ESSENTIAL CIVIL WAR CURRICULUM

Personal Liberty Laws

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The personal liberty laws of the northern free states protected African Americans from kidnapping and from being claimed as fugitive slaves. Slaveholding states in the 1850s complained that such laws were violations of the Fugitive Slave Clause, which provided that "No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due." [1] Abolitionists responded that a fundamental principle of state sovereignty was that states could define the status of its inhabitants and protect them in their liberty. When secession came in the winter of 1860 and 1861, the slave states that seceded cited the personal liberty laws as evidence of the failure of northern states to uphold their end of the constitutional bargain.

Personal liberty laws were not always so controversial. They predated the U.S. Constitution and were a vital part of fugitive slave reclamation during the early republic. They became controversial as sectional tensions increased leading into the Civil War. They also changed over time. In fact, it is useful to think of personal liberty laws as falling into four distinct periods. From 1780 through about 1820, anti-kidnapping laws and state habeas corpus procedure served both to protect free blacks in their liberty and regulate fugitive slave reclamation. From 1820 through 1842, several free states passed more robust personal liberty laws that regulated the process of fugitive slave removal. After 1842, the Supreme Court's decision in *Prigg v. Pennsylvania* declared that states' personal liberty laws were unconstitutional and that federal law (embodied in the fugitive slave acts of 1793 and later in 1850) would exclusively govern fugitive slave removal. During this time, some states passed the first explicitly named "personal liberty laws" that withdrew state support from fugitive slave removal. Beginning in 1855, however, several states passed new personal liberty laws that defied the Supreme Court and federal law and extended state protection to alleged fugitive slaves.

[1] United States Constitution Article IV, Section 2, Clause 3.

The early personal liberty laws, 1780-ca.1820

The earliest personal liberty laws were anti-kidnapping measures. Kidnapping was itself a very old problem. The earliest ships that arrived with indentured servants in British North America sometimes carried the victims of kidnapping, a problem that the British Parliament took up in the seventeenth century. [2] The first laws began appearing shortly after Independence. In 1780, Pennsylvania passed its act for the gradual abolition of slavery, which provided that every slave born after the passage of the act would be freed after twenty-eight years of service. In doing so, the state faced the possibility that slaveholders would sell their slaves out of state rather than allow them to become free. To combat this, Pennsylvania required slaveholders to register their slaves, forbade their sale or transportation out of state, and created incentives for abolitionist societies to monitor unscrupulous slaveholders. Pennsylvania had effectively created a new kind of criminal kidnapping and passed a personal liberty law designed to protect the class of people that gradual abolition would eventually create. [3]

Other states passed anti-kidnapping measures either as stand-alone laws or as parts of other bills. By 1788, Connecticut, Massachusetts, Virginia, and Delaware had made kidnapping a free black a crime. Notably, all these states, excepting Massachusetts, were slave states. More states would follow suit in decades to come. [4]

The U.S. Constitution's Fugitive Slave Clause did not directly impact this legal regime. The clause's language specifically forbade states from freeing fugitive slaves who fled to their borders, and commanded that they be "delivered up" to the slaveholders who claimed them, but the clause did not imply that states could not protect free blacks from kidnapping, even if done under color of fugitive slave reclamation. Nothing in the clause suggested that states could not pass laws governing how fugitive slave reclamation would take place.

Congress passed a Fugitive Slave Act in 1793. [5] The law extended jurisdiction to U.S. district court judges and state judges and magistrates to issue certificates of removal to slaveholders who had seized their fugitive slaves. The certificates of removal gave slaveholders legal authority to transport fugitive slaves across state lines in order to return them to their home state. In this sense, the Fugitive Slave Act of 1793 merely ratified existing customs and arrangements dependent upon interstate cooperation. The law also

[2] "Kidnapping Maidens, to Be Sold in Virginia, 1618," *The Virginia Magazine of History and Biography* 6, no. 3 (January 1, 1899): 228–30; John Donoghue, "'Out of the Land of Bondage': The English Revolution and the Atlantic Origins of Abolition," *American Historical Review* 115, no. 4 (October 2010): 943–74.
[3] "An Act for the Gradual Abolition of Slavery," (March 1, 1780). http://www.phmc.state.pa.us/portal/communities/documents/1776-1865/abolition-slavery.html, accessed June 16, 2017.
[4] Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North, 1780-1861* (Baltimore: Johns Hopkins University Press, 1974), 1–41.
[5] An Act Respecting Fugitives from Justice, and Persons Escaping from the Service of their Masters, Pub. L. No. 2-2, 1 Stat. 302 (1793).

made anyone who "knowingly and willingly" obstructed a slaveholder from seizing his fugitive slave or harbored a fugitive slave liable to the slaveholder in a civil action in the amount of $500. This part of the law conferred a novel, federal remedy for slaveholders that reified their property right.

The Fugitive Slave Act of 1793 worked in tandem with state laws and procedures already governing the return of fugitive slaves. State courts were still bound by state laws protecting their residents from kidnapping. Theoretically, there was no conflict between the two—fugitive slaves were, by definition, residents of other states and anti-kidnapping laws protected state residents. And even if these two cases were in dispute—if a person claimed as a fugitive asserted their freedom as a resident of a free state—a state court could sort out the matter in a formal legal hearing. This occurred quite frequently in the free states that bordered slave states. Abolitionist societies often established standing committees of attorneys devoted to providing legal protection to the suspected victims of kidnapping, and to fugitive slaves who otherwise did not have representation.

Slaveholders may have benefitted from the arrangement—they had significant protection for their property rights thanks to the Fugitive Slave Act of 1793—but they still advocated for stronger laws. Their representatives in Congress very nearly succeeded in 1801 and again in 1817. In 1801, the push for a stronger fugitive slave law stemmed in part from a backlash against a lobby for a congressional anti-kidnapping law, conducted primarily by representatives from Pennsylvania and Delaware in 1796. [6] Nothing came of the matter, but another attempt was made in 1799. Given that most of the states—including slave states—had passed laws criminalizing kidnapping in the 1780s and 1790s, and because fugitive slaves were finding ready employment on northern farms and in port towns, slaveholders argued for a stronger fugitive slave law and reported a bill out of a special committee to this effect in 1801. The law would have required people of color to carry certificates attesting to their status (wherever they were), and would additionally have made anybody who employed a fugitive slave liable to the slaveholder in the amount of $500. [7]

Slaveholders made another attempt to get a stronger fugitive slave law in 1817, although this time they focused on remedying procedural defects. The Fugitive Slave Act of 1793 had not given judges authority to issue arrest warrants, and this potentially left slaveholders exposed to charges of kidnapping if they seized a fugitive without any legal cover. Likewise, slaveholders in the process of obtaining a certificate of removal before one judge sometimes found themselves the target of aggressive abolitionist legal maneuvering that pitted state courts up against one another. The result was twofold. Abolitionist lawyers could search for a friendly judge to issue an order to bring the cause before his court, thus increasing their chances of freeing the fugitive. There is no serious evidence that this strategy worked—in fact, the appellate record suggests that free state

[6] H. Robert Baker, "The Fugitive Slave Clause and Antebellum Constitutionalism," *Law & History Review* 30, no. 4 (November 2012): 1140–1.
[7] *Annals of Congress*, 7th Cong., 1st sess., 336 (December 18, 1801).

judges were hostile to such legal maneuvering. [8] But the strategy still had the effect of making rendition longer and more expensive, and thus discouraging many slaveholders from even pursuing their fugitives. The 1817 law remedied both of these situations by providing for arrest warrants, and also by requiring state judges to issue both warrants and certificates of removal if the slaveholders had the requisite paperwork from a court in their home state. In the words of one prominent historian, the 1817 proposal would have made "northern governors and judicial officers virtually the ministerial agents of southern state officials." [9] It failed to pass Congress.

Slaveholders' failure to strengthen the Fugitive Slave Act came at a time when American attitudes about slavery and race appeared to be hardening. While every state north of the Mason-Dixon line had by then provided for at least the gradual abolition of slavery, many northern states had also severely restricted the rights of free blacks, as well as provided ample protections for slaveholders who sought their fugitive slaves. Leading the way had been Ohio with its notorious "Black Laws" of 1804. [10] In addition to restricting militia service to white men only, Ohio law required all African Americans to register and post bond when they arrived in the state, and offered up state resources to help slaveholders retrieve their fugitive slaves. [11] Throughout the first three decades of the nineteenth century, the hard-won freedoms that free blacks had gained in the Revolutionary era began to wane as slave states placed onerous restrictions on manumission and free states restricted free blacks' mobility and civic rights. [12]

Personal Liberty Laws from 1820 through 1842

The growing strength of abolitionist societies fueled the rise of a new kind of personal liberty law in the 1820s. Although national efforts by abolitionists had not yielded much fruit in Congress, vociferous petitioning and action at the state level did. [13] Beginning in 1820, this meant that states began to pass robust anti-kidnapping laws in what would become known as the very first "personal liberty laws." The first of them was Pennsylvania, which passed a law in 1820 that defined kidnapping as removing any person from Pennsylvania "with a design and intention of selling and disposing of, or of causing to be sold … as a slave or servant for a year or years." The penalty for this felony was between $500 and $2000 and 7-21 years' hard labor. If read strictly, the law made no distinction between someone who removed a fugitive slave or somebody who kidnapped a free black—both could theoretically be prosecuted under the law. And the law went

[8] Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1975).
[9] Don Edward Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (New York: Oxford University Press, 2001), 214.
[10] Stephen Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, Ohio University Press Series on Law, Society, and Politics in the Midwest (Athens: Ohio University Press, 2005).
[11] Ibid., 47–50.
[12] Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press, 1997), 178–9.
[13] Richard S. Newman, *The Transformation of American Abolitionism: Fighting Slavery in the Early Republic* (Chapel Hill: University of North Carolina Press, 2002).

further. Section 3 specifically forbade aldermen and justices of the peace from issuing certificates of removal under the Fugitive Slave Act of 1793, under pain of misdemeanor with a fine of $500 to $1,000 and section 4 required that judges of courts of record maintain a fair record of any proceeding resulting in a certificate of removal. [14]

These provisions worked together to make fugitive slave rendition virtually impossible. Slaveholders risked criminal indictment and conviction for exercising their undisputed constitutional right to the property in their fugitive slaves. Even if an appellate court quashed the indictment or overturned a verdict, this would come at crippling cost to the slaveholder. And the price of failure was not merely losing one's slave, but potential criminal conviction. The slaveholder's only recourse was to seek legal cover in the way of a certificate of removal. But the state had withdrawn virtually all support for this measure, leaving only the possibility of getting a court of record (federal or state) to hold a hearing.

The state of Maryland lobbied Pennsylvania to repeal its anti-kidnapping act and to pass laws more favorable to slaveholder interests. Maryland also lobbied with the other border states of New Jersey and Delaware for a law that would not only compel state judges and magistrates to participate in fugitive slave rendition proceedings, but would also create a presumption of slavery for any person of color. This was to be a legal standard in rendition cases, essentially shifting the burden of proof from the slaveholder to the alleged fugitive. It would also work proactively on private citizens of the free states, burdening them with confirming the status of any person of color whom they employed. In a manner of speaking, this was Maryland lobbying for the same law from its neighboring states that its representatives had asked of Congress in 1801.

Maryland's lobby had its effect. Delaware passed a version of the statute, although it simultaneously strengthened its anti-kidnapping law. [15] New Jersey and Pennsylvania, however, passed new laws that blended anti-kidnapping laws with new procedures for fugitive slave rendition hearings. Under Pennsylvania's law, slaveholders could now obtain a warrant for the arrest of the fugitive which would be served with the assistance of state peace officers. Provisions were made for the fugitive to be jailed or bonded, if necessary, in preparation for a trial. In both Pennsylvania and New Jersey, slaveholders could not enter their oath into evidence, requiring them to prove their ownership of the slave through some other means. [16]

Pennsylvania and New Jersey were joined by Indiana and New York in the 1820s in passing laws that protected the personal liberty of free blacks. But while Indiana's law more or less conformed to the established procedure laid out in the Fugitive Slave Act of

[14] An Act to Prevent Kidnapping, ch. 73, 1819 Pa. Laws 104 (March 27, 1820).
[15] Baker, "The Fugitive Slave Clause and Antebellum Constitutionalism," 1150–1.
[16] An Act to Give Effect to the Provisions of the Constitution of the United States, Relative to Fugitives from Labor, for the Protection of Free People of Color, and to Prevent Kidnapping, ch. 50, 1825 Pa. Laws 150 (March 25, 1826); A Supplement to An Act Concerning Slaves, 1826, N.J. Laws 90 (December 26, 1826).

1793, New York's law did not. New York's personal liberty law of 1828 (passed as part of its four-part collection of revised statutes) specifically revived trial by jury through the old writ of *homine replegiando*. The revival of jury trial was especially significant given that Pennsylvania's highest court and a United States circuit court had specifically rejected jury trials as incompatible with the procedures specified for fugitive slave rendition under federal law. [17]

It was not long before the personal liberty laws of the 1820s came under judicial scrutiny. In New York, the state law's conflict with federal law became a specific issue in the case of *Jack v. Martin*. In 1834, the New York Supreme Court held that the state law in the matter was void because the power to legislate on fugitive slaves belonged wholly to the federal government. [18]

Jack v. Martin marked the first time that a court had dismissed personal liberty laws as unconstitutional. Courts in Massachusetts, Indiana, and Pennsylvania had considered personal liberty laws prior to *Jack v. Martin*, and nearly all had held that state law was valid, unless superseded by federal law. [19] In short, the courts had largely considered fugitive slave rendition a concurrent power, subject to federal supremacy. Federal law had specified that rendition would be ordered in a summary hearing before a judge or magistrate, but had specified nothing else. Provided that state law also provided for a summary hearing, then it did not contravene federal law.

The New York Supreme Court was not the highest court in New York. *Jack v. Martin* was appealed to the New York's Court for the Correction of Errors, a court that consisted of the New York Senate and either the state's chancellor or the judges of the supreme court. Because the case was appealed from the supreme court, the chancellor sat with the senators. The Court for the Correction of Errors upheld the ruling, but the chancellor rejected the supreme court's reasoning in his opinion. The power, said Chancellor Reuben Walworth, was a concurrent one. [20] Nonetheless, Walworth's opinion was just that—a judicial opinion. It proved only that the law in New York was unsettled. In neighboring New Jersey, Chief Justice Joseph Hornblower issued a lengthy opinion which, although non-enforceable dicta, denounced the Fugitive Slave Act as unconstitutional and claimed that the state's personal liberty law would take precedence in any case.

[17] *Wright v. Deacon*, 5 Serg. & Rawle, 62 (Pa., 1819); *In re Susan*, 23 F. Cas. 444 (C.C.D. Ind. 1818) (No. 13,632). There exists no direct evidence that the legislators of New York would have necessarily known about the judicial rulings, although *Wright v. Deacon* had enjoyed enough notoriety that it is likely that the legislators would have known about it: De homine replegiando is a Latin term which means "for replevying a man." It refers to a writ or lawsuit to replevy (or remove) a man out of prison, or out of the custody of any private person after giving security that the replevied person will answer any charge. This writ has been superseded almost wholly, in modern practice, by that of habeas corpus.

[18] *Jack v. Martin*, 12 Wend. 311 (N.Y. Sup. Ct., 1834).
[19] Baker, "The Fugitive Slave Clause and Antebellum Constitutionalism," 1146, 1149–50.
[20] *Jack v. Martin*, 14 Wend. 506 (New York Court for the Correction of Errors 1835).

The constitutionality of personal liberty laws was thus in serious doubt by the end of the 1830s. Courts across the states had generally been loath to enforce personal liberty laws when they conflicted with federal law, but only the New York Supreme Court had gone so far as to proclaim that the states held no constitutional warrant to pass personal liberty laws. Most informed observers agreed that the personal liberty laws complicated fugitive slave rendition for slaveholders. Slaveholders frequently complained about this, and even free state judges unfriendly to slavery admitted that abolitionists could use the law to slow, frustrate, or even prevent fugitive slave rendition. [21] Nonetheless, abolitionists were adamant that the laws were necessary to guard against kidnapping. That kidnapping was a pervasive problem, especially in the port cities where significant free black population lived, was a certainty, although the extent of the problem is difficult to pin down. [22]

Personal Liberty Laws after 1842: The Non-Cooperation Laws

States' right to protect their residents from kidnapping and slaveholders' property rights collided in the case of *Prigg v. Pennsylvania*, which came before the United States Supreme Court in 1842. [23] Edward Prigg was a Maryland slave-catcher who crossed into Pennsylvania to seize Margaret Morgan, a woman claimed as a slave by Margaret Ashmore. The claim was not without complications. Margaret Morgan had never before been claimed as a slave, although her parents had been slaves to mill owner John Ashmore. Margaret had lived her life in freedom, and had moved to Pennsylvania with her free black husband, with whom she had several children. When Edward Prigg seized Margaret and her three children, he did so under a warrant obtained under the Pennsylvania personal liberty law. But when complications arose in his case, Prigg chose to take the fugitives to Maryland without first securing a certificate of removal. This led a Pennsylvania grand jury to indict Prigg for kidnapping under the very law from which he had originally obtained the arrest warrant. Maryland and Pennsylvania engaged in direct negotiations over how to handle the Edward Prigg affair. Finally, it was agreed that a pro forma case would be created in Pennsylvania courts that would be appealed to the U.S. Supreme Court for final adjudication. [24]

The result was *Prigg v. Pennsylvania*. On its face, the Supreme Court was united in striking down state personal liberty laws. They were slightly less united as to why. Justice Joseph Story authored the opinion of the court, and he reasoned that the fugitive slave clause of the Constitution conferred power solely on Congress to create fugitive slave laws. This exclusivity meant that all state laws purporting to regulate fugitive slave

[21] Earl M. Maltz, *Fugitive Slave on Trial: The Anthony Burns Case and Abolitionist Outrage, Landmark Law Cases & American Society* (Lawrence: University Press of Kansas, 2010).
[22] Eric Ledell Smith, "Rescuing African American Kidnapping Victims in Philadelphia as Documented in the Joseph Watson Papers at the Historical Society of Pennsylvania," *Pennsylvania Magazine of History & Biography* 129, no. 3 (2005): 317–45; Carol Wilson, *Freedom at Risk: The Kidnapping of Free Blacks in America, 1780-1865* (Lexington: University Press of Kentucky, 1994).
[23] Prigg v. Pennsylvania, 41 U.S. 539 (1842).
[24] H. Robert Baker, *Prigg v. Pennsylvania: Slavery, the Supreme Court, and the Ambivalent Constitution* (Lawrence: University Press of Kansas, 2012).

rendition were void. Chief Justice Roger B. Taney disagreed. He argued that states could pass concurrent laws assisting in fugitive slave reclamation, provided they did not conflict with federal law or serve to defeat the slaveholder in the pursuance of his or her right. Finally, John McLean argued that the present personal liberty law of Pennsylvania was unconstitutional, but that states could pass anti-kidnapping laws. This marked the three major positions on the Court, all of which agreed that fugitive slave rendition law was a matter for Congress but disagreed on the extent to which the states could participate in the process.

Regardless, the Supreme Court was unanimous in determining that muscular personal liberty laws that added requirements to federal law were unconstitutional. This came as a blow to abolitionists, who could no longer use personal liberty laws to protect both free blacks and fugitive slaves alike from slaveholders who sought them. However, Justice Story's opinion had left them a way out. The power to pass fugitive slave laws was exclusive to Congress, Story had argued, and Congress had exercised its power with the Fugitive Slave Act of 1793. That law had explicitly extended jurisdiction to state magistrates to hear rendition cases, and extended to them the power to issue certificates of removal. Justice Story was clear that state officers could take jurisdiction under federal law if they so chose, but that the federal government could not compel state officers to enforce federal law. On this point, the justices were in broad agreement.

This opened the way for states to withdraw their support for fugitive slave reclamation by actively forbidding their officers to take part. Massachusetts passed the first such law in 1843, on the heels of *Prigg v. Pennsylvania* and the George Latimer affair. George Latimer was a fugitive slave captured in October 1842 in Boston. Facing down a hostile crowd, the slaveholder lodged Latimer in the city jail where he was held for several weeks awaiting a hearing. Pressure from abolitionists ultimately forced the sheriff to remand the fugitive into the hands of the slaveholder. Facing down a hostile city and a strong abolitionist contingent, the slaveholder came to terms with abolitionists and allowed them to "buy" George Latimer from him. The abolitionists had proven an important point—without the state's jails or peace officers to assist them, slaveholders faced insurmountable odds in retrieving their fugitive slaves. [25]

Massachusetts' non-cooperation law was replicated by Pennsylvania in 1847 and Rhode Island in 1848. Ohio repealed its own fugitive slave act in the wake of *Prigg v. Pennsylvania*, but did not go so far as to withdraw its officers and jails from enforcing fugitive slave claims. New York, for its part, refused either to repeal its law or mount a legislative opposition to *Prigg v. Pennsylvania*. Some in the state believed that New York's law providing for a jury trial for fugitives was still in effect. Others believed that *Prigg v. Pennsylvania* had nullified it. [26]

[25] Morris, *Free Men All*, 107–29.
[26] Baker, "The Fugitive Slave Clause and Antebellum Constitutionalism," 1159–60.

As part of the Compromise of 1850, Congress passed a new Fugitive Slave Act. [27] The new law expanded federal power by empowering federal courts to appoint commissioners who would have jurisdiction to issue arrest warrants for fugitive slaves, to preside over rendition hearings, and to issue certificates of removal. The law specifically forbade state courts and officers from interfering with any legal process issuing either from federal courts or court commissioners. The appointment of commissioners was critical because of the small number of federal district and circuit court judges in northern states, although abolitionists immediately complained that Congress had delegated judicial functions to a non-judicial officer. Once before a commissioner or judge, the fugitive's testimony was specifically disallowed. In the face of resistance, federal officers were empowered to invoke the power of *posse commitatus* and impress anybody nearby into service in executing the law. The law contained criminal penalties for those who attempted rescues, and raised the civil penalties that applied to them as well. Congress had effectively filled the gap left behind by states that had withdrawn state support by passing a deliberately one-sided, proslavery bill. [28]

Slaveholders in Congress had craved the new fugitive slave bill, and it was neither the first nor the last time they had collectively demanded federal action to protect their slave property. What made the Fugitive Slave Act of 1850 so different was its naked invasion of state sovereignty. Slaveholders who had increasingly relied upon theories of state sovereignty and state's rights in order to defend their human property found little problem with demanding that northerners bow to federal supremacy, at least in this matter. However enthusiastic for the bill, slaveholders were also deeply skeptical. Many recognized that the rendition of fugitive slaves would depend upon the goodwill of northerners and their own determination to enforce the law. A rash of fugitive slave rescues in 1851 affirmed their pessimism.

Although abolitionists denounced the Fugitive Slave Act of 1850, they initially found little support in their state legislatures or courts to fight enforcement of the new law. Matters changed, however, after passage of the Kansas-Nebraska Act in 1854. The Kansas-Nebraska Act overturned the Missouri Compromise, which had prohibited slavery in the territory north of the 36°30′ latitude. While the law did not guarantee that new slave states would be carved out of that territory, most northerners viewed it as a violation of the constitutional settlement that contained slavery in the southern regions.

Two fugitive slave cases in 1854 added to the national attention. In Wisconsin, the arrest of Joshua Glover in March led to a large-scale rescue effort that frustrated the enforcement of the Fugitive Slave Act. The rescue came after federal officers refused to acknowledge a writ of habeas corpus issued by a state court. The federal officers were on solid legal ground in their refusal, relying as they did on both the Fugitive Slave Act of

[27] An Act to Amend, and Supplementary To, the Act Entitled "An Act Respecting Fugitives from Justice, and Persons Escaping from the Service of Their Masters," Approved February Twelfth, One Thousand Seven Hundred and Ninety-Three, Pub. L. No. 31-60, 9 Stat. 462 (1850).
[28] Baker, "The Fugitive Slave Clause and Antebellum Constitutionalism," 1163; posse commitatus is the authority possessed by an officer of the law to compel any person to assist him in carrying out his duties.

1850 and the Supreme Court's opinion in *Prigg v. Pennsylvania*. Nonetheless, many Wisconsinites were outraged that their state courts had proven impotent. In Boston, the arrest of Anthony Burns led to a failed rescue attempt that was disturbingly violent. Burns was eventually returned to slavery, but only because the army and the navy had provided protection for federal civil officers. [29]

Personal Liberty Laws after 1855: Interposition and Defiance

The furor in northern states over the Fugitive Slave Act of 1850 only intensified after the spectacular fugitive slave rescues in Milwaukee and Boston in 1854. In many parts of the country, the law became unenforceable. Popular defiance achieved a political voice as free states began to assert their sovereign right to protect their residents. The first such statement came from the Wisconsin Supreme Court, which released the men charged with the rescue of Joshua Glover from federal custody on a writ of habeas corpus in January of 1855. The Wisconsin Supreme Court took the dubious step of refusing to heed the U.S. Supreme Court's order to send the case up for review. This was more than just a violation of standing constitutional law and federal supremacy—it was, for all intents and purposes, a nullification of the Fugitive Slave Act in Wisconsin. The judges' opinions provided a powerful rationale for the interposition of state authority between the federal government and the people caught up in the law (whether they were fugitives or those who sought to aid them). The case became an instant cause célèbre among abolitionists, and gave credence to the notion that states could find a legitimate, constitutional defense of liberty rooted in state sovereignty. Such resistance was not limited to the courts. In 1855, Massachusetts passed a comprehensive personal liberty law that explicitly countermanded the Fugitive Slave Act. The state law prohibited state officers from aiding slave catchers at any step in the process of fugitive slave removal, and also prohibited anyone from acting as counsel for slave catchers. Anybody seizing a person later deemed not to be a fugitive slave would be liable for five years' imprisonment and a fine of up to $5,000. The law also extended the writ of habeas corpus to anyone seized as a fugitive slave which would be heard before the state supreme court or any of its justices. Upon application from either party, the court (or individual justice) could order a jury trial, which would make a final determination about whether the person so seized would be remanded. Finally, the law had specific evidentiary requirements that significantly protected the alleged fugitive. The burden of proof lay squarely with the slaveholder, who was required to provide in writing all of the facts of their claim and present the testimony (not merely sworn affidavits) of at least two witnesses who did not have a property interest in the alleged fugitive. Finally, no

[29] H. Robert Baker, *The Rescue of Joshua Glover: A Fugitive Slave, the Constitution, and the Coming of the Civil War* (Athens: Ohio University Press, 2006); Maltz, *Fugitive Slave on Trial*; Albert J. von Frank, *The Trials of Anthony Burns: Freedom and Slavery in Emerson's Boston* (Cambridge, MA: Harvard University Press, 1998); Fehrenbacher, *The Slaveholding Republic*.

confessions or admissions by the alleged fugitive would be admissible in court. Notably, the law was vetoed by Massachusetts' governor, but the legislature overrode the veto. [30]

In 1857, Wisconsin passed a version of Massachusetts's personal liberty law. The law was peculiar to Wisconsin in that it contained a section that required the state to pay defendants' costs associated with criminal prosecutions under the Fugitive Slave Act of 1850, and forbade the sale of property to collect on any civil judgment under the Fugitive Slave Act. Wisconsin thus provided additional protections for citizens who forcibly resisted the Fugitive Slave Act. [31]

Ohio passed several laws in 1857 that amounted to a weaker form of a personal liberty law. The state forbade the use of its jails in holding fugitive slaves, prohibited private recaption of fugitive slaves, and punished anybody who did not follow appropriate federal procedure when attempting to remove a fugitive. Even some states that did not pass new personal liberty laws, such as New York, reaffirmed their commitment to protecting the liberty of their free black citizens. While the northern citizenry remained divided in their commitment to the personal liberty laws—conservative Republicans continued to call for their repeal when they clearly violated federal law—the northern commitment to personal liberty in the face of the Fugitive Slave Act of 1850 was quite strong.

In 1859, the Supreme Court issued its ruling in *Ableman v. Booth*, the case that arose from the rescue of Joshua Glover in Wisconsin in 1854. Despite the Wisconsin Supreme Court's refusal to participate, The U.S. Supreme Court took the case on appeal. And so, in 1859, the Supreme Court held that federal law was supreme, that the Fugitive Slave Act was constitutional, and that any state law that contravened it was null and void. The ruling met with positive defiance from Wisconsin, and otherwise seemed to have little effect on abolitionists who were intent to continue using state law to thwart fugitive slave reclamation.

Following the election of Abraham Lincoln in 1860, southern states cited the personal liberty laws as a major reason for the extraordinary and extra-constitutional remedy of secession. South Carolina, in its *Declaration of Causes*, adopted on December 24, 1860, asserted that "fourteen of the States have deliberately refused, for years past, to fulfill their constitutional obligations, and we refer to their own Statutes for the proof." The obligation to which the state referred was enforcement of the Fugitive Slave Clause of the Constitution, and charged that the northern states "have enacted laws which either nullify the Acts of Congress or render useless any attempt to execute them. In many of these States the fugitive is discharged from service or labor claimed, and in none of them

[30] "An Act to Protect the Rights and Liberties of the People of the Commonwealth of Massachusetts," in *Massachusetts - Acts & Resolves, January Session*, 1855, pp. 924-929. (May 21, 1855.)
[31] "An Act Relating to the Writ of Habeas Corpus to Persons Claimed as Fugitive Slaves, the Right of Trial by Jury, and to Prevent Kidnapping in This State," *Wisconsin 10th Session, General Acts*, 1857, pp. 12–14. (February 19, 1857.)

has the State Government complied with the stipulation made in the Constitution." [32] Other states repeated the same argument. Georgia declared that the fugitive slave clause had been nullified by abolitionists determined to defeat it and "supported by [state] legislation in conflict with the clearest provisions of the Constitution." [33]

The irony was palpable. Southern states, which had long claimed the primacy of states' rights and, indeed, based their claims to secession on that basis, complained primarily of northern attempts to frustrate federal law. Northern states—notably Wisconsin and Massachusetts—had invoked a form of nullification theory to dispute claims of federal supremacy to legislate on the process of remanding fugitive slaves. As southern states began seceding, northern states were forced to moderate their positions. The Wisconsin governor, in his 1861 address to the legislature, admonished the legislature to modify or repeal any state laws that might be in conflict with the U.S. Constitution. [34] By April, constitutional niceties retreated in the face of the cannon fire of Fort Sumter, and the debate over personal liberty laws disappeared from public view.

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[32] *Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union; And, The Ordinance of Secession.* (Charleston: Evans and Cogswell, 1861), 6–8, http://archive.org/details/declarationofimm00sout Accessed June 16, 2017.
[33] *Journal of the Public and Secret Proceedings of the Convention of the People of Georgia: Held in Milledgeville and Savannah in 1861, Together with the Ordinances Adopted* (Milledgeville, GA: Doughton, Nisbet & Barnes, State Printers, 1861), 112, Digitized by the University of North Carolina at Chapel Hill's Documenting the American South Project http://docsouth.unc.edu/imls/georgia/georgia.html Accessed June 16, 2017.
[34] Baker, *The Rescue of Joshua Glover*, 171.