

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

Similarities

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 legal personhood to) the party with the priority claim, i.e., the slave

Dred Scott Court placed heavy reliance on non-legal arguments

Dred Scott prevented federal government from intruding on state legislative power and private citizens' personal choices

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")

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

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 legal personhood to) the party with the priority claim, i.e., the fetus/unborn

Roe Court placed heavy reliance on non-legal arguments

Roe prevented federal government from intruding on state legislative power and private citizens' personal choices

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")

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

Similarity or difference?

Dred Scott Court grounded highly controversial claim of slavery right in nebulous meaning of due process "liberty"

Roe Court grounded highly controversial claim of abortion right in nebulous meaning of due process "property"

Differences

Slavery was clearly protected by text of Constitution, thus providing some slight positive law justification for the *Dred Scott* decision

Abortion is not clearly protected by text of Constitution, thus providing no positive law justification for the *Roe* decision

Disagreement over *Dred Scott* was sectional, allowing each side to exercise strong control over states and forcing the community to face the decision's consequences (i.e., secession and civil war)

Disagreement over *Roe* decision has been geographically diffuse, leading to long-running and unresolved conflict and polarization while forestalling the community's confrontation of the decision's consequences

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

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

Dred Scott overruled by Fourteenth Amendment

Roe based largely on Fourteenth Amendment