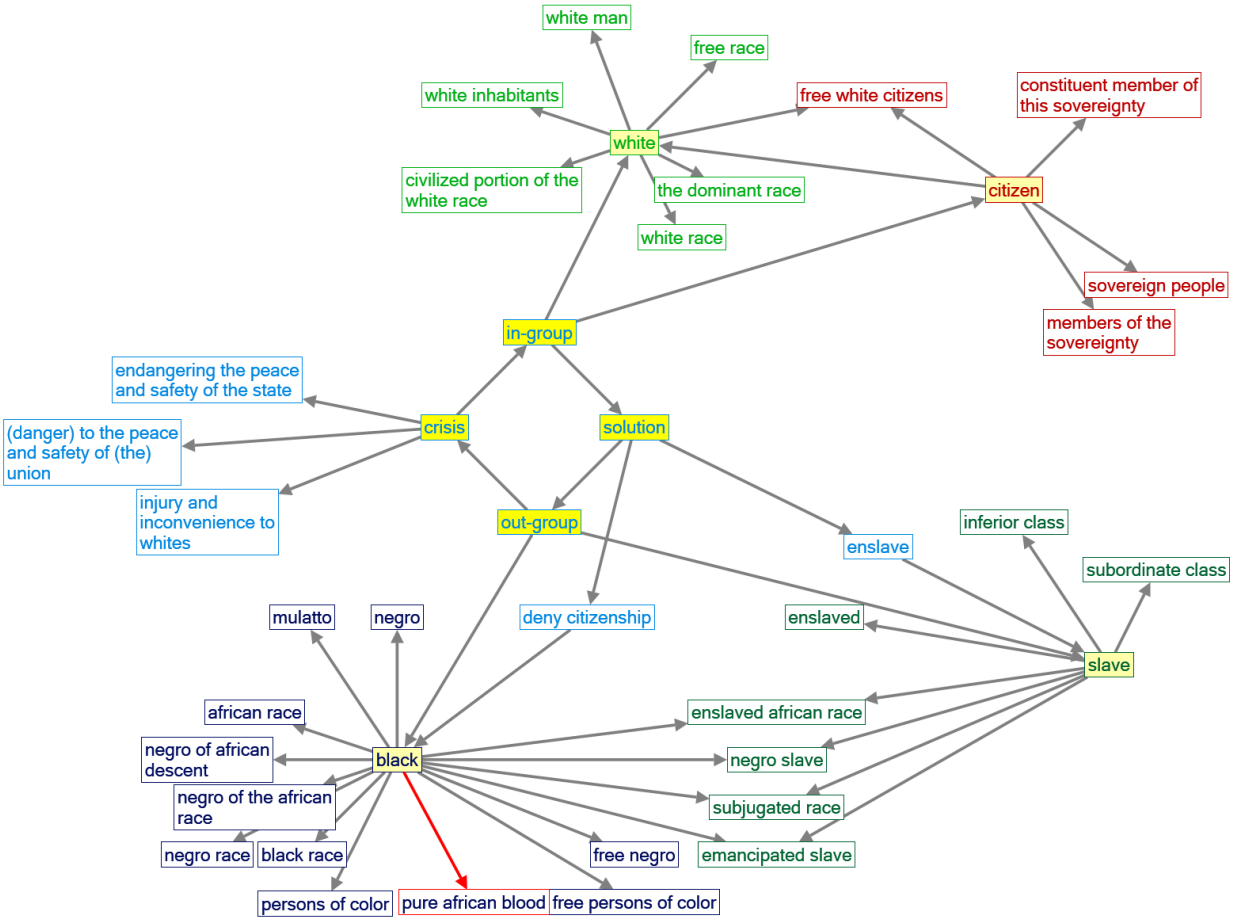


Figure 9: Citizen/slave distinctions in the Taney opinion.

4.5. In-group boundaries

Extremist ideologies often dwell on boundaries. When an in-group holds hostile intentions toward an out-group, especially if those intentions are severe or violent, it becomes vitally important to clearly differentiate between the in-group and out-group. One of Taney's chief concerns in the Dred Scott opinion is the establishment of strong boundaries to separate the White in-group from the Black out-group.

According to Taney, the founding fathers intended to create "a perpetual and impassable barrier ... between the white race and the one which they had reduced to slavery, and governed as subjects with absolute and despotic power." That barrier, in Taney's view, revolved around a White/Black binary. White people were eligible for U.S. citizenship, and Black people were not. All other distinctions—including free/slave—proceeded from what Taney calls a "broad line of distinction between the citizen and the slave races."

Not all non-White races fall under Taney's categorization of "slave race." He contrasts the situation of Black people with the situation of "Indians" also referred to as the "red man," who Taney says "were uncivilized, they were yet a free and independent people, associated together in nations or tribes and governed by their own laws" (incorrectly implying that Black people had not done so prior to enslavement). According to treaty, Native Americans could become citizens when Black people could not, he wrote. Despite this, "it has been found necessary, for their sake as well as our own, to regard [Native Americans] as in a state of pupilage," subservient to White people.

Aside from this tangent, Taney is primarily concerned with dualisms: White/Black, free/slave, and citizen/non-citizen. White, free and citizen are generally seen to overlap, as do Black, slave and noncitizen.

Some category-breaking exceptions are stipulated—not all White people are citizens, for instance, and not all Black people are slaves. But two absolute stipulations are present in the text, one explicit and one largely implicit. The articulated stipulation, and the core assertion of the opinion, is that Black people can never be citizens. The unspoken but equally absolute corollary is that White people can never be slaves.

5. Contemporary views of the decision and related issues

Proponents of the relative definition of extremism often argue that historical figures and their beliefs cannot be categorized as extremist if they reflect widely held values of the day. Thus, many people would defend and have defended Taney as a "man of his time"—a phrase so ubiquitous in describing historical racism that it became the title of a play about a meeting between modern-day ancestors of Taney and Scott.[53]

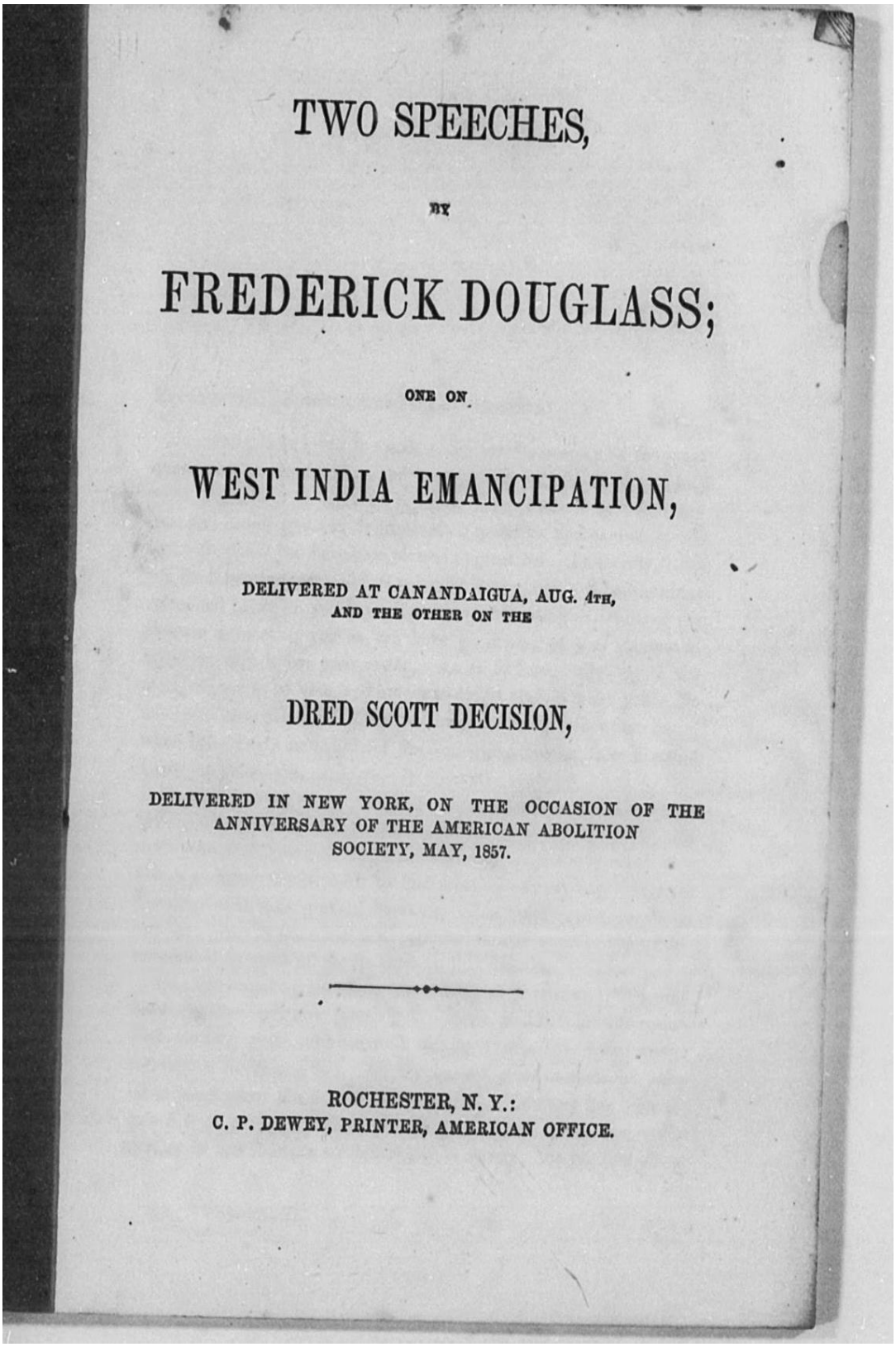
I have already articulated my generalized objection to this aspect of the relative definition of extremism, which would preclude considering Taney to be an "extremist" because of the social context in which he lived. I wish in this section to additionally object to the idea that Taney was in any meaningful sense an archetypical "man of his time." The precise ways that this claim fails reflect the broader weakness of the relative framing.

I will begin by stipulating that the "Roger Taney" discussed in this section is a reconstructed character. As discussed below, there are some inconsistencies with respect to slavery in Taney's life story, and some historians have argued that he may have believed that slavery was wrong and should be gradually abolished.[54] Real people are complicated, and they do not always lend themselves to easy, reductionist description.

Nevertheless, with all appropriate caveats in place, it's important to note that Taney and his fellow justices had a number of options for adjudicating *Scott v. Sandford*. Taney could have written a limited opinion in favor of either the plaintiff or the defendant based on the facts of the case, without addressing the constitutionality of slavery. He could have crafted an argument against the constitutionality of slavery, or he could have supported its constitutionality without encroaching on the rights of free Black people in the North. He could have created an argument that situated slavery as constitutional while acknowledging its many harms.

Instead, he chose, in consultation with the Court, to author an opinion filled with invective and disparagement of Black people and took a maximalist approach to justifying slavery by condemning all Black people to disenfranchisement at the federal level. While he hedged his language to place the responsibility for these outcomes on historical figures rather than on himself (a judicial practice that is not unique to Taney), this evasion does not readily apply to his extensive use of descriptive language denigrating Black people (as detailed in section 4.1.1.).

I do not believe this opinion could have been written by someone who was not racist, nor by someone who did not consider the continuation of slavery to be a morally acceptable outcome. The question that then remains is whether "Taney"—as we understand him through this opinion—was a representative "man of his time."



TWO SPEECHES,

BY

FREDERICK DOUGLASS;

ONE ON

WEST INDIA EMANCIPATION,

DELIVERED AT CANANDAIGUA, AUG. 4TH,
AND THE OTHER ON THE

DRED SCOTT DECISION,

DELIVERED IN NEW YORK, ON THE OCCASION OF THE
ANNIVERSARY OF THE AMERICAN ABOLITION
SOCIETY, MAY, 1857.

ROCHESTER, N. Y.:
C. P. DEWEY, PRINTER, AMERICAN OFFICE.

Figure 10: Title page from a printed edition of Frederick Douglass' speeches. Source: Library of Congress

5.1. White people were not the only people

Every effort to minimize or absolve the significance of historical racism is grounded in the erasure of racism's victims. Taney was a man of his time, but he was not the *only* man of his time, nor was he the only *person*, nor was he archetypical in any meaningful sense. It would be more accurate, but still grievously incomplete, to say he was a White person of his time, since most Black people from the same period strongly objected to the beliefs and opinions presented in the Scott decision.

Black Americans of the 1850s could not help but have strong opinions on slavery in general, and the Dred Scott decision in particular. Black abolitionist Charles Lenox Redmond, speaking in 1857, cried "Shame on Judge Taney! Shame on the United States Supreme Court!", saying that the election of Buchanan showed that "the American people, by an overwhelming majority, are on the side of slavery, with all its infernalism."[55]

For the government that produced and upheld the decision, mixed race abolitionist Robert Purvis said, "I, as a man, can have no feeling but of contempt, loathing, and unutterable abhorrence! And, sir, I venture to affirm that there is no man in this audience, who has a spark of manhood in him, who has a tittle of genuine self-respect in his bosom, that will not justify me in these feelings."[56]

Every effort to minimize or absolve the significance of historical racism is grounded in the erasure of racism's victims.

Such condemnations were not solely the province of Black men. Mary Ann Shadd Cary, a free Black woman whose family left the United States for Canada after years spent assisting fugitive slaves, wrote comments directed to American Black people saying the decision proved that "your national ship is rotten sinking, why not leave it, and why not say so boldly, manfully? . . . Leave that slavery-cursed republic."[57]

The *Provincial Freeman*, an anti-slavery newspaper Shadd published from Canada, printed an article from the paper's "Philadelphia correspondent" with comments on the decision from and about the city's Black people. "[I]ts influence has been more discouraging and prostrating to the hopes of the colored man than any preceding act of tyrany [sic] ever perpetrated upon him by this nation," the correspondent, identified as "W.S." wrote.

Frederick Douglass, in contemporary remarks on the decision, referred to it as a "shocking abomination" from the "Slaveholding wing of the Supreme Court." Unlike some

of his peers, however, he chose to highlight how the decision had awakened the nation. Slavery was no longer the default position of White America; the institution faced an active challenge, including from White Americans.

> Take this fact—for it is a fact—the anti-slavery movement has, from first to last, suffered no abatement. It has gone forth in all directions and is now felt in the remotest extremities of the Republic. ...
>
> You will readily ask me how I am affected by this devilish decision—this judicial incarnation of wolfishness? My answer is, and no thanks to the slaveholding wing of the Supreme Court, my hopes were never brighter than now. ...
>
> The cries of the slave have gone forth to the world, and up to the throne of God. This decision, in my view, is a means of keeping the nation awake on the subject. It is another proof that God does not mean that we shall go to sleep and forget that we are a slaveholding nation.[58]

5.2. White people did not uniformly support slavery

As Douglass implies, Taney was also not the only *White* man of his time, nor was he an especially representative one. Millions of White men and women of the day opposed slavery and opposed the Dred Scott decision's disenfranchisement of free Black people, even if relatively few of those people could be considered anti-racist in any modern sense.

The "man of his time" framing implies that it is not reasonable to expect someone of Taney's era to display the necessary moral sophistication and fortitude to oppose the cultural norms under which he lived. But in fact, that is an entirely reasonable expectation, and Taney himself appeared to have displayed such sophistication many years earlier. As a young lawyer, Taney represented both free Black people and White emancipationists. During his arguments defending a radical abolitionist, Taney called slavery "a blot on our national character." At the age of 41, he made the decision to free his own slaves. There is ample evidence that Taney, at one time, possessed enough moral discernment to understand that chattel slavery was wrong. Yet as he entered his 80s, he unambiguously aligned himself with enslavers.[59]

We cannot know what the younger Taney would have thought of the elder Taney's written opinion, but we have additional clear evidence that Taney's very specific social and cultural setting could produce a different result—in the form of two fellow Supreme Court justices, who filed sharply dissenting opinions in the Dred Scott case.

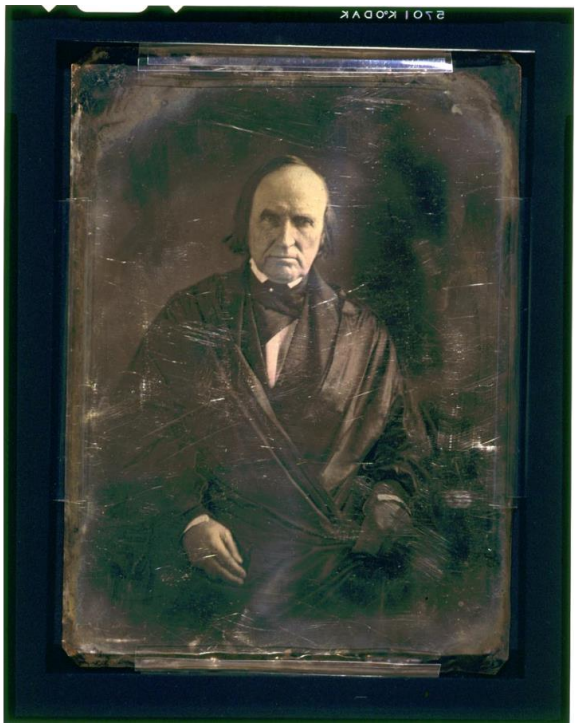


Figure 11: Supreme Court Justice John McLean. Source: Library of Congress

Justice John McLean noted in his lengthy dissent that free Black people had often participated in American public life as citizens, that some Black people had been enfranchised to vote at the time of the ratification of the Constitution thus becoming participants in the nation's founding, and that Black people could be considered citizens with standing to file suit even in places where they were denied the right to vote.

In several pointed precedents and quotes, including from some of the founding fathers, McLean highlighted the moral indefensibility of slavery and its "mercenary spirit." Taney's view that "a colored citizen would not be an agreeable member of society ... is more a matter of taste than of law," he wrote. Turning Taney's words against him, McLean said that "degradation" applied to the enslavers rather than the enslaved.

McLean "perceived that the [Taney] decision ran counter to the moral understandings that undergirded American constitutionalism," according to political scientist and scholar of constitutionalism Justin Buckley Dyer.[60]

"All slavery has its origin in power, and is against right," McLean wrote, going on to castigate the presumption that a slave owner could carry the legality of slavery with him when traveling to a free state. However, McLean stopped short of calling for its unqualified abolition. "I lament [the] excitement [against the institution of slavery] as much as anyone," he wrote.

McLean's opinion also cited precedential cases that had previously settled relevant questions of law, as opposed to Taney's use of precedent as a "faithful index" of historical public opinion. Noting the extensive precedential support for Scott's lawsuit, McLean sharply observed that the Supreme Court typically derided cases where "an excited public opinion has elicited new doctrines subversive of former safe precedent," and yet, he wrote, the majority had done exactly that in the Scott decision.

"All slavery has its origin in power, and is against right," McLean wrote, going on to castigate the presumption that a slave owner could carry the legality of slavery with him when traveling to a free state.

A second dissent, from Justice Benjamin Curtis, was similarly cutting, though less bluntly moralistic. Constitutional historian Stuart Streichler writes that Curtis's dissent was "the most comprehensive statement from the highest court to that date showing why blacks were members of the American political community."[61] Streichler continues:

> One cannot discount the significance of a statement from a member of the highest court that blacks were members of the American political community. In his opinion, Taney, denying that blacks were members of that political community, tapped into contemporary racist assessments that blacks were incapable of reason and independent thinking. By implication, Curtis repudiated this rationale for excluding blacks from political participation. By suggesting that blacks voted on ratifying the Constitution, Curtis placed blacks at this key moment in American constitutional history-sharing power with whites in forming the new government.[62]

Like McLean, Curtis cited several specific post-ratification cases, finding that in multiple states, free Black people enjoyed the full franchise of citizenship, including the right to vote. Going further back, Curtis argued that the Constitution made citizens of everyone who had been a citizen of the United States under the Articles of Confederation.

Furthermore, Curtis noted, Congress under the Articles of Confederation had considered and rejected an explicit stipulation that U.S. citizens must be White, contrary to Taney's assertion that Black people "were not even in the minds of the framers."

> [T]he citizens of the several States were citizens of the United States under the Confederation. ... To determine whether any free persons, descended from Africans held in slavery, were citizens of the United States under the Confederation, and consequently at the time of the adoption of the Constitution of the United States, it is only necessary to know whether any such persons were citizens of either of the

> States under the Confederation at the time of the adoption of the Constitution.
>
> Of this there can be no doubt. At the time of the ratification of the Articles of Confederation, all free native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, though descended from African slaves, were not only citizens of those States, but such of them as had the other necessary qualifications possessed the franchise of electors, on equal terms with other citizens.

Black people were citizens of the states that voted to ratify the Constitution, he wrote, and "it would be strange" if they were to establish a nation from which they could be excluded. Therefore, he wrote:

> [I]t is not true, in point of fact, that the Constitution was made exclusively by the white race. And that it was made exclusively for the white race is, in my opinion, not only an assumption not warranted by anything in the Constitution, but contradicted by its opening declaration that it was ordained and established by the people of the United States, for themselves and their posterity.

Curtis pointedly refused to speculate about the racial opinions of the founders, except to note that they could have explicitly excluded "free persons of color" from the Declaration of Independence's assertion of universal equality and the Constitution's protections for citizens, but they chose not to.

"[I]t would not be just to them nor true in itself to allege that they intended to say that the Creator of all men had endowed the white race, exclusively, with the great natural rights which the Declaration of Independence asserts," he wrote.

If Taney's views were robustly representative of his time, then the decision should have quieted the controversy instead of accelerating the drive toward Civil War.

Despite this, Curtis was not especially progressive when viewed from a modern context. For instance, he allowed that each state could lawfully decide whether Black people could be citizens of that state. States could determine what rights to accord their citizens, he wrote, and whether all of their citizens were entitled to the same rights. Streichler characterizes this approach as "an effort to secure the middle ground" relative to Taney.[63]

Finally, in addition to the contrast presented by his fellow justices, any defense of Taney as a "man of his time" neglects the consequences of the Dred Scott decision, which is

universally viewed as inflaming divisions over slavery. If Taney's views were robustly representative of his time, then the decision should have quieted the controversy instead of accelerating the drive toward Civil War.[64] While Taney certainly spoke for a portion of the country, his social context is not particularly exculpatory. A great many people of his time articulated and aspired to a higher morality.

5.3. Discussion

The complexity of individual and collective morality, including personal responsibility relative to a social setting, makes for an interesting and important debate, best saved for another day. While the preceding sections can certainly be read for their moral dimensions, the object of providing this context is not primarily moralistic. Instead, this examination is meant to illustrate the slippery and perilous nature of the relative definition of extremism. The pre-Civil War era highlights several problems with the relative definition.

Foremost, we lack historical data to make firm estimates of public opinion[65] and must instead resort to proxies to assess attitudes and make inferences about their universality, much as Taney did. The relative decision must be framed in comparison to poorly defined and largely unmeasurable "social norms" which are recorded and remembered in ways that are particularly susceptible to bias.[66] If we allow that extremism can only be categorized using unavailable data, we risk surrendering to complete subjectivity.

Even if we had access to clean, reliable polling numbers, almost no one has ventured to stipulate a threshold for deeming a movement extremist.[67] Most would agree that a movement with a strong majority should not be considered extremist, but what about a slim majority? What about a large plurality? A small plurality? Where do we draw the line? 40 percent? 20 percent? 10 percent? What about a polity in the midst of dramatic change, as the United States was in 1857?

Concurrent to the measurement and threshold problems, we find a frame-shopping problem. Namely, *whose* norms constitute the "center" of society? If someone is motivated to deem a particular historical movement extremist, or to absolve it thereof, they can situate the movement however they please to get the result they prefer.

For instance, if we posit, purely for the sake of argument, that White American society was evenly divided on the issue of slavery in 1857, which side's beliefs should be deemed the norm? How far do the scales need to tip in either direction to affect that determination, and for how long must they be tipped? None of these questions are authoritatively answered in the literature, if considered at all.[68]

The question of "whose norms" then becomes even more important. Our hypothetical example of a 50-50 split in White American society does not account for the balance-tilting opinions of Black Americans, who are too often erased from such historical discussions, despite their existence as participants and stakeholders in 1850s American society and despite their well-documented contributions to the debate over slavery.[69]

On the other end of the spectrum, the United States existed in a global community. By 1857, slavery had been abolished by many countries around the world. Should the norms of the United States be judged relative to Europe? To former British colonies? To English-speaking nations? To majority-White nations?

The frame-shopper has many options from which to choose.

If Roger Taney was a "man of his day," whose day was he a man of? The White man's day? The Black man's day? The day of all men and women, regardless of color or creed? An American day, or a global day? Should we judge him by the days of his youth, when he correctly called slavery a blot on the character of the nation? Or should we judge him in the full bloom of old age, when he wrote a decision affirming the principle that Black people had no rights that White people were bound to respect?

For all these reasons, it is perilous to judge historical people or movements solely according to the "standards of their day." Fortunately, we have other methods available to examine the question of historical extremism.

6. Analysis

The Supreme Court decision in *Scott v. Sandford* is lawful extremism. It contains all the familiar elements of an extremist ideology and system of meaning. Its prescription for hostile action against an out-group is so severe and universal that the ruling is categorically comparable to the genocidal ideologies of ISIS or modern neo-Nazis. In every meaningful sense, the opinion mirrors the rhetoric of groups we today deem extremist.

Extremism is on full display throughout the opinion but is especially visible in the discussion of the consequences of according rights to Black people, as seen in this previously cited excerpt:

> For if they were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police regulations which they considered to be necessary for their own safety. It would give to persons of the negro race, who were recognised as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went.

This passage suggests it would be outrageous and unthinkable that Black people should be able to go where they please "without molestation," speak freely, hold political meetings, or be exempt from race-specific restrictions. To exclude Black people from equal treatment under the law and other civil rights is an unmistakably hostile action. The exact same view would be uncontroversially deemed extremist today.

The difference in social and political contexts does not change the categorical nature of the movement. The fact that anti-Black views were widely accepted in White American society does not change the type of behavior endorsed by the movement, nor the inherently harmful nature of the actions taken by the movement. Importantly, these views were not simply the result of monolithic unanimity among contemporaries. Such views were not universally accepted, and countless people freely chose to oppose the scourge of chattel slavery at every point in its history.

Under the relative definition of extremism discussed in section 1 of this paper, we are led to believe that early abolitionists should be considered extremists and that their

movement may be fruitfully compared to pro-slavery ideologies, or to more recent movements such as the Ku Klux Klan or Christian Identity. The incongruence of this contention, if not readily apparent, is made explicit by examining the ideologies that supported chattel slavery and acknowledging their structural continuities with modern White supremacist movements. These continuities include:

- A White racial in-group
- A Black racial out-group
- The characterization of the out-group as intrinsically and perpetually inferior to the in-group (including religious concepts identical to those used by some modern White supremacists, such as the Mark of Cain/Curse of Ham)
- The enforcement of sharp lines separating the in-group from the out-group
- A crisis narrative
- A solution that requires perpetual hostile action against an out-group

A movement's activities are dictated not only by size but content. Whether a movement is large or small in a given context is less integral to its nature than *what* it directs adherents to do and *why* it directs them to do it.

While there are surely insights to be gained by studying the question of how small movements seek to mobilize support compared to how large movements seek to consolidate their status, such analysis can be pursued without reducing the intrinsic nature of those movements to a question of relative popularity.

More Americans subscribe to White supremacy than to Buddhism, but only one of those movements is considered extremist. We do not classify the Amish together with ISIS, even though both are fringe religious movements with beliefs and practices that "deviate from general norms."

It's tempting to rebel on purely moral grounds against a category that casts abolitionists and White supremacists as fundamentally equivalent, but the primary objection to the relative definition is pragmatic and utilitarian. What intellectual insight is unlocked by placing abolitionist and pro-slavery ideologues in the same analytical bucket? What path to understanding is opened?

The relative definition fails on the basis of utility and is further falsified by how the term is employed in academic circles. More Americans subscribe to White supremacy than to Buddhism, but only one of those movements is considered extremist. We do not classify the Amish together with ISIS, even though both are fringe religious movements with beliefs and practices that "deviate from general norms."

Movements that espouse deviant norms may be termed progressive, radical, reactionary, anarchic, or revolutionary if they seek to overturn current dominant social structures, but the body of movements that we have communally agreed to call extremist have different commonalities, and the most important is very consistent—an overwhelming and uncompromising commitment to hostile action against named out-groups.[70]

The Dred Scott opinion is interesting not just for its similarities to contemporary fringe extremism, but for its differences. The primary argument for a social identity-based definition of extremism is that it enables analysis of such differences and more fully illuminates the mechanisms of extremism in every stage of its life cycle. In an era where the fight against extremism plays out at the ballot box, it's important to deeply understand how extremist movements behave when they are powerful or weak, large or small, popular or ostracized.

As an analysis of the Dred Scott decision illustrates, the most important differences between dominant extremism and fringe extremism are more tactical than essential, with respect to both their use of violence and their deployment of rhetoric. The comparisons detailed below represent a preliminary investigation of these points of divergence, which can also form the basis for more focused future research.

6.1. Lack of in-group critique

Fringe and minority extremist groups usually expend a great deal of time and energy on a critique of their eligible in-group—for instance the critique of White people as decadent and corrupt that is found in William Luther Pierce's *The Turner Diaries*[71] and James Mason's neo-Nazi tract *Siege*,[72] or the critique of Muslims as complacent and cold-hearted in Abdullah Azzam's *Join the Caravan*.[73]

In contrast, Taney's Dred Scott opinion offers very little description of the in-group and no true critique. Many other pro-slavery ideologues were also relatively silent with respect to an in-group critique, despite the fact that these ideologies were articulated as part of an escalating in-group conflict that would soon erupt into Civil War.[74] To some extent, that looming conflict—which was widely feared—may have made an in-group critique taboo, too dangerous to express in a volatile social setting.

To successfully implement an extremist system of meaning, the eligible in-group must join the extremist in-group in pursuing a solution (hostile action) to the crisis presented by the out-group. Fringe extremists are immediately confronted with questions that must be answered: Why has the eligible in-group refused to adopt the extremist group's proposed solution? Why don't the beliefs of the eligible in-group align with those of the extremist in-group? While several narrative tracks are available to answer these

questions, fringe extremist in-groups often attribute such misalignment to deficiencies in the eligible in-group.

Since dominant extremist movements are aligned with a plurality, a majority or even a near-unanimity of the eligible in-group, they do not require such explanations, unless they are in urgent, imminent danger of losing their dominant position. For dominant movements, an overly harsh in-group critique risks alienating existing supporters.

At the time that the Dred Scott ruling was written, the end of slavery in the short- to medium-term was not perceived as inevitable, or even necessarily likely, while the prospect of escalating intra-group conflict (the sectional crisis) was perceived as a disaster for the entire in-group. Rather than risk further fracturing of the in-group, Taney instead proposed to solve the crisis by escalating hostile action against the out-group—from the enslavement of millions of Black people in the South to the complete disenfranchisement of all Black people residing anywhere in the nation.

6.2. Implicit crisis

As detailed in Section 4.2, Taney presents an extremely minimalistic description of the crisis his posited ideology is meant to solve. The sectional crisis driving his ideological argument was apparent to virtually anyone who was likely to read the opinion at the time it was written. Taney could allow the crisis narrative to remain implicit because other authorities and media sources were devoted to discussing it explicitly.

Most fringe extremist ideologies must first convince the eligible in-group that a crisis exists and then to describe its nature. Extremist crisis narratives may be factually derived to a greater or lesser extent, but fringe interpretations are not widely accepted. Therefore fringe extremist ideological theorists must spend a lot of time and energy persuading in-group audiences to accept their systems of meaning.

6.3. Demobilization

Fringe extremist movements seeking to overturn the status quo require the active and energetic participation of adherents to accomplish their goals. Fringe extremists therefore seek to mobilize supporters, often urging them to “wake up” to a crisis and take action. As an agent of the status quo, Taney had a different goal—to settle the slavery question conclusively, preventing further discord and, essentially, putting people back to sleep.

Taney escalates enslavement, an existing hostile action against the out-group, into the denial of all rights for all Black people in perpetuity. He did not perceive this as a

revolutionary step and thus does not describe it as such. Rather, the escalated position is a response to increasing attacks on the legitimacy of enslavement. Taney and the concurring justices clearly believed this escalation of ideology was necessary to preserve the status quo of enslavement in the United States. The majority opinion aimed to quell growing public sentiments that favored overturning that status quo.

Fringe extremists seek to mobilize supporters, often urging them to "wake up" to a crisis and take forceful action. As an agent of the status quo, Taney had a different goal—to settle the slavery question conclusively, preventing further discord and, essentially, putting people back to sleep.

The problem pro-slavery ideologues faced was not one of mobilization. The entire country was already far *too* mobilized over slavery, in their view, to such an extent that both pro- and anti-slavery forces agreed the national unity of the United States was at stake.

Taney sought to end the debate—to *demobilize* dissent by rendering a verdict that would overwhelm objectors with the weight of precedent and resolve uncertainty with the force of law. This aspect of the ruling was oblique and implicit in the text, due in part to the Supreme Court's reluctance to be perceived as responding to the "popular opinion or passion of the day," in Taney's words.

The goal of demobilization arises from context, rather than from clear, imperative language in the ruling. An important part of that context is the decision's utter failure to achieve its intended purpose. As Douglass noted, the ruling that was intended to "settle the controversy" instead set the country ablaze—"another proof that God does not mean that we shall go to sleep and forget."

6.4. Legitimacy challenge

Extremist ideologies often radicalize further when confronted with challenges to their legitimacy. When an in-group is impugned, or when its presumed rights and privileges are challenged, an ideological theorist must craft ever more compelling arguments, often expressing increasingly negative views of an out-group and advocating for increasingly harmful measures against that group.[75] For fringe extremists, these escalations typically serve to orient the movement more firmly toward the overthrow of the status quo.

In this case, Taney was defending the in-group's practice of enslaving an out-group against an intense legitimacy challenge. In response to abolitionists, Taney doubled down, arguing legal precedent and the text of the Constitution could be interpreted to mandate

that Black people, enslaved or free "had no rights which the white man was bound to respect" and therefore "might justly and lawfully be reduced to slavery."

Taney mandates the complete disenfranchisement of Black people in the eyes of the United States federal government, a condition that enables the practice of slavery by denying the enslaved out-group's claim to possess human rights and essential dignity. The extremist solution proposed here is an example of how ideologies radicalize—an escalation of articulated White supremacist ideology that increases the severity of hostile action against the out-group under a pretext of preserving the status quo.

Future research should consider the role of legitimacy challenges more deeply, examining questions such as whether and how radicalization takes place in the absence of a challenge, how non-extremist ideological movements respond to challenges, and whether and how the scale and intensity of a challenge may or may not correlate to the scale and intensity of radicalization.

6.5. System justification

Despite Taney's escalation of the solution (hostile action) component of his system of meaning, he makes a narrative decision to depict the Court's ruling as an extension of the status quo. Taney's argument leverages the system justification impulse, defined by social psychologist John T. Jost as "a general (but not insurmountable)" tendency to "defend and justify the status quo and to bolster the legitimacy of the existing social order."[76] More simply put, people tend to dislike change and will sometimes go to great lengths to mentally justify the social structures they currently inhabit.

The Dred Scott decision maintained the status quo of legalized racial slavery but opted to escalate the severity of American racial ideology to do so. To support this position, Taney infers the attitudes of the nation's founders, making an unsubtle case for continuity. The "fixed and universal" view of Black people "in the civilized portion of the white race ... was regarded as an axiom in morals as well as in politics which no one thought of disputing or supposed to be open to dispute," Taney wrote. "[T]he public history of every European nation displays it in a manner too plain to be mistaken."

The opinion sought to prompt a system justification response from White Americans, explicitly rejecting efforts to overturn the "status quo." Indeed, the primary function of the Supreme Court, as Taney understands it, is to maintain the status quo.

> No one, we presume, supposes that any change in public opinion or feeling, in relation to this unfortunate race, in the civilized nations of Europe or in this country, should induce the court to give to the words of the Constitution a more liberal construction in their favor

> than they were intended to bear when the instrument was framed and adopted. ... Any other rule of construction would abrogate the judicial character of this court, and make it the mere reflex of the popular opinion or passion of the day. This court was not created by the Constitution for such purposes. Higher and graver trusts have been confided to it, and it must not falter in the path of duty.

Fringe extremist groups cannot directly exploit system justification dynamics, since they typically seek to overturn the status quo rather than maintain it. Fringe ideological theorists may instead seek to trigger adjacent impulses through rhetorical tactics such as nostalgia or mythology, or they may tack in the opposite direction with millenarian, apocalyptic or accelerationist narratives.[77] As a result, fringe extremist narratives typically foreground the past or future, rather than the present. Taney seeks to preserve the status quo of his day except in one very important respect—he wishes to end the ongoing legitimacy challenge presented by slavery's opponents.

6.6. Prevalence versus power

If extremism is not confined to the fringes of society, then we must reckon with its use of power. Dating back to at least 1960,[78] scholars have endlessly discussed terrorism (commonly associated with extremism) as a "weapon of the weak." More recently, partially successful jihadist governance projects around the world have inspired scholarship on more powerful forms of extremist activity.[79]

Some academic discussions of these movements are often descriptive and often pertain to movements that govern more by force than by winning hearts and minds. Other explorations, including by this author, have examined the Islamic State's "victory narrative," which leveraged insurgent success and the trappings of statehood to create an extremist rhetorical program very different from that its predecessor group, al Qaeda.[80]

But jihadist governance efforts, with some notable exceptions,[81] have been precarious and relatively short-lived. In comparison, the Constitutional slave state in America lasted three-quarters of a century and was buttressed by massive financial interests.

Taney's elaboration of a status quo extremism came during a period when the *prevalence* of pro-slavery ideas was declining, but one in which the *power* of the pro-slavery movement was still entrenched. This shaped the content of the Dred Scott decision's rhetoric, which relied on a system justification argument rather than making a meaningful attempt to rationalize or explain the practice of slavery.

Many other pro-slavery ideological theorists of the day crafted detailed arguments about why slavery should be considered good, just, and moral. From his unique position of

power, Taney believed he only had to convince his audience that slavery was legal and that its legality could be rightfully enforced by the Court. His miscalculation had historic consequences, as major segments of the American body politic rejected the ruling, undermining the Court's power. The Civil War and the 13th and 14th amendments to the Constitution would render the Dred Scott decision moot within a few short years.

Given the complexities of people and politics, there are many other potential scenarios that feature a mismatch between prevalence and power. For instance, some fringe movements may not be prevalent but may command sufficient support to pursue strategies of incremental change—slowly shifting popular perception of in-group and out-group identities, or gradually taking control of institutions (such as courts or local legislatures) to begin implementing hostile action through legal means.

Roger Taney's elaboration of a status quo extremism came during a period when the *prevalence* of pro-slavery ideas was declining, but one in which the *power* of the pro-slavery movement was still entrenched.

Future research into lawful extremism should explore how the shifting scales of power and prevalence play out in extremist rhetoric, examining movements that are simultaneously powerful and popular, as well as movements for which one quality is more pronounced than the other. Fruitful areas of exploration might include examining the stability of a lawful extremist movement's grasp on power, and how that stability may reduce or increase uncertainty.

Finally, it's worth examining how prevalent and powerful extremist ideologies create universalist narratives—promoting the belief that in-group values are universal values. Universalism creates a baseline perception for any given society, making prevalent identities into a default lens for assessment. For instance, universalism may promote a view that every political or legal reference to "men"—such as "all men are created equal"—is understood as referring only to "White men." Taney relies on just such a universalist view in his opinion, referring to racial contempt directed against Black people by White people as an "axiom" and a "fixed and universal" opinion.

6.7. Conclusions

Lawful extremism is extremism. It occurs when extremists control the levers of power in government and/or society, allowing them to delineate the boundaries of acceptable belief and behavior. The same underlying system of meaning is found in both lawful and unlawful extremist movements, although its components may be weighted differently.

Dominant extremists employ the same in-group/out-group formulation as fringe extremists, and likewise demands that an in-group engage in hostile action against out-groups. The primary differences are tactical and strategic, with dominant movements seeking to preserve rather than overturn the status quo.

The study of lawful extremism helps illuminate the rhetoric, strategy, and tactics used by *all* extremist organizations to win hearts and minds. The conceptual and ideological analysis employed in this paper is only a first step toward understanding this phenomenon. Future research should focus on expanding the scope of comparative study, by analyzing, for instance: how dominant and fringe extremist groups employ lawful or unlawful violence; how ideological knowledge spreads and gains legitimacy; and how the color of law shapes the actions and attitudes of those who live under lawful extremism.

Most extremist movements seek to capture the eligible in-group, and some succeed. It's imperative to improve our understanding of how fringe extremist movements seek dominance, how they change as they become dominant, and the strategies that assist them in making that leap.

In addition, the study of lawful extremism offers some inroads into timely and complex questions related to extremist movements in flux. By establishing benchmark qualities that differ between dominant and non-dominant movements, we can chart the spaces between, learning what is likely to happen when fringe extremist movements become lawful, or when lawful extremist movements lose their dominance. By studying the transition from one state to another, we can identify risks more clearly.

Most extremist movements seek to capture the eligible in-group, and some succeed. It's imperative to improve our understanding of how fringe extremist movements seek dominance, how they change as they become dominant, and the strategies that assist them in making that leap.

The Western world is currently grappling with a potent wave of extremism targeting legal and political systems, whether in the resurging popularity of pro-fascist sentiments in Germany,[82] in legislative and judicial programs of persecution against women and

LGBTQIA+ people in the United States,[83] or in the dizzying array of ethnic and religious nationalist movements active and too-often successful all around the world.

Extremists today stand at the doors of the halls of power, as they have in times past and inevitably will again in the future. For scholars and supporters of human rights alike, a clear-eyed and intellectually defensible framework is imperative to understanding and encountering extremist movements as their adherents pass through those doors. Our long-term efforts can only succeed with robust frameworks that enable comparative and longitudinal study, and allow us to defend the credibility and objectivity of scholarship and policy against charges of bias and partisanship.

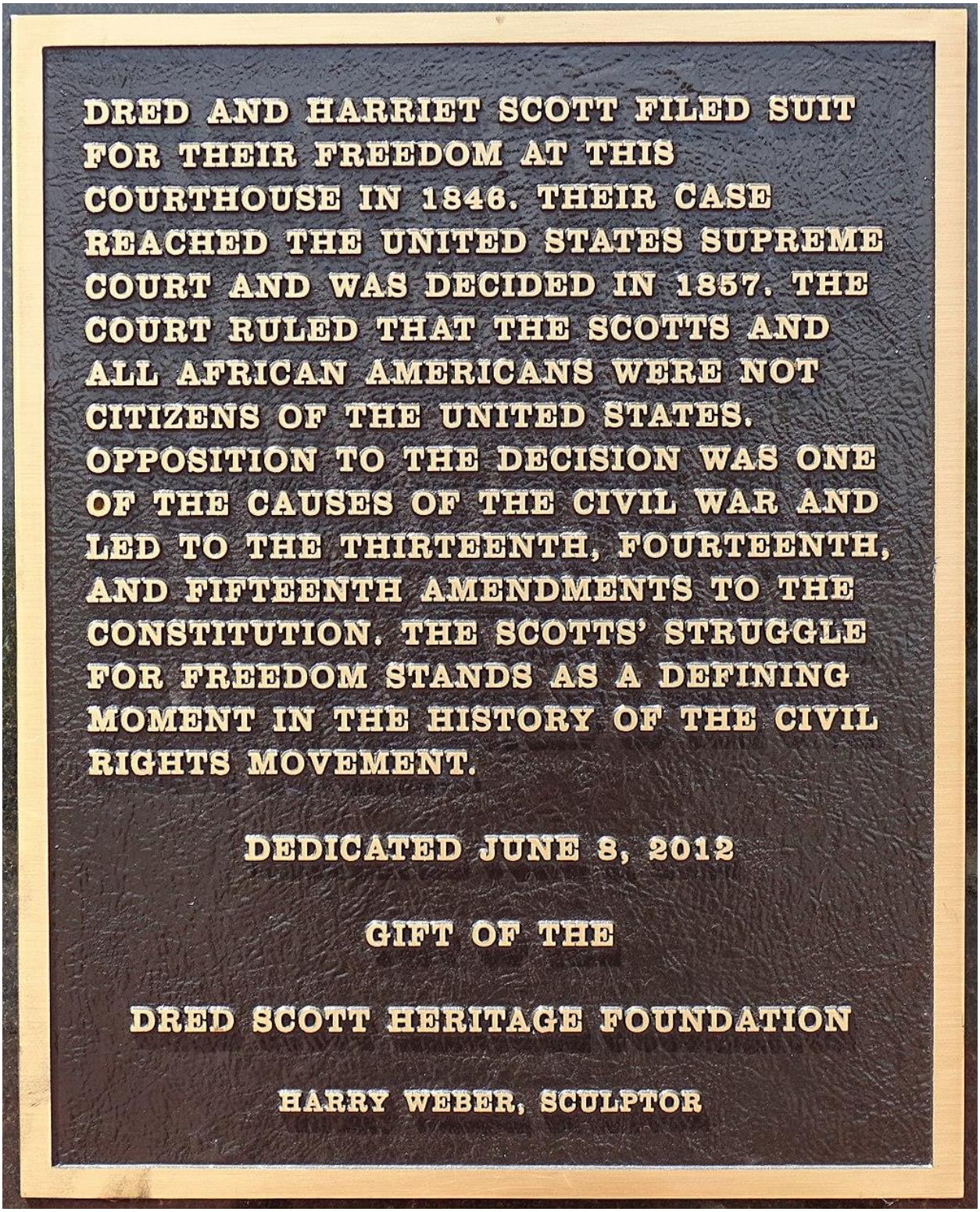


Figure 12: A plaque dedicated to Dred and Harriet Scott outside the Old Courthouse in St. Louis, Missouri. Photo by Adam Jones. Source: Wikimedia Commons via Creative Commons License.
https://commons.wikimedia.org/wiki/Category:Dred_Scott#/media/File:Plaque_on_Dred_Scott_Case_-_Outside_Old_Courthouse_-_St._Louis_-_Missouri_-_USA_(41040335655).jpg

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