Winter History & Heritage -- #3 (January 14)

This is our third winter post out of a total of eight leading up to our Winter 2013 History & Heritage Test. The test will be administered in early March (Lord willing).

John Jay --- (*Christian Almanac*, Dec. 11; Grant/Wilbur)
This American Founder (1745--1829), an aristocratic N.Y. lawyer, is best known for an unpopular treaty he negotiated in the 1790s to keep the peace with Britain? He was the new republic's first secretary of state ("Secretary of Foreign Affairs" under the Articles of Confederation) as well as its first chief justice of the Supreme Court. One of the founding era's Federalists, he supported ratification of the proposed U.S. Constitution (1787) and wrote a few of the *Federalist* essays in its defense.

Kansas-Nebraska Act --- (*America, Vol. 1*, pp. 288-289; Bennett)
This federal law (1854) altered the status of certain Louisiana Purchase territories in a failed effort to relieve tensions between Northern & Southern states? The act substituted Sen. Stephen Douglas's "popular sovereignty" principle for the slaveholding strictures of the Missouri Compromise (1820), allowing the people in the territories to determine for themselves whether to permit slavery. To punctuate his principle, the Illinois senator said, "I don't care whether slavery [in the West] is voted up or down."

Republican Party --- (*America, Vol. 1*, pp. 289-291)
Urged on by the *N.Y. Tribune's* Horace Greeley, **this anti-slavery political party** was born from anti-Kansas-Nebraska Act factions in Ripon, Wisconsin, in 1854? Its name suggested a link to the Jeffersonianism (states' rights federalism) of the founding era, although its positions resembled more the nationalism & state-assisted capitalism of Alexander Hamilton. The party's first presidential candidates were explorer/army officer John C. Frémont (1856) and attorney Abraham Lincoln (1860).

Dred Scott --- (*America, Vol. 1*, pp. 293-296)
This African-American, a slave to army surgeon John F.A. Sandford in Missouri, was party to a deeply divisive legal case before the U.S. Supreme Court in 1857? With abolitionist backing and while living in slaveholding Missouri, he sued for his freedom on the ground of having at one time moved with his master to free lands (including Illinois). His plea was denied by a 7-2 verdict, Chief Justice Roger Taney observing that the slave, lacking U.S. citizenship, could not bring a suit in a U.S. court.

Roger B. Taney & the Dred Scott Decision --- (Teacher commentary)
There is no doubt that U.S. Supreme Court Justice Roger B. Taney stirred up a veritable firestorm with his summation of a 7-2 majority verdict in *Dred Scott v. Sandford* (1857). To this day, in fact, the court's decision is generally regarded among its worst missteps.

For the most part, the controversy surrounds Taney's remarks made in passing and upon which the decision did not rest. The judge was at pains to note that his opinions represented not his personal view of human rights and race issues, but his

understanding of the Constitution and the history of the early republic that forms its backdrop.

Taney said African slaves like Mr. Scott were not citizens under the U.S. Constitution, and, in all likelihood, were never intended to be by the Founders. That generation, like those before them in colonial times, he said, believed black Africans were not equal to Anglo-Americans in the various dispositions and disciplines required of free men who would dare to fashion free governments. Thus, as long as they lived alongside white Americans, blacks would have to assume a subservient, not an equal, status and role. As to Jefferson's "all men are created equal" proposition in the *Declaration*, Taney thought it was never intended to apply to those of African descent, a debatable interpretation on the judge's part to say the least.

Even more infuriating to Northern opinion was Taney's view on the controversy over whether slavery should be allowed in U.S. territories. Congress, or territorial governments acting under congressional oversight, he suggested, could not prohibit slavery in such lands without depriving some citizens of their property rights under the Fifth Amendment. Those deprived citizens were slaveholders (living mostly in Southern states). Were they not entitled to equal access with their fellow citizens from free states to lands held in common by the United States? Laws banning slavery in the territories, said Taney, were effectively barring slaveholders from traveling or settling there by putting their legitimate property in slaves under the U.S. Constitution at risk. Favorable treatment for some Americans but not for others enshrined in statute, a welcome to the West for non-slaveholding citizens but not for slaveholding ones, was patently unconstitutional—a violation of the principle of equal protection of the laws.

The logic of Taney's argument cast a deep and dark shadow on the revered Missouri Compromise (1820), a congressional act that did not allow slavery in the northern reaches of the lands of the legendary Louisiana Purchase. In its day, that law seemed to save the Union (at least in the judgment of many).

But Taney's commentary also lifted the spirits of not a few Southerners. If the judge's views, especially with respect to slavery in the territories, were to prevail, there was more hope of slaveholding states being added to the Union in the future. Perhaps the South could avoid permanent minority status and impotence in the U.S. Congress. Perhaps she could, even with fewer people than the North, uphold her interests at least in the Senate.