

# “CRISIS OF CONSTITUTIONAL GOVERNMENT”

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WEEK 7 — WILL MORRISEY  WILLIAM AND PATRICIA LAMOTHE PROFESSOR IN THE U.S. CONSTITUTION

**AT THE HEART** of the American constitutional crisis of the mid-nineteenth century stood the moral, social, and political evil of slavery. At stake in this crisis was the future of republican self-government.

## LECTURE SUMMARY

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Abraham Lincoln saw the dilemma facing the nation as the “crisis of a house divided.” While the American Founders worked to put slavery, as Lincoln said, “on the course of ultimate extinction,” the institution had instead flourished in the first half of the nineteenth century. By the 1850s, efforts to expand slavery threatened to tear the nation apart.

Illinois Senator Stephen Douglas championed the idea that Americans living in the territories should choose whether or not slavery should be legal there. “Popular sovereignty” eventually became the law of the land with the passage of the Kansas-Nebraska Act of 1854, which repealed the Missouri Compromise of 1820.

For Lincoln, “popular sovereignty” was an abandonment of moral principle. Man does not have a moral right to choose a moral wrong. Self-government cannot mean ruling other human beings without their consent. The Kansas-Nebraska Act, although disguised in the language of liberty and self-government, was in fact at odds with the core principles of the American regime.

The Supreme Court’s *Dred Scott* decision marked a further departure from the principles of the American Founding. Writing for the majority in 1857, Chief Justice Roger Taney declared that the Founders never intended for the principles of natural right enunciated in the Declaration to apply to blacks—enslaved or emancipated. Furthermore, Congress had no right to ban slavery in the territories. For Lincoln and the opponents of slavery, this decision was not only constitutionally and historically wrong, but it also furthered the legal expansion of slavery nationwide.

Lincoln and Douglas debated both popular sovereignty and the *Dred Scott* decision in their Illinois Senate race of 1858. Douglas maintained that self-government and slavery were compatible and mutually beneficial in certain climates, and it was up to the majority of citizens

to determine whether or not the conditions prevailing in their territory or state made slavery useful. Lincoln countered that republicanism and slavery could never exist in harmony, and that self-government could never be compatible with the denial of consent. America, he held, could not long exist half slave and half free; it must become one or the other.

## KEY PASSAGES FROM THE READINGS

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### **SPEECH ON THE KANSAS-NEBRASKA ACT** ~ Abraham Lincoln

“When the white man governs himself that is self-government; but when he governs himself, and also governs another man, that is more than self-government—that is despotism.”

(*The U.S. Constitution: A Reader*, page 469)

“I particularly object to the new position which the avowed principle of this Nebraska law gives to slavery in the body politic. I object to it because it assumes that there can be moral right in the enslaving of one man by another. I object to it as a dangerous dalliance for a few people—a sad evidence that, feeling prosperity we forget right—that liberty, as a principle, we have ceased to revere.” (*The U.S. Constitution: A Reader*, page 477)

“Our republican robe is soiled, and trailed in the dust. Let us repurify it. Let us turn and wash it white, in the spirit, if not the blood, of the Revolution . . . Let us re-adopt the Declaration of Independence, and with it, the practices, and policy, which harmonize with it.” (*The U.S. Constitution: A Reader*, page 479)

### **DRED SCOTT V. SANDFORD** ~ Roger Taney

“But it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this Declaration; for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted.” (*The U.S. Constitution: A Reader*, page 489)

### **SPEECH ON THE DRED SCOTT DECISION** ~ Abraham Lincoln

“They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere.” (*The U.S. Constitution: A Reader*, page 508)

### **A HOUSE DIVIDED** ~ Abraham Lincoln

“‘A house divided against itself cannot stand.’ I believe this government cannot endure, permanently half slave and half free. I do not expect the Union to be dissolved—I do not expect the house to fall—but I do expect it will cease to be divided. It will become all one thing, or all the other.” (*The U.S. Constitution: A Reader*, page 511)

**ADDRESS AT COOPER INSTITUTE** ~ Abraham Lincoln

“Let us have faith that right makes might, and in that faith, let us, to the end, dare to do our duty as we understand it.” (*The U.S. Constitution: A Reader*, page 555)

## STUDY QUESTIONS

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1. What was the central policy of the Missouri Compromise? How did the Kansas-Nebraska Act undo this?
2. What is “popular sovereignty”?
3. What is Article IV, Section Four of the Constitution? How does it bear upon the question of slavery?
4. How did Supreme Court Chief Justice Roger Taney misinterpret the Declaration of Independence in the *Dred Scott* decision?
5. The Republican Party was founded at the height of the sectional crisis in 1854. For what purpose was it founded?

## DISCUSSION QUESTIONS

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1. Why is popular sovereignty incompatible with self-government and the consent of the governed? What effects does it have on constitutionalism?
2. Abraham Lincoln argued that although the Supreme Court’s decision in the particulars of *Dred Scott* had the force of law, its unconstitutional decision did not have the power of precedent. How does this line of argument relate to the debate about judicial supremacy today?
3. Should American citizens have a right to do wrong? Are there some matters that should be beyond the reach of majority vote?
4. Does America have a constitutional crisis today? How is this crisis similar to the crisis of slavery?



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