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Dred Scott vs. the *Dred Scott Case*:  
History and Memory of a Signal Moment in  
American Slavery, 1857-2007

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## Dred Scott versus the *Dred Scott* Case

*The History and Memory of a Signal Moment in American Slavery, 1857–2007*

Adam Arenson

NEWS OF the decision reached St. Louis before the end of the day. On March 6, 1857, Chief Justice Roger Brooke Taney gathered the U.S. Supreme Court to deliver the decision in *Dred Scott v. Sandford*. The result was telegraphed throughout the country all afternoon: “The act of Congress which prohibits citizens from holding property of this character north of a certain line is not warranted by the constitution, and is therefore void,” Taney announced, “and neither Dred Scott nor any one of his family were made free by their residence in Illinois.”<sup>1</sup>

The complexities of law embedded in the *Dred Scott* case were immediately controversial, and they remain the focus of intense legal and historical scholarship. Yet something very peculiar often happens in these accounts. The Scott family—Dred, Harriet, and their daughters, Eliza and Lizzie—often disappear. In each round of the case, the location, occupation, and journeys of the Scott family were at issue. But in the recorded history, after March 6, 1857, the Scotts suddenly fade, as if their lives ended that day in the courthouse. They did not.

The one hundred and fifty years between the *Dred Scott* decision and the most recent round of commemorations has been a period of tumult in the United States. After a brief window of opportunity during the Civil War and Reconstruction, the lives of African Americans remained scarred by the legacies of slavery and the doctrines of white supremacy, an atmosphere of vitriol that has lifted only in the past half century. Stripping back the inaccuracies to recover the true lives of slaves is only recently a scholarly priority, and finding Dred Scott and his family has been an ongoing task.<sup>2</sup>

In his Pulitzer Prize-winning analysis of the *Dred Scott* case, historian Don Fehrenbacher noted that “what has been believed about the Dred Scott case . . . became in itself a discernible historical force,” but he only gestured to these “pseudo-recollections” before framing the case’s significance in the realm of precedents and civil rights. In the same year, Walter Ehrlich published an insightful look at the Scotts’ lives and the course of the case but openly admitted how “the impact of the decision is not within the scope of this monograph.”<sup>3</sup> While a few recent articles have engaged both elements, the separation of the history of the Scott family from the memory of the *Dred Scott* case has generally been perpetuated.<sup>4</sup>

Elsewhere I have examined how the *Dred Scott* decision catalyzed the transformation of St. Louis politics, turning Missouri toward gradual emancipation just as the South’s proslavery advocates were declaring victory.<sup>5</sup> And I have described how the Scotts’ lives were recovered to memory through the actions spearheaded by their descendants.<sup>6</sup> Here I chronicle how the legacies of the *Dred Scott* case were long divorced from the fate and commemoration of the Scott family, in political rhetoric as well as scholarly dialogue. To reunite the Scott family and the *Dred Scott* case is to add the human cost to the legal significance of this signal moment in American history.

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Taney’s decision in the *Dred Scott* case did not change the legal status of the Scott family; it merely reaffirmed the Missouri Supreme Court’s judgment in *Scott v. Emerson*. Neither was it a surprise, as the outcome—including which justices dissented—had been leaked months before (see fig. 2.1).<sup>7</sup> Yet the decision did catapult the words “Dred Scott” into political shorthand, placing the name of an unknown African American at the center of the controversy over slavery. As Donn Pratt, a political observer in Cincinnati,

**We give this morning a report that the Judges of the U. S. Supreme Court have agreed upon their decision in the case of Dred Scott, and that on the point of the Missouri compromise the opinion of a majority of the Judges is adverse to the constitutionality of the act of 1820. The report, however, can scarcely be regarded as authentic. It is not probable that the Judges have made their decision as yet, or that they would allow the result of their deliberations to reach the public in the present stage of the subject.**

FIGURE 2.1. Despite the political controversy caused by the *Dred Scott* decision, the outcome was not a surprise to legal observers; it had been revealed in newspaper articles such as this, months before the official announcement. "Case of Dred Scott," *Boston Daily Advertiser*, January 2, 1857, issue 2, col F. Image provided by 19th Century U.S. Newspapers, a Gale Digital Collection, a part of Cengage Learning

observed to his antislavery ally George R. Harrington ten days after the decision was made, "The Dred Scott decision . . . sinks deep into the minds of the American people."<sup>8</sup>

What did the *Dred Scott* decision mean for the Scott family, and for St. Louis? Despite the increasingly heated rhetoric in national newspapers, the *Dred Scott* decision seemed hardly to change anything in St. Louis. Manumissions and filings for freedom bonds did not significantly increase or decrease.<sup>9</sup> The St. Louis University Philalethic Society proposed the question, "Has congress the power<sup>right</sup> to abolish slavery in the territories?" at their first meeting after the decision was announced, but then they did not debate it for months.<sup>10</sup> In local newspapers, other concerns predominated, but the true reaction came during St. Louis's April elections, when the emancipationist ticket shocked the nation with its victory.<sup>11</sup>

After the decision the Scott family remained slaves, but the notoriety of the case raised them up from the anonymity of their race, their condition, and their menial work.<sup>12</sup> Reporters sought Scott out, and one who seemingly received Dred Scott's cooperation noted that escape to freedom had

often been available, but that Dred Scott was now “insisting on abiding by the principles involved in the decision.” In the only known words attributed directly to Dred Scott, he described how the prolonged nature of the case had provided him “a ‘heap o’ trouble,’ he says, and if he had known that ‘it was gwine to last so long,’ he would not have brought it.” Scott was “tired of running about” and anxious to secure the purchase of his family. In the final sentence, “he says grinningly, that he could make thousands of dollars, if allowed, by traveling over the country and telling who he is.”<sup>13</sup> This brief speech of Dred Scott’s accentuates how even the most famous slaves were lost to history.

On May 26, 1857, the Scott family attained its freedom. In the national news, Irene Emerson’s second husband Calvin Chaffee, now a Republican representative from Massachusetts, claimed horror to learn that he might be the owner of Dred Scott. Yet his fright may have been staged, perhaps an aftereffect of allowing his wife’s St. Louis allies to continue the case with his tacit approval and simply hoping for the opposite result.<sup>14</sup> The Blow family had worked to gain title and purchase the family’s freedom. Yet, after the *Dred Scott* decision, what could freedom mean for the family or anyone of African descent? The *Hartford Daily Courant* stated the contradiction directly: “Dred Scott is a slave no more,” the editors wrote. “Being a freeman, in spite of Chief Justice Taney, we suppose he now has no rights which white men are bound to respect.”<sup>15</sup>

Despite the legal limits, celebrity status attached to the Scott family. Dred Scott “is well known to many of our citizens, and may frequently be seen passing along Third Street,” the *St. Louis News* reported.<sup>16</sup> Travelers noted meeting him in the street or at church.<sup>17</sup> A *Leslie’s Illustrated* correspondent inquiring at the Scotts’ alley address brought a rebuke from Harriet—her only recorded words—that suggested she was tired of the attention. “What white man arter dad nigger for?” the dialect depiction read. “Why don’t white man ’tend to his business, and let dat nigger ’lone?” Harriet was adamant that Dred would do no touring and that “she’d always been able to yarn her own livin, thank God.” The *Leslie’s* reporter succeeded in cajoling the Scott family into the local photography studio, and the result made the front cover of the newsmagazine (see figs. 2.2, 2.3, and 2.4).<sup>18</sup> That June, Abraham Lincoln addressed the Republican State Convention in Springfield and discussed the *Dred Scott* decision. He denied that “because I do not want



FIGURES 2.2, 2.3, AND 2.4. Despite the legal limits, celebrity status attached to the Scott family. After the loss in the U.S. Supreme Court and the family's emancipation by Taylor Blow, Dred and Harriet Scott, with their daughters Lizzie and Eliza, were cajoled into the local photography studio by a *Leslie's* reporter, and the resulting engraving appeared on the magazine cover. They entered the visual record dignified, but without joy. Dred Scott, Harriet Scott, and Eliza and Lizzie Scott, *Leslie's Illustrated*, June 1857. Image provided by 19th Century U.S. Newspapers, a Gale Digital Collection, a part of Cengage Learning

a black woman for a *slave* I must necessarily want her for a *wife*.” Rather, he said, “I can just leave her alone . . . in her natural right to eat the bread she earns with her own hands.”<sup>19</sup> To work and be left alone—this is what Harriet Scott sought. Yet, even unbound, the *Dred Scott* decision stood in her way.

“I look forward to a great reaction in regard to the Slavery question,” George Caleb Bingham, the master painter and sometime Whig politician of Missouri, wrote home from the art studios in Düsseldorf in June 1857, keeping up on local politics. In the same letter Bingham discussed his latest painting, “a large picture of ‘life on the Mississippi’ . . . far ahead of any work of that Class which I have yet undertaken.”<sup>20</sup> The painting, *Jolly Flatboatmen at Port* (1857), reflects the impact of the *Dred Scott* case (see fig. 2.5).<sup>21</sup> In the earlier *The Jolly Flatboatmen* (1846), a young man danced on the top of the flatboat, arms spread carefree over the wide expanse of

river.<sup>22</sup> Now Bingham constricted the river panorama, multiplied the hints of nostalgia, and heightened the contrasts by placing a black dockworker among the new figures. He stood with a relaxed pose, his face breaking into a smile, his height equal to that of the fiddle player on the opposite side of the compositional pyramid.

This was no casual decision. The work of William Sidney Mount, an earlier master of American genre painting whom Bingham admired, used the sharing of music to suggest connections between workers across the barriers of race and class.<sup>23</sup> For an expatriate Missourian sympathetic to antislavery, the *Dred Scott* decision intimated narrowed horizons and change along the river. It seems no coincidence that the white man's pole, coming up between the dancer and the African American enjoying his performance, gives the silhouette of a rifle pointed to the sky.

Closer to home, former Senator Thomas Hart Benton took a keen interest in the *Dred Scott* decision, declaring it no victory for either side. "Far from settling the question, the opinion itself has become a new question,"



FIGURE 2.5. Though he was in Düsseldorf when the *Dred Scott* case was decided, the politically active Missouri painter George Caleb Bingham returned to his signature works, but with an eye to the changed times. Adding an African American to the scene of dancing flatboatmen, Bingham commented on the *Dred Scott* decision as a moment of narrowed horizons and change along the river. George Caleb Bingham, *Jolly Flatboatmen at Port*, 1857, St. Louis Art Museum

Benton wrote.<sup>24</sup> As David Konig has noted in this volume, Benton's questions joined those of African Americans, resisting the *Dred Scott* decision by insisting on the importance of historical events as they remembered them, not only as glossed by Taney and other judges.<sup>25</sup> "We shall not, in this place, call in question the judgment of the learned Chief Justice," local African American chronicler Cyprian Clamorgan wrote of the *Dred Scott* decision in his pamphlet *The Colored Aristocracy of St. Louis*—but then proceeded to suggest it was because Taney "has in this State kindred of a darker hue than himself."<sup>26</sup> Beginning in 1858, black community leaders in Boston took the *Dred Scott* decision as an impetus to protest and celebrate the martyrdom of Crispus Attucks, killed March 5, 1770. As they took to the streets that week, they kept in mind the martyrdom under way for Dred Scott as well.<sup>27</sup> Defiant pride mixed with mournful nostalgia as free African Americans were buffeted by the same forces that limited their slave brethren.

On September 17, 1858, Dred Scott died. The most prominent political newspapers all noted his passing: "Few men who have achieved greatness have won it so effectually as this black champion," the *New York Times* declared, reviewing his life circumstances, the family left behind, and the sour way in which Dred Scott became "accidentally but ineffaceably associated" with Taney's decision. The editors were sure that "the adverse decision he encountered here will there meet with reversal," in "the Supreme Court above."<sup>28</sup> Left earthbound, however, was the *Dred Scott* case. The *Daily National Intelligencer* knew most would welcome it if "all the useless strife connected with his name . . . also died," yet the editors understood that was fruitless, as "at present the whole State of Illinois is agitated by the question what does Senator DOUGLAS say of Dred?"<sup>29</sup> As the Lincoln-Douglas debates turned on parsing of the *Dred Scott* case, the Scotts themselves were ever more abstracted.

Even as the *Dred Scott* case remained central to the struggles of the Civil War and Reconstruction, Harriet Scott, her daughters, sons-in-law, and grandchildren kept out of the news. When Wesleyan Cemetery in St. Louis was closed in 1867, Taylor Blow arranged for Dred Scott's reinterment in Calvary Cemetery.<sup>30</sup> Though the ex-slave community had begun a fund to erect a monument, "its originators failed in their project," a newspaper article would recall, and the grave remained unmarked.<sup>31</sup> On June 17, 1876, Harriet Scott passed away at the home of her daughter and son-in-law, Eliza and



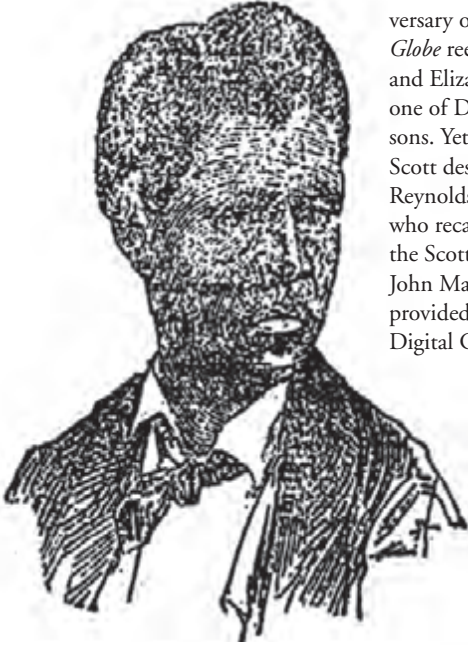
Wilson Madison. She was buried in the Greenwood Cemetery, her grave also without a headstone.<sup>32</sup> The blank graves mirrored the greater effacing: As the white communities north and south worked to reunify the country in the wake of Reconstruction, they worked to put the *Dred Scott* case behind them.<sup>33</sup> Now memory too could bury Dred and Harriet Scott.

As I have examined elsewhere, a small number of white St. Louisans resisted the general amnesia about the Scotts during the Jim Crow era.<sup>34</sup> In 1882, Mary L. Barnum, whose husband had owned the hotel where Dred Scott had worked, commissioned Scott's portrait for the Missouri Historical Society.<sup>35</sup> For the dedication of the portrait, the historical society turned to James Milton Turner, a St. Louis County freedman politician who had been the Grant administration's ambassador to Liberia. The dedication of this portrait, Turner argued, demonstrated "the strict impartiality of all true history," integrating the story of how "the Negro has been with us . . . from the very beginning of the history of our State, and, indeed, of the nation itself." Turner saw in Dred Scott an African American having "carved his humble niche in the temple of time."<sup>36</sup> (*His* indeed; this was for Dred Scott alone. For the next century, Harriet Scott was to fall victim to the double bind of race and sex. Her presence and her actions in filing and then encouraging her husband in the case were hardly mentioned again until the late twentieth century.<sup>37</sup>)

Turner congratulated not a true acknowledgment of Dred Scott but his own dreams for opening a racially segregated American society, which would come to naught. The *Dred Scott* case was a known quantity in Jim Crow America, but its specifics were denatured to the point where they could serve as fodder for humor. "What's this Dead Scott decision about?" a Mrs. Wigglesworth asked her husband, according to a vignette in the 1883 *San Francisco Daily Evening Bulletin*. "Dread Scott—not Dead Scott," Mr. Wigglesworth said, but with this correction of sorts made, his knowledge also ran out. He is recorded adding, "Something to do with the Mexican War."<sup>38</sup> In Gilded Age America, facts began to slip away as the social standing of African Americans declined.

In 1886, the *St. Louis Daily Globe* marked the thirtieth anniversary of the *Dred Scott* case by reengraving the images of Dred, Harriet, and Eliza Scott and adding a portrait of John Madison, one of two surviving grandsons (see figs. 2.6, 2.7, 2.8, and 2.9). Yet no quotes from Scott descendants accompanied the images. Instead, the reporter questioned Thomas C. Reynolds, a former secessionist governor of Missouri who in 1857 had been U.S. district attorney in St. Louis. "Scott was a very respected negro," Reynolds

FIGURES 2.6, 2.7, 2.8, AND 2.9. On the thirtieth anniversary of the *Dred Scott* decision, the *St. Louis Daily Globe* reengraved the daguerreotypes of Dred, Harriet, and Eliza Scott and added an image of John Madison, one of Dred and Harriet Scott's two surviving grandsons. Yet the reporter included no quotes from the Scott descendants, instead interviewing Thomas C. Reynolds, a former secessionist governor of Missouri, who recalled the *Dred Scott* case but no specifics about the Scotts. Dred Scott, Harriet Scott, Eliza Scott, and John Madison, *St. Louis Daily Globe*, 1886. Image provided by 19th Century U.S. Newspapers, a Gale Digital Collection, a part of Cengage Learning.



observed, but he then said his recollections of the case were of the national attention, more than any specifics of the individuals involved.<sup>39</sup>

“What Became of Dred Scott?” the *Globe-Democrat* asked when Scott’s portrait was given a place of honor at the 1904 World’s Fair. And—despite the record present in the newspaper’s own files—the reporter claimed Scott had lived past the Civil War. He quoted St. Louisans who recalled Dred as a cook during the St. Louis visit of the Prince of Wales in 1860. He even claimed—through senility? owing to racism-laced ventriloquism?—that James Milton Turner had said he had seen Scott in St. Louis in the 1870s.<sup>40</sup> Such stories held currency for white St. Louisans: in 1923 an “old-timer,” Eugene H. Lahee, repeated the Prince of Wales anecdote and revealed Lahee’s supposed encounter with Dred Scott as a bank janitor in 1868.<sup>41</sup> It is hard to know whether Lahee transferred the name of Dred Scott to any African American with a servile post, or whether African Americans were willingly playing on the prejudices of whites.

“I distinctly remember Dred Scott among the family servants,” Julia Webster Blow wrote in 1907, calling him a “pensioner of the Blows until his death . . . never hunted nor sought after cruelly in his eventful life again.”<sup>42</sup> Though Blow’s words painted a sympathetic picture, her correspondent, Mary Louise Dalton, librarian of the Missouri Historical Society, summed it up differently: Scott was a “no-account nigger.”<sup>43</sup> She told as much to her research patron, *Harper’s* correspondent and amateur historian Frederick Trevor Hill. He then called Scott “a shiftless, incapable specimen” in his finished work.<sup>44</sup> Based more on racist prejudice than any recourse to fact, this characterization was repeated for decades.<sup>45</sup>

While the Scott family was being maligned, the power of the *Dred Scott* case in political rhetoric remained: In 1913, just after his defeat as a Bull Moose candidate, former president Theodore Roosevelt spoke of “the Dred Scott decisions of our own time; of decisions like the tenement-house cigar-factory decision, like the bakeshop decision, like the Knight Sugar Case, like the Workmen’s Compensation Act decision.” Citing Lincoln as his inspiration, Roosevelt said that “we mean to reverse [these cases], and we mean to do it peaceably.”<sup>46</sup> The case was also wielded as a weapon of ridicule. In 1911, the University of Missouri yearbook, amid nicknames and witticisms, stated that John M. Slaughter, a junior in the College of Agriculture, “lives in constant fear of the Dred Scott Decision,” a menacing if vague sobriquet (see fig. 2.10).<sup>47</sup> Even attempts to dignify the

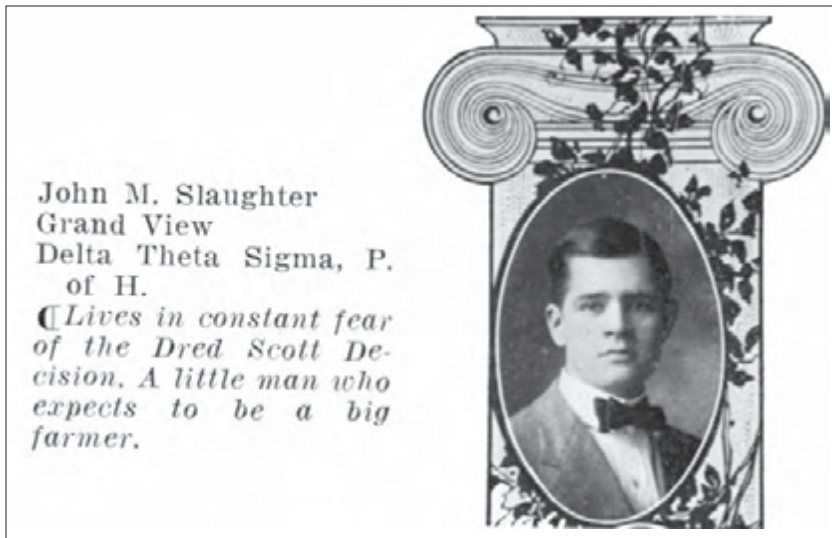


FIGURE 2.10. In the early twentieth century, the Scotts were forgotten, and the *Dred Scott* case was casually and abstractly referenced by defenders and detractors. Among the nicknames and witticisms, the claim that junior John M. Slaughter of the College of Agriculture “lives in constant fear of the Dred Scott Decision” is a menacing if vague testimonial to the times. 1911 *Savitar* (yearbook), University Archives, University of Missouri at Columbia

Scotts leapt free from the historical record. Walter B. Stevens, the dean of turn-of-last-century St. Louis historians, depicted Dred Scott as “the St. Louis slave who looked like an African king,” though he gave no hint of his inspiration for such an idea.<sup>48</sup>

By the time of the publication of the *Dictionary of American Biography* in 1935, it was canonical that Dred Scott was “shiftless and unreliable, and therefore frequently unemployed and without means to support his family.” The dictionary restored the correct date of his death, but the Dred Scott it presented was merely a placeholder for the actions of others—bought, sold, freedom filed for by others, court case fought by others. “The ignorant and illiterate Negro,” Thomas S. Barclay pronounced there, “comprehended little of its significance, but signed his mark to the petition in the suit.”<sup>49</sup> The memory of Dred and Harriet Scott had reached its nadir.

In the early twentieth century, the differences between Dred Scott and the *Dred Scott* case reached new extremes in the divided memory of whites and

African Americans. As Supreme Court justice George Sutherland proudly cited the *Dred Scott* case in a 1934 dissent that grounded originalism,<sup>50</sup> another perspective was also emerging. In 1937, Nathan B. Young Jr. published *Your St. Louis and Mine*, a compendium of African American history and culture in the city, in which he devoted two pages to Dred Scott and his descendants. Young had been born in Tuskegee, Alabama, in 1894, in the house next door to his father's mentor, Booker T. Washington; he graduated from Florida A&M in 1915 and Yale Law School in 1918, and moved to St. Louis in 1927 to serve as a lawyer in that segregated city.<sup>51</sup> Declaring that received history had "paid little attention to Dred Scott as a man and pictured him as a puppet, as a simpleton," Young instead argued that, better than his white contemporaries, Scott understood both the conditions of his slavery and the national import of his case.<sup>52</sup> Young openly challenged the white memories of slavery and Reconstruction.

In the wake of the New Deal and World War II, the struggle against segregation and for civil rights opened new connections between Dred and Harriet Scott and the *Dred Scott* case. Marcus A. Murphy, on trial as a communist in St. Louis in 1954, declared to the jury how he was proud that "I can at least speak to you as a human being." Repeating Taney's phrase, Murphy said it was "ninety-seven years ago" when "another Negro stood in federal court to hear . . . that he was not a human being and had no rights which a white man was bound to respect."<sup>53</sup> That year the *Brown v. Board of Education* decision repudiated formal segregation, and Rosa Parks refused to move from her bus seat. The time had come for Dred Scott's resurrection.

It was a genealogist, the Reverend Edward Dowling, S.J., who rediscovered Scott's grave site in time for the centennial of the *Dred Scott* case in 1957. Dowling spoke of a modest effort to mark the resting place. "We have in mind putting up only a simple monument," he told the newspapers. "Then if someone some day wants to put up a better monument it will at least be known where Dred Scott lies." Awareness of the Scott descendants was also renewed: the article contained a photograph of great-grandson John A. Madison with his wife and children. Madison was a postal worker studying for a law degree. He was preparing to argue cases in the "courts in which Dred Scott couldn't even sue."<sup>54</sup>

On March 6, 1957, Scott's descendants and Father Dowling joined the president of the St. Louis University Law School Student Bar Association to lay a wreath on the still unmarked grave, following ceremonies in the Old Courthouse (see fig. 2.11).<sup>55</sup> When the granddaughter of Taylor Blow came



FIGURE 2.II. Genealogist Father Edward Dowling, S.J., rediscovered Dred Scott's unmarked grave in time for the centennial of the *Dred Scott* case. "We have in mind putting up only a simple monument," he told reporters. "Then if someone some day wants to put up a better monument it will at least be known where Dred Scott lies." Father Dowling indicates Dred Scott's grave to John A. Madison, the Scotts' great-grandson, and his family. *St. Louis Globe-Democrat*, February 10, 1957. Courtesy of the St. Louis Globe-Democrat Archives of the St. Louis Mercantile Library at the University of Missouri–St. Louis



forward to pay for a gravestone, one commentator, Frank P. O'Hare, a socialist and local journalist, worried about the symbolism. "A hundred years has not erased the ideology of the slave owners," O'Hare charged, as forces still aligned to prevent "a monument for a slave to overtop the monument for the master."<sup>56</sup> Yet as O'Hare was writing, change was coming, with federal troops desegregating Little Rock High School. The efforts of Young, Dowling, and O'Hare reunited the historical particulars of Dred and Harriet Scott's actions with the conditions of slavery and the memory of the *Dred Scott* case.

In 1965, Nathan B. Young Jr. was appointed the first African American municipal court judge in St. Louis, and he linked his vocation with his avocation for the history of African American St. Louis. With his customary enthusiasm, in a 1979 speech Young called Dred Scott "undoubtedly the paramount figure in all American history and law!"<sup>57</sup> Young imagined Scott's life in a novel, *Dred the Revelator*, and in many poems.<sup>58</sup> And Young condemned Taney's decision as "suspect law—garbled history—and shoddy sociology," seeing it as a moment that horribly delayed the march of civil rights.<sup>59</sup> Young's efforts mixed history and myth to vividly and viscerally recall the person of Dred Scott.

By the time the Association for the Study of Afro-American Life and History placed the first historical marker on the Old Courthouse in 1977, indignant responses to the *Dred Scott* case had become more common. John A. Madison,

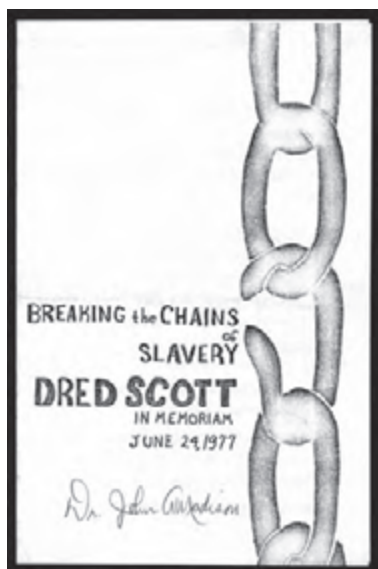


FIGURE 2.12. The Scotts' great-grandson John A. Madison Jr. provided the invocation and designed the bold program illustration for the ceremony to commemorate the Scotts' efforts at the Old Courthouse, organized with the Association for the Study of Afro-American Life and History, the originators of Black History Month. "Breaking the Chains of Slavery," National Historic Marker Ceremony at the Old Courthouse, June 24, 1977. Courtesy of St. Louis University Archives, Nathan B. Young Collection, as well as Lynne M. Jackson and the Dred Scott Heritage Foundation

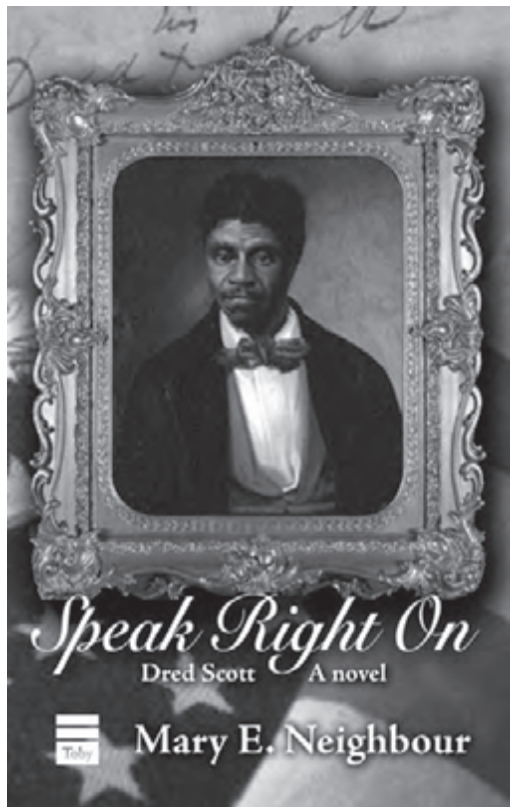
now juris doctor, provided the invocation, introduced his family, and created "Breaking the Chains of Slavery," the bold program illustration (see fig. 2.12).<sup>60</sup> The Scott relatives emphasized their ancestors' actions and their personal stories, stepping beyond the mere invocation of Dred Scott's name.

In the years since, such recoveries have continued. Harriet Scott received a cenotaph in 1999, reacknowledging her struggle alongside her husband and for her children.<sup>61</sup> In 2000, Dred and Harriet Scott's petitions for freedom were retrieved from storage and placed on display at the main branch of the St. Louis Public Library, their "X"s speaking across history and leading scholars toward hundreds of other freedom petitions.<sup>62</sup> In 2006, the true resting place of Harriet Scott was finally rediscovered, and a full-scale biography of this remarkable woman appeared in 2009.<sup>63</sup> A new plaque was affixed to the Old Courthouse, emphasizing the actions of the Scotts in their own legal proceedings and in precipitating the Civil War (see fig. 2.13).<sup>64</sup> In time for the 150th anniversary of the *Dred Scott* case, three novels about Dred Scott were published, two of which imagine the case from Scott's perspective and one from that of a young lawyer working on his case (see fig. 2.14).<sup>65</sup> They suggest a renewed effort to engage with the Scotts themselves and to think through their experience.



FIGURE 2.13. Not until 2006 was a new plaque placed at the Old Courthouse, displaying images of both Dred and Harriet Scott and emphasizing their efforts in their own legal proceedings as well as the importance of their claims within the *Dred Scott* case in precipitating the Civil War. Image courtesy of the National Park Service, Jefferson National Expansion Memorial

FIGURE 2.14. As the 150th anniversary of the *Dred Scott* case approached, the value of describing the case from Dred Scott's perspective inspired at least three writers of fiction, including Mary E. Neighbour, author of *Speak Right On*. These works demonstrate the renewed effort to engage with the Scotts themselves, and to think through their experience. Cover of *Speak Right On*, 2006, copyright © 2006 The Toby Press LLC





Despite this recovery, the *Dred Scott* case has remained more a symbol to some. Fantastically, abortion opponents have equated *Roe v. Wade* with the *Dred Scott* case, imagining a world inside its injustices for their arguments.<sup>66</sup> In his 1996 dissent from *Planned Parenthood v. Casey*, Supreme Court justice Antonin Scalia invoked the 1859 portrait of Taney, reflecting on what he saw as its “expression of profound sadness and disillusionment . . . how the lustre of his great Chief Justiceship came to be eclipsed by *Dred Scott*,” with danger to the Court and the nation in tow.<sup>67</sup> President George W. Bush also hinted at this interpretation in 2004, when he mentioned the *Dred Scott* case as an adequate test for his judicial nominees, not noting the irony of making the comment while in St. Louis for a presidential debate.<sup>68</sup>

Yet the damage done by such legal analogies is evident when the true historical context for the cases is not only recovered but considered as fundamental to a contemporary perspective on justice. Legal naming conventions encourage the separation of personhood from plaintiffs and defendants: referencing *Dred Scott v. Sandford*, or *Plessy v. Ferguson*, or *Korematsu v. United States*, lawyers rarely reference Dred and Harriet Scott, Homer A. Plessy, or Toyosaburo Korematsu. Yet, as this account of forgetting and recovering Dred and Harriet Scott demonstrates, the denigration of legal actors can do as much to sway our opinion of a case as the legal arguments made. True justice will come from recovering the heroic actions taken by those in painful, controversial cases and by judging their stinging defeats as an indictment of past American law and politics.

The cause of integrating the *Dred Scott* case to its context within the lives of Dred and Harriet Scott—and not the other way around—continues today, and the descendants of Dred and Harriet Scott remain its most prominent advocates. In 2007, Dred and Harriet Scott’s great-great-granddaughter, Lynne Jackson Madison, founded the Dred Scott Heritage Foundation to promote anniversary events and to raise money for a life-size statue of Scott at the Old Courthouse, “as a memorial to the man and his cause,” together. The foundation’s events will provide a forum for evaluation of and reflection on the continuing impact of the Scott family, within and beyond their legal action.<sup>69</sup>

The *Dred Scott* case is known to every American lawyer and to practically every American student. But for too long the efforts and dreams of

Dred and Harriet Scott have been forgotten, discounted, or excluded, even as they ostensibly have been remembered. The search for their history—in conjunction as well as in contradistinction to the case—connects the traumas of slavery with the struggles for civil rights in the following century, and it places the system of legal precedent under scrutiny. Personal stories can strengthen our ability to grapple with the unfathomable legacies of slavery, with the unspoken contexts of American history lost amid legal formalisms. Dred Scott and his wife Harriet were and are more than just symbols. In the fight between the *Dred Scott* case and Dred and Harriet Scott, critical perspectives and historical recovery let their heroic acts of resistance finally win out.

## Notes

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1. “The Dred Scott Case,” *New York Herald*, March 9, 1857, 1. The printed version of Taney’s decision was revised and the language changed slightly: Walter Ehrlich, *They Have No Rights: Dred Scott’s Struggle for Freedom* (Westport, Conn.: Greenwood Press, 1979), 137–43.

2. The newest and most accurate accounts are Ruth Ann Hager, *Dred and Harriet Scott: Their Family Story* (St. Louis: St. Louis County Library, 2010), and Lea VanderVelde, *Mrs. Dred Scott: A Life on Slavery’s Frontier* (New York: Oxford University Press, 2009). For general problems in the history of slavery and American memory, see James Oliver Horton and Lois E. Horton, eds., *Slavery and Public History: The Tough Stuff of American Memory* (New York: New Press, 2006).

3. Don E. Fehrenbacher, *The Dred Scott Case, Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), 572, 70, 72, 93; Ehrlich, *They Have No Rights*, 238n1.

4. Important recent exceptions include Lea VanderVelde and Sandhya Subramanian, “Mrs. Dred Scott,” *Yale Law Journal* 106, no. 4 (1997): 1033–1122; and Barbara Bennett Woodhouse, “Dred Scott’s Daughters: Nineteenth Century Urban Girls at the Intersection of Race and Patriarchy,” *Buffalo Law Review* 48 (Fall 2000): 669–701.

5. Adam Arenson, “City of Manifest Destiny: St. Louis and the Cultural Civil War, 1848–1877” (Ph.D. diss., Yale University, 2008), chap. 5.

6. Adam Arenson, "Freeing Dred Scott: St. Louis Confronts an Icon of Slavery, 1857–2007," *Common-Place* 8, no. 3 (2008), <http://www.common-place.org/vol-08/no-03/arenson/>.

7. *New York Herald*, January 1, 1857; "Case of Dred Scott," *Boston Daily Advertiser*, January 2, 1857.

8. Donn Pratt to George R. Harrington, March 18, 1857, George R. Harrington Papers, Missouri Historical Society, St. Louis.

9. My analysis of this data is ongoing, relying on the list of emancipations registered in the St. Louis Circuit Court, 1817–65, compiled in 2006 by Robert Moore Jr., National Park Service-Jefferson National Expansion Memorial, and Kristin Zapalac, Missouri Department of Natural Resources; and the list of freedom bonds from the Dexter P. Tiffany Collection compiled by Dennis Northcutt and Molly Kodner, Missouri Historical Society. Thanks to Bob Moore, Dennis Northcutt, and Molly Kodner for making these lists available.

10. March 18, 1857, and January 1, 1858, meetings, St. Louis University Historical Records, Philalethic Society Minutes, 1850–63, St. Louis University Archives.

11. See Arenson, "City of Manifest Destiny," chap. 5.

12. For the sense of not being seen, Horton and Horton, eds., *Slavery and Public History*; Woodhouse, "Dred Scott's Daughters," 397.

13. "The Original Dred Scott a Resident of St. Louis—A Sketch of His History," *St. Louis [Daily Evening] News*, April 3, 1857. For similar estimations of appearance and age, "Visit to Dred Scott—His Family—Incidents of His Life—Decision of the Supreme Court," *Frank Leslie's Illustrated Newspaper*, IV, no. 82 (June 27, 1857).

14. Ehrlich, *They Have No Rights*, 180–81; Fehrenbacher, *Dred Scott Case*, 420–21, 473, 663n20. On the idea that Chaffee sought a ruling as a test decision, see Albert P. Blaustein and Robert L. Zangrando, *Civil Rights and African Americans: A Documentary History* (Evanston, Ill.: Northwestern University Press, 1991), 147.

15. "General News," *Hartford Daily Courant*, May 28, 1857. For a different view, see Hager, *Dred and Harriet Scott*, 33–44.

16. "The Original Dred Scott a Resident of St. Louis."

17. One such traveler is Charles Elliott, "Correspondence. [Letter to Brother Haven]," *Zion's Herald and Wesleyan Journal* (July 25, 1857; printed September 23, 1857).

18. "Visit to Dred Scott."

19. Abraham Lincoln, "Speech at Springfield, June 27, 1857," in *The Collected Works of Abraham Lincoln*, ed. Roy P. Basler, 8 vols. (New Brunswick, N.J.: Rutgers University Press, 1953–55), 2:405, 404, 401.

20. George Caleb Bingham to James Rollins, June 3, 1857, James Rollins Papers, folder 39, Western Historical Manuscript Collections, Columbia, Mo.

21. Despite recording the letters and Bingham's politics, the connection between the painting and the *Dred Scott* decision has not been made elsewhere.

For a brief discussion of the black dancing figures in relation to Mount and minstrelsy—but not politics—see Louis Gerteis, “Shaping the Authentic: St. Louis Theater Culture and the Construction of American Social Types, 1815–1860,” in *St. Louis in the Century of Henry Shaw: A View beyond the Garden Wall*, ed. Eric Sandweiss (Columbia: University of Missouri Press, 2003), 212–15.

22. George Caleb Bingham, *The Jolly Flatboatmen*, 1846, The Manoogian Collection.

23. See brief mention of the influence in Jonathan Weinberg, “The Artist and the Politician—George Caleb Bingham,” *Art in America* 88, no. 10 (2000): 138–45.

24. Thomas Hart Benton, *Historical and Legal Examination of That Part of the Decision of the Supreme Court of the United States in the Dred Scott Case, Which Declares the Unconstitutionality of the Missouri Compromise Act, and the Self-Extension of the Constitution to Territories, Carrying Slavery along with It* (New York: D. Appleton, 1857), 5.

25. David Thomas Konig, “Constitutional Law and the Legitimation of History: The Enduring Force of Roger Taney’s ‘opinion of the court,’” chapter 1 in this volume.

26. Cyprian Clamorgan, *The Colored Aristocracy of St. Louis* (St. Louis, 1858; repr., ed. Julie Winch, Columbia: University of Missouri Press, 1999), 47. Winch notes that no standard Taney biography corroborates Clamorgan’s claim, but given his slaveholding lineage in Maryland and the nature of slave knowledge about parentage I find the claim plausible (69n16).

27. Elizabeth Rauh Bethel, *The Roots of African-American Identity: Memory and History in the Antebellum Free Communities* (New York: St. Martin’s Press, 1997), 1–28. Thanks to Jill Lepore for this reference.

28. “Dred Scott,” *New York Times*, September 21, 1858. See also “Dred Scott Gone to Final Judgment,” repr. of *New York Herald* in *Liberator*, October 1, 1858.

29. *Daily National Intelligencer*, September 22, 1858.

30. Ehrlich, *They Have No Rights*, 183. For the exact date, see David Brown, “Dred Scott Centennial: Famous Slave Whose Case Split U.S. Lies in Unmarked Grave in Calvary Cemetery Here,” *St. Louis Globe-Democrat*, February 10, 1957.

31. “Dred Scott: Life of the Famous Fugitive and Missouri Slave Litigant,” *St. Louis Daily Globe*, January 10, 1886.

32. Hager, *Dred and Harriet Scott*, 64–66.

33. See especially David W. Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2001).

34. An earlier version of the research in this section appeared in Arenson, “Freeing Dred Scott.”

35. Ehrlich, *They Have No Rights*, 183.

36. Irving Dilliard and James Milton Turner, “Dred Scott Eulogized by James Milton Turner: A Historical Observance of the Turner Centenary: 1840–1940,”

*Journal of Negro History* 26, no. 1 (1941): 9; passage quoted by Gary R. Kremer, *James Milton Turner and the Promise of America: The Public Life of a Post-Civil War Black Leader* (Columbia: University of Missouri Press, 1991), 1.

37. For more on the double burden on Harriet Robinson Scott, see VanderVelde, "Mrs. Dred Scott."

38. "The Dred Scott Decision Explained," *San Francisco Daily Evening Bulletin*, October 17, 1883, 4.

39. "Dred Scott: Life of the Famous Fugitive and Missouri Slave Litigant."

40. A. W., "What Became of Dred Scott? The Question Answered by Investigation in St. Louis—How an International Celebrity Lived in a St. Louis Alley," *St. Louis Globe-Democrat*, October 9, 1904. Turner is quoted as saying Scott "was an ignorant old darky." The language suggests these are ventriloquisms rather than records of African American voices.

41. "Links Present with War Days: Resident of this City Knew Historic Figures," an interview with Eugene H. Lahee, July 22, 1923, clipping in the Dred Scott Collection, Missouri Historical Society.

42. Julia Webster Blow to Mary Louise Dalton, March 13, 1907, Dred Scott Collection, folder 5, Missouri Historical Society.

43. Mary Louise Dalton to Frederick Trevor Hill, February 11 and March 13, 1907, in *ibid.*

44. Frederick Trevor Hill, *Decisive Battles of the Law; Narrative Studies of Eight Legal Contests Affecting the History of the United States between the Years 1800 and 1886* (New York: Harper and Brothers, 1907), 116.

45. This chain of characterizations is traced in Fehrenbacher, *Dred Scott Case*, 571 and 714n7.

46. Theodore Roosevelt, "The Heirs of Abraham Lincoln," February 12, 1913. Online at <http://teachingamericanhistory.org/library/index.asp?document=1140>, accessed January 2007.

47. University of Missouri, *Savitar for 1911* (1912), 54. Online at <http://www.virtuallymissouri.org/> accessed January 2007. It is amazing to note the items that can be found in the era of digitized texts and keyword searches, though one must always be cognizant of what might be missed by relying overmuch on such an approach.

48. Walter B. Stevens, "Lincoln and Missouri," *Missouri Historical Review* 10, no. 2 (1916): 64.

49. "Dred Scott," *Dictionary of American Biography* Base Set, American Council of Learned Societies, 1928–36, reproduced in *Biography Resource Center*, Thomson Gale, 2007, <http://galenet.galegroup.com/servlet/BioRC>. See discussion in Fehrenbacher, *Dred Scott Case*, 571 and 714n7.

50. *Home Bldg. and Loan Ass'n v. Blaisdell*, 290 U.S. 398, 450 (1934) (Sutherland, J., dissenting, quoting *Dred Scott*). Thanks to Austin Allen for this citation, from chapter 5 of this volume, "An Exaggerated Legacy, Dred Scott and Substantive Due Process."

51. Antonio Frederick Holland, *Nathan B. Young and the Struggle over Black Higher Education* (Columbia: University of Missouri Press, 2006).

52. [Nathan B. Young Jr.], "Who Was Dred Scott?" *Your St. Louis and Mine* (St. Louis: n.p., [1937]), 19, 41.

53. "Case of 5 Reds on Trial Here Likely to Go to Jury Tomorrow," *St. Louis Post-Dispatch*, May 27, 1954. Thanks to Bonnie Stepenoff for this citation, from her paper "St. Louis and the Sharecroppers" at the 2006 Western History Association annual meeting.

54. Brown, "Dred Scott Centennial."

55. "Wreath for Dred Scott's Grave" and "Dred Scott Case Celebrated Here," *St. Louis Post-Dispatch*, March 6, 1957. Nathan B. Young Jr. also spoke on this occasion at the St. Louis University School of Law.

56. Frank P. O'Hare to Irving [Dilliard], not sent, [February 13, 1957], Frank P. O'Hare Papers, Missouri Historical Society; Norman Kerr, Curate, St. David's Episcopal Church, Radnor, Pa., "Dred Scott Rests in Peace," Dred Scott Collection, folder 7, references Mrs. Charles C. Harrison Jr., of Villanova, Pa., the granddaughter of Taylor Blow. Despite what VanderVelde writes of her conversation with Kenneth Kaufman, the first grave marker seems to have been unveiled September 17, 1957, the ninety-ninth anniversary of Dred Scott's death. Yet the marker flush with the ground may have been placed in the 1920s, as she suggests: Ehrlich, *They Have No Rights*, 184; VanderVelde, "Mrs. Dred Scott," 1043n33.

57. Nathan B. Young Jr., "Speech for the Forty-One Fellows of the Danforth Foundation," January 30, 1979, 7.

58. Young, *Dred the Revelator* [the cover "1930s" date seems unlikely], and, for example, *Boots to the Levee*, Santopolis poems, 1960, Nathan B. Young, Jr., Collection, St. Louis University Archives.

59. Young, "The Missouri Compromise and the Dred Scott Case in the Anatomy of Civil Rights," Washington University lecture, March 15, 1971, in *ibid.*, 14.

60. Association for the Study of Afro-American Life and History, Program for National Historic Marker ceremony, June 24, 1977, *ibid.*

61. "Lovejoy Society Will Set Stone for Wife at Grave of Dred Scott," *St. Louis Post-Dispatch*, November 4, 1999; Robert W. Tabscott, "Harriet Scott: A Woman Who Forged the Way," *St. Louis Post-Dispatch* editorial, November 25, 1999.

62. Tim O'Neil, "Dred Scott's Formal Petition for Freedom Will Go on Display; Old Courthouse Ceremony Will Highlight Papers That Detail Plight of Slave, Wife," *St. Louis Post-Dispatch*, February 8, 2000. For the broader recovery, see Freedom Suits in the St. Louis Circuit Court Records project, <http://stlcourtrecords.wustl.edu/index.php>.

63. Frankel, "Finding a St. Louis Legend"; Lea VanderVelde, *Mrs. Dred Scott: A Life on Slavery's Frontier* (New York: Oxford University Press, 2009).

64. O'Neil, "Dred Scott Case Is Remembered with New Plaque," *St. Louis Post-Dispatch*, December 1, 1999.

65. Shelia P. Moses and Bonnie Christensen, *I, Dred Scott: A Fictional Slave Narrative Based on the Life and Legal Precedent of Dred Scott* (New York: Margaret K. McElderry Books, 2005); Mary E. Neighbour, *Speak Right On: Dred Scott: A Novel* (New Milford, Conn.: Toby Press, 2006); Gregory J. Wallance, *Two Men before the Storm: Arba Crane's Recollection of Dred Scott and the Supreme Court Case That Started the Civil War* (Austin, Tex.: Greenleaf Book Group Press, 2006).

66. Timothy Noah, "Why Bush Opposes *Dred Scott*: It's Code for *Roe v. Wade*," *Slate* Chatterbox, posted October 11, 2004, at 6:45 PM ET, <http://www.slate.com/id/2108083/>

67. *Planned Parenthood of Southeastern Penn. v. Casey*, 505 U.S. 833, 1002 (1992) (Scalia, J., concurring in part and dissenting in part). Thanks to Austin Allen for this citation. For a sense of Taney's eclipse, see James F. Simon, *Lincoln and Chief Justice Taney: Slavery, Secession, and the President's War Powers* (New York: Simon and Schuster, 2006).

68. Commission on Presidential Debates, second Bush-Kerry presidential debate transcript, October 8, 2004, <http://www.debates.org/pages/trans2004c.html>.

69. <http://www.thedredscottfoundation.org/>, accessed March 2007.