

The Supreme Court and Civil Rights

Part I

The Declaration of Independence (1776)

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

Thomas Jefferson

The Constitution 178

1. Creates a federal government
2. Spells out operational processes and procedures
3. Lists its powers
4. Protects states from federal encroachment

The Bill of Rights

Protects individuals from federal encroachment on what the founders considered to be the natural rights of man

The Civil War Amendments

13th Amendment (1865) ended slavery in the United States.

14th Amendment (1868) provides (in part) that every person who was born or naturalized in the United States is a citizen of the United States and of his/her state of residence.

15th Amendment (1870) gave all citizens of the United States the right to vote in Federal and state elections regardless of race, color, or previous condition of servitude.

In addition, the 14th Amendment

limits the power of the states by extending to United States citizens the same protections against state encroachment on individual rights granted in the Bill of Rights against the Federal government.

Drafting the Constitution

1. The Constitution is not a perfect document
2. Political considerations required extensive compromise
3. The document is at best the 18th century equivalent of a PowerPoint presentation
4. The draftsmen were focused on finding practical solutions to current problems; not trying to be visionaries.

Drafting the Constitution (cont.)

4. They were dealing with a much different country than we have today
5. For political reasons the document made it very hard to amend and as a result very hard to adopt to changing needs and circumstances
6. The draftsmen did not provide any guidance for interpretation

Interpreting the Constitution (and all Other Laws)

1. The responsibility of the legislative branch is to enact laws to direct future conduct.
2. The executive's job is to enforce the laws, i.e. require individuals and institutions to conduct themselves in the manner envisioned by the legislative branch.
3. The role of the judiciary is to oversee the application of law in accordance with the legislature's intent.

Interpreting the Constitution (cont.)

4. Uniform and consistent interpretation and application of law is necessary promote fairness from case to case and regulate future social conduct.
5. The first step when a law comes before the judiciary is to determine what conduct the law was intended to control.
6. The second step is to determine whether the conduct in the case at issue is the kind of conduct the legislature wanted the law to apply.

Interpreting the Constitution (cont.)

7. Laws are not intended to be fair; they are meant to be applied in a consistent and uniform manner case after case.

8. This means in practice that the same set of facts must be interpreted the same way from case to case, hence stare decisis.

8. The only times a judge can interpret a provision differently is when the judge believes (a) prior decisions contradict or (b) prior decisions incorrectly interpret the law.

Interpreting the Constitution (cont.)

9. If a party to a lawsuit disagrees with a judge's interpretation, the party can appeal to see if more senior judges have a different view.

10. Facts are determined at the trial level and cannot be revisited during the appeal process

11. Once SCOTUS has made a decision, only SCOTUS itself, the legislature or Constitutional amendment can change it.

Interpreting the Constitution (cont.)

"[I]n any fair and just construction of any section or phrase of (the Constitution), it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy... until that purpose was supposed to be accomplished as far as constitutional law can accomplish it."

Justice Samuel F. Miller (1873)

The Problem of Determining Purpose

How do you determine intent?

1. The plain meaning of the words themselves?
2. The meaning of the words at the time they became law?
3. The meaning of the words in current usage?
4. The meaning of the words in contemporaneous writings and/or speeches by the enactors?

The Problem of Determining Intent (cont.)

5. What did the “people” think that the law was intended to do when it was enacted?
6. What the “people” today think the law means or should mean?
7. How did the enactors think ambiguities in the words should interpreted?
8. How do you determine intent when considering the collective intent of a legislative group, several legislated groups?

The Problem of Determining Intent (cont.)

9. Can or should contemporaneous social norms, events or attitudes be taken into account?
10. How do you determine intent when the words at issue were drafted by committee?
11. How do you establish intent when words are drafted to effect a compromise that nobody likes?

The Constitution and Change

1. Every lawyer is taught that the role of the courts is to interpret law, not make it.
2. The underlying principle of our democratic system is that the "people" or their duly elected representative, i.e. the legislative branch.
3. The Supreme Court in our system is the final arbiter of what the laws enacted by the legislative branch and how they should be applied. It also functions as the policeman of the lower courts.

The Constitution and Change (cont.)

5. The need for consistency and predictability makes the judiciary by nature very conservative.
6. Change through the courts comes, if it comes at all, in small incremental steps.
7. We take a liberal court for granted and are shocked by the decisions coming out of the Supreme Court in the last decade or two.
6. In fact through most of our history the Supreme Court has been ultraconservative, and the second

The Constitution and Change (cont.)

half of the 20th century has been the aberration.

7. Of all the laws we live by, the Constitution is the hardest to amend and, therefore, the most conservative law of all.

The Age of the Enlightenment

1. The Age of Enlightenment was a philosophical movement that began in the late 1600's and reached its peak in the mid 1700's.
2. Its most important thinkers included Diderot, Hume, Kant, Montesquieu, Rousseau, Adam Smith and Voltaire.
3. Their writings changed the way the educated classes thought about freedom, slavery and government.

The Age of the Enlightenment (Cont.)

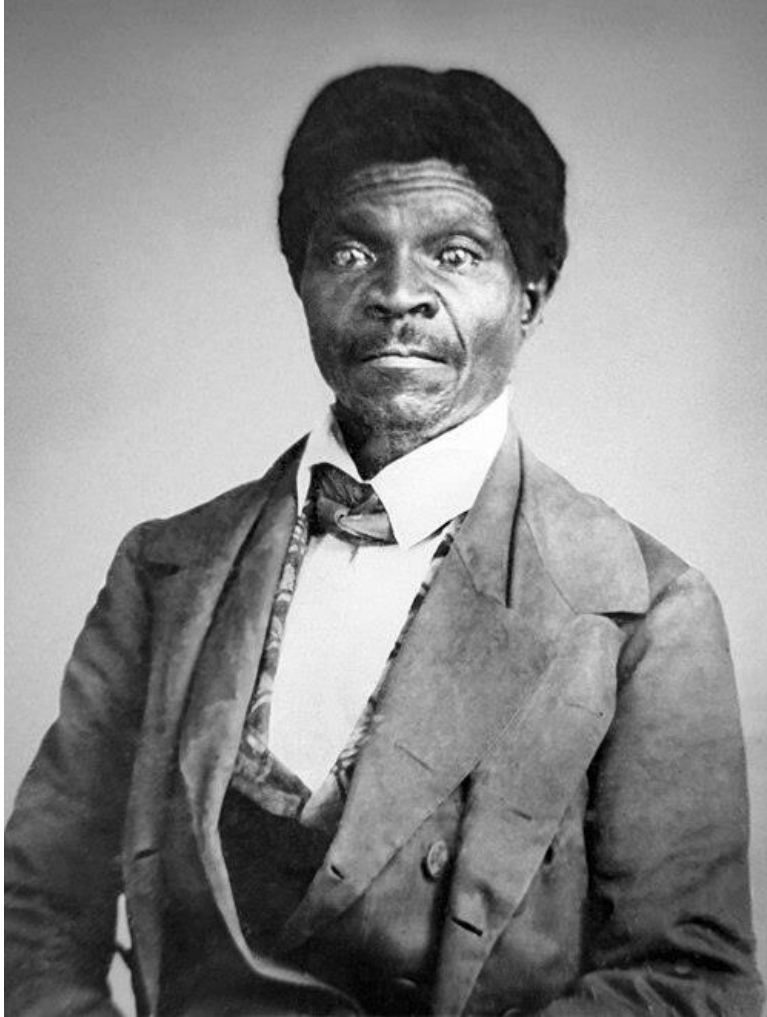
- 4 . These ideas led directly to the American Revolution in 1776 and the French Revolution in 1789.
5. They also led simultaneously to the rise of abolitionist movements in England, the United States (especially in the North) and South America.
6. The inability of the United States to accommodate these two ideas peacefully led to the Civil War.

Dred Scott v. Stanford

U.S. Supreme Court

(7 – 2)

1857



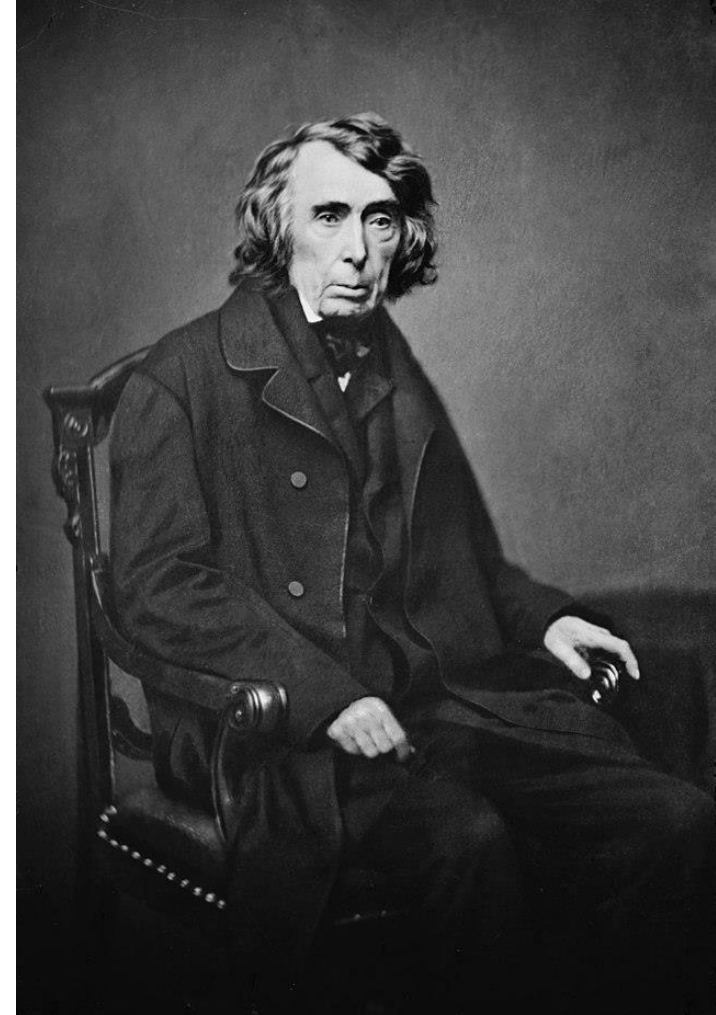
Dred Scott



Harriet Scott

Majority Decision

Chief Justice Roger B. Taney
for the Court



Roger B. Taney
(1777 – 1864)

Background

- Attitudes toward the institution of slavery had changed dramatically in the United States (and worldwide) since the Constitution was adopted in 1787.
- The northern states became centers of anti-slave sentiment as more and more people began to believe the slavery was immoral and should be eliminated.
- Growing abolitionist sentiment in the North (and the world) threatened to undermine the foundations of the Southern economy, and the ruling classes in the South became correspondingly more assertive in protecting their way of life.
- The Dred Scott case was followed closely in both the North and South, becoming much more important than the fate of the Scotts themselves.

Basic Facts

1. Dred Scott was born a slave in Virginia in 1799.
2. In 1818 he was moved by his owner Peter Blow to Alabama and then in 1830 to St, Louis, Missouri.
3. In 1832 he was sold to Dr. John Emerson, an Army surgeon. Emerson was transferred to Illinois in 1836, to Minnesota territory in 1837 and back to Missouri in 1840. Dred Scott traveled with him to each posting.
4. In 1846 he sued for his freedom in Missouri state court, claiming that he became free when his master moved him to

Basic Facts cont.

the free state of Illinois and Minnesota Territory, where slavery was prohibited under the Missouri Compromise of 1820.

6. Missouri and some other slave states had a long-standing rule that “once free, always free”.

7. He lost his first case in 1847 because he couldn’t prove his was legally enslaved.

8. In an 1850 retrial he won his case, but the case was overturned by the Missouri Supreme Court on appeal.

9. The Missouri Supreme Court rejected the “once free, always free” doctrine, holding that under Missouri law travel to free states did not change the status of a Missouri slave.

Issues to be Decided by the Court

1. Was Scott a citizen of Missouri where he lived and started his freedom suit?
2. Did Scott become free when his owner moved him first into a free state and then to a free territory.
3. Did Congress have the power under the Constitution to determine whether a territory was free or slave?

The Majority Decision

- Dred Scott was not a citizen. The drafters of the Constitution did not intend to grant black men the rights granted to white men.
- A slave is property under the Constitution and a slaveholder has the same right to use and protect his property as any other property.
- A slave does not become free merely because he is moved from a slave state to a free state or territory.
- Congress doesn't have the power under the Constitution to make a state or territory slave or free.

Excerpts from the Majority Decision

On the Declaration of Independence

"It is too clear for dispute, that the enslaved African race were not intended to be included."

The draftsmen “perfectly understood the meaning of the language they used, and how it would be understood by others, and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which, by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery.

Is Taney Right?

	Slaveholders	Non-Slaveholders	Total
Signers of the Declaration of Independence	41	15	56
Official Representatives to the Constitutional Convention	25	30	55
Signers of the Constitution	25	14	39

On the Intent of the Draftsmen

The Constitution "must be construed now as it was understood at the time of its adoption."

"The legislation of the States... shows in a manner not to be mistaken the inferior and subject condition of that race at the time the Constitution was adopted and long afterwards."

"The legislation and histories of the times... show that neither the class of persons who had been imported as slaves, nor their descendants... were then acknowledged as a part of the people."

On the Intent of the Draftsmen (Cont.)

"They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race... and so far inferior, that they had no rights which the white man was bound to respect."

On African Americans under the Constitution

"They are not included, and were not intended to be included, under the word 'citizens' in the Constitution."

"The right of property in a slave is distinctly and expressly affirmed in the Constitution."

"The negro might justly and lawfully be reduced to slavery for his benefit."

"An Act of Congress which prohibited a citizen from holding and owning property of this kind in the territory... is not warranted by the Constitution, and is therefore void."

On Slaves as Property

“The unhappy black race... were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection. ”

“The Constitution recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen. ”

On Slaves as Property (Cont.)

“(A)t the time the Constitution was adopted, they were not even there raised to the rank of citizens, but were still held and treated as property... to the interest and convenience of the white race...”

"Congress cannot deprive... a citizen of his liberty or property merely because he... brought his property into a particular Territory..."

On Correcting Injustice

If any of its provisions are deemed unjust, there is a mode prescribed in the instrument itself by which it may be amended; but while it remains unaltered, it must be construed now as it was understood at the time of its adoption.

On judicial powers

No one, we presume, supposes that any change in public opinion or feeling, in relation to this unfortunate race, in the civilized nations of Europe or in this country, should induce the court to give to the words of the Constitution a more liberal construction in their favor than they were intended to bear when the instrument was framed and adopted.

Curtis Dissent



Justice Benjamin R. Curtis
(1809 – 1874)

Curtis Dissent

The Constitution has left to the States the determination what persons, born within their respective limits, shall acquire by birth citizenship of the United States.

And as free colored persons were then (when the Constitution was adopted) citizens of at least five States, and so in every sense part of the people of the United States, they were among those for whom and whose posterity the Constitution was ordained and established.

Is Curtis Right?

State	Emancipation Date
Vermont	1777 – prohibited adult slavery
Pennsylvania	1780 – gradual emancipation
Massachusetts	1783 – court ordered
New Hampshire	1783 – gradual emancipation
Connecticut	1784 – gradual emancipation
Rhode Island	1784 – gradual emancipation

Curtis' Dissent: Once free, always free.

When he was taken into the State of Illinois, the laws of that State declared that slavery could not exist there...His master voluntarily took him into that State, and, by the operation of its laws, he became free...

Conclusions of The Curtis Dissent

- Free black people are citizens of the United States because each state determines who are citizens of the state and a citizen of a state under the Constitution is a citizen of the United States.
- Scott became free when his master moved him into a part of the United States where slavery is prohibited.
- The Missouri Compromise and acts admitting other states are constitutional because Congress can set conditions for the admission of states to the Union.

Impact of the Dred Scott Decision

1. Convinced abolitionists that the Constitution as drafted would not end slavery.
2. Emboldened slaveholders.
3. Destroyed the delicate political balance between North and South.
4. Legalized slavery in the western territories.
5. Permitted slaveholders to bring slavery into the free states.

Abolitionist Options out of the Stalemate

1. Maintain the status quo.
2. Amend the Constitution.
3. Divide the country.
4. Eliminate slavery by force.

Outcome of the Civil War

1. The Southern states were forced to vote to amend the Constitution.
2. The amendments were a direct repudiation of the Dred Scott decision.
3. The 13th Amendment abolished slavery in all states and territories.
4. The 14th Amendment made all persons born or naturalized in the United States citizens of the United States and the states in which they reside.

Outcome of the Civil War (Cont.)

5. The 14th Amendment also required all states to apply laws uniformly and expanded the protections of the Bill of Rights to cover state, as well as federal, activities.
6. The 15th Amendment prohibited discrimination in state and federal voting due to race, color or previous condition of servitude.

The Slaughterhouse Cases

U.S. Supreme Court

(5 – 4)

1872

Facts

1. Louisiana gave one corporation a monopoly on beef processing in New Orleans.
2. This put all independent butchers out of business.
3. An organization of butchers sued the state claiming the state law deprived them of their right to earn a living.
4. They argued that this is a right of citizenship protected by the 14th Amendment.

The 14th Amendment, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Key 14th Amendment Clauses

Citizenship = Who belongs

Privileges or Immunities = Rights of U.S. citizens

Due Process = Protection of liberty and fair treatment

Equal Protection = Equality under the law

Privileges and Immunities Clause

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

Questions to be Decided

1. Is the right to earn a living one of the privileges of being a United States citizen?
2. If the right to earn a living is a privilege of citizenship, does the Privileges and Immunities Clause prevent a state from enacting laws to restrict the right of citizens to earn a living?

The Majority Decision

1. The amendment was intended to be interpreted narrowly.
2. It does not protect all rights of being a U.S. citizen.
3. It only protects those rights expressly granted by the Constitution and federal statutes.
4. The 14th Amendment was not intended to change the basic
5. Relationship between the federal government and the states originally established by the Constitution.

“[W]e wish to state here that it is only... (the laws of the United States) which are placed by this clause under the protection of the Federal Constitution...”

"(The 14th Amendment is not intended) to transfer the security and protection of all the civil rights which we have mentioned, from the States to the Federal government.”

“(Applying the 14th Amendment to state laws) would constitute this court a perpetual censor upon all legislation of the States, on the civil rights of their own citizens...”

Justice Samuel Freeman Miller

The Slaughter House Dissents

1. The 14th Amendment significantly changed the relationship between the states and the federal government originally established by the Constitution.
2. The 14th Amendment gave the federal government the power to protect citizens from any action by a state to deny or limit the rights of any other United States citizen.

“(The 14th Amendment was adopted) to “provide National security against violation by the States of the fundamental rights of the citizen”.

“(P)ersons of the African race... may have been the primary cause of the amendment, but its language is general, embracing all citizens...”

Justice Joseph Bradley

The Civil Rights Cases

U.S. Supreme Court

(8 – 1)

1883

Background

In 1875 Congress adopted the Civil Rights Act of 1875 which entitled everyone to access accommodation, public transport, and theaters regardless of race or color.

Questions to be Decided

1. Was the Civil Rights Act of 1875 constitutional?
2. Did the 14th Amendment entitled everyone to equal access to privately owned facilities as well a governmental facilities?
3. Did the 14th Amendment give the federal government the power to regulated private conduct?

The Majority Decision

- The Civil Rights Act of 1875 was unconstitutional.
- The 14th Amendment only granted black citizens the same rights as whites with respect to government matters.
- The amendment was not intended to extend to private interactions.
- Private interactions included access to privately owned businesses, such as stores, businesses, transportation facilities, hotels, restaurants, etc.

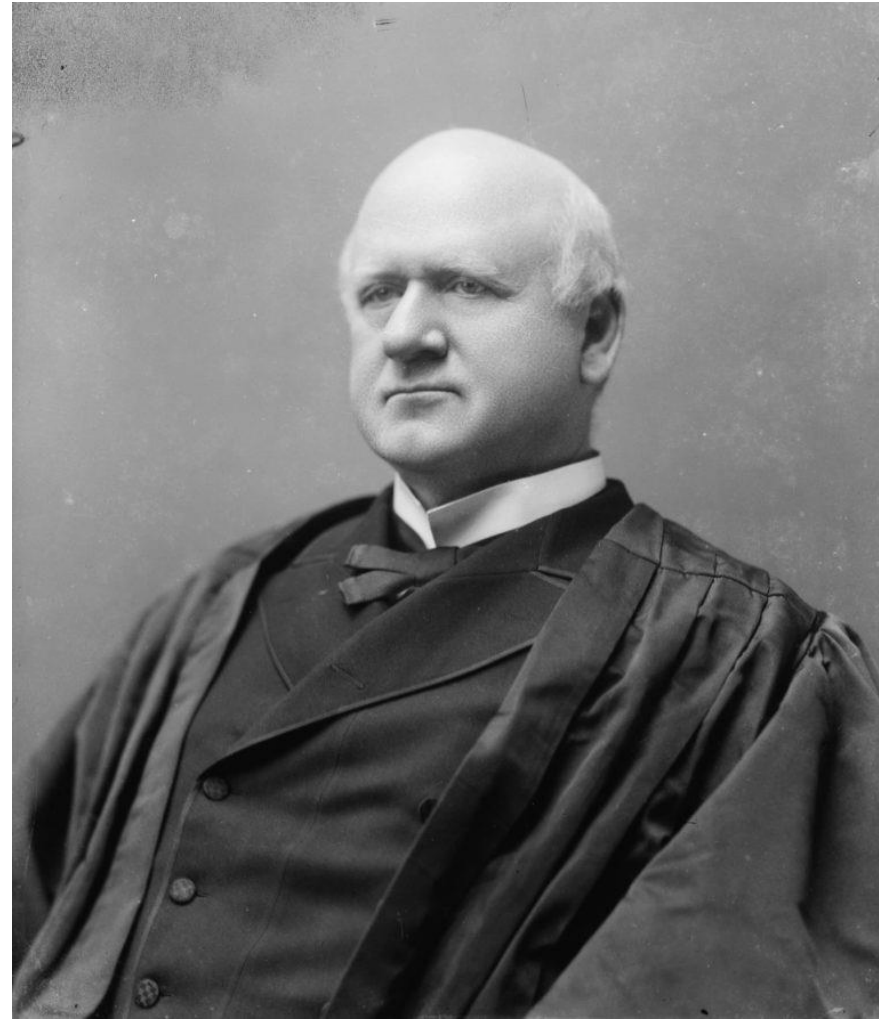
“[The Fourteenth Amendment does] apply to every act of discrimination which a person may see fit to make as to guests he will entertain, or as to the people he will take into his coach or cab or car; or admit to his concert or theater, or deal with in other matters of intercourse or business. .”

“[When the Fourteenth Amendment was adopted, black people did not think] that it was any invasion of their personal status as freemen because they were not admitted to all the privileges enjoyed by white citizens, or because they were subjected to discriminations in the enjoyment of accommodations in inns, public conveyances, and places of amusement.”

“Mere discriminations on account of race or color were not regarded as badges of slavery...”.

Justice Joseph P. Bradley

Harlan Dissent



Justice John Marshall Harlan
(1833 – 1911)

The Civil Rights Dissent

1. The 14th Amendment was intended to provide meaningful freedom and equal civil rights to formerly enslaved people.
2. The amendment was intended to eliminate both governmental and social discrimination preserving the subordinate status of blacks.
3. Congress had the power to eliminate some forms of private conduct, especially activities relying on governmental licenses, permits, etc.

Minority Opinion

“Such discrimination practiced by corporations and individuals in the exercise of their public or quasi-public functions is a badge of servitude, the imposition of which Congress may prevent under its power... to enforce the Thirteenth Amendment.”

Justice John Marshall Harlan

Results

1. Supported discrimination in private facilities serving public functions.
2. Validated a permanent two class society.
3. Led directly to the Jim Crow laws in the South.