

A COMPARISON OF THE REASONING AND RESULTS OF THE *DRED SCOTT*
AND *ROE V. WADE* DECISIONS

Dred Scott:

Roe:

Similarities

Holding:

Dred Scott declared that slaves aren't persons

Holding:

Roe declared that unborn children aren't persons

Legal reasoning:

Dred Scott Court placed heavy reliance on non-legal arguments

Legal reasoning:

Roe Court placed heavy reliance on non-legal arguments

Due process analysis:

Supreme Court in *Dred Scott* resolved conflict between one party's priority due process right to "liberty" claim and the other party's inferior due process right to "property" claim in favor of the inferior claim by dehumanizing (denying personhood to) the party with the priority claim, i.e., the slave

Due process analysis:

Supreme Court in *Roe* resolved conflict between one party's priority due process right to "life" claim and the other party's inferior due process right to "liberty" claim in favor of the inferior claim by dehumanizing (denying personhood to) the party with the priority claim, i.e., the unborn child

Federal/state/individual power distribution:

Dred Scott prevented federal government from intruding on state legislative power and private decisionmaking

Federal/state/individual power distribution:

Roe prevented federal government from intruding on state legislative power and private decisionmaking

Legal response from decision's opponents:

In the wake of *Dred Scott*, opponents of slavery argued that a higher law than the Constitution existed and that the Supreme Court's decision violated this higher law (*cf.* the Declaration of Independence's reference to "the laws of Nature and Nature's God")

Legal response from decision's opponents:

In the wake of *Roe*, opponents of abortion argued that a higher law than the Constitution existed and that the Supreme Court's decision violated this higher law (*cf.* the Declaration of Independence's reference to "the laws of Nature and Nature's God")

Effects of decision:

Dred Scott subjected Supreme Court to charges of making political, not legal, decisions and resulted in deep-seated damage to the rule of law, leading to internal disunity, widespread protest of the decision's legitimacy, and ultimately war and constitutional revolution

Effects of decision:

Roe subjected Supreme Court to charges of making political, not legal, decisions and resulted in deep-seated damage to the rule of law, leading to internal disunity and widespread protest of the decision's legitimacy

Differences

Popular attitude towards decision:

Dred Scott now universally denounced as one of the most unjust and poorly reasoned decisions in Supreme Court history

Popular attitude towards decision:

Roe now supported by a large segment of the American public, despite its overwhelming legal and logical similarity to *Dred Scott*