

DRED SCOTT

Within a few years of Hitler's Nazi control of Germany, German Jews gradually lost their citizenship rights. The Nuremberg Laws of 1935 established a "definition" of who was to be considered Jewish by the Nazi state. (See Kalfus, *Primary Source Documents*, pp 2-3)

Eventually anyone who had some "Jewish blood in his or her ancestry" was no longer a German citizen. After 1935, Jews were excluded from almost all areas of employment – law, medicine, retail business, and education. In effect, Jews no longer existed as viable human beings. This becomes grotesquely evident in the language used by the Nazis to describe Jews: they were often referred to as vermin, parasites, bacteria, merchandise and burdensome loads to be disposed of. The German chemical company, I.G. Farben, experimented on Jewish prisoners.

Since Jews were no longer viewed as human beings the following memorandum written by a company manager to the SS is horrifying to us but not surprising within the context of the Nazi period: "The tests were made, all subjects died. We shall contact you shortly on the subject of a new load." (See also Kalfus, *Primary Source Documents*, p 89)

Were the Nazis the only people who reduced human beings to non-person with no legal rights to merchandise that could be handled at the will of those considered "superior" human beings?

Answer these questions in a short paragraph by reading the account below of the Dred Scott Case. Be sure to take note of the similar language used by the Nazis and by the justice of the Supreme Court.

INTRODUCTION TO THE COURT OPINION OF THE DRED SCOTT CASE

Dred Scott's case holds a unique place in American constitutional history as an example of the Supreme Court trying to impose a judicial solution on a political problem. It called down enormous criticism on the Court and on Chief Justice Roger Brook Taney; a later chief justice, Charles Evans Hughes, described it as a great "self-inflicted wound."

Scott, born a slave, had been taken by his master, an army surgeon, into the free portion of the Louisiana territory. Upon his master's death, Scott sued for his freedom, on the grounds that since slavery was outlawed in the free territory, he had become a free man there, and "once free always free." The argument was rejected by a Missouri court, but Scott and his white supporters managed to get the case into federal court, where the issue was simply whether a slave had standing – that is, the legal right – to sue in a federal court. So the first question the Supreme Court had to decide was whether it had jurisdiction. If Scott had standing, then the Court had jurisdiction, and the justices could go on to decide

the merits of his claim. But if, as a slave, Scott did not have standing, then the Court could dismiss the suit for lack of jurisdiction.

The Court ruled that Scott, as a slave, could not exercise the prerogative of a free citizen to sue in federal court. That should have been the end of the case, but Chief Justice Taney and the other southern sympathizers on the Court hoped that a definitive ruling would settle the issue of slavery in the territories once and for all. So they went on to rule that the Missouri compromise of 1820 was unconstitutional since Congress could not forbid citizens from taking their property, i.e., slaves, into any territory owned by the United States. A slave, Taney ruled, was property, nothing more, and could never be a citizen.

Now, as we have already said in an earlier part of this opinion, upon a different point the right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every state that might desire it, for twenty years. And the government in express terms is pledged to protect it in all future time if the slave escapes from his owner. That is done in plain words – too plain to be misunderstood. And no word can be found in the Constitution which gives Congress a greater power over slave property or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

If Jews were loaded onto cattle cars and sent to concentration camps to be gassed, how were many blacks who disobeyed their “property owners” treated?