Southern New Hampshire University

"And Be It Further Enacted…"

Natural Law and Southern Federalism in the Fugitive Slave Controversy

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Abstract

Despite the vast research on the events that led to the Civil War, little scholarship focuses solely on the extent to which the Fugitive Slave Law of 1850 played a role. While historians highlight the law's political, social, and cultural significance to the sectional conflict, the literature on the Fugitive Slave Law does not consider its importance to the ideological debate that exacerbated the rift between the Free and Slave states. This study focuses on the impact that the differing interpretations of Natural Law had on the sectional conflict, and how each section's prioritization of personal liberty and property underscores the true nature of the states' rights debate. An analysis of antebellum newspapers, pamphlets, and fugitive slave cases demonstrates that the Free states were more inclined to argue for states' rights during the fugitive slave crisis, whereas Slave states argued in favor of federalism to protect their right to recover their slave property. This examination will add to Civil War scholarship by inverting the states' rights defense in favor of the northern states and further highlight the Fugitive Slave Law of 1850 as one of the leading causes of the disunion that led to civil war.

Dedication

For Elliott and Noah

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Glossary

Broad Construction: an interpretation of the United States Constitution in which any state or federal law or policy that was not explicitly prohibited by the Constitution was allowed.

Extraterritoriality: the legal authority of a state to execute its laws beyond its borders.

Federalism: the constitutional relationship between the federal government and state governments. Federalism advocates support a strong national government with more limited power for state governments.

Habeas Corpus: a legal recourse brought before a court to report the unlawful detention or imprisonment of a person and a request to secure that person's release from custody unless lawful grounds are shown for the person's detention.

Jacksonian (era): the period of American politics from 1824 to 1840. Andrew Jackson's presidency occurred from 1829 to 1837, however his influence on American politics defined the period as a philosophy that promoted extending democracy for "the common man," i.e. non-property holding white men.

Natural Law: the universal moral principles that bind all humans in a state of nature.

Natural Rights: the fundamental rights under Natural Law that preserve every human's right to their life, liberty, and property.

Republicanism: the ideology of a civil government in which the people hold popular sovereignty where the natural rights of all people in that government are protected.

Social Contract: the tacit agreement between members of a society to sacrifice individual freedoms under a State of Nature and form a civil government for the benefit of state protection.

State of Nature: the natural state of man, without formal laws or government.

State Sovereignty: the right of a State to govern itself, including passing and executing laws, imposing and collecting taxes, and negotiating treaties, without interference from a central government or foreign nation.

State of War: a conflict between two or more parties when one attempts to violate the others' natural rights.

Strict Construction: an interpretation of the United States Constitution in which any state or federal law or policy that was not explicitly allowed by the Constitution was prohibited.

Introduction

Following the Mexican-American War, the House of Representatives passed the Wilmot Proviso which aimed to exclude slavery from the newly acquired western territories. The measure outraged the Slave states who had hoped to expand into the new territories with their property, including slaves. Although the balance of Free to Slave states in the Senate ultimately killed the bill, the admittance of California as a Free State in 1850 skewed the congressional balance in favor of the non-slaveholding states. To mollify southern threats of disunion, the Compromise of 1850 contained provisions that included the obstruction of the Wilmot Proviso and allowed the Utah and New Mexico territories to decide on the question of slavery through popular sovereignty while also admitting California as a Free State. While the South conceded Texas' claim on New Mexico and the domestic slave trade was banned in Washington D.C., Congress assuaged the southern states by enacting a new fugitive slave law.

The Fugitive Slave Law of 1850 federally mandated that all states, including those that had abolished or excluded slavery in their regions, aid in the rendition of "Persons escaping from the Service of their Masters."[1] This bill, along with the other provisions of the Compromise of 1850, intensified sectional disputes as southerners hoped that the law forced northern compliance in retrieving their human property. Northerners, on the other hand, viewed the law as giving the slaveholding minority jurisdiction over the nation. The law was heinous not only to slaves seeking freedom and the abolitionists that sought to aid fugitives, but also to anti-slavery northerners who felt that the legislation compelled them to enforce slavery in areas that had

[1] *Fugitive Slave Act*, *U.S. Statutes at Large 9* (1850). Washington: U.S. Government Printing Office (1967). Retrieved from the National Archives. Accessed March 31, 2017, https://www.loc.gov/law/help/statutes-at-large/9th-congress/c9.pdf.

already abolished and excluded the "peculiar institution." More importantly, the law denied agency to the alleged fugitives as their testimonies and right to trial by jury were excluded from the court proceedings and the writ of habeas corpus was suspended. Free Blacks also feared for their personal liberty as slave catchers increased their kidnapping activities. In nearly every case in which the Fugitive Slave Law of 1850 faced a legal challenge, judges found in favor of slavery over Natural Law, which exhibits the courts' prioritization of the property rights of Whites over the personal liberty of Blacks.

Civil War scholarship has examined the various causes of the conflict. Michael F. Holt attributes the war to the ideological turn of the sectional disputes following the breakdown of the second party system, which eventually manifested on the battlefield.[2] Will Gilliam stresses the southern states' rights defense concerning the exclusion of slavery from the territories following the Mexican-American War.[3] More recent scholarship acknowledges the impact of the Fugitive Slave Law of 1850 in exacerbating the sectional disputes, though there is disagreement on the significance of the fugitive slave problem. Peter Geyl argued that the law was merely a symbolic gesture towards the Slave states. "Southerners clung to the law because they desired to have from the North an acknowledgment of the right [to their slave property] rather than because of the material advantage."[4] James McPherson echoed this theory remarking that the northern

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[2] Michael F. Holt, *The Political Crisis of the 1850s (*New York: W.W. Norton, 1983).
[3] William Gilliam, "Kansas and Slavery in Two Lexington Kentucky Newspapers—1857," *The Register of the Kentucky Historical Society,* 49, no. 168 (1951): 225-230. Accessed March 11, 2017, http://www.jstor.org/stable/23373679.
[4] Peter Geyl, "The American Civil War and the Problem of Inevitability," *The Causes of the Civil War*, Ed. Edwin C. Rozwenc. (Boston: D.C. Heath, 1961): 198.

personal liberty laws were "an insult to southern honor."[5] This theory, however, discounts the violent effects of the fugitive slave conflict, particularly in the Border States.

Conversely, William Freehling dismisses the "symbolic gesture" theory noting the significance of the fugitive slave problem in the Border States.[6] The slave population in the Upper South comprised of six percent of the total southern slave population, yet they accounted for thirty-six percent of the total permanent escapes. This issue directly contributed to the increase in slave sales to the Deep South to prevent further escapes, and therefore one of the primary reasons that the Slave states required greater constitutional compliance from the Free states. Nevertheless, David Potter contends that the Fugitive Slave Law was counterproductive because it only exacerbated the sectional conflict, ultimately leading to a civil war.[7] Certainly the northern attempts to circumvent or outright defy the federal law were directly referenced in several Slave states declarations of secession, thus contributing to the cause of the Civil War.

The existing scholarship has examined many historical lenses yet begs additional questions that have yet to be researched in depth. Several historians that accept the states' rights defense fail to explore why the traditionally "small government" South argued in favor of federal intervention in the fugitive slave problem. The ideological differences that escalated after the breakdown of the second party system could be studied with attention to the extent that the Fugitive Slave Law played a role. And with the Free states arguing in favor of personal liberty while the Slave states fought to have their property rights federally protected, historians have not asked how the differing interpretations of republicanism aided the sectional conflict.

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[5] James McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988): 79.
[6] William Freehling, *The Road to Disunion, v.1, Secessionists at Bay: 1776-1854* (New York: Oxford University Press, 1990).
[7] David Potter, *An Impending Crisis: 1848-1861* (New York: Harper and Row, 1976).

I will argue that the Fugitive Slave Law of 1850 was contentious because it reflected the differing interpretations of Natural Law, primarily the conflict over how each section prioritized the principles of personal liberty and property. It is my argument that the Fugitive Slave Law exemplifies that the "states' rights" argument was a northern, rather than southern, defense, and that the law demonstrated the South's willingness to advocate for federalism.

Historians traditionally associate the states' rights defense with the Slave states because of the southern tradition to favor a smaller federal government and strict construction of the Constitution. The states' rights argument has also been used to defend southern heritage, as the motive for secession, and for the continuous right to wave the Confederate flag as a show of "southern pride." However, scholars have taken the states' rights defense for granted which is why the converse argument has yet to be investigated. My research differs in that I will explore the tendency of the Slave states to argue in favor of federalism as it pertained to their property rights in slaves. I will use the existence and persistence of the personal liberty laws in the Free states, laws based on the northern "states' right" to exclude slavery from their society and protect their free black citizens. It is my initial conclusion that it was the fundamental differing interpretations of Natural Law, for which the Fugitive Slave Law of 1850 set the stage, that was the ideological basis for southern secession that led to the Civil War.

Chapter 1: Fugitives and the Early Republic

The fugitive slave controversy originated with the earliest days of colonial development as slavery's introduction to the North American colonies was almost immediately met with fugitive regulations. The frequency of runaways in New Netherlands required an article in the 1629 charter "Freedoms and Exemptions granted by the West India Company to all Patrons, Masters or Private Persons who would agree to settle in the Netherlands."[8] This fugitive clause, though not restricted to slavery, promised not to remove anyone in service to one patroon without written consent, and promised comity between the patroons in the event that any colonist or slave in the service of a master should run away to another patroon.[9]

The New England Confederation of Plymouth, consisting of Massachusetts (including New Hampshire), Hartford, Connecticut, New Haven, and Plymouth passed a 1643 agreement to return any fugitive slaves (including Africans and Indigenous people) found to have escaped into the jurisdiction of the others' colonies, upon certificate of proof from a magistrate. The right to trial by jury was declared unnecessary.[10] A 1683 New Jersey statute, and a similar Rhode Island law in 1714, required slaves to travel with a notarized certificate "to satisfy the clearness of his, her, or their coming away" whereas those found without a pass were placed in the custody of a constable to be claimed by their owner.[11] C.W.A. David notes that these same measures in the

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[8] "Article 30," *Van Rensselaer Bowier Manuscripts*, Trans. Mrs. Alan H. Strong, Ed. A.J. F. van Laer (Albany: University of the State of New York, 1908), 137-153. Accessed March 11, 2017, https://archive.org/details/vanrensselaerbo00rensgoog.
[9] Ibid.
[10] Francis N. Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America* (Washington D.C.: Government Printing Office, 1909): 80.
[11] Marion Gleason McDougall, Albert Bushness Hart, *Fugitive Slaves: 1619-1865* (Boston: Ginn & Company, 1891): 96.

Confederation compact set the precedence for the measures found in the fugitive slave clauses in the 1787, 1793, and 1850 statutes.[12]

VRYHEDEN
By de Vergaderinghe van de Negenthiene vande Geoctroyeerde West-Indische Compagnie vergunt aen allen den ghenen / die eenighe Colonien in Nieu-Nederlandt sullen planten.

In het liecht ghegheven.

Om bekent te maken wat Profijten ende Voordeelen aldaer in Nieu-Nederlandt, voor de Coloniers ende der selver Patroonen ende Meesters, midtsgaders de Participanten, die de Colonien aldaer planten, zijn becomen.

Westindjen Kan syn Nederlands groot gewin.
Verkleynt s'vyands Macht brengt silver plalen in.

T'AMSTELREDAM,
Voor Marten Iansz Brandt Boeckvercooper / woonende by

Figure 1: Charter of Freedoms, New Amsterdam 1629[13]

There was also an international element to the colonial fugitive slave statutes. The Georgia colony had originally excluded slavery; however, a 1735 British law contained a fugitive slave provision that allowed Carolinian masters to reclaim runaways that escaped into Georgia. Additionally, after slavery had been made a race-specific institution in the late

[12] C.W.A. David, "The Fugitive Slave Law of 1793 and its Antecedents," *The Journal of Negro History*, 9, no. 1 (1924): 19. Accessed April 10, 2017, http://www.jstor.org/stable/2713433.
[13] Dr. Charles T. Gehring, "Annals of New Netherland," *Consulate General of the Netherlands in New York.* Accessed April 10, 2017, https://www.newnetherlandinstitute.org/research/essays-and-articles/.

seventeenth century, the measure allowed for any unclaimed Blacks to be sold into slavery.[14] Georgia's fugitive slave law was significant because the colony acted as a buffer between the Carolina colony and Spanish Florida. The proximity of foreign colonies, all of which were slaveholding, did not deter runaways from seeking some measure of liberty under a potentially less tyrannical system. Because of the varying slave systems between the Anglo-Protestant and the Spanish-Catholic colonies, Carolinian slaves attempted to escape into Florida where the Spanish system offered a sort of refuge in comparison to the harsher Anglo slave laws.[15]

When Georgia became a slave colony in 1751, Carolinian slaves no longer had the buffer zone of the free Georgia colony in which to escape into Florida. Furthermore, because of the lack of international law within the colonies and therefore no formal extradition agreements, colonies such as New York in 1750 were required to pass statutes that attempted to prevent slave escapes into Canada.[16] In 1797, James Seagrove, U.S. commissioner to the government of Florida, and Thomas King of Georgia brokered a fugitive slave agreement with the King of Spain where "total stop is put to all fugitive slaves, or servants, being people of color, from receiving countenance or protection in Florida."[17] Any fugitives found in Florida were to be imprisoned until claimed by their owners, though enforcement of this clause was inconsistent.

The Revolutionary War ushered in a new era of fugitive slave legislation, particularly as anti-slavery sentiment arose in response to the republican ideals in the fight for independence. Although the first Continental Congress voted on April 6, 1776 to ban slave importation to the

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[14] A. Leon Higginbotham, *In the Matter of Color: Race and the American Legal Process—The Colonial Period* (New York: Oxford University Press, 1978): 222-227.
[15] Frank Tannenbaum, *Slave and Citizen* (Boston: Beacon Press, 1946).
[16] David, "The Fugitive Slave Law of 1793 and its Antecedents," 19.
[17] *Gazette of the United States, & Philadelphia Daily Advertiser,* (Philadelphia, PA), June 19, 1797. Retrieved from the Library of Congress [Web]. Accessed April 26, 2017, http://chroniclingamerica.loc.gov/lccn/sn83025881/1797-06-19/ed-1/seq-3/.

thirteen colonies, the reality by 1781 saw only three of the colonies abolish slavery either gradually or altogether, which included Vermont in 1777, Massachusetts in 1780, and Pennsylvania also in 1780 through gradual emancipation. New Hampshire followed three years after the end of the war while New York completed its gradual emancipation in 1827. A total ban on the international slave trade was not enacted until 1808 as per Constitutional allowance. By the time the federal Constitution was ratified, the Union was already divided into Slave and Free states, thus creating the first traces of a sectional dispute over the mounting fugitive slave problem.

During the post-Revolutionary period, concerns over runaway slaves were addressed with the Ordinance of 1787 which, in addition to creating the Northwest Territory, prohibited slavery in the territories while also containing a fugitive slave clause. Paul Finkelman cites this law as a "sacred text" for antebellum northerners that viewed the Northwest Ordinance as not only favorable but also that the sectional conflicts of the 1850s might have been avoided if the Kansas-Nebraska Act of 1854 followed its model. In fact, Finkelman argues that the Ordinance may have strengthened slavery in the South rather than threaten it.[18] C.W.A. David agrees that the Ordinance appeased southern congressmen because it forced the legislature to recognize slaves as property.[19] Deep South supporters of the Ordinance saw it as allowing slavery in all the territories south of the Ohio River, and the fugitive slave clause protected slave owners' property

[18] Paul Finkelman, "Slavery and the Northwest Ordinance: A Study in Ambiguity," *Journal of the Early Republic,* 6, no. 4 (1986): 343-345, Accessed September 4, 2016, http://www.jstor.org/stable/3122644.
[19] David, "The Fugitive Slave Law of 1793 and its Antecedents," 21.

in the event of escape into the northern territories. David Brion Davis also noted the significance of the Three-Fifths Compromise in the southerners' acquiescence to the Northwest Ordinance.[20]

While the Ordinance of 1787 may have strengthened slavery in the South, it also allowed for the admittance of five new Free states which eventually became Ohio, Indiana, Illinois, Michigan, and Wisconsin, and "helped create a white majority in the Northwest that was hostile to slavery."[21] The creation of the Mason-Dixon boundary delineated Maryland's authority from Pennsylvania's in 1767. That line was extended across the Allegheny Mountains in 1786, a year before the Northwest Ordinance made the Ohio River the border between Free and Slave states. It was in the states that lie on this Free and Slave border than a later fugitive slave law exacerbated the sectional conflict. In 1820, the Missouri Compromise extended the boundary to the Mississippi River as Missouri was admitted as a Slave state and Maine as a Free State.

The Ordinance was necessary to settle the question of a slave's status once they entered the Free territory. On one hand, by allowing such interstate travel, the Free states violated their own prohibition of slavery. On the other hand, not allowing slaveholders to travel into the territories with their "property" could cause disharmony within the nascent Union. As such, the Ordinance was passed to address the possibility of fugitive slaves seeking freedom in the North by asserting that "any person escaping into the [territories], from whom labor or service is lawfully claimed in any of the original states, such fugitive may be lawfully re-claimed and conveyed to the person claiming his or her labor or service aforesaid."[22] Yet, the ambiguity of the fugitive slave clause within the Ordinance that simultaneously prohibited slavery begs the

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[20] David Brion Davis, "The Significance of Excluding Slavery from the Old Northwest in 1787," *Indiana Magazine of History,* 84, no. 1 (1988): 83, Accessed September 4, 2017, http://www.jstor.org/stable/27791141.
[21] Finkelman, "Slavery and the Northwest Ordinance," 346.
[22] *Article VI, Northwest Ordinance,* July 13, 1787.

question as to whether the Ordinance ever truly prevented slavery in the territories. Indeed, slavery did exist in what is now Illinois and Indiana as southern immigrants into the Northwest Territories brought along their human property. These slaveholding immigrants petitioned Congress to lift the Ordinance's prohibition of slavery, however the motion was denied in 1796 when Governor William Henry Harrison declared that the rapid population growth in the Indiana Territory deemed slave labor unnecessary.[23]

Still, Harrison's proclamation did not preclude slavery from continuing to exist in Indiana until 1820; the Illinois Constitution in 1818 did not prohibit slavery and the institution existed in the state until 1844.[24] The fugitive slave provision in the Northwest Ordinance contradicted the conclusiveness of the slavery question in the territories, so how could the fugitive slave clause recognize an enslaved person's status while the Ordinance voided that status upon entry into the territories? Finkelman asserts that the Ordinance failed because of this ambiguity as it did not completely prohibit slavery in the Northwest Territory.[25] Not only did it not prohibit slavery, but it was also not an emancipatory document—slaves were not automatically free upon crossing the Free boundary—primarily because the fugitive slave clause reaffirmed their slave status.

The inconclusiveness of a slave's status in the Free territories was also the catalyst for the congressional debate in 1798. A house committee on the slavery clause in the Northwest Ordinance was formed to decide on an "amicable settlement of limits with the state of Georgia, and for providing a temporary Government in the Mississippi Territory." Representative George Thatcher of Massachusetts entered a motion to strike the slavery clause from the Ordinance that

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[23] Joseph Warren Keifer, *Slavery and Four Years of War: A Political History of Slavery in the United States,* Vol. 1, 1861-1863. (New York: G.P. Putnam's Sons, The Knickerbocker Press, 1900): 25.
[24] Keifer, *Slavery and Four Years of War,* 26-7.
[25] Finkelman, "Slavery and the Northwest Ordinance," 349.

prohibited slavery in the Northwest Territories while admitting slavery in the Mississippi Territory. Robert Harper of Maryland expressed discontent with the motion stating it was "improper" to exclude slavery in the Mississippi Territory because immigrants to the southern territory expected to be allowed to settle there and bring "that species of property" with them.[26] The violation of the rights of man as established in Natural Law, specifically property rights, was expressed by other slaveholding states such as South Carolina. Thatcher was quick to note that the Slave states only upheld Natural Law in the property rights of white men while denying black people the right to liberty.[27]

Anti-slavery sentiment was reinvigorated by the 1790s and petitions against the institution flooded Congress. Southern congressmen opposed each petition and claimed such efforts were "creat[ing] disunion among the states" while also threatening to "excite the most horrible insurrections [amongst the slaves]."[28] Southern slaveholders found that only "prejudiced and uncandid persons" believed that slavery "brings down reproach on America."[29] In response to Quaker petitions to abolish slavery, Congressman William L. Smith of South Carolina rationalized to pro- and anti-slavery advocates that the immorality of slavery was no different than any sin in other civilized nations "which the world quietly submit to."[30] Where the Quakers decry the inhumanity of slavery, Smith hails that the humanity was in bringing Africans to America as slaves. In an essay on slavery, the unnamed author, who claimed to neither

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[26] *Gazette of the United States* (Philadelphia, PA), March 27, 1798. Retrieved from the Library of Congress [Web]. Accessed April 26, 2017, http://chroniclingamerica.loc.gov/lccn/sn83025881/1798-03-27/ed-1/seq-2/.
[27] Ibid.
[28] William O. Blake, *The History of Slavery and the Slave Trade, Ancient and Modern* (Columbus: H. Miller, 1862): 423.
[29] *Gazette of the United States* (New York, NY), April 14, 1790. Retrieved from the Library of Congress [Web]. Accessed April 26, 2017, http://chroniclingamerica.loc.gov/lccn/sn83030483/1790-04-14/ed-1/seq-1/.
[30] Ibid.

support nor condemn the institution, supposed that "Negroes can more easily brook a state of Slavery, than any other nation" because their lives and property were "at the absolute disposal of their Princes."[31] However, a measure of anti-slavery sentiment was even expressed amongst slave-owners who "declare[d] that it is not their fortune, but their misfortune that they [own slaves]," while also maintaining the paternalistic stance that it was the slave-owners responsibility to keep black people in bondage for the sake of the slave as well as white citizens.[32]

The problem with the existing fugitive slave clause was that it was clear in preventing runaways from seeking sanctuary in Free states or territories, but it was not clear in who was to apprehend and deliver these fugitives back to their former owners. Concern over slave rendition became so pivotal that it was also written into the Constitution. Slavery was not explicitly mentioned in the federal document, however Article IV decreed that "No person held to Service or Labour [sic] in one State, under the laws thereof, escaping into another, shall, in Consequence of any Law of Regulation therein, be discharged from such Service or Labour, but shall be delivered up on claim of Property to whom such Service or Labour may be due."[33] The Slave states insisted on the fugitive slave clause as a condition for ratifying the Constitution and joining the Union.

The fugitive slave clause, however, enticed slave catching agents to kidnap free Blacks in the pursuit of legitimate fugitives. In some cases, slave catchers faced prosecution when they pursued alleged fugitives in the Free states, such as the case of John Davis, and brought about

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[31] *Gazette of the United States* (New York, NY), May 6, 1789. Retrieved from the Library of Congress [Web]. Accessed April 26, 2017, http://chroniclingamerica.loc.gov/lccn/sn83030483/1789-05-06/ed-1/seq-1/.
[32] *Gazette of the United States,* March 27, 1798.
[33] *U.S. Constitution*, Art. 4, Sec. 2, Cl. 3.

questions as to where the line should be drawn between property rights and personal liberty. In the early 1780s, Davis' owner took him to Pennsylvania after the state adopted gradual emancipation. Davis' owner forgot to register Davis as a slave as was required by law; when the deadline passed, Pennsylvania statute recognized Davis as a free man. However, when Davis' owner took him back to the South, the Pennsylvania Abolition Society located Davis in Virginia and returned him to Pennsylvania. Davis' former owner hired slave catchers to retrieve Davis and the three men "with force and arms and a strong hand, assaulted, seized, imprisoned, bound, and carried" Davis back to Virginia to slavery.[34]

Pennsylvania governor Thomas Mifflin issued an order to extradite Francis McGuire, Absalom Well, and Baldwin Parsons on charges of kidnapping John Davis. Virginia governor Beverley Randolph refused the extradition request, and asserted that Davis was indeed a slave. Mifflin alerted President George Washington of the issue and explained that the Constitution ensured that Pennsylvania, or any state, had the right to execute criminal law, including extradition. "It is equally certain, that the laws of the State, in which the act is committed, must furnish the rule to determine its criminality, and not the law of the State, in which the fugitive from Justice happens to be discovered."[35] However, the uncertainty in the interpretation of the fugitive clause within the Constitution prompted Washington to petition Congress to pass

[34] United States Congress, *American State Papers, 1789-1809.* (Washington: Gales and Seaton, 1834): 39.
[35] "To George Washington from Thomas Mifflin, 18 July 1791," *The Papers of George Washington*, Presidential Series, vol. 8, *22 March 1791–22 September 1791*, ed. Mark A. Mastromarino. (Charlottesville: University Press of Virginia, 1999), 345–348.

legislation that clarified the process of interstate extradition of both fugitives from slavery and from the law.[36]

The resulting legislation was meant to address these issues by making the rendition of fugitive slaves the slaveholder's responsibility while also granting the claimant aid in the rendition as outlined in the original fugitive slave clause in the Constitution.[37] The new law was also supposed to protect freemen—Blacks that were native to and/or longtime residents of northern states—from slave catchers that attempted to kidnap and extradite them to the Slave states where a black person's status was automatically and institutionally that of property. President Washington signed the new law on February 12, 1793 which held that any person "held to labor" in any State or established U.S. Territory could be apprehended as a fugitive and taken to any Judge or Magistrate in the United States where the claimant of their service could produce proof of the accused's slave status and consequently re-enslave them.[38]

The Fugitive Slave Law of 1793 not only placed fugitives that sought freedom in the Free states at risk of recapture, it also consequently classified all children of fugitive slave women as slaves as well, in perpetuity. President Washington experienced the effects of the new law when his own servant, Ona Judge (later Ona Judge Staines) escaped in 1796 after her ownership was transferred to that of Washington's step-granddaughter and her new husband. Though not the only one of Washington's slaves to escape, Ona Judge shared her experience to an abolitionist newspaper in 1845. She revealed that when the Washington family resided in Philadelphia, her

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[36] Paul Finkelman, "The Kidnapping of John Davis and the Adoption of the Fugitive Slave Law of 1793." *The Journal of Southern History,* 56, no. 3 (1990): 397-422. Accessed March 11, 2017, http://www.jstor.org/stable/2210284.
[37] H. Robert Baker, "The Fugitive Slave Clause and the Antebellum Constitution," *Law and History Review,* 30, no. 4 (2012): 1138.
[38] U.S. Statutes at Large 1, Stat. 302.

encounters with free Blacks influenced her decision, particularly after her change in ownership could mean an uncertain future with unknown masters. Washington attempted twice to retrieve her, having to keep his efforts quiet because of the strong Quaker community in Philadelphia. He only stopped at his death in 1799; Ona Judge was never recaptured.[39]

Cases such as Ona Judge and John Davis prompted northern states to pass laws to protect long-time black citizens from fugitive slave clauses and potential kidnappers. Several states north of the Mason-Dixon had already passed personal liberty laws after they abolished slavery to prohibited the removal of black men and women out of the Free states to be enslaved in the South. These personal liberty laws were aimed at not only the protection of free Blacks in the North, but also as a statement that northerners were not going to aid in the capture and abduction of their citizens, free or alleged fugitives.

The differing interpretations of the fugitive slave laws between 1793 and 1850 were due to the Constitution's ambiguity over the balancing of personal liberty and property rights. Some scholars argue that the Founders' Constitution was intentionally proslavery in nature because the Fugitive Slave Law of 1793 illustrates that slaveholders held significant power. "The Act of 1793 was a constitutional exercise of power to protect the citizens of the slaveholding States in enjoyment of the rights and no State was authorized to pass any law that comes in conflict in any respect with the remedy provided by Congress."[40] Historians that oppose this interpretation state that the Constitution was neutral on slavery even though it protected the institution through the

[39] Erica Armstrong Dunbar, "'I Knew That If I Went Back to Virginia, I Should Never Get My Liberty': Ona Judge Staines, the President's Runaway Slave," *Women in Early America*, Ed. Thomas A. Foster (New York: New York University Press, 2015): 225-245.
[40] David, "The Fugitive Slave Law of 1793 and its Antecedents," 24.

fugitive slave law.[41] The issue was that the 1793 law did not protect free or emancipated Blacks from potential abduction.

The changing interpretations of the fugitive slave law needed to address three components: who determined the jurisdiction of the fugitive case, what procedures and evidence were considered, and how fugitives were to be transported as well as how to protect free Blacks from capture and extradition to the Slave states. These instances were sent to Congressional committee for interpretation of the fugitive slave law; however, Congress left the interpretation up to the sovereign states to determine the "legal status" of the kidnapped men and women. The irony of the Fugitive Slave Law of 1793 was not lost on white people that spouted republican values.[42] Where the framers and enforcers of the fugitive clause within the Northwest Ordinance and the Constitution questioned whether Natural Law should prioritize personal liberty over property rights, the northern states nevertheless passed laws that championed personal liberty in direct defiance of the 1793 law, thereby reaffirming their state sovereignty to interpret the Constitution through a broad construction regarding alleged fugitive slaves.

[41] Baker, "The Fugitive Slave Clause and the Antebellum Constitution," 1138.
[42] Ibid., 1142.

Chapter 2: Fugitives and the American National Identity

In the early American republic, liberty and property correlated as property ownership was a primary requirement for enfranchisement. White non-property holders sought for voting rights to be extended so they could participate in the democratic process. However, poor white men did not intend for Blacks to be included in these efforts. In the early eighteenth century, free Blacks could vote in several southern colonies.[43] After the Constitution was ratified and voting requirements became more restricted in the individual states, free Blacks (and widowed women) that met the voting requirements of some states found a loophole in their states' constitutions.

Egalitarian reformers that supported suffrage for all Whites hated that Blacks were exploiting this loophole. "Tennessee's original 1796 constitution granted the suffrage to all 'freemen' who met the minimal freehold or residency requirements" which allowed a number of free Blacks to vote in their counties.[44] This caused a heated debate in the 1834 Tennessee constitutional convention because enfranchisement was the political expression of liberty and citizenship; free people of color, including mulattoes and Native Americans, "were not parties to our political compact" and therefore not American citizens.[45]

Delegate G.W.L. Marr moved to prohibit free Blacks from voting in Tennessee; he insisted that the preamble to the U.S. Constitution that stated "We the People" only applied to

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[43] Albert E. McKinley, *Suffrage Franchise in the Thirteen English Colonies in America.* (Philadelphia: University of Pennsylvania Press, 1905); free Blacks voted in North Carolina until 1715, in Virginia until 1723, and in Georgia until 1754.

[44] Lacy K. Ford, Jr. "Making the 'White Man's Country' White: Race, Slavery, and State-Building in the Jacksonian South." *Journal of the Early Republic*, 19, no. 4 (1999): 731, Accessed April 26, 2017, http://www.jstor.org/stable/3125140.

[45] *Journal of the Convention of the State of Tennessee: Convened for the Purpose of Revising and Amending the Constitution.* (Nashville, 1834): 107.

free *white* people. Furthermore, Marr argued that people of color could not be naturalized as American citizens under this parameter and therefore should never be allowed the "great right to free suffrage."[46] William Loving feared that black enfranchisement set a bad example for slaves while Terry Cahal worried it might encourage fugitives from the Deep South to take refuge in Tennessee.[47] Some supporters of black suffrage such as John Giles argued that enfranchisement tethered free Blacks to the white population. He added that black voters acted as a buffer between slaves and the white community. Allowing free eligible Blacks to vote gave them a stake in politics and may even "cultivate an inclination to protect the community against disorders" whereas disenfranchising Blacks might incite them to lead slaves in rebellion or aid in slave escapes.[48] Still, statutes to disenfranchise Blacks were passed in states such as Tennessee, North Carolina, and Maryland. By the 1830s, political involvement—the right to full liberty—became an exclusively white activity in several states.

Even while prohibiting slavery north of the Ohio River, several Free states passed Black Laws to restrict the liberty of free or emancipated Blacks. Some of these laws limited the number of black people, free or enslaved, that could move within the states' boundaries; these laws were intended to protect working class white people from having to compete with black labor. Other laws prohibited free schools for Blacks who were nonresidents because it might have enticed people of color to immigrate to the state. Miscegenation laws were also passed in

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[46] Ibid.
[47] Lacy K. Ford, *Deliver Us from Evil: The Slavery Question in the Old South* (New York: Oxford University Press, 2009): 413.
[48] Ford, "Making the 'White Man's Country' White," 733.

northern states and Pennsylvania courts ruled that free Blacks were not American citizens and therefore were ineligible to vote.[49]

In the American national identity, a nation was a political state that was governed by the consent of the people, but as slavery protests of the late eighteenth century invoked Natural Law, legislation in the Slave states increasingly defined the national identity of Africans by their captivity.[50] Southerners deemed black people as foreigners; Africans were not white and therefore were not nor could never become American citizens. Even the southerners that agreed with gradual emancipation centered their agenda on the belief that freed slaves could not live civilly amongst the white population. The Africans' foreign status that conferred upon them the legacy of slavery, and the formation of racial identities that created it, were believed by many white southerners as too great for peaceful cohabitation.

The southern white abolitionist solution was to expatriate free Blacks and colonize them in a different territory, comparable to Native American "removal" from the Deep South to allow white southerners to acquire rich cotton land. Another incentive for the Indian Removal was to ensure that federal intervention on behalf of Native Americans did not extend to civil rights for slaves. Thomas Jefferson was a chief proponent of colonization which also included diffusing the former slaves into the western territories.[51] By diluting slavery over a greater surface, it made slavery a national problem rather than keeping it confined to the South where it perpetuated the sectional dispute.

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[49] Edgar J. McManus, *A History of Negro Slavery in New York* (New York: Syracuse University Press, 1966): 184.
[50] Peter S. Onuf, *Jefferson's Empire: The Language of American Nationhood.* (Charlottesville: University Press of Virginia, 2000): 149.
[51] *Thomas Jefferson to Edward Coles, August 25, 1814.* Retrieved from the Library of Congress [Web]. Accessed April 20, 2017, http://www.loc.gov/item/mtjbib021817.; *Thomas Jefferson to John Holmes, April 22, 1820.* Retrieved from the Library of Congress [Web]. Accessed April 20, 2017, http://www.loc.gov/item/mtjbib023795.

Jefferson's colonization scheme no doubt stemmed from his adherence to Natural Law and therefore a desire for slave owners to avoid a State of War with former slaves. Yet his opposition to slavery was coupled with an anti-black loathing that feared black retaliation against white slave owners if freed people were to remain in Virginia. The Jacksonian South's idea of "racial modernity" centered on preventing slave rebellions, the expulsion of free Blacks from the South, and regulating the abolition of the interstate slave trade. Their goal was to establish and maintain white supremacy and to keep the South as strictly a white man's country.[52]

While some free Blacks shared in the colonization philosophy, many other northern Blacks rejected voluntary emigration or any other government sponsored colonization efforts. Black Americans, for they did believe themselves to be Americans, denounced organizations such as the American Colonization Society and the New York Manumission Society, especially the latter for attempting to speak on behalf of Negroes. An anti-colonization black leadership formed in the 1820s to oppose colonization and established the *Freedman's Journal* to give agency to black voices against these efforts. Anti-colonization Blacks articulated a vision of a free and equal America where rights were not conferred based on race, color, or ancestry. It was this basic philosophy that gave rise to a new form of militant abolitionism in the 1830s, particularly one that rejected the idea that property rights trumped the personal liberty of free or enslaved black Americans.[53]

Nevertheless, whiteness became an even greater requirement for citizenship than property ownership during the Jacksonian era, and privilege evolved from one based on socio-economic class into one based on race. The white South sought to achieve the Jeffersonian colonization

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[52] Ford, "Making the 'White Man's Country' White," 713.
[53] Eric Foner, *Gateway to Freedom: The Hidden History of the Underground Railroad* (W.W. Norton & Co., 2015): 53-54.

model of exclusion through the total subordination of Blacks, free or enslaved. Whites in the Upper South that supported gradual emancipation and colonization were seeking to "whiten" the South which they feared had grown too "black" in its population of slaves and freedmen.[54] Subordinationists in these Border South states understood that the South's economic dependency on slave labor required the complete subjugation of black people to maintain the white supremacy status quo.

In the Lower South, emancipation was never given serious thought; colonization was a means to an end of strengthening the institution of slavery. Exclusion was an ideology of maintaining racial control over Native Americans while subordination was the preferred method of racial control over the black population. While some southerners did debate the evils of slavery, it was always in how it affected the white population. Pro-colonizationists saw slavery as demoralizing to poor white and yeoman farmers because of lost jobs to black slave labor. Proslavery Virginians saw it as necessary to maintaining white supremacy over the black population and as essential to the southern agrarian economy. Still others, particularly southerners that did not own slaves, saw slavery as a positive reminder of white independence and freedom.[55]

Yet the South resented northern criticism of slavery and sectional conflicts developed in the Border States in the 1780s when Pennsylvania began to initiate gradual emancipation. The conflict escalated as more boundaries were set delineating Free and Slave states and as legislation banned the international slave trade in 1808, increasing the value of slaves that were eventually sold further south to the booming cotton plantations. "A vicious circle developed as

[54] Ford, "Making the 'White Man's Country' White," 736-37.
[55] Ibid., 722.

slaveholders sold slaves south to prevent escape and slaves escaped to prevent sale south."[56] Many of the Border South states, particularly in the Chesapeake region that consists of Maryland, Delaware, and Virginia, had a larger free Black population than the Deep South because of closer adherence to Natural Law as well as the decline of tobacco as a cash crop over wheat (which did not require as much labor). This decline led many border slaveholders to manumit their slaves.

Several slaveholders in this region either migrated southwest to the Deep South or sold their slaves to cotton planters. Stanley Harrold contends that the decline in slavery in the Border South has been embellished and that their reliance on slave labor "guaranteed that most of its internal opposition to slavery was mild and unqualified."[57] While in Delaware and Maryland the slave populations along their northern borders decreased, the slave populations of Virginia, Kentucky, and Missouri increased; Virginia maintained the largest slave numbers in the antebellum period.[58] Yet the decline in slavery, embellished or not, did not preclude conflict between the Border States. The most significant of these borderland conflicts stemmed from the rising anti-slavery sentiment in the Free states.

The Lower North had low numbers of free Blacks chiefly because of anti-black prejudice and a belief that free or bonded black labor degraded white labor. Free and Slave boundaries notwithstanding, the Border States remained connected through economics, demographics, and culture. The interactions between the Border States caught them in the middle of the radicalism of the Upper North and the Deep South. When abolitionist James Birney attempted to publish

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[56] Stanley Harrold, *Border Wars: Fighting Over Slavery before the Civil War*. (Chapel Hill: University of North Carolina Press, 2010): 10.
[57] Harrold, *Border Wars*, 6.
[58] Ibid., 24.

anti-slavery newspapers in Cincinnati, he immediately stirred the pro-slavery indignation of the white residents and officials. "Cincinnati's ties with the South were strong because of commercial ties, personal friendships, and family connections."[59] And yet this proximity also meant slaves were frequently escaping into Ohio for refuge and free Blacks found the city a convenient place to settle. By 1829 there were 2,258 people of color living in Cincinnati. However, pro-slavery sentiment was so high amongst white Cincinnatians that anti-black mob violence was an accepted practice. The number of black men and women that were killed due to anti-black violence caused more than half of them to flee the city.[60]

James Birney almost met the same fate when Colonel Charles Hale charged him with committing treason against the federal Constitution and inciting slave rebellions in the South with his anti-slavery publications. When faced with an angry mob of pro-slavery Cincinnati residents, Birney shrewdly reminded the crowd that by abolishing slavery the South gained representation in Congress with the remaining two-fifths of the black population that was not covered under the apportionment scheme. Birney no doubt understood that the Three-Fifths clause was one of the concessions that bound the Slave states to the Union and not only appealed to southern interests, but provided a possible compromise to quell threats of disunion.

Ironically, despite the continued anti-black prejudice in the Border North, the Free and Slave states differed in how they defined a black person's status. Although many white people in the Border Free states perceived fugitive and free Blacks as inferior, as degenerate, and as a threat to free white labor, white northerners nevertheless generally recognized Blacks as human

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[59] D. Laurence Rogers, *Apostles of Equality: The Birneys, The Republicans, and the Civil War.* (Lansing: University of Michigan Press, 2011): 107.
[60] Rogers, *Apostles of Equality,* 108.

beings whereas white southerners defined black people as chattel property.[61] Many Lower North residents regarded fugitive slave rendition as akin to kidnapping and began to pass personal liberty laws to "work favorably within the existing constitutional settlement, even if some of these laws tested its outer limits."[62] The Fugitive Slave Law of 1793 law gave the slaveholding claimant the power to arrest the alleged fugitive in the Free State in which they were found. The claimant then had to present either oral or written testimony before any federal, state, or local judiciary who was given the authority to either adjudicate the claim or transfer the case back to the claimant's home state. The law denied the alleged fugitive the right to call witnesses on their behalf and they were denied the right to trial by jury.

Anti-slavery northerners were concerned that the law gave the slaveholding claimant, or the agent he sent to retrieve the fugitive, the authority to go into any Free State and seize any black person without impunity. Since Article IV of the Constitution and the 1793 law concerned both fugitives from justice and from labor, the framers assumed that the procedure for rendition fell solely under extradition and therefore did not require a jury trial.[63] What they did not take into consideration, besides the morality of the slave issue, was that the law did not provide protections for free black residents of the northern states.

Border North states had to tread carefully between protecting the liberties of free Blacks in their states while also adhering to federal law. The Indiana Territory enacted anti-kidnapping laws as early as 1810 by requiring the claimant or agent to provide proof of their claim to a court before they were issued a certificate that authorized the rendition of the fugitive; if the claimant

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[61] Harrold, *Border Wars,* 7.
[62] Baker, "The Fugitive Slave Clause and the Antebellum Constitution," 1151.
[63] Emma Lou Thornbrough, "Indiana and Fugitive Slave Legislation," *Indiana Magazine of History,* Vol. 50, No. 3 (1954): 202. Accessed April 16, 2017, http://www.jstor.org/stable/27788199.

failed to comply they were imposed a fine to both the official and the territory. After Indiana became a state, further personal liberty laws reinstated the right to trial by jury.[64] However to avoid conflict with the federal law, Indiana provided for claimants to make the arrest of alleged fugitives under either Indiana law or under federal law; if the arrest was made under Indiana law, the accused was guaranteed a jury trial whereas arrests made under federal law were, at best, given a summary hearing.

Indiana's personal liberty law was put to the test in 1818 in the case of John L. Chasteen who claimed that a Black woman named Susan was his slave. Chasteen of Kentucky had Susan arrested in Indiana, but moved to have the case heard before a federal judge rather than in the county court. Susan's lawyers filed an injunction to prevent her removal from Indiana until she had a trial. The county judge decided in favor of granting Susan a local trial under state law. Chasteen instead appealed to federal law when he sought a warrant from the United States court. Susan's lawyers moved for the case to be dismissed because the United States Constitution did not grant Congress authority to decide in this case. They also claimed that the states had concurrent power to pass laws involving fugitive slave cases. Consequently, Judge Parke ruled against these motions, noting that federal law superseded state legislation, thereby deciding on the constitutionality of the 1793 law. Parke's opinion on the matter essentially ruled personal liberty laws as incompatible with the federal legislation.[65]

Southern slaveholders reacted to the personal liberty laws with threats of disunion as they considered these laws as nullification of federal law. Kentucky statesman Henry Clay argued that the federal law declared slaves to be property and that the value of slave property to the

[64] Thornbrough, "Indiana and Fugitive Slave Legislation," 204.
[65] Ibid., 205.

economic welfare of the nation outweighed the slaves' claim to freedom.[66] As the northern states passed personal liberty laws to protect free black residents and to ensure state sovereignty over any fugitive slave cases, congressmen from the Slave states introduced bills to ensure that the 1793 law worked in the slaveholders' favor. A motion was entered on December 15, 1817 by Representative James Pindall of Virginia to form a committee to "inquire into the expediency of providing more effectually a law for reclaiming servants and slaves escaping from one State into another."[67] The committee consisted of Pindall as well as Representatives from two other Border States, Ohio and Kentucky. Pindall's motion hoped to amend the 1793 law to aid claimants in the recovery of fugitive slaves, to have the fugitive extradited to the claimant's state for identification and to hear the case, and to affix penalties on those that either harbored fugitives or obstructed their rendition.

In January 1818, Charles Rich of Vermont moved to recommit the bill to the committee so that more safeguards were put in place to protect the rights of free persons of color. John Quincy Adams, who served as a Massachusetts Representative, acknowledged the Slave states' right to own property in slaves, however he remarked that he refused to prioritize the property rights in the Slave states over personal liberty in the Free states. Arthur Livermore of New Hampshire specifically highlighted the danger of the provision that required alleged fugitives to be identified in the claimant's state; this provision put free Blacks in danger of capture and removal to the Slave states where their status as property was inevitable regardless of their free status in the North.[68] Conversely, other northern representatives did not believe the amendments

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[66] Ibid.
[67] *Annals of Congress*, 15 Cong., 1st sess., 446-447. Retrieved from the Library of Congress. Web. Accessed April 21, 2017, https://memory.loc.gov/ammem/amlaw/lwac.html.
[68] *Annals of Congress*, 15 Cong., 1st sess., 837-838.

to protect free Blacks were necessary, expressing confidence that southern courts of law were as just as those in the North. Jonathan Mason of Massachusetts further conveyed his desire to not have his hometown of Boston "infested" with runaway slaves.[69] Although the motion to recommit the bill was denied and the House voted in favor of the bill, it ultimately did not pass in the Senate because the House refused to make the necessary amendments to protect free Blacks.[70]

The personal liberty laws were northern attempts to ensure the universality of Natural Law, at least under state sovereignty. While the American national identity continued to exclude people of color, antislavery northerners were nevertheless cognizant of the moral implications of the federal fugitive slave law. William Ellery Channing of Pennsylvania feared that northern compliance with the Fugitive Slave Law "makes us partakers of the guilt" by denying natural rights to one group of people based on their race.[71] However, the personal liberty of all northerners, regardless of race, was called into question as the sectional conflicts over slavery and fugitive slave rendition began to escalate in the mid-nineteenth century.

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[69] Ibid.
[70] *Annals of Congress*, 15 Cong., 1st sess., 513, 829-830, 837-840; 2nd sess., 1339, 1393.
[71] *The Voice of Freedom,* April 20, 1839. Retrieved from the Library of Congress [Web]. Accessed April 21, 2017, http://chroniclingamerica.loc.gov/lccn/sn84022687/1839-04-20/ed-1/seq-3/.

Chapter 3: Fugitives and the Anti-Slavery Movement

The sectional disputes over slavery and fugitive rendition became so intense that Congress needed to maintain a delicate balance in the Senate when admitting new states to the Union. When Vermont was admitted as a Free State in March 1792, Kentucky joined three months later as a Slave state. It followed that Tennessee and Ohio, Louisiana and Indiana, and Mississippi and Illinois also joined in pairs of Slave and Free states to uphold an equal number of seats in the Senate. When Alabama petitioned to enter the Union as a Slave state in 1819, Missouri (which had applied for statehood in 1817) was required to enter as a Free State to preserve the congressional balance.

New York Congressman James Tallmadge foresaw a controversy amongst slaveholders should Missouri enter the Union as a Free State because there were already approximately 10,000 slaves in Missouri by 1819. During the 15th congressional session, Tallmadge proposed a bill to prohibit more slaves from entering the state and that slave children born after Missouri became a state were to be emancipated when they turned twenty-five years old. This proposition triggered the "first real threats of disunion" in opposition to the measure.[72] Henry Clay invoked state sovereignty when he argued that Congress could not impose conditions on new states after they were admitted to the Union. Ironically, when the Free states presented similar state sovereignty arguments after the Compromise of 1850, the Slave states accused northerners of treason.

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[72] Keifer, *Slavery and Four Years of War,* 49.

Amendment supporters objected to the expansion of slavery in the Louisiana territory because the Three-Fifths compromise allowed a percentage of slaves to be counted for representation in the legislature. Additionally, in 1819 the Senate was evenly balanced with both sections possessing eleven seats each; the Slave states stood to gain a two-seat advantage in the Senate with the admittance of Missouri. Amendment supporters also reminded Congress that the Ordinance of 1787 prohibited slavery northwest of the Ohio River. Tallmadge went on to denounce slavery as a "scourge of the human race," and that the Constitution did not sanction the institution, only tolerated it.[73] Tallmadge's amendment passed in the House but was defeated in the Senate.

When the 16th Congress convened in December 1819, Missouri's statehood was reconsidered. The sections remained in a stalemate as Rufus King of Massachusetts argued in favor of restricting slavery in Missouri while William Pinkney of Maryland opposed the restriction, again using the states' rights defense. The pro-slavery factions were fortunate that Maine separated from Massachusetts and petitioned for statehood as a Free State in the same year. To avoid further dispute and threats of disunion, Jesse Thomas of Illinois added a proviso to prohibit slavery north of latitude 36˚30', thereby limiting the institution to the territory south of the dividing line except for Missouri. Although northern congressmen attempted to block the measure in favor of a free Missouri, the Thomas proviso passed and Missouri entered the Union in 1821 as a Slave state.

The Missouri Compromise was an attempt to quell the sectional conflict over slavery, but proved to exacerbate the disputes. Thomas Jefferson wrote to John Holmes in 1820 that the

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[73] Ibid., 50.

Missouri Compromise was a "reprieve only" on the slavery debate and that a "geographical line, coinciding with a marked principle, moral and political, once conceived and held up to the angry passions of men, will never be obliterated."[74] The Compromise halted gradual emancipation at the Missouri border, eliminated another possible free territory in which fugitive slaves could escape, and further cemented slavery as an institution.

The admittance of Missouri extended the northern border of the Slave states to the west; however the state had already awakened to the realities of the fugitive slave debate. While the Ohio River served as the dividing line between the Border States, the Mississippi River connected the borders of Missouri and Illinois. The river also provided one of the main routes of slave escapes. Illinois began harboring fugitive slaves from Kentucky and the Missouri Territory as early as 1819.[75] Although slaves were not considered American citizens, an 1824 Missouri law did allow black people that were illegally held in bondage to sue for their freedom. In that same year, the *Winny v. Whitesides* freedom suit in the Missouri Supreme Court established the "once free, always free" precedent, which benefitted a former slave named Rachel when she sued John Walker for her freedom in 1834 after he held her as a slave in Illinois.[76] *Rachel v. Walker* was later referenced in the 1857 *Dred Scott v. Sanford* freedom suit.[77]

After Missouri achieved statehood, fugitives began to escape north into the Iowa Territory due to the oppressive Missouri Black Codes and the potential that both fugitives and free Blacks could be kidnapped under the 1793 Fugitive Slave Law. "Between 1810 and 1820, for example, the free black population of Missouri was reduced by almost half; that is, it

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[74] *Thomas Jefferson to John Holmes,* April 22, 1820.
[75] Brian Dolinar, *The Negro in Illinois: The WPA Papers* (University of Illinois Press, 2013): 22.
[76] "*Winny v. Whitesides, Phebe,* Case No. 190*,* April 1821," Circuit Court Case Files, Office of the Circuit Clerk, St. Louis, Missouri. Accessed April 21, 2017, http://stlcourtrecords.wustl.edu.
[77] *Dred Scott v. Sanford,* 60 U.S. 19 How. 393 (1856).

decreased from a total of 607 to 347."[78] In 1840, Iowa's black population was 188, and within a decade that number nearly doubled. However, pro-slavery sentiment in southeastern Iowa proved to be as pervasive as in the southern borders of other Lower North states such as Indiana and Ohio; fugitives and free Blacks often continued their journeys further north into Canada to avoid kidnapping and rendition. Quaker aid to the fugitives in southern Iowa often stirred the ire of the pro-slavery forces in Missouri and the Nebraska Territory.

Figure 2: Map of Slave Escape Routes[79]

[78] James L. Hill, "Migration of Blacks to Iowa 1820-1960," *The Journal of Negro History,* 66, no. 4 (1981-1982): 290. Accessed April 24, 2017, http://www.jstor.org/stable/2717237.
[79] Michael Seigal, Rutgers Cartography Lab. Accessed April 24, 2017, http://mapmaker.rutgers.edu/PROJECTS/undergroundrailroad.png.

Slave owners from the bordering Slave states frequently sent agents to repossess their property from Iowa. The abduction of free Blacks, especially when the person was a well-known resident that had lived in the community for years, often did more to increase anti-slavery sentiment in the Border North than did any abolition literature.[80] The first fugitive slave case in the Iowa Territory occurred in 1839 when a man named Ralph moved from Missouri to Iowa with permission from his former master. Slave catchers arrested him as an alleged fugitive, however at the trial, Judge Charles Mason ruled that Ralph was no longer a slave since his master gave him permission to reside on free soil. In another incident, Quakers refused to turn over fugitive slaves to a band of armed Missouri slave catchers.[81] Border clashes in the mid-nineteenth century over slavery, and especially over fugitive slave renditions, often reached the point of armed conflict, thus foreshadowing the nation erupting in a civil war.

Kentucky clergyman Robert J. Breckenridge identified the key issue of the conflict in the Border States as the fugitive slave controversy. "Posterity will hold these six border Free States and four border slave States responsible for the fate of this nation in the present crisis."[82] Stanley Harrold contradicts Michael F. Holt's claim that armed conflict in the borderlands did not exist prior to the Civil War. Since the 1780s, black and white border residents fought, even to death, over slavery.[83] The Lower North experienced frequent violent clashes over slavery as slaveholders and their agents fought to retrieve fugitives or to keep the slaves that they brought to the northern states. Slave uprisings and fugitive renditions in the Border States contributed to

[80] Dolinar, *The Negro in Illinois,* 23.
[81] Ibid., 291.
[82] Harrold, *Border Wars*, xii.
[83] Ibid., 37.

much of the conflict along the Ohio River as black Americans, free and fugitive, fought to avoid recapture, abduction, or resale to the Deep South.

The Border Free states were also the sites of some of the worst instances of mob violence in the antebellum period. James Birney's sister warned him not to cross the Ohio River into Kentucky for fear of retaliation due to his abolitionist activities.[84] Reverend David Nelson's service at Marion College in Missouri was interrupted by a melee between slave owners and abolitionists after he distributed a sermon where he admonished slaveholders to not "covet they neighbor's time, they shalt not covet thy neighbor's toil, nor his sweat, nor his bones, nor his blood, nor his soul, nor any thing that is thy neighbor's."[85] Still, their fates did not compare to the black residents of Cincinnati whose homes were invaded by pro-slavery mobs. In St. Louis, a mob removed a black man, who had been charged with homicide, from jail and burned him at the stake. Often, the worst of the mob violence was visited upon the black residents of a Free State.

On both sides of the sectional conflict, people believed their natural rights had been threatened. The Upper South regarded slave escapes, anti-slavery sentiment, and abolitionist aid to fugitives as targeting slaveholders' property rights and as inciting slave rebellions. In the Border North states, fugitive slaves also threatened the white economy, however northern black residents identified with the refugees' desire for personal liberty and assisted their escape. When Virginia slave-owner Richard Haxall had seven-year-old Henry Scott dragged from the African Freedom School in New York to be returned to slavery, black abolitionists and white supporters

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[84] "Anna R. Marshall to James G. Birney, August 3, 1836," *Birney Letters,* I. William Clements Library, University of Michigan, 2010. Accessed April 24, 2017, https://quod.lib.umich.edu/c/clementsmss/umich-wcl-M-399bir?view=text.

[85] Dwight Lowell Dumond, *The Antislavery Origins of the Civil War*, (Lansing: University of Michigan, 1961): 54.

publicized Henry's case and garnered significant public sympathy. Fortunately, Haxall was unable to produce a will to prove that Henry had belonged to Haxall's father; Henry was released from jail and went to live with Elizur Wright, editor of abolitionist publication the *Emancipator.*[86] Such cases aroused the ire of even anti-black northerners and increased antislavery sentiment in the North.

In 1838, Kentucky Governor James Clark voiced his fear that assisted slave escapes endangered the northern Kentucky border. The arrest of a white abolitionist, who was charged with aiding fugitives and protecting them from slave catchers, prompted the Ohio General Assembly to pass its own Fugitive Slave Law to assuage northern Kentuckians. In addition to enforcing the provisions of the federal law, the Ohio law made it a crime for anyone to assist a fugitive slave, to encourage them to escape, or to interfere in their rendition. Ohioans charged the legislation as a violation of personal liberty and a threat to state sovereignty.[87] The law only remained in effect for four years, however several instances of kidnapping revealed the reality of both the state and federal fugitive slave laws. Traditionally anti-black residents of the Border North that witnessed the recapture of alleged fugitives, as well as the mob violence against abolitionists and black communities, began to worry for their own personal liberty. The *Indiana State Sentinel* even published a cartoon of Henry Clay ordering his slaves to flog a white northern couple.[88]

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[86] *First Annual Report of the Anti-Slavery Society* (New York: Dorr & Butterfield, 1834): 56.
[87] Harrold, *Border Wars,* 92; Stephen Middleton, *The Black Laws: Race and the Legal Process in Early Ohio* (Athens: Ohio University Press, 2005): 175.
[88] *Indiana State Sentinel* (Indianapolis, IN) , May 23, 1844. Retrieved from Library of Congress. Accessed April 24, 2017, http://chroniclingamerica.loc.gov/lccn/sn82015677/1844-05-23/ed-1/seq-2/.

Figure 3: Political cartoon from the *Indiana State Sentinel,* May 23, 1844

Fugitive slave cases in the Free states and territories that invoked personal liberty as a defense further inflamed the sectional conflict. The Ohio Supreme Court tested its own fugitive slave law when it reviewed the 1841 case of *State v. Farr*. When Virginia slaveholder Bennett Rains passed through Ohio in route to Missouri with his slaves, a party led by abolitionist Abraham Brooke encouraged the slaves to flee because they were on free soil. Raines had the abolitionists charged with violating both the federal and state fugitive slave laws. During the trial, the judge advised the jury to ignore the free-soil argument and reminded them of the 1839 Ohio Fugitive Slave Law; the jury found in favor of Raines. At the appeal to the circuit court, the justices found the trial judge in error and ruled that by merely passing through a Free State, slaves were made free. Additionally, the justices found that any removal of a black person with the intention of bringing them to a Slave state violated Ohio law. This case set a precedent for subsequent Ohio fugitive slave cases which used personal liberty as a justification for denying slaveholders' claims to return alleged fugitives to slavery.[89]

[89] Middleton, *The Black Laws,* 179.

Pennsylvania passed personal liberty laws in 1788 and 1826 that prohibited the seizure and removal of any free black resident from the state to be enslaved in the South. The 1826 Pennsylvania law also classified the kidnapping "by force and violence" or "by fraud or false pretense, seduce, or cause to be seduced" of any "negro or mulatto" as a felony.[90] These personal liberty laws were challenged in the case of Margaret Morgan. When John Ashford of Maryland allowed his slave Margaret to live in virtual freedom, she married a freeman named Jerry Morgan in Pennsylvania in 1832 and settled there for several years with their family; she was by definition not a fugitive slave. However, because Margaret's manumission was never formalized by her master before his death, Ashford's heir dispatched slave catcher Edward Prigg to retrieve Margaret from Pennsylvania and return her to slavery in Maryland.

Prigg initially followed the procedure established in Pennsylvania's 1826 personal liberty law which required the claimant to obtain a warrant from the Pennsylvania county magistrate. When that same magistrate "refused to take further cognizance of the case," Prigg and three agents waited until her husband was away and carried Margaret and her six children back to Maryland in violation of Pennsylvania law.[91] At least one of her children was born in Pennsylvania and therefore free under state law. Prigg and his accomplices were indicted for kidnapping in Pennsylvania and the state ordered their extradition. Just as in the case of John Davis that sparked the 1793 Fugitive Slave Law, the governor of Maryland refused to extradite Prigg, however Prigg voluntarily turned himself in and was convicted in Pennsylvania for kidnapping.

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[90] *Cases Argued and Decided in the Supreme Court of the United States 10* (Rochester: The Lawyers Co-Operative Publishing Company, 1918): 1065.

[91] *Edgefield Advertiser* (Edgefield, SC), May 27, 1848. Retrieved from the Library of Congress [Web]. Accessed April 26, 2017. http://chroniclingamerica.loc.gov/lccn/sn84026897/1848-05-24/ed-1/seq-6/.

Prigg appealed to the United States Supreme Court and his case hinged on the proper construction of Article IV of the Constitution as well as the 1793 Fugitive Slave Law. The essential question before the court was whether a slave owner had a right to retrieve a slave that had escaped into the Free states "as one of the incidents of perfect ownership?"[92] Prigg argued that both the 1788 and the 1826 Pennsylvania personal liberty laws were unconstitutional, citing the Supremacy Clause that stated that federal legislation superseded state law.[93] The federal justices found that Pennsylvania's personal liberty laws were "repugnant to the Constitution of the United States, and is therefore void" because the laws nullified the 1793 fugitive slave legislation.[94] The fate of Margaret Morgan and her children, however, remains a mystery to historians.

Justice Joseph Story's opinion on the case has been the subject of academic debate because of its inherent contradictions. Story held that "the slaveholding States [had] the complete right and title of ownership in their slaves, as *property* [sic] in every State in the Union into which they might escape," and that the adoption of the fugitive slave clause in the Constitution is what bound the Slave states to the Union.[95] Because the formation of the Union hinged on that right, Story also declared that fugitive slave rendition should not be left to state authority, but rather it was under federal jurisdiction.

Prigg v. Pennsylvania upheld the constitutionality of the Fugitive Slave Law of 1793 and determined that Congress held ultimate authority over slave rendition. The case also attacked state sovereignty regarding personal liberty laws that were in direct violation of federal law. Yet

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[92] Ibid.
[93] *Prigg v. Pennsylvania*, 41 U.S. 16 Pet. 539 (1842).
[94] *Carroll Free Press* (Carrollton, OH), March 11, 1842. Retrieved from the Library of Congress [Web]. Accessed April 25, 2017, http://chroniclingamerica.loc.gov/lccn/sn83035366/1842-03-11/ed-1/seq-3/.
[95] *Edgefield Advertiser,* May 27, 1848.

this is where the nine justices' agreements ended. Justice Story's opinion declared only federal officials had to aid in the recapture of fugitives in the Free states, not the state magistrates. Chief Justice Roger Taney, on the other hand, insisted that the states retained authority to assist in slave rendition. In either case, the Free states constitutionally lost the authority to protect their free residents from kidnapping because the decision "offered a sweeping justification for federal authority over the states" regarding fugitive slave rendition.[96]

Although traditionally states' rights advocates, southern slaveholders praised Story's opinion and as such openly favored federal authority over the states as it pertained to their right to slave property. However, while Story declared that states could not interfere with rendition, he also left the interpretation open for Free states to refuse any state aid to the claimant or to slave catching agents. Justice Story's opinion on *Prigg* gave Northerners a "loophole for non-cooperation" because while it invalidated personal liberty laws that hindered fugitive rendition, it did not deny northern states the right to pass laws that protected free Blacks in their states in other ways.[97] Subsequently, six northern states passed laws that barred any state officials from aiding in fugitive slave rendition.

Pro-slavery advocates condemned the efforts of the Free states for not performing their duties under the Constitution. The federal document was a social contract "*between the states* [sic]," and included accepting that slavery was sanctioned by the federal government.[98] This meant, according to the Slave states, that no sovereign parties could pass laws that discharged slaves from the service of their masters. This referred specifically to laws in several northern

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[96] Eric Foner, *Gateway to Freedom,* 110.
[97] Ralph A. Keller, "Extraterritoriality and the Fugitive Slave Debate," in *Illinois Historical Journal,* Vol. 78, No. 2 (Summer, 1985), pp. 114. Accessed September 4. 2016, http://www.jstor.org.ezproxy.snhu.edu/stable/40191835.
[98] *Anti-slavery Bugle* (New Lisbon, OH), September 26, 1845. Retrieved from the Library of Congress [Web]. Accessed April 26, 2017, http://chroniclingamerica.loc.gov/lccn/sn83035487/1845-09-26/ed-1/seq-3/.

states that declared free any slave that travelled with their masters into that Free State. When northern states passed State legislation to further impede in fugitive slave rendition, the Slave states denounced the Free states as becoming "hostile opponents" to the Constitution.[99] Under Natural Law, this denial of southern property rights brought the Free and Slave states into a State of War.

Anti-slavery parties, however, pointed out that part of the social contract included adhering to the decisions of the judicial body of government "if they are true to the obligations of citizenship."[100] Some anti-slavery supporters conceded that the Constitution sanctioned slavery, but that in adopting the institution the nation "compromise[d] the principles of liberty, and the entire destruction of the rights of the colored population."[101] As the federal government compromised the natural rights of "the colored population," anti-slavery advocates in the Free states continued to pass personal liberty laws to block any state aid to the claimant in the rendition of alleged fugitives, including the use of state jails in which to confine them.[102] The Free states used the loopholes inherent in *Prigg* and in the Fugitive Slave Law of 1793 to protect free Blacks, reinforce state sovereignty, and prioritize personal liberty over the property rights of slaveholders.

Prigg v. Pennsylvania was the first fugitive slave case to be heard in the Supreme Court and remains one of the most significant because it underscored the debate between state

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[99] *Edgefield Advertiser,* May 27, 1848; *Weekly National Intelligencer,* February 9, 1850. Retrieved from the Library of Congress [Web]. Accessed April 26, 2017, http://chroniclingamerica.loc.gov/lccn/sn83045784/1850-02-09/ed-1/seq-4/.
[100] *Anti-slavery Bugle,* September 26, 1845.
[101] *Anti-slavery Bugle,* March 27, 1846. Retrieved from the Library of Congress [Web]. Accessed April 26, 2017, http://chroniclingamerica.loc.gov/lccn/sn83035487/1846-03-27/ed-1/seq-1/.
[102] Jeffrey Schmitt, "Rethinking *Ableman v. Booth* and States' Rights in Wisconsin," *Virginia Law Review,* 93, no. 5 (2007): 1319.

sovereignty versus the central authority of the federal government in the antebellum period. The fugitive slave disputes exemplified the tendency of the Free states to argue in favor of states' rights to protect their free black residents and condemn the kidnapping of alleged fugitives. Consequently, the Slave states were forced to rely on the federal government to enforce state extraterritoriality, or else make good on their threats of disunion. It was up to Congress to find a new settlement to the fugitive slave controversy to curb southern threats of secession, even if it meant violating the sovereignty of the Free states by forcing them to comply in the apprehension of fugitive slaves.

Chapter 4: Fugitives and the Antebellum Period

The Supreme Court decision in *Prigg v Pennsylvania* (1842), and the subsequent acquisition of territory in the west from the Mexican-American War, created such sectional turmoil that southern congressmen insisted that the federal legislature clarify not only the slavery question in the territories, but also fugitive rendition procedures. Northern black presses were against the annexation of Texas and the Mexican-American War because slaveholders wanted to sanction slavery in territories that had been free when Mexican President Vicente Guerrero abolished the institution in 1829.[103] Anti-slavery parties in New England passed resolutions declaring slavery's expansion in the west as a cause for the dissolution of the Union.[104] Likewise, the Slave states threatened secession if they were denied the ability to expand into the new territories with their human property.[105] John C. Calhoun specifically cited northern violation of the Fugitive Slave Law of 1793 as a justification for disunion in his address to the southern delegates in 1849.[106]

In January 1850, James M. Mason of Virginia introduced new measures to Congress outlining fugitive slave rendition procedures to force northern compliance with the federal law. Henry Clay incorporated a version of these procedures into "a plan of sectional reconciliation" that proposed a final answer to the fugitive slave controversy and the question of slavery in the

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[103] President Guerrero was himself of African descent. His father, Pedro Guerrero was of mixed African-Mexican ancestry and it is disputed whether his mother or grandfather was a slave.
[104] *The Spirit of Democracy* (Woodsfield, OH), August 30, 1844. Retrieved from Library of Congress [Web] Accessed April 30, 2017, http://chroniclingamerica.loc.gov/lccn/sn85038115/1844-08-30/ed-1/seq-1/.
[105] Ibid.
[106] John C. Calhoun, *Mr. Calhoun's address to the people of the southern states* (Fort Hill, 1849). Retrieved from the Library of Congress [Web]. Accessed May 9, 2017, https://lccn.loc.gov/08025395.

territories.[107] In this bill, Clay proposed to admit California as a Free State, for New Mexico and Utah to decide on slavery through popular sovereignty, for the District of Columbia to abolish the domestic slave trade, and for a fugitive slave bill that mandated all American citizens to assist in slave rendition.[108] Clay insisted that it was the responsibility of every American to return fugitive slaves to their owners and for Congress to enforce the Constitution which sanctioned slavery and mandated rendition of fugitives.[109]

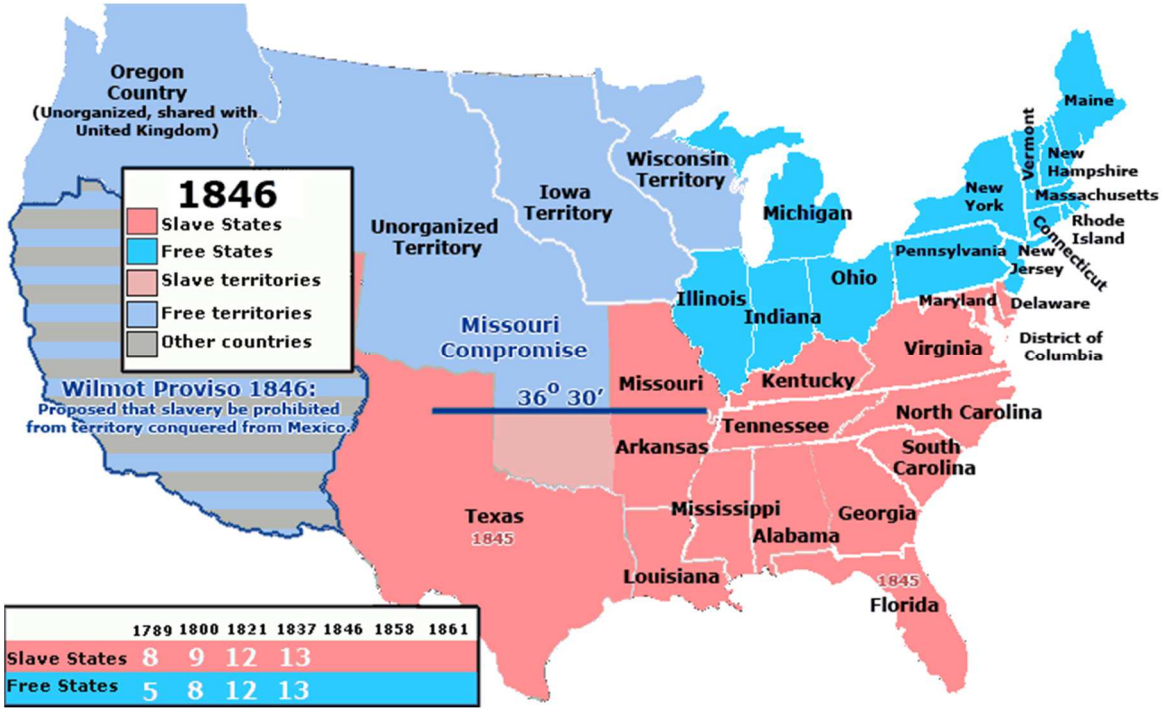

Figure 4: Map of the United States in 1846[110]

Salmon P. Chase and William H. Seward denounced the bill as "unjust, unconstitutional and immoral."[111] Seward claimed that "[t]here is a higher law than the Constitution, which

[107] Foner, *Gateway to Freedom,* 119.
[108] Henry H. Simms, *Decade of Sectional Controversy, 1851-1861.* (Chapel Hill: University of North Carolina Press, 1942): 50-51.
[109] John C. Calhoun, *Speech of Mr. Clay, of Kentucky, in Support of His Propositions to Compromise on the Slavery Question,* February 5, 1850. Retrieved from Internet Archive. Accessed May 9, 2017, https://archive.org/details/speechofmrclayo00clay.
[110] "US Slave/Free State Map," Wikimedia Commons. [Web] Accessed May 5, 2017, https://simple.wikipedia.org/wiki/File:US_SlaveFree1846_Wilmot.gif.

regulates our authority over the domain, and devotes it to the same noble purposes."[112] This higher law superseded the laws of man which denied personal liberty as Clay's compromise did to the northern populations. The debate over the compromise endured until, in July 1850, the bill failed to pass in Congress. Stephen Douglas later repackaged the compromise into separate bills; this rebranding narrowly passed in Congress in September 1850. The Compromise of 1850 was considered a victory over threats of disunion even though each section continued to disapprove of some of the bills' measures.

The Fugitive Slave Law of 1850 was the new settlement within the Compromise that constitutionalized the *Prigg* decision and aimed to render the previous federal fugitive bills more enforceable. Prior to 1850, slave catchers circumvented Pennsylvania's 1847 personal liberty law that prohibited the use of state jails or law enforcement to aid in rendition. Instead of charging the black suspects with escape from slavery, the slave catchers had them charged with other petty crimes such as horse theft so that they could use state aid to apprehend and hold the alleged fugitives. The new "draconian" law federally mandated the states to aid in fugitive slave rendition, including the use of state magistrates, state jails, local law enforcement or even civilian bystanders.[113]

The law also denied alleged fugitives the traditional legal protections afforded other northern citizens and thus created a presumption of slavery in the North.[114] The 1850 law also assigned federal commissioners in every county in the country and granted them the power to issue warrants, form slave-catching parties, and decide on the status of alleged fugitive slaves.

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[111] Simms, *Decade of Sectional Controversy*, 53.
[112] Department of American Studies, *The Compromise of 1850.* Ed. Edward C. Rozwenc. (D.C. Heath & Co., 1957): 46.
[113] Foner, *Gateway to Freedom*, 124.
[114] Baker, "The Fugitive Slave Clause and the Antebellum Constitution," 1163, 1174.

There was a financial penalty if the commissioner found in favor of the fugitive (five dollars) or if he required further proof of ownership (ten dollars).[115] Harboring or aiding fugitives was considered a felony. The statute of limitations on the fugitive's escape was eliminated, which allowed slaveholders or their agents to accuse any black person as a fugitive slave regardless of the length of their residence in the Free states. Since Blacks were denied the right to testify in fugitive slave cases, their slave status was all but guaranteed.[116]

Although Southerners were incensed that the Compromise granted the North an advantage in Congress by admitting California as a Free State, it was the fugitive slave bill that caused the most controversy between the sections. Southerners hoped that by federally protecting slave property through the Fugitive Slave Law of 1850, slaveholders could expand into the territories without fear of losing their property rights. If slaveholders had the right to retrieve fugitive slaves in the territories, then it followed that they could legally carry their slaves into the territories and consequently expand slavery with federal protection.

Northerners likewise interpreted the Fugitive Slave Law of 1850 as an attempt to expand slavery beyond its borders. Prior to 1850, northern anti-slavery sentiment was largely a matter of morality rather than politics. After 1850, "the Northern States [had] become thoroughly imbued with the Anti-Slavery spirit" because the institution no longer only affected black residents.[117] Northerners were enraged that the law called upon citizens of the Free states to perform "acts in violation of humanity" by compelling civilians to aid in Slave rendition, and that the law violated

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[115] The financial penalty equates to approximately one hundred fifty and three hundred dollars respectively in 2016 figures.

[116] Dean J. Kotlowski, "'The Jordan is a Hard Road to Travel': Hoosier Responses to Fugitive Slave Cases, 1850-1860," *International Social Science Review,* 78, no. 3/4 (2003): 71. Accessed May 5, 2017, http://www.jstor.org/stable/41887145/.

[117] *Anti-Slavery Bugle,* October 12, 1850. Retrieved from the Library of Congress [Web]. Accessed January 19, 2017. http://chroniclingamerica.loc.gov/lccn/sn83035487/1850-10-12/ed-1/seq-1/.

the constitutional rights of free residents against unlawful detainment without due process.[118] John Davis of Massachusetts refused to enforce the fugitive clause in his state because it infringed upon states' rights. In defiance of the fugitive bill, several northern states exercised state sovereignty by passing further personal liberty laws and flooding Congress with petitions to have the fugitive bill repealed.

Some southern presses acknowledged that the northern contempt of the Fugitive Slave Law was because its legal restrictions and lack of protection to free black northern residents were considered unconstitutional. The law's denial of jury trial and suspension of the writ of habeas corpus meant that the Free State could not order the alleged fugitive to be returned to the North pending proof of their alleged slave status. While one southern newspaper conceded that alleged fugitives had a right to defend themselves against kidnapping, the publication admonished that "the people of the Union should never resort to force against the law."[119] Submission to federal law was what protected the Union "against civil war and anarchy."[120] The editor of the *Anti-Slavery Bugle* in Ohio called the anti-slavery indignation with the law "damning villainy" because northerners understood that the social compact required them to comply with the federal legislation.[121]

Interestingly, the 1850 law created a shift amongst some Lower North residents as they also considered the bill a violation of their states' rights to exclude slavery in the North. The *Dayton Evening Empire* observed "a determination in certain quarters to resist the operation of the law recently passed by Congress, for the apprehension of fugitive slaves and their restoration

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[118] *Anti-Slavery Bugle,* October 12. 1850.
[119] *The Woodville Republican* (Woodville, MS)*,* November 5, 1850. Retrieved from the Library of Congress [Web]. Accessed January 19, 2017. http://chroniclingamerica.loc.gov/lccn/sn84020023/1850-11-05/ed-1/seq-2/.
[120] Ibid.
[121] *Anti-Slavery Bugle,* October 12, 1850.

to their owners."[122] At a meeting in New Brighton, Pennsylvania, anti-slavery parties headed by Henry C. Wright passed resolutions stating that all slaves "owe it as a sacred duty to themselves, to their posterity and their God to escape from slavery" and any person that refused to aid any fugitives "by secreting, harboring, and feeding them, and by furnishing them means to elude the slave-hunters" were to be regarded as "a *kidnapper* [sic], and a traitor to God and Humanity."[123] The *Pittsburgh Saturday Visitor* opined that even if the bill were repealed, it could not assuage any guilt should a northerner aid in returning a slave to bondage.[124]

At a public meeting on September 28, 1850 in Pittsburgh held in opposition to the "Fugitive Slave Bill," the chairman, Reverend Charles Avery, called the law "one of the most sinful laws ever passed" especially as it "even made the duty of ministers of the gospel to become slave catchers."[125] At the same meeting, Honorable T.M. Howe, Whig candidate for Congress, denounced the bill as "more full of iniquity than any other that has been passed by our national Legislature for the last twenty years." The most galling to anti-slavery northerners was the denial of the "inestimable privileges" adopted from the Magna Carta of a right to trial by jury and the suspension of habeas corpus.[126] These rights were part of the natural rights of every American citizen and yet people of color were subsequently denied because of their exclusion from the American national identity.

Despite northern opposition to the legislation, much of the Lower North, especially in southern Ohio and Indiana, continued to express pro-southern sentiment and agreed to enforce

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[122] Middleton, *The Black Laws,* 210.
[123] *Anti-Slavery Bugle*, October 19, 1850. Retrieved from the Library of Congress [Web]. Accessed May 5, 2017, http://chroniclingamerica.loc.gov/lccn/sn83035487/1850-10-19/ed-1/seq-3/.
[124] Ibid.
[125] *Anti-Slavery Bugle,* October 12, 1850.
[126] Ibid.

the Fugitive Slave Law to support the Federal Union. Stanley Campbell dismissed James Ford Rhodes' traditional thesis that anti-slavery sentiments in the North were strong enough to render the 1850 law unenforceable.[127] Many of the personal liberty laws that were passed in defiance of the law did not preclude the rendition of legitimate fugitive slaves. In Indianapolis, although support was shown to long-time black residents whom slave catchers attempted to kidnap or render into slavery, "real fugitives received little sympathy."[128] Moreover, Indiana never passed personal liberty laws in opposition to the legislation largely because anti-black sentiment and social ties to the South remained strong enough to ensure enforcement of the law.[129]

There were 332 fugitive slave cases brought before federal courts, however abolitionists were only able to protect 22 individuals after 1850. Out of the 191 fugitive slave cases heard in federal courts, 151 were returned to the South; 141 additional alleged slaves were captured and returned without due process. Historians have relied on this small number of cases to attest to the Fugitive Slave Law's ineffectiveness. Yet despite the relatively small number of cases in comparison to the numbers of fugitives that fled from the South, in over eighty percent of the cases the alleged fugitives were nevertheless remanded to slavery.[130]

There were pockets of resistance to the Fugitive Slave Law in the Lower North despite the continued pro-slavery spirit. Although black Indiana residents were subject to anti-black laws that denied them the right to vote or testify against white people in court, they nevertheless "formed institutions to look after their own interests" such as Masonic lodges, churches, schools,

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[127] Stanley Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860* (Chapel Hill: University of North Carolina, 1970): 48.
[128] Dean J. Kotlowski, "'The Jordan is a Hard Road to Travel': Hoosier Responses to Fugitive Slave Cases, 1850-1860," *International Social Science Review,* 78, no. 3/4 (2003): 75.
[129] Kotlowski, "The Jordan," 72-3.
[130] Campbell, *Slave Catchers,* 207.

and anti-slavery groups which included the Underground Railroad.[131] However, other than Black and Quaker involvement in aiding fugitives, the Fugitive Slave Law was rarely resisted by Indiana residents. Anti-black legislation and Indiana's lack of personal liberty laws largely kept the black community from openly resisting the federal legislation.

The *Pittsburgh Gazette* editorialized on the effect that the law had on its black Pennsylvanians, both free and fugitive. Many fugitives whom had been living near New Salem for years took up arms and left for Canada. Some black men that fled left behind wives and children (many of which later followed) and their property that they had acquired as free men.[132] The black population of many northern states declined as fugitives and freemen fled further north; in many cases the black population of northern cities dropped by as much as half.[133] Northern churches often reported the decline in their congregations. In one Pennsylvania community, many blacks had either sold or given away their property before their departure to Canada. Some members of a Detroit congregation even abandoned their homes as they fled.[134]

One Pittsburgh newspaper noted that "nearly all the waiters in the hotels have fled to Canada."[135] In several of these instances, refugees armed themselves with pistols and knives and were determined to die rather than be returned or kidnapped into slavery. Canadian law was sufficient to protect the fugitives from rendition, especially after the John Anderson case set precedence in Canadian courts. Anderson killed a slave catcher as he was making his escape into Canada. The Canadian courts initially found in favor of extraditing Anderson back to the

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[131] Ibid., 73.
[132] *Anti-Slavery Bugle,* October 12, 1850.
[133] Fred Landon, "The Negro Migration to Canada After the Passing of the Fugitive Slave Act," *The Journal of Negro History,* 5, no. 1 (1920): 25-6. Accessed September 4, 2017, http://www.jstor.org/stable/2713499.
[134] Ibid.
[135] Ibid., 24.

United States, however the English courts overruled the decision and clarified that the British government's position on rendition and extradition favored the fugitive.

The *Cleveland True Democrat* reported that "Several of our colored citizens have left the city, and others are preparing to go to Canada, through fear of this most infamous law."[136] However the *True Democrat* believed that black citizens were leaving "unnecessarily"; the publication affirmed that public opinion assured that free Blacks were justified to use force to defend themselves against slave catchers in response to the new law. The *Ashtabula Sentinel* did not share this sentiment as it urged fugitives to "flee to British soil" in Canada where "[t]hey will then be free; and no law exists in any State by which they can be re-enslaved."[137] White northerners were also encouraged to "defend [Blacks] as *freemen* [sic]."[138] Those that could not get to Canada were recommended to take up arms in defense of their freedom. "If the slave catcher comes, receive him with powder and ball, with dirk, or Bowie knife, or whatever weapon be most convenient."[139] The Sentinel used very specific Natural Law language when it guaranteed that "[t]here is no penalty against the fugitive defending himself. This law regards him as *property* [sic], and he is no more punishable for killing his master in self defense [sic] than would be the mule that should kick his master fatally."[140] The Fugitive Slave Law threatened Blacks' natural right to liberty and thus brought the slave catcher into a State of War with the alleged fugitives.

In several Free states, black crowds gathered outside courthouses and commissioners' offices that heard fugitive slave cases, ready to secret away fugitives that were found to be slaves

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[136] *Anti-Slavery Bugle,* October 12, 1850.
[137] Ibid.
[138] Ibid.
[139] Ibid.
[140] Ibid.

under the law. In the first fugitive slave case heard under the 1850 law, the Hamlet case, black New Yorkers gathered outside of the commissioner's office, however only one was allowed into the hearing. In this case, James Hamlet was arrested at his job in New York City after his former owner, Mary Brown, learned of his location and hired slave catchers to retrieve him. The slave catchers waited until the Fugitive Slave Law went into effect, to avoid conflict with New York personal liberty laws, before they brought documents to prove Hamlet's slave status to the U.S. commissioner's office. At the hearing only a day later, Brown's representatives identified Hamlet as her slave. Hamlet stated that his parents had been emancipated but he lost their manumission documents. Under the new law, Hamlet's testimony was thrown out and the commissioner found in favor of Brown. Hamlet was quickly remanded to Maryland after rumors of a rescue attempt, however once in Maryland, a black organization raised the necessary money to purchase his freedom and he was back in New York one week after his initial arrest.[141]

The Fugitive Slave Law also impacted the western territories. Prior to the Mexican-American War, fugitives escaped into Latin America in large numbers, even before the former Spanish colony abolished slavery. Texas slaveholders and politicians made several attempts to broker extradition treaties with the Mexican government, yet Mexico refused to aid in the rendition or the extradition of fugitives from slavery.[142] One of the largest factors of the southern filibustering efforts was the fugitive slave problem in Texas. After 1850, the federal government again attempted an extradition treaty with Mexico that promised, amongst other measures, any persons that captured "or causing the capture" of fugitives that escaped beyond the limits of the Texas jurisdiction a sum of thirty-three and one-third percent of the value of the

[141] McDougall, *Fugitive Slaves,* 43-44.
[142] Ronnie C. Tyler, "Fugitive Slaves in Mexico," *The Journal of Negro History,* 57, no. 1 (1972): 4. Accessed September 4, 2016. http://www.jstor.org/stable/2717069.

fugitive.[143] This treaty had only limited success; fugitives continued to risk the journey into Mexico. Despite southern demands to annex Cuba and reopen the international slave trade in exchange for a Mexican treaty, Mexican Minister Matias Romero refused any extradition treaty to return fugitive slaves to the United States even after Texas seceded from the Union. Finally, all negotiations ceased when President Benito Juarez passed Article VI of a treaty that strictly forbade the extradition of fugitives.[144]

Free black men and women in California also "exhibit[ed] a great deal of energy and intelligence in saving their brothers" from rendition.[145] California adopted an anti-slavery constitution in 1849, and yet slavery continued to be practiced throughout the state. Southern immigrants were so secure in their property rights that they openly advertised in newspapers the sale of slaves and even in calls to apprehend runaways. Black Californians sometimes resorted to cloak and dagger tactics to rescue fugitives. When slave catchers attempted to render a freedman named Stephen S. Hill to Arkansas on charges of escaping slavery, the judge in Sonara allowed Hill's friends to search for his freedom papers, though they were never found. When Rozier, the leader of the slave catchers, put Hill in chains aboard a ship bound for San Francisco, strangers plied Rozier with drinks while Hill was "mysteriously" freed from the ship.[146]

After 1850, the anti-slavery sentiment in California often clashed with the enforcement of the federal legislation. In 1850, Missouri slave owner Calloway brought an 18-year-old slave named Frank to work in the California mines during the gold rush. Frank escaped from the Sierra Nevada to San Francisco in 1851 where he fostered friendships with free blacks in the

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[143] *General Laws of the Seventh Legislature of the State of Texas* (Austin: John Marshall & Co., 1858): 202.
[144] Tyler, "Fugitive Slaves in Mexico," 10-11.
[145] Rudolph Lapp, *Blacks in Gold Rush California* (Yale University Press, 1977): 137.
[146] Lapp, *Blacks in Gold Rush California,* 139.

area. Two months later, Calloway found Frank in San Francisco and held him prisoner on the Long Wharf. Frank's friends presented an affidavit to Judge Morrison claiming Calloway was holding Frank against his will to be returned to Missouri as a slave. In this case, Judge Morrison ruled that the Fugitive Slave Law of 1850 did not apply because Frank did not escape from a Slave State. Calloway also never provided proof that he ever owned Frank as per proper procedure. Calloway's lawyers attempted to use Frank's own words against him because he had stated that he had been a slave in Missouri. Judge Morrison used the Fugitive Slave Law to deny Frank's testimony since alleged fugitives were not allowed to testify, and found that Frank was a free man.[147]

Clashes over slavery in the Border States, however, often took a bloody turn as free Blacks vowed to "give [fugitives] food and shelter—and if it be that we have to suffer, or drag out weary months in prison, and be subjected to cruel fines for acting the part of the Good Samaritan, we will cheerfully submit."[148] In Gettysburg, slave catchers in pursuit of a fugitive from Maryland were thwarted by an unnamed local black man when he warned the fugitive of the coming posse. When U.S. Marshall John Agen and other agents surprised a runaway slave at his home in Coatesville, Pennsylvania, "the other colored persons in the house interfered, and, arming themselves with axes and fire arms, succeeded in enabling the fugitive to escape."[149] In Shrewsbury, five fugitives engaged in a shootout with a gang of slave catchers aboard a train bound for Maryland. Black resistors in Pottsville surrounded the home of a fugitive's house to

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[147] Ibid.
[148] David G. Smith, *On the Edge of Freedom: The Fugitive Slave Issue in South Central Pennsylvania, 1820-1870.* (Fordham University, 2015): 124.
[149] *The Liberator,* January 10, 1851. Retrieved from Newspapers.com. Accessed May 11, 2017, https://www.newspapers.com/newspage/34607127.

prevent slave catchers from seizing her.[150] In Lancaster County, black residents resolved to use force to aid fugitives, if necessary. William Parker, the leader of the black resistance, founded an organization to "forcibly oppose both kidnappings and fugitive slave seizures."[151] In other parts of Pennsylvania, Blacks fled to Canada to avoid rendition or abduction.

One of the most highly publicized and polarizing riots over slave rendition occurred along the southern border of Pennsylvania in Christiana. In Baltimore County, Maryland, four slaves fled from Edward Gorsuch and settled near William Parker in Pennsylvania. Gorsuch located the fugitives in 1851 when an informant tipped him of their whereabouts. Gorsuch went to Philadelphia and gathered law enforcement, slave catching agents, and warrants for the fugitives. Parker was forewarned of Gorsuch's arrival so that when the latter arrived on September 11, Parker and the fugitives were barricaded upstairs in his home. Marshall Henry H. Kline proposed that they burn the fugitives out of the house; however Eliza Parker, William's wife, sounded the alarm to rally William's organization for help. Either Kline or Gorsuch ordered their party to shoot at Eliza, thus triggering the gunfire at Christina. Even under gunfire, Eliza managed to gain a better protected position and never stopped blowing the horn.

Gorsuch's son, Dickinson, urged his father to give up his efforts, however Gorsuch was determined to retrieve the fugitives. The arrival of Parker's reinforcements, other Black residents of Christiana and several white observers, "turned the tide" of the melee as they swarmed Parker's house armed with guns, knives, and tools.[152] Marshall Kline attempted to garner aid from the white observers but they refused. Parker's reinforcements forced Kline to retreat; Gorsuch refused to withdraw and Parker's defenders killed Gorsuch and wounded his son

[150] Smith, *On the Edge of Freedom,* 123.
[151] Ibid., 125.
[152] Ibid., 135.

and nephew. Although many of the black defenders fled after the riot, many were later arrested, including one of the fugitives.[153]

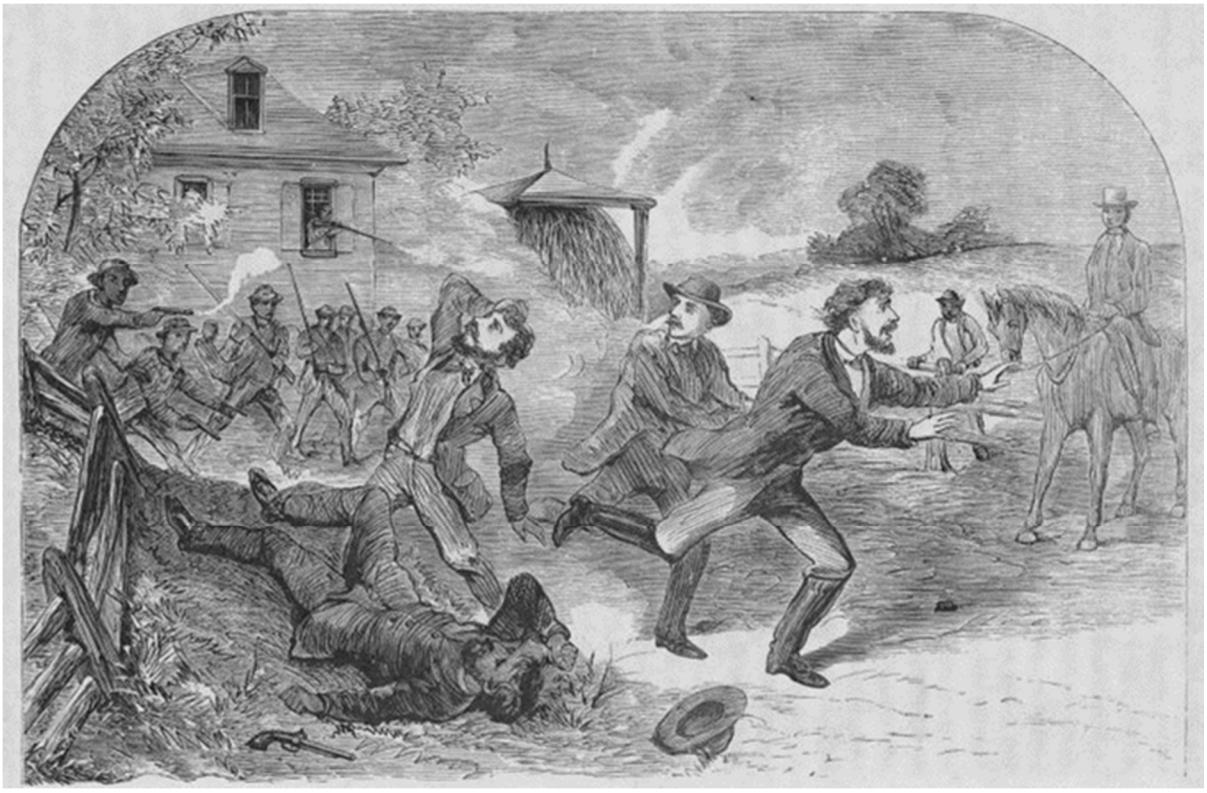

Figure 5: "Christiana Riot," from William Still's *The Underground Railroad,* 1872.[154]

One of the observers, Castner Hanway, was charged with inciting the riot, though District Attorney John Ashmead noted at the trial that if Hanway was "not the prime mover in the outrages at Christiana, [he was] the chief promoter at the time."[155] The rioters were tried for treason for violating federal law, however Judge Robert Grier urged the jurors to consider what

[153] *Southern Sentinel* (Plaquemine, LA), September 27, 1851. Retrieved from the Library of Congress [Web]. Accessed May 12, 2017, http://chroniclingamerica.loc.gov/lccn/sn88064476/1851-09-27/ed-1/seq-2/.
[154] "Christiana Riot." Retrieved from Explore PA History [Web]. Accessed May 14, 2017, http://explorepahistory.com/displayimage.php?imgId=1-2-3D4.
[155] *The National Era.* (Washington D.C.), December 11, 1851. Retrieved from the Library of Congress [Web]. Accessed May 12, 2017, http://chroniclingamerica.loc.gov/lccn/sn84026752/1851-12-11/ed-1/seq-4/.

constituted as treason and whether the charge was sustainable to the actions of the defendants. Hanway and the other defendants were acquitted of treason and the case shifted the mood of the border northerners who finally understood that the Fugitive Slave Law could implicate any northerner that refused to comply with its measures.

The Christiana riot became national news for its challenge to the Fugitive Slave Law. The Hanway case exhibited the northern courts' shift from a strict construction of the Constitution regarding fugitive slave cases to the "higher law" argument of abolitionists. This shift was reflected in how both sections used the riot to further their propaganda. In South Carolina, the riot was yet another justification for secession because it proved the Fugitive Slave Law was ineffective in the Free states. Floridians considered the Christiana riot an omen that more uprisings could result in a civil war. Northerners used the riot to condemn the immorality of the Fugitive Slave Law and the agents that enforced it. In Pennsylvania, the riot cemented the split between the conservative and antislavery factions of the Whig Party.

Pennsylvania Democrats seized upon Governor Johnston's failure to react efficiently or sufficiently to the riot when he failed to call in the militia or to offer a reward for the anti-slavery resistors. The Christiana riot pushed the Fugitive Slave Law to the front of the gubernatorial race as Democrats used the conflict to express support for banning black immigration into Pennsylvania. Reah Frazier even proposed building a "big wall" between the Free and Slave states to keep black immigrants out.[156] Frazier's remarks were indicative of the anti-black sentiment in Pennsylvania despite the anti-slavery spirit in several counties. The Democrats won

[156] Smith, *On the Edge of Freedom,* 135.

the election and a suggestion for black colonization was printed in a Whig antislavery newspaper.

Regardless of the backlash from white conservatives, the Christiana resistors took their personal liberty and right to self-defense to heart. For black Americans, the Fugitive Slave Law reinforced the idea that the American national identity excluded people of color "and, in turn, forced them to seek to empower themselves through the creation of a worldview which would sanction African liberation through the use of force, if necessary."[157] Black Americans' recognition of, and "alienation" from their natural rights was converted into the "rhetoric of black redemptive violence into practice" against those that violently denied Blacks their inalienable rights as defined under Natural Law.[158] Slave and free black resistance to the Fugitive Slave Law manifested from the motive of self-defense which was distinctive from the racial violence perpetuated by slaveholders and anti-black supporters of the law. Some white northerners also began to realize that the law not only denied black Americans basic protections under the law, it also denied state sovereignty in the North. The traditionally states' rights South rejoiced that Congress federally protected slavery and denied northern state sovereignty to keep the institution out of Free states.

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[157] Ella Forbes, "'By My Own Right Arm': Redemptive Violence and the 1851 Christiana, Pennsylvania Resistance," *The Journal of Negro History,* 83, no. 3 (1998): 160. Accessed September 4, 2017, http://www.jstor.org/stable/2649012.
[158] Forbes, "'By My Own Right Arm'," 163.

Chapter 5: Fugitives and the Disunion

Northern public opinion on the Fugitive Slave Law remained divided until 1854. At that time, the biggest draw of the unorganized territory north of the 36°30' parallel for politicians and entrepreneurs was the prospect of a transcontinental railroad. Southerners, however, preferred a route through the Slave states since the northern land was outside of the slavery boundary because of the Missouri Compromise.[159] Stephen Douglas and William Richardson of Illinois proposed in 1853 to organize the Nebraska Territory north of the Free-Slave dividing line, however southern senators succeeded in tabling the bill especially since Missouri faced the possibility of bordering Free states on three sides. To garner southern support, Douglas wrote into his revised bill to allow slavery in the territory north of latitude 36°30' and to allow for the creation of two territories: Kansas and Nebraska.

James McPherson considers the Kansas-Nebraska Act of 1854 as "the most important single event pushing the nation toward civil war."[160] While the Act certainly steered the nation toward civil war, it was one in a series of events that stemmed from the fugitive slave controversy. The legislation repealed the Missouri Compromise and opened the door to the extension of slavery into the territories north of the 36°30' parallel. Any latent anti-slavery and free soil sentiment from settlers and northern citizens erupted and divided support of the Compromise of 1850 along the Free and Slave state line. Free Soilers considered the Kansas-Nebraska bill as merely another exercise of the "Slave Power" that sought to expand slavery beyond its borders as had the Fugitive Slave Law of 1850. Instead of forestalling threats of

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[159] McPherson, *Battle Cry of Freedom,* 121.
[160] Ibid.

disunion, the Kansas-Nebraska Act cemented the sectional disputes over slavery that only ended with its abolition.

Northern repudiation of the Kansas-Nebraska Act reflected in the 1854 elections when northern Democrats lost seventy seats in the House of Representatives and, according to McPherson, aided in the rise of the new Republican Party after the Whigs' demise.[161] Free states in the Upper North took particular umbrage with the Kansas-Nebraska Act because it "repealed all compromises heretofore adopted by the Congress of the United States" which gave the North justification in nullifying the Fugitive Slave Law of 1850.[162] Wisconsin in particular took this resolution to heart in its Supreme Court that same year when a fugitive slave case was brought before the bench. Joshua Glover had escaped to Racine, Wisconsin from St. Louis, Missouri in 1852. His former owner Benjamin Garland, along with slave catchers and U.S. Marshall Stephen Ableman, captured Glover and held him in a Milwaukee jail. Sherman Booth heard news of Glover's capture the next morning and rallied a crowd of almost 5000 at the jail to demand Glover's release.[163] After the Marshall refused, the crowd broke the jail door and hurried Glover to safety; Glover escaped to Canada through the Underground Railroad.

Sherman Booth was charged with inciting a riot and violating the Fugitive Slave Law of 1850. Booth's attorney sought a writ of habeas corpus from the Wisconsin Supreme Court to determine the legality of his arrest and detention. Justice Abram Smith granted the writ and freed Booth, declaring the Fugitive Slave Law of 1850 unconstitutional because it denied the right to trial by jury; he also maintained that Congress had neither the jurisdiction over fugitive

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[161] Ibid., 129.
[162] *Proceedings of the State Historical Society of Wisconsin, Volumes 43-44* (Madison: Democrat Printing Company, 1896): 123.
[163] *Richmond enquirer* (Richmond, VA) March 21, 1854. Retrieved from the Library of Congress [Web]. Accessed May 13, 2017, http://chroniclingamerica.loc.gov/lccn/sn84024735/1854-03-21/ed-1/seq-1/.

slave rendition nor the authority "to clothe court commissioners with the power to determine the liberties of people."[164] After two more appeals, the Wisconsin Supreme Court upheld Justice Smith's decision that the Fugitive Slave Law violated state sovereignty and therefore was nullified in their state.[165] The Wisconsin court was the highest court in the country to make such a ruling at the time and used the states' rights doctrine to develop their constitutional theory that state courts had the right and final jurisdiction to interpret the Constitution.

Wisconsin's test of the Fugitive Slave Law's constitutionality depended on its "operation 'upon a free citizen of a free state,' to see if by that process 'such a person may be deprived of his liberty without due process of law.'"[166] It is important to note that *Ableman v Booth* arose at an ideal time for Wisconsin as the combination of anti-Nebraska sentiment and the rise of the Republican Party garnered the state court enough popular support to nullify the federal fugitive law. Wisconsin's ruling amplified support for state sovereignty even though the federal decision in *Ableman* in 1859 negated northern personal liberty laws. *Ableman* encouraged antislavery use of the states' rights defense throughout the Free states and further aggravated the sectional tensions that eventually erupted into a civil war.[167]

Anti-slavery newspapers in the Free and Slave states praised the "citizens of Milwaukie and other places for the glorious part they took in the affair" in the rescue of Joshua Glover and ensuring that "the pretended officers of the law did not violate any [of Glover's rights]."[168] The *Wood County Reporter* considered the Wisconsin decision a triumph for northern states' rights

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[164] *Daily National Era* (Washington, D.C.) June 16, 1854. Retrieved from the Library of Congress [Web]. Accessed May 13, 2017, http://chroniclingamerica.loc.gov/lccn/sn86053546/1854-06-16/ed-1/seq-2/.
[165] *Ableman v Booth,* 62 U.S. 506 (1859).
[166] Baker, "Antebellum Constitution," 1169-70.
[167] Schmitt, "Rethinking Ableman v Booth," 1318.
[168] *Richmond Enquirer,* March 21, 1854.

and that even the ruling of a superior court can be made in error and called into question as to its constitutionality.[169] The Milwaukee *Daily Free Democrat* remarked that the state court's opinion that Congress did not have the constitutional power to legislate on the subject of fugitive slaves was in accordance with Daniel Webster's comments during the 1850 debates.[170]

However, while U.S. Marshall Ableman awaited the appeal to the federal court, another fugitive slave case in Missouri created further strife in the sectional conflict and cemented the perception of Blacks in the American national identity. In 1834, slaveholder Dr. John Emerson brought his slave, Dred Scott, from Missouri to Rock Island, Illinois until 1836. Scott was then taken from Rock Island to Fort Snelling which was a U.S. territory at the time and therefore slavery was prohibited under the Missouri Compromise. In the meantime, Scott married another of Emerson's slaves, Harriet, and the couple had two daughters, the older of the two was born in the free territory while the younger was born in Missouri. In 1838, Emerson took the Scott family back to Missouri but later sold Harriet and their daughters to John Sanford. Scott filed a lawsuit against Sanford in the circuit court of Missouri "to recover the freedom of himself, of his wife, and of his children."[171] The circuit court ruled against Dred Scott and he appealed to the U.S. Supreme Court. The federal court dismissed the case stating that the Supreme Court did not have jurisdiction because Scott was not a citizen of either Missouri or the United States.[172]

Chief Justice Taney's opinion on the case affirmed that the American national identity excluded people of color, whether free or enslaved and set a precedent that was not overturned

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[169] *Wood County Reporter* (Grand Rapids, WI) March 10, 1860. Retrieved from the Library of Congress [Web]. Accessed May 13, 2017, http://chroniclingamerica.loc.gov/lccn/sn85033078/1860-03-10/ed-1/seq-1/.
[170] *Daily National Era,* June 16, 1854.
[171] *Bedford Inquirer and Chronicle* (Bedford, PA), May 15, 1857. Retrieved from the Library of Congress [Web]. Accessed May 14, 2017, http://chroniclingamerica.loc.gov/lccn/sn86083444/1857-05-15/ed-1/seq-1/.
[172] *Dred Scott v Sanford,* 60 U.S. 393 (1857).

until 1866. Dred Scott's right to sue for his freedom depended on the nature of his legal status while in the Free territory. Some Free states passed legislation that emancipated slaves that entered their state with their owner's permission. However, it was the Supreme Court's opinion that since Dred Scott had been a slave in Missouri, his residence in a Free State for any length of time did not negate his or his family's slave status. Chief Justice Taney declared that "slaves are property, by the express provisions of the Constitution of the United States... and that therefore neither the Congress of the United States, nor any territorial government created by it, has any power to exclude slavery from the National Territories."[173] If no state or territory can exclude slavery, then it followed that slavery could exist even in areas that passed anti-slavery constitutions, making slavery federally protected. This decision was reaffirmed when the U.S. Supreme Court ultimately overruled the Wisconsin decision in *Ableman v Booth* two years later, stating that no state legislature or judiciary could supersede a federal law.[174]

Slaveholders interpreted the *Dred Scott* decision as reaffirming their right to carry their slaves into any part of the United States and its territories and have the federal government protect that right.[175] Although *The Kentucky Statesman* hailed the *Dred Scott* decision for its attack on "the freedom shriekers and denouncers of the Kansas bill because it declared that Congress had no control over slavery in the territories," this states' rights defense is inconsistent with the slave states insistence on federal protection of slavery via acts of Congress. Pro-slavery papers also praised the federal court decision in *Ableman*, noting that "the decision will vindicate

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[173] *Bedford Inquirer and Chronicle,* May 15, 1857.
[174] *Ableman v Booth,* 62 U.S. 506 (1859).
[175] *Richmond Enquirer* (Richmond, VA), March 14, 1861. Retrieved from the Library of Congress [Web]. Accessed May 14, 2017, http://chroniclingamerica.loc.gov/lccn/sn84024735/1861-03-14/ed-1/seq-2/.

itself and silence every attempt to find fault."[176] Stephan A. Douglas warned that resistance to the *Dred Scott* decision "shall be forced upon the country as a political issue" and "become a distinct and naked issue between the friends and the enemies of the constitution."[177] The northern states, however, considered the federal decision in both cases to be extra-judicial "and, therefore, not binding" and called for the U.S. Supreme Court to be "remodeled" so that the "universal freedom of the slave in the territories" was recognized.[178] The *Dred Scott* decision and the U.S. Supreme Court's overruling in *Ableman v Booth* irreparably divided the sections over the fugitive slave controversy until the Election of 1860 ultimately broke the nation apart.

Abraham Lincoln's ascent to the presidency was the final nail for southern slaveholders, yet in the declarations of secession, it was another persistent issue that ranked higher as a justification for disunion. Since the Union's inception, the fugitive slave problem was a top priority of the Slave states. South Carolina's declaration of secession emphasized Article IV of the federal constitution as "so material to the compact, that without it that compact would not have been made."[179] While South Carolina noted that the fugitive slave clauses were executed for several years, the Free states exhibited "increasing hostility" to slavery which resulted in their nullification of each of the federal government's fugitive slave bills through their personal liberty laws and even a disregard of the Constitution, as in the *Ableman* case. Some of these personal liberty laws, South Carolina charged, even emancipated slaves upon entering the Free state, thus rendering a slaveholder incapable of traveling to the North or into the territories with their slave

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[176] *The Washington Union* (Washington D.C.) April 8, 1859. Retrieved from the Library of Congress [Web]. Accessed May 13, 2017, http://chroniclingamerica.loc.gov/lccn/sn82006534/1859-04-08/ed-1/seq-2/.
[177] *The Star of the North* (Bloomsburg, PA), July 1, 1857. Retrieved from the Library of Congress [Web]. Accessed May 14, 2017, http://chroniclingamerica.loc.gov/lccn/sn85025182/1857-07-01/ed-1/seq-1/.
[178] *Richmond Enquirer,* March 14, 1861.
[179] *Ordinances of Secession and Other Documents, 1860-1861,* American History Leaflets Colonial and Constitutional, No. 12. Ed. Albert Bushnell and Edward Channing (New York: A Lovell & Company, 1893): 6.

property. The slaveholding states considered this a violation of their property rights under Natural Law which brought the Free and Slave states into a State of War and thus rendered the social compact between the States null and void.[180]

Mississippi included northerners' refusal to protect slavery in the Free states and the failure to create new Slave states after Texas was admitted in 1845. Most importantly, Mississippi cited the nullification of the Fugitive Slave Law as the cause of secession.[181] Florida, Alabama, and Texas pointed to the election of Abraham Lincoln as a confirmation that the federal government intended to deny the slaveholding states the right to their human property, however Texas also specified, among other reasons, the northern nullification of the fugitive slave clause in Article IV of the Constitution as a violation of the social compact.[182]

Georgia similarly noted the importance of federal legislation passed "In the fourth year of the Republic" that bound the Slave states to the Union.[183] The Free states failed to not only deliver up fugitives from slavery, but also fugitives from justice which Georgia declared were those that aided slave escapes and thus were thieves of southern slave property. The non-slaveholding states passed personal liberty laws or ruled in fugitive slave cases that "generally repealed all laws intended to aid the execution of [the Fugitive Slave Law of 1793]."[184] The Fugitive Slave Law of 1850 was intended to ensure the enforcement of slave rendition with

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[180] Ibid., 7
[181] *An Address Setting Forth the Declaration of Immediate Causes Which Induce and Justify the Secession of Mississippi from the Federal Union and the Ordinance of Secession* (Jackson: Mississippi Book and Job Printing Office, 1861): 3.
[182] *A Declaration of the Causes Which Impel the State of Texas to Secede from the Federal Union.* Retrieved from the Texas State Library and Archives Commission [Web]. Accessed May 14, 2017, https://www.tsl.texas.gov/ref/abouttx/secession/2feb1861.html.
[183] *Georgia Declaration of Secession.* Retrieved from The Avalon Project, Yale Law School [Web]. Accessed May 14, 2017, http://avalon.law.yale.edu/19th_century/csa_geosec.asp.
[184] Ibid.

northern compliance, but "was met with ferocious revilings" from the Free states which Georgia proclaimed as a violation of the social compact and thus sufficient for disunion.[185]

The Kentucky Statesman had denounced secession as akin to demanding northern Democrats to sanction slavery in the North and was just as reprehensible as the abolitionists that attacked southern property rights.[186] *The Statesman* called attention to the traditionally states' rights southerners promoting federalism to protect slave property. However, Kentucky's continued loyal to the Union may underscore their states' rights defense as aligning with the Free states, and Kentucky's silent concession that the Confederacy sought to extend the jurisdiction of slavery though federalism. The Fugitive Slave Law of 1850 intensified the violence in the Border States, and yet Missouri, Kentucky, Maryland, and Delaware remained in the Union out of a belief that only the Federal Union could protect slavery, not secession.[187]

Southern secession did not end the fugitive slave controversy. Once the Civil War erupted, northerners insisted they were not fighting to abolish slavery, yet it did not prevent the Union from "fac[ing] a stampede of fugitive slaves."[188] Some historians claim that the enlistment of runaways helped the Union Army win the war. Slave insurrections occurred in every southern state during the war, but W.E.B. Du Bois argues that the flight of fugitives reduced the frequency of the uprisings. Despite Union indifference to the fugitives' plight, or even at times outright hostility towards the runaways that "stampeded" the camps, the slaves believed the presence of northern troops meant emancipation. At first, northern armies

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[185] Ibid.
[186] Gilliam, "Kansas and Slavery," 225.
[187] Harold, *Border Wars,* 211.
[188] W.E.B. Du Bois, "The Negro and the American Civil War," *Science & Society,* 25, no. 4 (1961): 350. Accessed January 11, 2017, http://www.jstor.org/stable/40400768.

"cheerfully returned fugitive slaves," but eventually "the armies were convinced that the slaves had to be emancipated because they could not win the war without slaves as allies."[189]

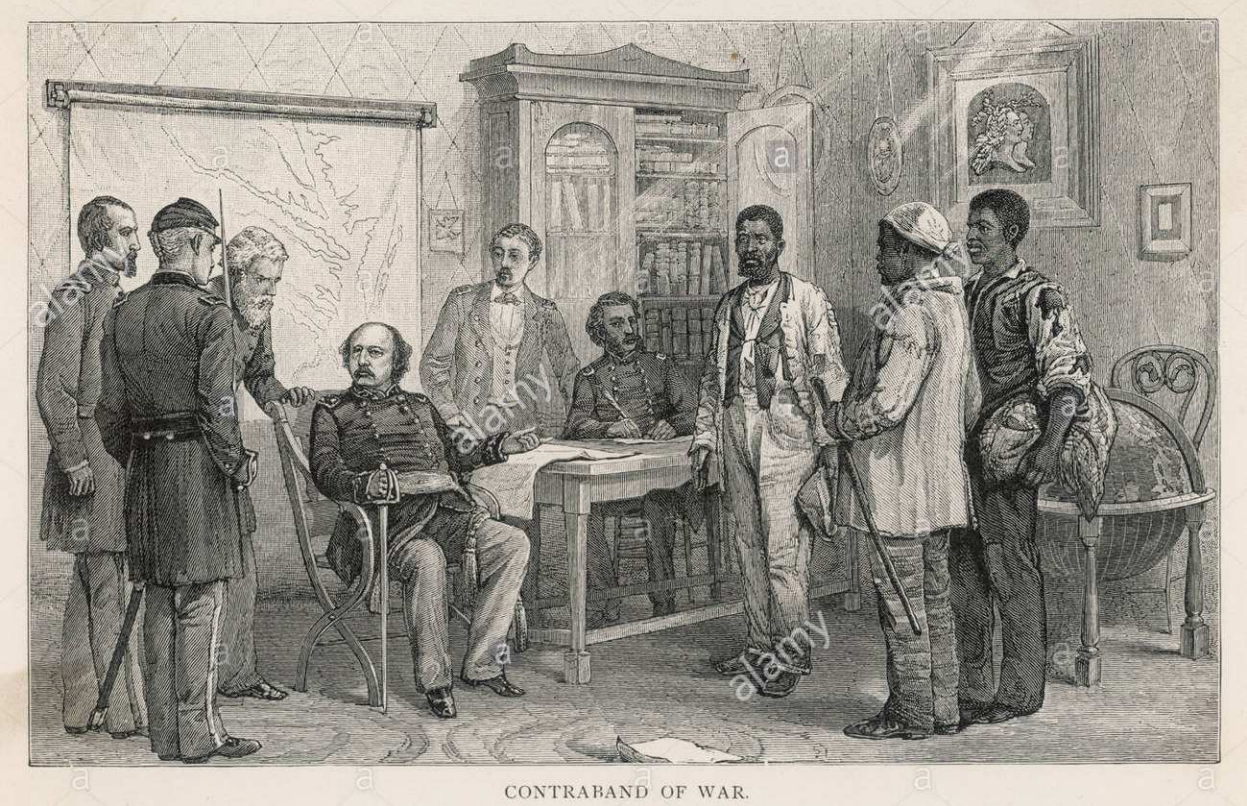

Figure 6: "Contraband of War"[190]

Union General John C. Fremont and Brigadier General John W. Phelps both attempted to emancipate and recruit fugitive slaves into their regiments in Missouri and Louisiana respectively in various capacities including as spies, as laborers, and as soldiers. Fremont had acted under the assumption that the Confiscation Act of 1862 included slaves as property that could be seized from the rebelling states, effectively turning southern comprehension of Natural

[189] Du Bois, "The Negro and the American Civil War," 350.
[190] "Runaway Slaves," Mary Evans Photo Library [Web]. Accessed May 17, 2017, http://c7.alamy.com/comp/AHG4TC/runaway-slaves-AHG4TC.jpg.

Law on the slaveholding states.[191] Benjamin Butler had done something similar when he defined slaves as "contraband" while in command in Virginia. Phelps, a devout abolitionist, continuously defied Butler's orders to stop emancipating and arming slaves, especially those who were in the service of loyal Unionists. Butler sidestepped the issue of arming slaves by instead arming free black men who were once part of a regiment that served commendably in the War of 1812.[192] In 1861, Butler openly expressed that the goal of the Civil War "should be oriented towards abolition as well as the preservation of the Union," thus foreshadowing the Emancipation Proclamation that was put into effect two years later.[193]

While several factors drove the Union down the road to civil war, the one pervasive issue since the nation's inception was the fugitive slave controversy. The 1850s marked a point of no return as the Fugitive Slave Law succeeded only in exacerbating the section conflict to the point of bloodshed. The converging issues of Fugitive slaves and the expansion of slavery manifested in the massacre that became known as Bleeding Kansas, which proved to only serve as a precursor to the Civil War that ultimately decided the fate of the "peculiar institution." The fugitive slave controversy also created conflict between state and federal courts. The proper construction of the constitution and the prioritization of natural rights ideology became the deciding factor as to the authority of the state and federal governments as well as black Americans' place in the American national identity.

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[191] Murray Horowitz, "Ben Butler and the Negro: 'Miracles are Occurring," *Louisiana History: The Journal of the Louisiana Historical Association,* 17, no. 2 (1976): 1716. Accessed September 4, 2016, http://www.jstor.org/stable/4231586.
[192] Howard C. Westwood, "Benjamin Butler's Enlistment of Black Troops in New Orleans in 1862," *Louisiana History: The Journal of the Louisiana Historical Association,* 26, no. 1 (1985): 13-14. Accessed September 4, 2016, http://www.jstor.org/stable/4232388.
[193] Horowitz, "Ben Butler and the Negro,"172.

Conclusion

The fugitive slave debate between the Free and Slave states predated the passage of the Fugitive Slave Law of 1850. Slavery was a measure that was not explicitly mentioned in the Constitution until after the Civil War, yet its place in the national context was subject to either broad or strict construction since the days of the early republic. Legislation attempted to address concerns over slavery, especially its limits and the fugitive slave problem, and yet sectional conflict continued to plague especially those states that shared the bordering line. Initial concerns over runaway slaves were addressed with the Northwest Ordinance of 1787 which, in addition to creating the Northwest Territory, prohibited slavery in the territories while also containing a fugitive slave clause. Despite the prohibition of slavery north of the Ohio River, the institution persisted and created a problem as to the status of not only fugitive slaves, but also slaves that entered the state with permission from their owners.

The solution to this issue was supposedly answered with the Fugitive Slave Law of 1793, however the act proved that it was insufficient in protecting free or freed Blacks from abduction. As northern states enacted personal liberty laws to address these concerns, the Slave states viewed these laws as nullification of the federal fugitive bill. Personal liberty laws were put to their first real test in 1842 in the kidnapping case of *Prigg v Pennsylvania.* Southerners initially praised the court decision for attacking northern state sovereignty and nullifying their personal liberty laws; slaveholders hoped that the *Prigg* decision was the final word in protecting slavery outside of the Slave states. Northerners condemned the decision, but ultimately viewed the loophole in Justice Joseph Story's opinion as a triumph in state sovereignty and used it to deny state aid in slave rendition.

After the U.S. acquired western territories following the Mexican-American War, the slavery question again raised threats of disunion from both the Free and Slave state congressmen. David Wilmot attempted to pass a measure that prohibited slavery's expansion into the west, however Wilmot's Proviso created such turmoil in Congress that the debates lasted for two sessions and resolutions for disunion made the rounds in the state legislatures. While arguing that the Proviso granted the northern states jurisdiction over the South, the Slave states failed, or refused, to recognize the similarity in their goals concerning federal protection of their slave property through the fugitive slave laws. Though the Proviso was defeated in the Senate, it underscored the depth of the sectional disputes between Free Soilers, Pro-Slavery factions, and Anti-slavery northerners. Congress recognized that after *Prigg* and the debacle with Wilmot's Proviso, there needed to be a new settlement to address fugitive slave rendition procedures. Most importantly, to quell southern threats of disunion, this new settlement had to federally compel the Free states to comply with fugitive slave rendition.

The Fugitive Slave Law of 1850 was the congressional attempt to curb southern threats of disunion. White citizens in the Free states were indignant that the law violated their states' rights as it mandated northerners to act as slave catchers for the South. Several Free states further nullified many of the conditions of the federal law through personal liberty laws, such as reinstating the right to trial by jury or repealing the suspension of habeas corpus. Black northerners, on the other hand, vowed to not only resist the law, but to use force if necessary. White northerners began to recognize black Americans' right to defend their personal liberty even in a land that denied them access to the American national identity. Each of the fugitive slave legislations was an attempt to appease the slaveholding states and quell their threats of disunion over the fugitive slave problem. Northern nullification through personal liberty laws

proved to the South that only congressional—*federal*—intervention on behalf of slaveholders would protect their slave property. Yet not only did the federal fugitive slave laws threaten the state sovereignty of the Free states, they also ensured that the sectional disputes over slavery would perpetuate until the nation erupted into a civil war over these differing interpretations of Natural Law.

Although historians debate the extent to which these sectional disputes affected social, political, and economic life in the antebellum period, there is a consensus that the Fugitive Slave Law of 1850 that attempted to suppress these conflicts not only exacerbated them, but was a leading, if not primary, cause of disunion that led to the Civil War. During the war, the effects of the Fugitive Slave Law escalated as the question of whether to recruit the fugitives into the Union army was met with controversy even within the northern ranks. Nevertheless, the answer as to the ultimate purpose of the war was finally answered when the Emancipation Proclamation made slavery the central issue on both sides of the conflict.

The fugitive slave controversy and its place in the states' rights defense lies in the moral and political doctrine of Natural Law. As a philosophical concept, Natural Law and natural rights were central to the need for a social compact that bound citizens within a polis. In one of the political doctrines that inspired the Declaration of Independence, those natural "inalienable" rights that a civil government was obligated to protect were life, liberty, and property.[194] These latter two rights, however, provided the background for debate as the pro- and anti-slavery sections prioritized either property or liberty in their laws and ethics. The Slave states held their right to slave property as paramount, especially as they viewed their right to expand into the

[194] John Locke, *Two Treatises of Government, 1690.* (London, 1821): 338.

territories and to recover their human property as essential to the social compact that bound them to the Union. The Free states valued personal liberty and, by extension, state sovereignty to ensure that liberty was protected.

What prior scholarship has previously neglected to address was the consistent violation, at least in the eyes of the Free states, of northern state sovereignty. The doctrine of states' rights is traditionally associated with the Slave states, especially when considering the southern filibustering efforts in Mexico and Cuba and the slavery question in the territories that was to be decided through popular sovereignty. Yet regarding fugitive slaves, which the southern states repeatedly cited as the primary reason that the Slave states ratified the Constitution, the traditionally states' rights southerners turned to federal government intervention to protect their property rights in every State and Territory in the Union.

The Slave states emphasized the fugitive slave problem as the key feature of the social compact because it ensured federal protection of their human property. Northern nullification of federal legislation aimed at protecting slave property was consistently the primary motivator for threats of disunion. Southerners repeatedly cited federal law and sought federal protection (and expansion) of slavery, even to the point of denying the Free states the right to exclude slavery from their regions. It was northern state sovereignty that had been violated and nullified through federal intervention in the fugitive slave controversy. Therefore, the South forfeited the states' rights defense when it resorted to "big government" to prioritize their right to slave property over the personal liberty of black *and* white citizens of the Free states. The Fugitive Slave Law of 1850 was the primary trigger for the violent conflict that split the Union along the ideological lines of northern states' right to defend personal liberty and southern federal attempts to protect their right to human property.

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