

Prigg v. Pennsylvania and the Rising Sectional Tension of the 1840s

by

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ABSTRACT

This thesis looks at the 1842 Supreme Court ruling of *Prigg v. Pennsylvania*, the events leading up to this case, and the subsequent legislative fallout from the decision. The Supreme Court rendered this ruling in an effort to clear up confusion regarding the conflict between state and federal law with regard to fugitive slave recovery. Instead, the ambiguities contained within the ruling further complicated the issue of fugitive slave recovery. This complication commenced when certain state legislatures exploited an inadvertent loophole contained in the ruling. Thus, instead of mollifying sectional tension by generating a clear and concise process of fugitive slave recovery, the Supreme Court exacerbated sectional tension.

Through an analysis of newspapers, journals, laws and other contemporary sources, this thesis demonstrates that *Prigg v. Pennsylvania* and the subsequent legislative reactions garnered much attention. Through a review of secondary literature covering this period, a lack of demonstrable coverage of this court case emerges, which shows that scant coverage has been paid to this important episode in antebellum America. Additionally, the lack of attention paid to this court case ignores a critical episode of rising sectional tension during the 1840s.

DEDICATION

This thesis is dedicated to those who kept me going.

My parents whose encouragement and understanding helped me through tough
times.

My sister who always believes in me, even when I doubt. She introduced me to
whole new worlds by teaching me to read.

And, in particular, my partner, Beatriz, whose love and support is nothing short of
a compass to a lost traveler.

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Additionally, particular thanks go to Dr. Kelly Nelson whose editorial insights helped me turn the corner.

TABLE OF CONTENTS

	Page
CHAPTER	
1 THE CONFLICT OVER FUGITIVE SLAVE RECOVERY	1
2 REACTIONS AND RESPONSES	27
3 A NEW SET OF PERSONAL LIBERTY LAWS FURTHER AMPLIFIES SECTIONAL TENSION.....	49
REFERENCES	74

Chapter 1

THE CONFLICT OVER FUGITIVE SLAVE RECOVERY

Introduction

On April 1, 1837, Margaret Morgan and her children were kidnapped in Philadelphia. That kidnapping not only destroyed a family, but also began a series of battles in courts, newspapers, and legislatures over the nature of federal, state, and local authority over slavery. Those battles affected the lives of enslaved Americans, who worked, as always, to escape slavery or to limit the institution's control over themselves and their families. The battles also exacerbated regional tensions over the institution of slavery, years before the dramatic events of the 1850s on which historians tend to focus.

Morgan's parents had been slaves of a Maryland man named John Ashmore, who had informally emancipated them before Margaret was born. In testimony before the Supreme Court five years later, a Pennsylvania State's Attorney testified that Ashmore "exercised no ownership" and "constantly declared he had set them free."¹ With Ashmore's full knowledge and blessing, Morgan had moved to Pennsylvania in 1832. There, she married a free black man

¹ Thomas Hambly. "Argument of Mr. Hambly, of York, (PA) In the Case of Edward Prigg, Plaintiff in Error, vs. The Commonwealth of Pennsylvania, Defendant in Error: In the Supreme Court of the Unites States, Washington, D.C.," Vol. 1 of *Fugitive Slaves and the American Courts: The Pamphlet Literature, Series II Volume I*, ed. Paul Finkelman (New York: Garland Publishing, Inc., 1988), 128.

named Jerry Morgan and they had “several children” and lived in relative freedom.²

Sometime around 1836, John Ashmore died and passed his estate to his niece, Margaret Ashmore Beemis. Soon after, Beemis’s husband, Nathan S. Beemis, hired three men to kidnap Margaret and her children and return them to slavery in Maryland. Leading the kidnapping was attorney and justice of the peace Edward Prigg, who had been listed in the *Baltimore Patriot* as an “insolvent debtor” eight years earlier.³ It is possible that Prigg needed money and used his connections with Beemis to secure the fugitive recovery job. The two other men involved, Jacob Forward and Stephen Lewis, were slave catchers.

The men easily located Morgan and her family in Philadelphia, which suggests, argues Paul Finkelman, “she did not see herself as a fugitive slave and had never tried to hide her whereabouts from Ashmore or his niece.”⁴ The kidnapers left Jerry Morgan behind and “crossed the line into Maryland, with the mother and children, and by the morning light they were sold to a negro trader and in a calaboose ready for shipment to the South.”⁵ The rapid transport of Margaret Morgan and her children out of Maryland, followed by a quick sale, suggests that Margaret Ashmore Beemis had arranged that sale in advance.

² Ibid 128.

³ *The Baltimore Patriot*. May 22, 1828.

⁴ Paul Finkelman. “Sorting Out *Prigg v. Pennsylvania*.” *Rutgers Law Journal* 24:3 (1993): 611.

⁵ Hambly. *Fugitive Slaves and the American Courts*, 130.

Kidnapping free African-Americans in order to sell them to interstate slave traders was not uncommon. “All blacks in America were touched by this new [interstate slave] trade,” argues Steven Deyle, because “the profits that could be made from it triggered an outbreak in the kidnapping of free people of color and their transportation and sale into slavery in the Deep South.”⁶ The year 1837 was the apex of the United States domestic slave trade. Slave prices were higher than they had been in nearly twenty years and higher than they would be for more than a decade.⁷

Jerry Morgan, who did not know his wife and children had been sold into slavery, tried unsuccessfully to enlist the help of Pennsylvania authorities and legal counsel to coordinate the return from Maryland. He would never see them again. While traveling on a canal boat to enlist legal assistance, he was accused of stealing a white man’s jacket. Fearing for his safety, he leapt off the boat and

⁶ Steven Deyle. *Carry Me Back: The Domestic Slave Trade in American Life*. (Oxford: Oxford University Press, 2005), 17.

⁷ Indeed, 1837 was high tide for inflationary money expansion, leading to rising prices, owing to two factors. First, “a large influx of silver coin from Mexico, and second, the sharp cut in the usual export of silver to the Orient.” With a massive influx and retention of specie in bank vaults across the country under a fractional reserve system, the result was a massive outpouring of bank notes that led to upward pressure on prices across the economic board. As slavery was so instrumental to the American economy, it is no surprise that this inflationary flood raised slave prices as well. See Murray Rothbard. *A History of Money and Banking in the United States: The Colonial Era to World War II*. (Auburn, Ludwig von Mises Institute: 2005), 97. For slave prices see Ulrich Bonnell Phillips. *Life and Labor in the Old South*. (South Carolina: University of South Carolina Press, 1929), 177.

fell to his death. Neither Margaret Morgan nor her children was ever heard from again.⁸

Five years after the kidnapping, in 1842, Pennsylvania attorney Thomas Hambly spoke for the Morgan family as he argued in front of the Supreme Court. “They were seized before day light, in bed,” he testified; “the mother, father and children put into an open wagon in a cold, sleety rain, with scarcely their ordinary clothes on.”⁹ Yet, by the time this case reached the Supreme Court, it was no longer about just one family. It evolved into a case testing federal authority over the recapture of fugitive slaves.

The Supreme Court ruling, *Prigg v. Pennsylvania*, sought to resolve complications involving fugitive slaves in the United States, yet it ultimately made the issue more contentious. While asserting federal supremacy in cases concerning fugitive slave recapture, the ruling opened an unintentional legal loophole, which permitted states to pass measures designed to thwart attempts to recapture slaves. Chapter 1 explains how that legal loophole came about and why it heightened sectional tensions over fugitive slave recapture from the period of 1842 to 1850. Chapter 2 analyzes initial reactions to the Supreme Court ruling across the many northern and southern regions within the United States. This chapter also investigates how sectional tensions grew following the Supreme Court ruling. Chapter 3 analyzes how personal liberty laws passed in response to

⁸ While this author’s research can, by no means, be viewed as exhaustive, no accounts were found that indicated the fate of Margaret Morgan and her children.

⁹ Hambly. *Fugitive Slaves and the American Courts*, 128.

Prigg v. Pennsylvania further exacerbated sectional tension and discusses why the court case is often overlooked in social and political histories of antebellum America.

State and Federal Laws Collide

Margaret Morgan’s abduction in Philadelphia in 1837 fell under two jurisdictions: one federal and one state. The Fugitive Slave Act of 1793 guaranteed the right of an “owner or his agent to seize an interstate ‘fugitive from labor’ and take him before a federal judge or local magistrate.”¹⁰ That Congressional law directed state agents to assist in the recovery of fugitive slaves. Under this law, Pennsylvania had the responsibility to comply in the recapture of runaway slaves.

Pennsylvania passed a personal liberty law in 1826 in order to limit seizures of fugitives under the Fugitive Slave Act of 1793. Those seeking to “recover” an enslaved person had to demonstrate to a state authority that the person being seized was actually a fugitive. This law established guidelines for state officials to follow in determining fugitive slave status. This was important because, as Don Fehrenbacher explains, “an alleged fugitive was not wholly at the mercy of national law on the subject – not in a federal republic.” Divided sovereignty, an essential component of federalism, placed some powers in the hands of the federal government and others in the hands of states, and the

¹⁰ Don Fehrenbacher. *The Slaveholding Republic: An Account of the United States Government’s Relations to Slavery*. (Oxford: Oxford University Press, 2001), 212.

boundaries of those sometimes overlapping powers was not clear. “Pennsylvania . . . had not only a right but an obligation to protect its citizens and other residents against wrongful treatment amounting to abduction.”¹¹ Or so the architects of the state legislation contended. The personal liberty law of 1826 was crafted as a “compromise between what were considered the demands of the fugitive slave clause, and the responsibility to protect the personal liberty of blacks,” argues Thomas Morris.¹² Pennsylvania was one of several northern states that passed laws to make it more difficult for slave catchers to apprehend those they claimed were fleeing slaves. The law attempted to maintain the delicate balance between the rights of slave owners and the role of state government to protect its free citizens. The law was not abolitionist legislation, but rather an attempt to implement federalism with regard to fugitive slaves.

Whatever Edward Prigg thought about divided sovereignty or federalism, a Pennsylvania grand jury sought to resolve the ambiguity over whether his sojourn into Pennsylvania was to recapture a slave under the Fugitive Slave Act or to unlawfully kidnap a Pennsylvania resident in violation of the 1826 personal liberty law. He was charged with kidnapping and a warrant was issued for his arrest. The first section of Pennsylvania’s personal liberty law mandated a sentence of twenty-one years hard labor in prison for anyone who unjustly seized a man “by force or violence,” or enticed him, through fraud, with the intention of

¹¹ Ibid.

¹² Thomas D. Morris. *Free Men All: The Personal liberty laws of the North, 1780-1861*. (Baltimore: The Johns Hopkins University Press, 1974), 45.

selling or holding him as a slave.¹³ The second section provided penalties for those who seized a free person “for the purpose of fraudulently removing, exporting, or carrying him or her out of state.”¹⁴ The third section authorized a fugitive seeker to apply to any judge, justice of the peace, or alderman for a warrant to arrest the purported fugitive. On this point, the law did not distinguish between judges, justices or aldermen in Pennsylvania and those in other states. The law also stated that the claimant, with warrant in hand, must seek the proper county sheriff or constable to arrest the named fugitive, and bring him or her before a judge to certify fugitive status. The law asserted that it “no longer was a general right of reception by self-help alone part of that guarantee as far as Pennsylvania was concerned.”¹⁵ In other words, while an official in any state could issue a warrant for the arrest of a fugitive slave, a Pennsylvania judge would have to hold a hearing to validate that status. Additionally, the law allowed the accused fugitive to gather evidence to refute the claim, and disallowed the oath of the owner or “interested parties” to be received in evidence.¹⁶

Prigg had not completely complied with state law. The kidnappers in the Morgan case had a warrant drawn up by Prigg, a justice of the peace in Harford County, Maryland. Under section 3 of the 1826 Pennsylvania law, this was a

¹³ Ibid.

¹⁴ (quoted in) Ibid.

¹⁵ *Penn. Session Laws*, 1820, 104-6. (quoted in) Morris. *Free Men All*, 52.

¹⁶ (quoted in) Ibid.

legally valid document. Once in Pennsylvania, the kidnappers sought the required permission from a local justice of the peace. That local official, Thomas Henderson, concluded that Morgan and her children were neither fugitives nor slaves and determined that Prigg “had no jurisdiction by the law of Pennsylvania.”¹⁷ Henderson refused to issue a warrant for reception. In other words, Henderson recognized the Maryland warrant as valid, did not see Margaret Morgan as a slave, and refused to let the slave catchers ‘receive’ Morgan.

Henderson’s assessment of Morgan’s status drew on a 1788 Pennsylvania law titled, “An Act to Explain and Amend ‘An Act for the Gradual Abolition of Slavery 1780.’” This law stated that any slave who, with the knowledge of his or her owner, stayed in Pennsylvania longer than six months was legally emancipated. At the time of the kidnapping, Margaret Morgan had been living in Pennsylvania for nearly five years. Thus, under Pennsylvania law, Morgan was a free woman as was every member of her family.¹⁸ Pennsylvania indicted Prigg, the two bounty hunters, and Beemis as kidnappers since the removal of Morgan had not been certified by an official in Pennsylvania. Pennsylvania legislators

¹⁷ Ibid.

¹⁸ Indeed, even a South Carolina judge noted in *State v. Harden* (1832), “Proof that a negro has suffered to live in a community for years, as a free man, would *prima facie*, establish the fact of freedom. Like all other *prima facie* shewing (sic), it may be repelled, and shewn (sic) that, notwithstanding, he is a slave, not legally manumitted, or set free. But until this is done, the general reputation of freedom would...establish it.” (Quoted in) Paul Finkelman. “Story Telling on the Supreme Court: Prigg v. Pennsylvania and Justice Joseph Story’s Judicial Nationalism.” *The Supreme Court Law Review* 1994 (1994): 278.

requested Maryland's assistance in recovering and arresting the kidnappers as the slave catchers had already retreated to Maryland.

A case over fugitive recovery quickly morphed into a contest of state versus federal law with regarding fugitives. Governor Ritner of Pennsylvania appealed to Governor Thomas W. Veazey of Maryland for assistance in extradition of the kidnappers. Governor Veazey refused, but sent Thomas Culbreth, secretary of the Maryland Council, to Pennsylvania to convince legislators to drop the indictments.¹⁹ This mission proved unsuccessful but Governor Veazey, ultimately, relented and agreed to extradition.²⁰

The Maryland House of Delegates, however, whose most powerful constituency were Southern Maryland and Eastern Shore slaveholders anxious at Prigg's indictment, responded with a 50-4 vote to send an envoy to Pennsylvania to work to get the indictments dropped.²¹ Unhappy with Governor Veazey's capitulation, the powerful slaveholding constituency sent the envoy with three objectives in mind: "secure dismissal of the pending prosecutions; make whatever agreements might be necessary to ensure that all issues between the two states would eventually be decided by the Supreme Court of the United States; and

¹⁹ Barbara Holden-Smith. "Lords of the Lash , Loom, and Law: Justice Story, Slavery and *Prigg v. Pennsylvania*." *Cornell Law Review*: 78 (1992): 1123.

²⁰ *Ibid.*

²¹ *Richmond Enquirer*. January 16, 1838.

obtain such modifications of the Laws of Pennsylvania as will preserve the rights of slave holders and cherish good will between the two states.”²²

The Maryland legislature sent the envoy to Pennsylvania to have the charges dropped, as noted, arguing that “a citizen of their state (Maryland) was not subject to the laws of another state merely for exercising his right of reception.”²³ In sum, Maryland was asking for a “modification of the laws of that State relating to negroes.”²⁴ At that time, Pennsylvania was in fact considering modifying the state’s personal liberty law of 1826, but in order to strengthen protections for African Americans rather than weaken them. Legislators were considering instituting jury trials as added safeguards against kidnapping.²⁵ Pennsylvania denied Maryland’s requests.

A report issued by a committee of the Maryland legislature noted that the defendants seemed to have followed proper legal procedure, obtaining a proper affidavit and warrant before entering Pennsylvania and bringing the “fugitives” to a Pennsylvania justice of the peace to certify removal. The Committee noted that “the only offence alledged [*sic*] against the citizens demanded, was the arrest and bringing into Maryland certain slaves which absconded from Margaret Ashmore,

²² Barbara Holden-Smith. “Lords of the Lash , Loom, and Law: Justice Story, Slavery and *Prigg v. Pennsylvania*.” *Cornell Law Review*: 78 (1992): 1123.

²³ Morris. *Free Men All*, 94.

²⁴ *Daily National Intelligencer*. June 1, 1840

²⁵ Morris. *Free Men All*, 94.

of Harford County.”²⁶ Their use of the term “slaves” reveals their belief that it was up to the state from which Morgan “fled” to determine fugitive status. The Maryland Legislature, in essence, rejected section 11 of Pennsylvania’s personal liberty law and all of the 1780 manumission law.

The report also argued that the Pennsylvania justice of the peace illegally threw up a barrier to legal recovery of fugitive property. By not certifying the legality of the warrant, Henderson had interposed himself between a citizen of Maryland and his legal property. From the perspective of the Maryland legislature, Henderson erred by not issuing a certificate of removal for a fugitive slave, and Prigg and company were guilty of nothing more than seizing legally owned property. The Maryland committee also noted larger ramifications, namely that Pennsylvania’s personal liberty law exemplified “the power of the non-slaveholding States, in effect to nullify that Article of the Federal Constitution which recognizes the relation of master and slave, and guarantees the right of property in persons of held to service.”²⁷ Pennsylvania could not curtail enforcement of federal fugitive slave laws (any more than Maryland could tax the Bank of the United States for issuing notes).

When Pennsylvania refused to drop the indictment, the Maryland Governor Thomas W. Veazey “felt himself constrained to comply therewith and

²⁶ Ibid.

²⁷ Ibid.

ordered the arrest and delivery over of the citizens demanded.”²⁸ The governor was willing to cooperate with the Pennsylvania legislature in this case in an effort to resort, first, to “conciliatory measures.”²⁹

The case involving Edward Prigg had grown into one probing the limits of federal and state power. Knowing that no outcome to the trial would answer the questions about fugitive slave recapture that the incident had posed, Pennsylvania and Maryland arranged a compromise to send the case to trial on a *pro forma* basis.³⁰ The Pennsylvania legislature passed an act to forego the trial, so that the case could move quickly to the appellate level, at which the broader legal questions could be decided. Pennsylvania indicted Prigg on a writ of error in 1839. The appeal was sent to the Supreme Court in the May term of 1840. The “principles involved were of the deepest concern to all the slave States,” a Washington, D.C., newspaper bellowed, and could “put to rest the conflicting questions of State and National jurisdiction over the subject of fugitive slaves.”³¹

Prigg v. Pennsylvania: The Case

In January 1842, the Supreme Court interpreted, for the first time, the Fugitive Slave Act of 1793. As Fehrenbacher notes, “*Prigg v. Pennsylvania*, might, with

²⁸ *Daily National Intelligencer*. June 1, 1840.

²⁹ *Ibid.*

³⁰ Morris. *Free Men All*, 95.

³¹ *Daily National Intelligencer*. June 1, 1840

more accuracy, have been titled ... 'Slave States versus Free States.'³² Arguing to reverse Prigg's conviction, the prosecution argued that fugitive slave status could not be undermined or mitigated by state statute. Prigg's attorney noted that he had tried to comply with Pennsylvania law, but the local official had refused to issue a certificate of removal. Prigg could not be prosecuted for kidnapping, they argued, because state law obstructed a federal law. Prigg had acted within his rights under the Fugitive Slave Act of 1793. At the heart of the matter, the attorney argued, Pennsylvania law was in conflict with federal law and should be struck down.³³

Thomas Hambly, Pennsylvania's defense counsel, opened with a states' rights argument, contending that each state held the tools by which national legislation would be implemented. His argument centered on the idea that fugitive slave recovery was a right integrated into the United States Constitution, just as states' rights were. Many federal agents needed state assistance in the form of judges, jails and warrants to effectively fulfill their legal duties. Hambly did not quibble with the federal directive to assist in fugitive recovery. Instead, Hambly used the fundamental principle of divided sovereignty to argue that Pennsylvania was well within its rights to undertake establishing slave status in an effort to execute federal law. It was, he reasoned, the state to which the fugitive ran that must determine that status, owing to a state's duty to protect its free citizens from kidnapping. Pennsylvania was not denying the right of Maryland slave catchers

³² Fehrenbacher. *The Slaveholding Republic*, 219.

³³ *Ibid.*

to recover fugitive slaves. Merely, Pennsylvania law sought to implement a federal directive to assist with fugitive recovery in an attempt to balance the need to protect the rights of its free citizens alongside the constitutional right of fugitive slave recovery.

Others used the opportunity to point out the constitutional vagaries of divided sovereignty when it came to recapturing slaves. For instance, New York Governor William H. Seward stated that Prigg's lawyers were usurping the rights of the states in their attempt to expand the national government's authority over fugitive recovery by inserting into the legal framework of the Constitution a right that was reserved solely to the states. He noted, "the necessity of legislation, under the claim of the Constitution, is *violently* inferred, and then another *violence* is committed by inferring an implied power."³⁴ William Jay, a judge from New York, argued much the same, contending that federal power to recapture slaves "was inserted to satisfy the South; and its obvious meaning is, that slaves escaping into the States, but (it) confers no power on Congress [to dictate to states the process by which fugitives are to be recovered]. This clause imposes an obligation on the States," he argued, "as the power of recovering these fugitives is not delegated to Congress; it is reserved to the several States, who are bound to make such laws as may be deemed proper, to authorize the master to recover his slave."³⁵

³⁴ (quoted in) Joseph Noyes. "The Prigg Case and Fugitive Slavery, 1842-1850: Part I" *The Journal of Negro History*. (39:3): 1954, 188.

³⁵ *Ibid.*

Prigg v. Pennsylvania: The Ruling

In March 1842, the Supreme Court found for the plaintiff in a vote of 7-2, ruling that the Constitution's framers designed protection for slavery at a national level, thus the same nationalized protections applied to the issue of fugitive slaves.³⁶ In doing so, the Supreme Court held that the Fugitive Slave Act of 1793 was a constitutional law. Any state law obstructing this legal right was overturned. Finally, this right of fugitive recovery needed no authorization beyond the constitutional one.³⁷

Slavery's protection, maintenance, propagation, and existence were mandated, legislated, and thoroughly defended at the federal level. The majority opinion, written by Justice Joseph Story, held:

Upon this ground, we have not the slightest hesitation in holding, that under and in virtue of the constitution, the owner of a slave is clothed with the entire authority, in every state in the Union, to seize and recapture his slave, whenever he can do it, without any breach of the peace or any illegal violence. In this sense, and to this extent, this clause of the constitution may properly be said to execute itself, and to require no aid from legislation, state or national.³⁸

³⁶ Chief Justice Roger B. Taney, displaying "fine strategic sense," turned the writing of the official opinion over to Justice Joseph Story, "the country's foremost legal scholar, who combined his judicial career with the role of luminary in the Harvard Law School." Fehrenbacher. *The Slaveholding Republic*, 219.

³⁷ *Prigg v. Pennsylvania*. 41 U.S. 539 (1851).
<http://www.enfacto.com/case/U.S./41/539/>

³⁸ *Ibid.*

He explained “that a slaveholder virtually carried the law of his own state with him when he pursued a fugitive into a free state.”³⁹ Slaveholders held the authority to journey into any part of the country to recover runaways. Their right to hold property in human beings superseded any state law seeking to facilitate this process. A slaveholder’s right to recover his property needed no authorization other than the ingrained right of human beings to be secure in their property.

The ramifications of this were dire. Slaveholders seeking to recover actual runaways could be secure in the knowledge that the Supreme Court had ruled firmly in their favor. At the same time, so, too, could the unscrupulous kidnapper who sought to kidnap free black citizens. Cloaked in the authority of this Supreme Court decision, kidnappers could now act with near impunity in labeling anyone a slave. State legislatures, even those eager to facilitate fugitive recovery, were powerless to do anything to shield free citizens who were not slaves. The Supreme Court, in other words, had struck down any laws that sought to inquire into the fugitive status of the accused. A slaveholder’s affidavit, in other words, was considered proof.

The right of a slaveholder to recover a fugitive slave was cast by Story as a *natural* right, guaranteed by virtue of owning slaves. Owners of property had a right to recover that property if it were stolen. Slaves who ran away had stolen

³⁹ Fehrenbacher. *The Slaveholding Republic*, 221.

themselves. Story ascribed the recovery of fugitive slaves to a central foundation of the institution of slavery.⁴⁰ He wrote:

The full recognition of this right and title was indispensable to the security of this species of property in all the slave-holding states; and, indeed, was so vital to the preservation of their domestic interests and institutions, that it cannot be doubted, that it constituted a fundamental article, without the adoption of which the Union could not have been formed. Its true design was, to guard against the doctrines and principles prevalent in the non slave-holding states, by preventing them from intermuddling with, or obstructing, or abolishing the rights of the owners of slaves.⁴¹

Story interpreted the United States Constitution as guaranteeing not only the right of owners to recover slaves, but also the right of owners to be safe from any state law that promoted the freedom of slaves. The ruling that slavery was protected by the federal government's commitment to enshrining natural law made slavery immune from any law that sought to undermine the institution, regardless of any system of government in place that shared power between state and federal jurisdiction. In essence, Finkelman argues, "Story's opinion asserted that an owner returning home with captured fugitive slaves had exemption from state regulation and control, through however many states he may pass, while in transit to his own domicile." "This clearly meant that interstate transit with a fugitive slave would have federal protection."⁴² The ruling had ramifications for

⁴⁰ Andrew Napolitano. *Dred Scott's Revenge: A Legal History of Race and Freedom in America*. (Nashville: Thomas Nelson, 2009), 34.

⁴¹ *Prigg v. Pennsylvania*. 41 U.S. 539 (1839).
<http://www.enfacto.com/case/U.S./41/539/>

⁴² Paul Finkelman. *An Imperfection Union: Slavery, Federalism, and Comity*. (Chapel Hill: University of North Carolina Press, 1981), 133.

all blacks. “It meant any southerner could seize any black and remove that person to the South without any state interference, as long as no ‘breach of peace’ occurred. The consequences for the nearly 175,000 free blacks in the North could have been dire,” argues Finkelman.⁴³ Not only had the court legalized the Morgan family’s kidnapping, it undermined state protections against kidnapping African Americans accused of being fugitives from slavery.

At the time, there was confusion about what the ruling meant. Even the official court report, edited by Richard Peters, was erroneously titled “Report of the Case of Edward Prigg Against the Commonwealth of Pennsylvania Argued and Adjudged By the Supreme Court of the United States At January Term, 1843, In Which It Was Decided That All The Laws Of the Several States Relative To Fugitive Slaves Are Unconstitutional And Void And That Congress Have the Exclusive Power Of Legislation On the Subject Of Fugitive Slaves Escaping Into Other States.”⁴⁴ The lengthy title attempted to convey what the Supreme Court ruled and failed. The subtle difference between what Chief Justice Roger B. Taney ruled in his concurring opinion and what Peters reported was that the Supreme Court, in fact, did not overturn all laws relating to fugitive slaves. The

⁴³ Finkelman, “Sorting Out *Prigg*, 637.

⁴⁴ Richard Peters. *Report of the Case of Edward Prigg Against the Commonwealth of Pennsylvania Argued and Adjudged By the Supreme Court of the United States At January Term, 1843, In Which It Was Decided That All The Laws Of the Several States Relative To Fugitive Slaves Are Unconstitutional And Void And That Congress Have the Exclusive Power Of Legislation On the Subject Of Fugitive Slaves Escaping Into Other States.* (Philadelphia: District Court of the United States, 1843), title page.

Supreme Court overturned laws that added burdens to the process of fugitive recovery via so-called personal liberty laws. Any state could choose to pass laws to facilitate fugitive recovery, but states were barred from passing laws to impede this process. Thus, the Supreme Court effectively overturned all personal liberty laws in the United States because these laws added legal barriers to the recovery of fugitive slaves.

Legal ramifications of *Prigg v. Pennsylvania*

With a limited federal enforcement mechanism in service of fugitive slave recovery, the possibility arose that slaves would have the ability to travel north into these zones while state officials, in deference to a literal reading of Story's ruling, looked on and did nothing. Without a massive expansion of federal personnel to service the recovery process, capturing fugitive slaves would become increasingly difficult. Chief Justice Taney's concurring opinion disagreed with Storey's contention that the ruling enforced itself. The seven separate opinions all reached the same conclusions from very different legal perspectives. Nevertheless, Story's opinion was seen as "the official interpretation of the Fugitive Slave Act and the Fugitive Slave Clause."⁴⁵ Nine years before the *Prigg* ruling, Story had written:

⁴⁵ Historian Paul Finkelman has done an admirable job in summing up, in visual chart form no less, the undercurrent of diversity that existed, even within the concurring opinion. However, he sums up the situation by noting, "Although there were seven separate opinions...all observers at the time agreed that his (Story's) opinion was the official interpretation of the Fugitive Slave Act and the Fugitive Slave Clause. Justices Taney, Thompson, Baldwin, Wayne and Daniel concurred in the result, but only Wayne agreed with all of the specifics of Story's opinion. Justices Catron and McKinley silent agreed with Story's opinion.

Laws have no force beyond the territorial jurisdiction of the state, all persons found within any jurisdiction whether their residence is temporary or permanent are subject to the laws of that place, and nations and states from comity admit that the laws of other nations and states ought to have the same force everywhere as long as they do not prejudice the power or rights of other governments, or of their citizens.⁴⁶

Thus, in applying that logic to *Prigg*, Story ruled, “states cannot therefore, be compelled to enforce them; and it might well be deemed an unconstitutional exercise of the power of interpretation, to insist, that the states are bound to provide means to carry into effect the duties of the national government, nowhere delegated or intrusted to them by the constitution.”⁴⁷ Thus, states could not act, in any way, to interfere with fugitive slave recapture nor could they be compelled to act in the implementation of slave recovery.

Story was a nationalist in the line of jurists schooled under John Marshall whose “lifetime goal,” according to Finkelman, was “to preserve national harmony and to strengthen the national government.”⁴⁸ He contends that “Story favored national power over any other value, even if it meant strengthening slavery.”⁴⁹ The ruling sought to reassert federal supremacy in yet another area of American law, but unlike Marshall’s decisions in *McCulloch v. Maryland* or

Justice McLean’s “separate opinion” was clearly a dissent.” See Finkelman. “Sorting Out *Prigg*,” p. 628.

⁴⁶ Finkelman. *An Imperfect Union*, 13.

⁴⁷ *Prigg v. Pennsylvania*. 41 U.S. 539 (139).
<http://www.enfacto.com/case/U.S./41/539/>

⁴⁸ Paul Finkelman. “Story Telling on the Supreme Court,” 251.

⁴⁹ *Ibid.*

Gibbons v. Ogden, Story's ruling succeeded only in articulating the general principle while failing to explain its practical applications.

Finkelman argues that the decision was unlikely to have been otherwise. Ultimately, *Prigg* "was largely predetermined by the makeup of the Court, which had a southern majority steadfast in its proslavery allegiance, and a northern minority firm in its conviction that moral repugnance of the institution, however commendable, must not be allowed to impair the rule of law or the constitutional cement of Union."⁵⁰ The Supreme Court ruling in *Prigg* presaged the coming battles between proslavery and antislavery forces. In the 1840s, the Supreme Court ruled for the former over the latter, much as they would in the 1850s.

Prigg ruled that states could not impede fugitive slave recovery, even though the Fugitive Slave Act of 1793 did not explain how states were to implement recovery. As the Tenth Amendment reserved, to the states, all powers not given to the federal government, the states had an obligation to assist with fugitive recovery, but were free to determine how to do so. Story's ruling in *Prigg* blurred these clear federalist boundaries. By assuming that any state process that could extend recovery time or inject state officials into the process was an attempt to undermine fugitive recovery, Story accomplished two things. First, he achieved his goal of nationalizing laws and, thus, did strengthen the national government, if only in theory. At the same time, the decision undermined its enforcement. The national harmony that he sought to establish

⁵⁰ Ibid.

would break down, in part, over the confusing legal reasoning and legal loopholes left in his ruling.

Story seemed to imply to states that it was their prerogative whether to abide by the ruling. He knew what states *should* do, but could not *make* them do it. Since the right to be secure in one's property was a natural right that existed above state and federal law, in his view, "the states cannot therefore, be compelled to enforce them; and it might well be deemed an unconstitutional exercise of the power of interpretation, to insist, that the states are bound to provide means to carry into effect the duties of the national government, nowhere delegated or entrusted to them by the constitution."⁵¹ Story was so adamant that fugitive slave recovery lie within the sole domain of the national government and thus be safe from the meddling laws of northern legislatures, that he created a situation where the Constitution could not compel states to act in its maintenance, given how distant slavery was from their legal purview.

Chief Justice Roger Taney wrote a concurring opinion, which differed slightly on some key points.⁵² Taney noted a glaring loophole within Story's ruling: "according to the opinion just delivered, the state authorities are prohibited from interfering, for the purpose of protecting the right of the master, and aiding

⁵¹ Enfacto. *Prigg v. Pennsylvania*. 41 U.S. 539 (139).
<http://www.enfacto.com/case/U.S./41/539/>.

⁵² Ibid.

him in the recovery of his property.”⁵³ While praising the nationalization of the fugitive slave issue, Taney noted that:

In other words, according to the opinion just delivered, the state authorities are prohibited from interfering, for the purpose of protecting the right of the master, and aiding him in the recovery of his property. I think, the states are not prohibited; and that, on the contrary, it is enjoined upon them as a duty, to protect and support the owner, when he is endeavoring to obtain possession of his property found within their respective territories.⁵⁴

Taney recognized the constitutional duty to protect the rights of slaveholders to feel secure in their property. More importantly, it seems, Taney recognized this type of property was mobile. As a slave could flee to any part of the Union, it was the duty, in his view, of every government, state or federal, to uphold the right of slaveholders to hold slaves. This meant assistance with fugitive recovery. In sum, Taney sounded alarm bells over the fact that Story had allowed states to opt out of a process of recovery. His fear was the result of his belief, expressed in an 1832 letter to Edward Livingston while serving as U.S. attorney general, that “the African race in the United States even when free, are everywhere a degraded class, and exercise no political influence.”⁵⁵ Taney was a native Marylander who had freed slaves inherited from his father early in life. Nevertheless he contended

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Daniel Walker Howe. *What Hath God Wrought: The Transformation of America, 1815-1848*. (New York: Oxford University Press, 2007), 442.

that slavery was the natural place of African-Americans, and anything that facilitated escape from that situation was to be avoided.

Taney believed that in his effort to afford slavery federal protection, Story had denied the institution state protection and had enabled state assault on it. Justice Story recognized the loophole shortly after the *Prigg* decision and recommended a legislative program to address it. He wrote to Senator John M. Berrien of Georgia (and former U.S. Attorney General) that Congress could create fugitive slave commissioners in every county of the United States of America under the auspices of a federal bankruptcy bill. “This might be done without creating the slightest sensation in Congress,” Story contended, wagering that “if the provision were made general...It would then pass without observation.”⁵⁶ In a suggestion that anticipated much of what citizens would find objectionable in the Fugitive Slave Act of 1850, Story suggested that federal courts “would appoint commissioners in every county, & thus meet the practical difficulty now presented by the refusal of State Magistrates.”⁵⁷ Sensing the incendiary politics of the issue while not quite grasping them, he added that it would be “unwise to provoke debate to insert a Special clause in this first section, referring to the

⁵⁶ Story to John Macpherson Berrien, April 29, 1842, in John Macpherson Berrien Papers, Southern Historical Collection, University of North Carolina, (quoted in) Paul Finkelman. “Story Telling on the Supreme Court: *Prigg v. Pennsylvania* and Justice Joseph Story’s Judicial Nationalism.” *The Supreme Court Review* (1994), 1994: 249.

⁵⁷ *Ibid.*

fugitive Slave Act of 1793.”⁵⁸ Story suggested, “Suppose you add at the end of the first section: ‘& shall & may exercise all the powers, that any State judge, Magistrate, or Justice of the Peace may exercise under any other Law or Laws of the United States.’”⁵⁹

These tax commissioners, Story added, would enforce all the laws of the land. Story suggested that Congress could create an army of fugitive slavery officers, ostensibly appointed as tax commissioners, to address the loophole created by *Prigg*, right under the eyes of any unsuspecting anti-slavery legislators.

Story further noted:

because State Magistrates now generally refuse to act, & cannot be compelled to act; and the Act of 1793 respecting fugitive slaves confers the power on State Magistrates to act in delivering up Slaves. You saw in the case of *Prigg*...how the duty was evaded, or declined. In conversing with several of my Brethren on the Supreme Court, we all thought it would be a great improvement, & would tend much to facilitate the recapture of Slaves, if Commissioners of the Circuit Court were clothed with like powers.⁶⁰

Story turned to Berrien to implement legislative remedies in an effort to end the ambiguity caused by the unintentional loophole in his ruling.⁶¹ Historian William Freehling has documented the close relationship that Justice Story and Senator

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid. These ideas would be incorporated into the Fugitive Slave Law of 1850. Finkelman, “*Prigg v. Pennsylvania and Northern State Courts*,” 16.

⁶¹ William W Freehling. *The Road to Disunion: Secessionists at Bay, 1776-1854*. (New York: Oxford University Press, 1990), 436.

Berrien shared, and even called Berrien “the faction’s senior senator,” in reference to his devotion to proslavery principles.⁶² Nevertheless, Taney’s concerns about the loophole would be seized upon by various legislatures in the years to come.

While the Supreme Court had offered what they thought was finality to the issue of fugitive slave recovery, the Court’s ruling would contribute to the increasing sectional tensions in the period from 1842 to 1850.

⁶² Ibid.

Chapter 2

REACTIONS AND RESPONSES TO *PRIGG V. PENNSYLVANIA*

Introduction

In January 1842, while *Prigg v. Pennsylvania* was being argued in the Supreme Court, abolitionist Gerrit Smith delivered the keynote address at the Antislavery Convention in Peterboro, New York. “We rejoice with all of our hearts,” he said, “in the rapid multiplication of escapes from the house of bondage.”⁶³ Confident in the ability of Northern personal liberty laws to provide sanctuary to runaway slaves, Smith openly encouraged desertion from slave plantations: “the fugitive need feel little apprehension, after he has entered a free State.”⁶⁴

Two months later, the outcome of *Prigg v. Pennsylvania* raised much more than apprehension among fugitive slaves and antislavery advocates. The Supreme Court delivered an ostensibly proslavery ruling by asserting federal authority over fugitive slave recovery. More specifically, it overturned any state law that sought to interfere with the recapture of fugitive slaves. While the Constitution and the Fugitive Slave Act of 1793 directed states to aid in the recovery of fugitives, these documents made no explicit reference regarding how that should be done. Individual states, such as Pennsylvania, passed laws to facilitate the process. The Supreme Court, however, cloaked fugitive slave

⁶³ Stanley Harrold. *The Rise of Aggressive Abolitionism; Addresses to the Slaves*. (Kentucky: University Press of Kentucky, 2004), 157.

⁶⁴ *Ibid.*

hunters with federal protection such that no state law could stifle the fugitive recovery process. The Court's decision, argues Jeffrey Rogers Hummel, "granted slaveholders the right to recapture slaves using private force, without going through any legal process, state or federal."⁶⁵

Opponents of slavery were not united by the Supreme Court ruling. Rather, the already factionalized antislavery community remained divided, advocating different responses to the ruling. This chapter presents rhetorical, legal and political reactions among antislavery advocates in the immediate aftermath of the March 1842 ruling. Some individuals and groups raised alarm that with state laws designed to protect African Americans overturned, free black citizens would be subject to kidnapping. Free citizens had no recourse when out-of-state fugitive slave hunters arrived in their towns and counties. Some within the antislavery movement agitated for legal and political changes while others saw the Supreme Court ruling as a breaking point and begin to agitate for dissolution of the Union. Still others advocated violence in the wake of the ruling. As for fugitive slaves, the ruling caused some individuals to hasten movement out of the United States into Canada.⁶⁶

This chapter focuses on the year following the March 1842 ruling for three reasons. The initial reactions illustrate the pro-slavery nature of the ruling as well as capture a moment in time before antislavery advocates exploited the legal

⁶⁵ Jeffrey Rogers Hummel. *Emancipating Slaves, Enslaving Free Men*. (Chicago: Open Court Publishing, 1996), 54.

⁶⁶ Peter C. Ripley (ed.). *The Black Abolitionist Papers (Volume III: The United States, 1830-1846)*. (Chapel Hill: University of North Carolina Press, 1991), 383.

loophole created by the Court's ruling. Secondly, this is important because it shows various factions of a movement unhappy with the ruling grasping for ways to endure or grudgingly implement the Supreme Court mandates. Lastly, the reactions to the ruling constitute another critical episode in the rising sectional tension in antebellum America. The year after *Prigg* was profoundly important because it touched a variety of political actors and citizens.⁶⁷

Legal Protections for Free Black Citizens

One reaction to *Prigg v. Pennsylvania* focused on what appeared to be the ability of slaveholders to seize blacks who were legally free and, possibly, citizens. Writers presenting this view believed the rights of American citizens were endangered by the possibility that non-slaves could find themselves kidnapped. One writer depicted the feared scenario:

⁶⁷ The search engine used to locate historical documents was <http://www.genealogybank.com>. A search of that database using the words "Prigg," and "Pennsylvania," focusing on the year 1842 yielded 46 results. To contrast, using the search terms "Dred" and "Scot" focusing on the year 1857 yielded 2,140 items. Clearly, as we shall see, the Supreme Court decision seems to have been intensely, but not widely, discussed. At the same time, broadening the search terms to include the words "Margaret" and "Morgan," while including "Prigg" and expanding the dates from 1837-1850, yields an additional 76 results. A search of "Margaret" and "Morgan" for the same date range yields 3,161 items. However, this is misleading as the database is recovering any mention of Margaret Morgan, a common enough name. The writer is assuming the name Prigg, as well as Dred Scot, is unique enough to yield valid results. While comparing the two terms is useful in gauging how widespread reaction was to the aforementioned events, it must be remembered that 1842 and 1857 were two very different periods with regard to sectional tension. This thesis argues that the events of *Prigg v. Pennsylvania* would be one of the many factors that would lead to the amplified sectional hostility in 1857, even if this was not clear to the citizens of 1842. Indeed, because it has not received attention by historians, this thesis attempts to demonstrate how underappreciated this historical event has been.

any unprincipled kidnapper may come... and forcibly arrest any colored citizen, carry him before any justice of the peace of his own selection, make a false oath that such colored person is his fugitive slave, and without trial by jury or by any respectable court of law, may transport such person...to Texas or the West-Indies and sell him as a slave, never to be heard of afterwards.⁶⁸

As historian Walter Johnson has documented, these types of kidnappings did occur: “The shades of legality in which the traders dealt sometimes crossed into outright kidnapping.”⁶⁹ Thus, black citizens in 1842 found themselves at greater risk of being kidnapped into slavery. This conflict would occur without the aid of any state law or organization for protection. After *Prigg*, fugitive slave hunters could act under the notion that black did, indeed, equal slave.

Also in jeopardy were the states’ rights to protect their own citizens. One newspaperman wrote, “The effect of this decision seems to be, to deprive the States of all power of affording protection to its colored free citizens. The State institutions, in relation to those of the Union, are constantly losing, and the United States institutions accumulating, authority, jurisdiction and supremacy.”⁷⁰

Another journalist warned, “The whole doctrine of State Rights is at stake. If a state may not protect its own native born citizens *what may it do?*”⁷¹

⁶⁸ *Boston Daily Courier*, March 10, 1842.

⁶⁹ Walter Johnson. *Soul by Soul: Life Inside the Antebellum Slave Market*. (Massachusetts: Harvard University Press, 1999), 128.

⁷⁰ *Boston Daily Courier*, March 10, 1842.

⁷¹ *Portsmouth Journal of Literature and Politics*, March 12, 1842.

Ohio, which shared a border with the slave states of Virginia and Kentucky across the Ohio River, faced the very real possibility of slave hunters crossing their borders and kidnapping free citizens. Their presence in pursuit of fugitive slaves put free black citizens at heightened risk of kidnapping. “Let a slave catcher lay hands on a free colored person in Ohio, and drag him into slavery, and how can he be punished?” a Cincinnati journalist wrote. “Not a single legal security has a single citizen of this State, against the acts of violence of the two hundred and fifty thousand slave holders of this republic.”⁷²

These writers were not necessarily expressing an antislavery view but rather a concern with the federal government trumping states’ laws and rights. When one considers that “black males lost the right to vote in Connecticut in 1818, Rhode Island in 1822, in North Carolina in 1835, and in Pennsylvania in 1838,” and that “of the states admitted after 1819, every state but Maine disenfranchised African Americans,” it becomes easy to understand the alarm lay not with protecting the rights of fugitives, but in the fear that overturning personal liberty laws undermined state authority to protect citizens it deemed free.”⁷³ As a contemporary correspondent argued, “It is not so much against the power of

⁷² *The Philanthropist*, March 30, 1842. Slave hunters were already targeting fugitive slaves in Ohio because “the underground railroad was expanding nowhere more rapidly than in the Ohio River Valley [in the 1840s]. Once across the river, fugitives who managed to make contact with the railroad could, with some confidence, hope to pass in safety from town to town and from farm to farm all the way to the Great Lakes [into Canada].” Fergus Boredwich. *Bound for Canaan: The Epic Story of the Underground Railroad, America’s First Civil Rights Movement*. (New York: Harper Collins Publishers, 2005), 196.

⁷³ Walker Howe. *What Hath God Wrought*, 497.

taking away in this manner an actual fugitive slave, fully proved to be such, that complaint is made, as the manifest injustice of deciding whether a man IS free or a slave, upon such dangerous evidence, by such summary process, and without intervention of a jury.”⁷⁴

This fear of citizen kidnappings led another contemporary writer to call for “a new discussion on the principles of and practice of slavery” which would be “more thorough than anything we have had yet.”⁷⁵ This discussion, involving the “enlightened of all classes and all parties,”⁷⁶ would lead, the writer imagined, to petitions pouring into Congress to amend the Constitution. These changes would not outlaw slavery but would regulate the recovery of fugitive slaves and provide “adequate penalties for every manifest perversion of the right to purposes of kidnapping or malevolence.”⁷⁷

The Antislavery Political Reaction

Another reaction to *Prigg v. Pennsylvania*, voiced by several high-profile politicians, William Seward chief among them, focused on what these politicians saw as the Supreme Court’s arrogation of federal power. They argued that the Supreme Court had overstepped its constitutional authority by giving the federal government additional powers in overturning state laws dealing with fugitive slave recovery. However, just as modern scholars have had a hard time

⁷⁴ *Boston Daily Courier*, March 10, 1842

⁷⁵ *Portsmouth Journal of Literature and Politics*, March 12, 1842.

⁷⁶ *The Jamestown Journal*, March 17, 1842.

⁷⁷ *Portsmouth Journal of Literature and Politics*, March 12, 1842.

deciphering the mercurial ruling, so, too, did many contemporaries. Politicians such as William Seward and John Quincy Adams did not react to specific aspects of the ruling, but to the general idea that it was a proslavery decision. It may be that these politicians used the results of *Prigg* to bolster a case they had already made about the influence of slavery on the political landscape. In sum, *Prigg* explained a climate of opinion in the wake of the decision that is relevant to the issues it raised.

At the time of the *Prigg* decision, Whig New York Governor Seward saw the slavery issue as one that only the Whig and Democratic parties were capable of dealing with. He saw the political process as the arbiter of the slavery issue. Third parties and abolitionists were an irritant to the problem, not a solution. To allow other parties access to the political process would upend the tenuous balance and throw the country into turmoil. In Seward's view, argues Doris Kearns Goodwin, "the Democratic Party, with its strong base in the South, would always be the party of slavery, while the Whig Party would champion the antislavery banner, 'more or less,' depending on the 'advancement of the public mind and the intentness with which it can be fixed on the question of slavery.'"⁷⁸ This may be an accurate surface reading of the political landscape in the 1840s, but the reality was more complicated. The very fact that the Whig party was able to balance, internally, pro and antislavery interests stood as testament to the fragility of this national party. The party would disintegrate at the sectional level

⁷⁸ Doris Kearns Goodwin. *Team of Rivals: The Political Genius of Abraham Lincoln*. (Simon and Schuster: New York, 2005), 111.

in the 1850s, in part, over the Compromise of 1850. It is quite possible that the *Prigg* descision hastened this process.

In the 1840s, for Seward, party allegiance would trump antislavery sentiment. The Whig Party was in no mood to disrupt a sectional balance that had won them the presidency in 1840. Thus, Seward was “disheartened by the Whig Party’s current lukewarmness on the Subject of Slavery,” while continuing to hope for “a more advanced position in the future.”⁷⁹ The *Prigg case* seems to have provided the justification for movement towards that position. The year 1842 was the same year that Seward said, on not leaving the Whig Party, “To abandon a party and friends to whom I owe so much, whose confidence I do in some degree possess, would be criminal, and not more criminal than unwise.”⁸⁰ In 1842, the idea of leaving the Whig Party was anathema to him as the proslavery principles of the Democratic Party did not appeal to him. This left no other political party to secure him power. The sectional tension of the 1840s would change that. Thus, party allegiance, at this moment in time, was critically important to Seward. However, the slavery issue as a political topic was becoming more prominent, partly in response to *Prigg*. Seward was quick to note his “profound respect” for the Court, but was not swayed by their judicial logic: “The ruling fails to satisfy us.”⁸¹ Seward’s pithy response was indicative of

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ (quoted in) Noguee, Joseph. “The Prigg Case and Fugitive Slave, 1842-1850: Part I” *The Journal of Negro History*. (39:3): 1954, 196.

many opposed to slavery. By introducing a judicial solution to the problem of slave recovery, Story had introduced further sectional tension in a time when two political parties, Whig and Democrat, were committed to avoiding it.

Former president and then Representative from Massachusetts John Quincy Adams had a more vociferous reaction. He viewed the decision as another way in which the Slave Power was trying to gain ascendancy. As Hummel contends, “The entire Texas saga (was viewed) as an elaborate plot of what abolitionists referred to as ‘The Slave Power.’” The plot dated back to before the Texas Revolution. If the extensive territory the Texans claimed was added to the Union, it might become as many as four or five new states and carry slavery north of the Missouri Compromise line.”⁸² In sum, the Slave Power Thesis articulated the notion of a national conspiracy to keep slaveholders in political ascendancy at any cost. The proslavery nature of the *Prigg* ruling seems to have been fuel for the conspiracy fire, even if the specifics of the ruling escaped observers.. Contemporaries may not have understood the chemical nature of fire, in another words, but they knew it was hot.

In a speech in September of 1842, Adams articulated the notion that the Slave Power not only sought territorial acquisition but also sought to impose added protections for slavery in territory already incorporated into the Union. Framing his speech with the narrative of the spirit of the American Revolution, Adams continued, “Mr. Tyler's confidence in his Attorney General's advice, must

⁸² Hummel *Emancipating Slaves, Enslaving Free Men*, 81.

have rested on the stronger pillar of a slave-holding Supreme Court.”⁸³ Thus, Adams linked the perceived tyranny of King George III with the supposed tyranny of President John Tyler.

Prigg seems to have facilitated the rising of sectional tension. Both President John Tyler and John Quincy Adams were members of the Whig Party. Tyler had been ushered into office in the wake of William Henry Harrison’s death. The *Prigg* decision afforded Adams an opportunity to reject party commitment in favor of antislavery principles. Just as King George III had, at his disposal, a cadre of advisors to implement neo-mercantilism policies designed to raise revenue in the wake of the Seven Years War, so, too, did John Tyler have advisors helping him in the office of Attorney General and the decisions of the Supreme Court. And their task was, “with the recorded reasoning . . . of the more recent case of *Prigg vs. the State of Pennsylvania*, there is as little favor to be expected from their decision, when the act of a brother slave-holder President of the United States comes in conflict with the first principles of human liberty.”⁸⁴ Their task was, then, to coordinate, at all levels of government, an expansion of slavery at the expense of the ‘first principles of human liberty.’ For Adams, this is what occurred in the recent court case.

Calls for Disunion

While antislavery politicians and political parties were committed to maintaining the Union, others, such as abolitionist William Lloyd Garrison, raised

⁸³ Ibid.

⁸⁴ Ibid.

a call for disunion in the wake of the *Prigg* ruling. Garrison, born in 1805, was the:

son of a drunken sailor who had abandoned his family, grew up in a poor but piously Baptist household in Newburyport, Massachusetts. He served as a printer's apprentice and then made his first notable mark on antislavery activism when he went to jail rather than pay a fine for libeling as a "high robber" and "murderer" a New England merchant who shipped slaves between Baltimore and New Orleans.⁸⁵

Garrison went on to publish the abolitionist weekly *The Liberator* beginning on January 1, 1831. Garrison called for immediate emancipation of slaves, without any compensation to slaveholders, and for immediate political rights for all blacks.⁸⁶ In 1833, Garrison helped to organize the American Anti-Slavery Society which, seven years later, had two thousand local societies with 200,000 members.⁸⁷ Garrison "more than anyone else," argues Stanley Harrold, "shaped American abolitionism during the 1830s."⁸⁸

Garrison recognized that the federal government had taken a strong step by asserting federal control over fugitive recovery. "By this decision," he thundered, "the personal liberty of every inhabitant of the Free States is placed at

⁸⁵ Ibid 20.

⁸⁶ Ibid 21.

⁸⁷ Ibid.

⁸⁸ Harrold, *The Rise of Aggressive Abolitionism*, p. 11. Abolitionists were, by no means, a majority anywhere in the Union, estimated to be only 2 percent of the population. Though small in number, abolitionists and free black communities were "the most common targets of mob violence in the 1830s." Howe, *What Hath God Wrought*, pp. 652 and 426.

the mercy of a single judge, selected by his enemy.”⁸⁹ For Garrison, the specifics of *Prigg* were less important than the proslavery agenda it advanced. While Garrison had long pondered solutions to the national problem of slavery, for the first time, and in direct response to the Supreme Court ruling, he forcefully urged secession. Promoting this position, Garrison could uphold his strategy of moral suasion and nonviolence while moving toward the North becoming “a haven for runaway slaves.”⁹⁰

The Supreme Court decision, in his eyes, was an important piece of the conspiracy of slaveholders to subvert the republic, and Garrison sought to convince northerners to secede with fiery rhetoric.

If the Constitution shall still be held to be a Lie to us LET THE CONSTITUTION PERISH! If the bond of this boasted Union be indeed but links of iron, binding our free limbs to the triumphal car of slavery, as it crushes beneath its wheels all that we hold most dear, MAY THE UNION BE SHIVERED, AND THAT SPEEDILY, INTO A THOUSAND FRAGMENTS!⁹¹

While Garrison did not, in all likelihood, grasp the subtlety in his argument, retrospection affords that opportunity. As Hummel has noted, “Slavery flourished because the country’s political and legal structures socialized its enforcement costs...we can now understand why Garrison’s call for disunion posed such a danger to the peculiar institution. Northern secession represented an effective

⁸⁹ Howe. *What Hath God Wrought*, p. 432.

⁹⁰ Hummel. *Emancipating Slaves, Enslaving Free Men*, 21.

⁹¹ *Ibid* 17.

way to eliminate this subsidy to slaveholders.”⁹² According to Hummel, by leaving the Union, Northern states were no longer obliged to assist in fugitive recovery. As slaveholders were seeking to nationalize the issue of fugitive recovery, a new nation of Northern states opposed to assisting with fugitive recovery could prove dangerous for the institution of slavery. For Garrison and his followers, voting was useless and holding office was pointless since the laws themselves were susceptible to the machinations of the Slave Power. The only successful tactic was removal from a proslavery United States, along with the legal and judicial supports that kept slavery in place. Garrison tried to tap into Americans’ predilection to suspect conspiracies against them by using the events of *Prigg* to support the case for a Slave Power conspiracy.⁹³ Whether or not this was a realistic position is not as important as the perception that Garrison, an influential member of the abolitionist community, believed a conspiracy was afoot.

Abolitionists like Garrison were a radical minority yet the ideas he presented fed into slaveholder fears. “Southern slaveholders viewed American abolitionists as part of an international movement steadily encircling them,”

⁹² Ibid 55.

⁹³ Whether or not such a “power” existed is not debatable, as historian Daniel Walker Howe notes. “The ‘slave power’ of which abolitionists and free-soilers complained was no figment of their imagination.” Indeed, Howe has remarked, “Americans had a long standing suspicion of conspiracies against them. Their recurrent fear of conspiracy had manifested itself in some ways well justified and other less well justified, against such varied targets as George III’s ministries, deistic ‘Bavarian illuminati,’ rebellious slaves, and, most recently, Freemasonry.” Howe. *What Hath God Wrought*, 512.

argues Hummel.⁹⁴ Abolitionists were, at best, “a tiny minority in the North,” but “they definitely were heard – especially in the South.” A wave of newly independent nations in Central and South America were declaring independence and abolishing slavery in the nineteenth century. The British West Indies abolished slavery in 1833, and France and Denmark followed suit, in 1844, for their colonies, as well. By 1850, slavery persisted in the United States, Puerto Rico, Cuba and Brazil, “although the total slave population in the Western Hemisphere was larger than it had been a half century earlier.”⁹⁵ The number of slave societies were decreasing while the numbers of slaves in the United States were growing. Thus, just as Garrison felt a conspiracy of slaveholders were threatening the ideals of the republic, many slaveholders began to fear an abolitionist conspiracy to deprive them of their property. Slave power conspiracy theorists and abolitionist conspiracy theorists were complementary. Any proslavery or antislavery activity guaranteed to feed into this sectional hostility. *Prigg*, it seems, did just that. The extraordinary agitation that some abolitionists unleashed over *Prigg* did feed growing sectional tension. The unpopularity of abolitionists did not reside only in the South. One Northern Congressman went so far as to say, of abolitionists, “When gentlemen pretending to the love their county would place the consideration of a handful of degraded Africans in the one

⁹⁴ Hummel. *Emancipating Slaves, Enslaving Free Men*. p. 23.

⁹⁵ *Ibid* 22.

scale, and the Union in the other, and make the latter kick the beam, I would not give a fig for their patriotism.”⁹⁶

The height of southern reaction to abolitionist speech came in the 1830s. Yet, each episode of pro and antislavery argument seemed to make the radical fringe more mainstream. As an example, in the 1830s, proslavery advocates had come to declare slavery as an unqualified good. Partly, this was in response to an initial wave of abolitionist literature. *Prigg* unleashed a new wave of Garrisonian thunder. The mutually suspicious pro and antislavery activists seemed to take each action of the opposition as evidence of a conspiracy. Garrison’s reaction to *Prigg*, more than likely, primed slaveholders for the second wave of personal liberty laws that would come to pass in 1843. Garrison could issue hundreds of editorials on the subject of slavery and use “newer and cheaper printing technologies to flood the South with anti-slavery tracts,” according to Hummel.⁹⁷ The perceived threat of abolitionists had led several states to pass laws to censor free speech on this issue. In Virginia, “advocating abolition” became a felony and Louisiana “established a penalty ranging from twenty-one years hard labor to death for speeches and writings “having a TENDENCY to promote discontent among free colored people, or insubordination among slaves.”⁹⁸ The Georgia legislature had even offered a reward of \$5,000, in 1831, for anyone who would

⁹⁶ Ibid 27.

⁹⁷ Ibid. 26.

⁹⁸ Ibid. 25.

kidnap Garrison and bring him south for trial and punishment. Only Kentucky, among the slave-state legislatures, did not pass a law censoring free speech.⁹⁹

In the political climate and sectional tension of the 1840s, in response to the *Prigg* ruling, Garrison clearly had a hand in amplifying the sectional tension. His literature and speeches, facilitated by technology, reached a large audience and introduced an angry and militant rhetoric that individuals like Seward and Adams were desperate to avoid, even if they embraced his anti-slavery leanings. In sum, Garrison refused to let the issue go away and the rhetoric he espoused, more than likely, went a long way towards increasing sectional tension.

Advocating Violence

The *Prigg* ruling also had a significant impact on African American abolitionists like Henry Highland Garnet. Garnet, born a slave in New Market, Maryland, escaped to Pennsylvania in 1824 with his family. Eventually settling in New York, Garnet studied theology and became a preacher for the Liberty Street Presbyterian Church. A member of the American Anti-Slavery Society, Garnet was a firm advocate of Garrison's nonviolent philosophy.¹⁰⁰ Before *Prigg*, Garnet had preached the doctrine of moral suasion and passive resistance to slavery. "I cannot harbor the thought for a moment that... [the slaves']

⁹⁹ Ibid. 26.

¹⁰⁰ Steven H. Shiffrin. "The Rhetoric of Black Violence in the Antebellum Period: Henry Highland Garnet." *Journal of Black Studies* 2:1 (1971): p. 49.

deliverance will be brought about by violence,”¹⁰¹ he stated in a speech the month *Prigg v. Pennsylvania* reached the Supreme Court.

The ruling, however, shattered Garnet’s hope of a peaceful resolution to the matter of slavery and he started to advocate for violent emancipation. As historian Steven Shiffrin has noted, “[Prigg] made it easier for slaveholders to recovery fugitive slaves, and Garnet was a fugitive slave.”¹⁰² Three months after having preached and pleaded for nonviolent resistance to slavery, Garnet stated at a Buffalo speech, directly in response to the *Prigg* decision, that he concurred “with the sentiment of Patrick Henry and solemnly. . .[declared] that we will have Liberty, or we will have death.”¹⁰³ “It is probable,” according to historian Steven H. Shiffrin, “that the Supreme Court decision of *Prigg v. Pennsylvania* was the proverbial straw that broke Garnet’s faith in nonviolence,” although he notes, “no conclusive evidence is available to tell us why Garnet changed his mind.”¹⁰⁴ Within a month of the *Prigg* ruling, Garnet exhorted a crowd in Buffalo: “Let your motto be RESITANCE! RESISTANCE! RESISTANCE! – No oppressed people have ever secured their liberty without resistance.”¹⁰⁵ This speech has been called “the most forthright call for a slave uprising ever heard in antebellum

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid 33.

America.”¹⁰⁶ While opposition, for Garrison, Seward, and Adams, may have been passionate, it was academic. Garnet faced the very real threat that *Prigg* made his recovery, as a fugitive, much easier.

Garnet’s views were not widely embraced within the abolitionist movement. “Garnet’s invocation of an assertive black masculinity disturbed white Garrisonians, who feared its violent potential,” explains Shiffrin, “It also disturbed such black abolitionists as Douglass.”¹⁰⁷ Even the American Antislavery Society condemned Garnet’s address, noting “that man knows nothing of nature, human or Divine, - or of character, - good or evil, who imagines that a civil or servile war would ultimately promote freedom.”¹⁰⁸ His enflamed rhetoric did not lead to any uprisings or massive slave revolts. Still, it is fair to say that his address, given in the wake of *Prigg v. Pennsylvania*, “anticipated John Brown’s raid and the Civil War.”¹⁰⁹ While there is not a direct relationship between Garnet’s Address and the Civil War, it must be noted that the violent rhetoric certainly pushed forward the idea of violence being used to destroy slavery. Garnet took five years to publish his speech finding a much more

¹⁰⁶ Ibid 49.

¹⁰⁷ Ibid 96.

¹⁰⁸ Ibid 94.

¹⁰⁹ Ibid 149.

receptive audience in 1848, likely owing to the increased sectional tension that pervaded the 1840s.¹¹⁰

Leaving for Canada

Those most directly affected by the ruling, fugitive slaves, had few ways to respond to the *Prigg* ruling. Participating in any kind of legal challenge or formal political process was out of the question since they were not legal citizens with voting rights or representation. One fugitive slave living in New York, Samuel Ringgold Ward, wrote a letter to abolitionist Gerrit Smith to express his concerns. “The decision of the Supreme Court alarms me. I can see no kind of legal protection for any colored man’s liberty. Every thing [sic] is made as easy as possible for a kidnapper. How easy it is to seize a man & under pretense of carrying him before a U.S. Judge to take immediately south!”¹¹¹ Before *Prigg*, Ward, or even Garnet, could be confident of a jury trial more than likely sympathetic to his plight; now, there was nothing to stand between him and a fugitive slave catcher, cloaked in the authority of the federal government. Ward, who served as pastor of a Congregationalist church, shared his plans with Smith:

Without troubling you with a detail of them, let it suffice to say that my being born free – legally – is not susceptible to proof. I am resolved therefore to remove immediately to Kingston, Canada. I shall dispose of my other loose property to pay my debts and then resign my charge, and remove my family trusting indeed to an uncertain living in a distant land, but being sure of my liberty in a free land.¹¹²

¹¹⁰ Harrold. *The Rise of Aggressive Abolitionism*, 118.

¹¹¹ Ripley (ed.). *The Black Abolitionist Papers*, 383.

¹¹² *Ibid.*

Ward would move to Canada in the wake of the Fugitive Slave Act of 1850. It is likely, as evidenced above, that the *Prigg* decision forced him to wrestle with the decision to leave the United States. While he did not move in the 1840s, the sociopolitical political landscape of the United States was altered by the *Prigg* decision. The mental resolve Ward had achieved in response to the *Prigg* decision in the 1840s was implemented in the 1850s.

The most attractive refuge for runaway slaves in antebellum America was Canada. “After the War [of 1812],” argues Fergus Bordewich, “Canada openly welcomed runaways, especially those who were willing to settle in the strategically vulnerable region near the Michigan Territory, on the assumption that former slaves could be counted on to resist another invasion by the United States.”¹¹³ The Canadian geography provided a safer and more defensible terminus from where runaway slaves were more insulated from capture, although this still took place in places like Amherstburg and Windsor, across the river from Detroit. The Canadian government supported runaways through laws that protected runaways in theory and in fact. Additionally, runaways “were granted land and citizenship on the same terms as other immigrants, as well as the right to vote, a privilege that was enjoyed by free blacks in only a handful of Northern states.”¹¹⁴ Runaways in Canada were never safe from a slaveholder determined to

¹¹³ Bordewich. *Bound for Canaan*, p. 113.

¹¹⁴ *Ibid.*

reclaim his property. However, like the car thief who would rather exert his energies on a car without a sophisticated safety system in place, the distance, time and energy involved in reclaiming slaves living in Canada proved daunting. In sum, it was much safer and cheaper to kidnap a free black citizen living in the United States. The *Prigg* case overturned state laws seeking to inquire into the fugitive status of an accused runaway. This removed a major judicial protection that a falsely accused individual could rely on.

Canada had become such an attractive destination for those slaves inclined towards liberty that, “by the early 1840s, there may have been as many as twelve thousand former slaves living in Canada, the great majority of them in communities scattered across southern Canada West, present day Ontario.”¹¹⁵ Daniel Walker Howe estimates that “about thirty thousand escaped slaves settled in Ontario.”¹¹⁶ Given the removal of personal liberty laws, and the ideas of individuals like Garnet, it is fair to assume that *Prigg* had some part in the migration of fugitive slaves. The clumsy and complicated ruling’s specifics may have escaped antislavery activists and abolitionists. One thing was for certain, however, in their eyes: The Slave Power had showed its true colors and managed, with this court case, to usurp the judiciary.

Conclusion

While the responses to the *Prigg* decision varied amongst antislavery activists, no one questioned the importance of the Court’s ruling. No one, also,

¹¹⁵ Ibid 260.

¹¹⁶ Ibid 654.

seemed to grasp its precise meaning. The anger directed at the decision seemed not to rest on any specific grievance other than the fact that the Supreme Court seemed to have advanced a proslavery agenda. The intensity of responses seems to have been directed by the weight with which the decision could come down in an individual's life. For Seward, Adams and Garrison, the decision seems to have fed into their distrust and paranoia over the proslavery influence on the American sociopolitical landscape. As white men, however, the danger posed to their lives was minimal. For men like Ward and Garnet, fugitive slaves living in the United States, the reactions were much more forceful. The reactions were not focused on specific aspects of the ruling, but the plans to deal with it were. However, these agendas would be eclipsed by savvy politicians who would use the legal framework laid out by Justice Story to twist the *Prigg* decision to antislavery ends.

Chapter 3

A NEW SET OF PERSONAL LIBERTY LAWS FURTHER AMPLIFIES SECTIONAL TENSION

Introduction

The *Prigg v. Pennsylvania* ruling left a loophole that states exploited by passing laws designed to comply with the letter of the Supreme Court decision while undermining its spirit. Scholars have paid scant attention to the case, which had a larger effect on growing sectional tensions than they realize. William W. Freehling, however, points to its importance. “After the decision,” he argues, “many states passed so-called Personal Liberty laws, barring their officials from performing Washington’s fugitive slave chores. Disappearance of state bureaucratic aid left the federal nonbureaucracy unable to cope with slave runaways, as several post-*Prigg* incidents made clear.”¹¹⁷ In the background of Freehling’s characterization, sectional tensions heightened as a result of these new liberty laws. Thomas Morris and Paul Finkelman investigate the legal wrangling that took place following this case, but like Freehling they fail to recognize how critically the *Prigg* decision amplified sectional hostility after 1842.

This chapter argues that reactions and legal actions prompted by *Prigg v. Pennsylvania* did in fact increase tensions between Northern and Southern states. While these regions were already split by the practice of slavery, *Prigg* increased sectional cleavage over the issue of fugitive slave recovery, which had not been a central issue before this case. In this chapter, I discuss the personal liberty laws

¹¹⁷ Freehling. *The Road to Disunion*, 489.

enacted by several Northern states during the 1840s to illustrate how states became pitted against each other over the very problem *Prigg v. Pennsylvania* had sought to solve. I hope to demonstrate that *Prigg* is a more important cause of sectional tension than historians have tended to think.

A Turn About

Certain journals and newspapers pointed to the Supreme Court's ruling in *Prigg v. Pennsylvania* as a significant event. The *Portsmouth Journal of Literature and Politics* called it "the Most Important Legal Decision" and anticipated it would "create intense interest throughout the country."¹¹⁸ The *Jamestown Journal* ran an article stating, "The Supreme Court of the United States has just pronounced the most important decision which has proceeded from its bench for many years – perhaps ever."¹¹⁹

Newspapers published in Southern states generally expressed positive reactions to the ruling. The Supreme Court's decision, according to a writer in the *Baltimore Sun*, "is all that Maryland can desire, and will be particularly agreeable to the slave-holders of the South."¹²⁰ J.H. Thornwell, a Presbyterian theologian and firm defender of the rights of slave holders, noted, "We are happy to find that the Supreme Court of the United States has fully confirmed the interpretation

¹¹⁸ *Portsmouth Journal of Literature and Politics*, March 12, 1842.

¹¹⁹ *The Jamestown Journal*, March 17, 1842. This paper was located in Jamestown, Virginia, but chose to reprint a Northern, New York paper's reaction.

¹²⁰ *Ibid.* Again, yet another person leads analysis of the decision with some permutation of "if we understand it."

which we have given to this clause of the Constitution.”¹²¹ The right of slaveholders to own and recapture their property he declared “constituted a fundamental article, without the adoption of which the Union could not have been formed.”¹²² For Thornwell, any threat to the sanctity of slavery was a threat to republican liberty. Slavery protected, “the principles of regulated liberty” and supported “representative, republican government against the despotism of the masses on the one hand, and the supremacy of a single will on the other.”¹²³ Indeed, the guaranteed ability of masters to recover fugitives assured that “Christian paternalism would prove a stronger fortress against insubordination and rebellion than weapons of brass or iron.”¹²⁴ In guaranteeing fugitive recovery, in Thornwell’s eyes, the federal government could force recalcitrant slaves to stay in place until the ‘positive good’ of slavery took root and changed the slaves’ lives for the better. Thus, the Supreme Court ruling was no mere guarantor of a master’s ability to hold on to slavery, but a bulwark against the

¹²¹ James Henley Thornwell, “The State of the Country: An Article Republished From the Southern Presbyterian Review,” (1861) [online: <http://docsouth.unc.edu/imls/thornwell/thornwel.html>]. Thornwell stated, “The parties in this conflict [referring to the conflict over slavery] are not merely Abolitionists and slaveholders - they are atheists, socialists, communists, red republicans, Jacobins on one side, and the friends of order and regulated freedom on the other. In one word, the world is the battleground -Christianity and atheism the combatants; and the progress of humanity at stake.” Lacy K. Ford. *Deliver Us From Evil: The Slavery Question in the Old South*. (New York: Oxford University Press, 2009), 513.

¹²² Ibid.

¹²³ Ford. *Deliver Us From* , 513.

¹²⁴ Ibid 516.

forces that would seek to overthrow the cherished principles of republican liberty upon which the American experiment were based.

Yet such happiness was no longer evident in writings a mere five years later. Charles James Faulkner, a Virginian who served in his state legislature and Congress, wrote to Secretary of State John C. Calhoun in 1847:

Our slave property is utterly insecure. Slaves are absconding from Maryland and this portion of Virginia in gangs of tens and twenties and the moment they reach the Pennsylvania line, all hopes of their recapture are abandoned.¹²⁵

What had caused this turn about in just half a decade? Why was slave recapture seen as hopeless in the years after *Prigg v. Pennsylvania*? The answer lies in the Story ruling itself. As Justice Taney had pointed out at the time, states could interpret the ruling differently than Story had intended.

A New Set of Personal Liberty Laws

Because *Prigg* federalized fugitive slave recovery, states could direct their officers to remove themselves entirely from the process without breaking the law. Since the federal government did not have adequate resources in place to serve as the sole agent of fugitive slave recovery, the ability to recover fugitives would be weakened without support from the local officials. A ruling aimed at strengthening the power of slaveholders held the ability to weaken slaveholder power to recover fugitives. A proslavery ruling held the potential of creating an

¹²⁵ Chauncey C. Boucher and Robert P. Brooks (eds.). *Correspondence Addressed to John C. Calhoun, 1837-1849*. (Washington American Historical Society, 1929). (quoted in) Jeffrey Rogers Hummel and Barry R. Weingast. *The Fugitive Slave Act of 1850 – Symbolic Gesture or Rational Guarantee?* <http://politicalscience.stanford.edu/faculty/documents/weingast-the%20fugitive%20slave%20act.pdf>

antislavery landscape in states that moved to limit the power of slaveholders to use government mechanisms to recover fugitives.

Anti-slavery activists and legislators began to exploit this loophole. Staying within the law, Massachusetts, Vermont, Connecticut, New Hampshire, Pennsylvania, Ohio and Rhode Island were able to subvert *Prigg* by passing new personal liberty laws that forbade state officials from assisting in the recovery of fugitive slaves.

Massachusetts was the first state to act. As legislator Charles Francis Adams, son and grandson of a president, had argued, while states were powerless to defy fugitive slave statutes, they were well within their rights to set up the mechanism by which fugitive slave status was determined. In March 1843, one year after the *Prigg* ruling, the Massachusetts legislature passed the “Act Further to Protect Liberty.”¹²⁶ The new law forbade local judges or justices of the peace from certifying warrants for fugitive slaves. Any individuals seeking to regain fugitives would have to rely on federal courts in Massachusetts to certify removal. The law additionally forbade, “sheriff, deputy-sheriff, coroner, constable, jailer, or other officer of this Commonwealth,” from, “aid[ing] in the arrest or detention or imprisonment in any jail or other building belonging to this Commonwealth, or to any county, city or town thereof, of any person for the reason that he is claimed

¹²⁶ Morris. *Free Men All*, 125.

as a fugitive slave.”¹²⁷ Penalties for violating the state law were designed to ensure cooperation with state rather than federal authority. Violators could be fined up to one thousand dollars or be imprisoned in a county jail for up to a year.¹²⁸ In one legislative sweep, Massachusetts dramatically reduced the number of individuals able to assist slave hunters.

This law was popularly known as the Latimer law, after a high-profile case involving George Latimer, a black man who had fled slavery in Virginia and moved to Boston with his wife. When James Gray, the man who claimed to own Latimer, imprisoned the black man in a Suffolk County jail on larceny charges, several citizens of Massachusetts organized a Committee for Freeing Latimer. Finkelman argues that “Public pressure forced the jailer to release Latimer into his master’s custody but with no other facility available to restrain him, Latimer’s owner cut his losses by selling the slave [for four hundred dollars] to a group of abolitionists who immediately freed him.”¹²⁹

Massachusetts went a step further and passed a law to deploy state agents into the ports of Charleston, South Carolina, and New Orleans, Louisiana in an

¹²⁷ *Acts and Resolves Passed by the General Court (1663)*. Chapter 69 (University of Massachusetts: Boston), 81.

<http://www.archive.org/details/actsresolvespass184345mass>

¹²⁸ Ibid.

¹²⁹ Finkelman. “Prigg v. Pennsylvania and Northern State Courts,” 23.

effort to forestall the sale of abducted Massachusetts residents into slavery.¹³⁰

The legislature reasoned that “the perseverance of many states of the Union, against all remonstrance on part of Massachusetts, in seizing and imprisoning her citizens without allegation of any crime, is calculated to weaken the confidence she has in the good disposition of those States to maintain their engagements to the constitution of the United States inviolate.”¹³¹ The act stipulated the agent would be able to bring suit on behalf of the kidnapped individual and allowed the governor to post a warrant for the release of the prisoner during the duration of the trial.¹³²

The Liberator praised the law as an “effectual stopper on slave-hunting in the old Bay State” that would be “tantamount to an act of emancipation for all slaves who shall escape from the South.”¹³³ Other abolitionist journals suggested that the new liberty law would make the process of fugitive slave recapture impossible, and that it would, “spread rapidly through all the free States, arousing them all to a similar course.”¹³⁴

¹³⁰ *Acts and Resolves Passed by the General Court (1663)*. Chapter 67 (University of Massachusetts: Boston), 81.
<http://www.archive.org/details/actsresolvespass184345mass>

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *The Liberator*, April 7, 1843. (quoted in) Morris. *Free Men All*, 115.

¹³⁴ *The Latimer Journal and North Star*, May 10, 1843. (quoted in) Morris. *Free Men All*, 115.

Other states did soon adopt similar laws instructing their state officials to remove themselves, and their facilities, from the process of fugitive recovery. Vermont in 1843, Connecticut in 1844 and New Hampshire in 1846 passed personal liberty laws modeled after the Massachusetts law. The preamble of the Connecticut law alluded directly to the *Prigg* ruling by stating:

Whereas, it has been decided by the Supreme Court...that both the duty and the power of the legislation...pertain exclusively to the National Government...No judge, justice of the peace, or other officer appointed under the authority of this state shall be authorized, as such, to make, issue, or serve any warrant or process for the arrest or detention of any person claimed to be a fugitive for labor or service....¹³⁵

Pennsylvania passed a similar law in 1847 following a petition drive organized by the Pennsylvania Abolition Society during which, Morris argues, “more petitions were submitted to the legislature (over this matter) than at any time since the high point of 1837-38.”¹³⁶ The bill was read twice aloud in front of the legislature “with a minimum of debate and no recorded division” and passed quickly; the state senate followed suit.¹³⁷ Within a month, Governor Francis R. Shunk signed the bill into law. One abolitionist newspaper proclaimed, “Slavery in Pennsylvania has received its deathblow.”¹³⁸

¹³⁵ *Public Acts of Connecticut, May Session, 1844, 33-34.* (quoted in) *Ibid.*

¹³⁶ Morris. *Free Men All*, 125.

¹³⁷ *Ibid.*

¹³⁸ *Pennsylvania Freeman, March 11, 1847.* (quoted in) *Ibid.*

Ohio in 1847 and Rhode Island in 1848 also passed personal liberty laws. Not every northern state, however, enacted such legislation. A bill modeled after the Massachusetts law was introduced in the New York senate in 1847 but received an unfavorable review by the judiciary committee and died without further consideration.¹³⁹ Still, by 1850, seven states had some type of law on the books that obstructed the recovery of fugitive slaves.

As states passed laws to remove their officers and institutions from fugitive recovery, some state judges were “able to declare that they had no authority to hear cases involving fugitives, and to suggest claimants ought to seek a remedy in a federal court. Such a court might be hundreds of miles away and perhaps not even in session.”¹⁴⁰ These judges, like legislators passing new liberty laws, were still following the letter of law with regard to *Prigg*, even while they undermined the spirit of it. As historian Joseph Noyes has noted, “the law of 1793 [The Fugitive Slave Act] was a dead letter and Southern leaders knew it.”¹⁴¹

Territorial Expansion and Sectional Tension

While these laws took hold in response to the Supreme Court’s ruling in *Prigg*, another factor that became entwined with this sectional tension was territorial expansion. It is helpful, at this point, to review the sectional tension that existed over territorial expansion since arguments over land acquired from

¹³⁹ Morris. *Free Men All*, 125.

¹⁴⁰ Finkelman. “Prigg v. Pennsylvania and Northern State Courts,” 22.

¹⁴¹ Noyes. “The Prigg Case and Fugitive Slavery, 1842-1850.” 202.

the war with Mexico would eclipse the hostility unleashed by *Prigg*. While the Missouri Compromise had postponed sectional tension over territorial gains by linking Maine's admission with Missouri, questions over the acquisition of Texas upended this already fragile balance. As one historian has noted, "The worry about fugitive slaves would continue to gnaw at the southern psyche during every sectional crisis from the annexation of Texas up through Fort Sumter. Stephen F. Austin had helped lead the settlement of U.S. citizens within Mexico's province of Texas during the 1820s. At the outset of the Texas Revolution in 1835, Austin wrote his cousin "*Texas must be a slave country. It is no longer a matter of doubt. The interest of Louisiana requires that it should be. A population of fanatical abolitionists in Texas would have a very pernicious and dangerous influence on the overgrown slave population of that state.*"¹⁴² Southern paranoia over the ability to maintain slavery was increasing as, "The South was feeling increasingly isolated as one of the last citadels of chattel slavery in the entire world. The Texas question linked the country's traditional hatred of Britain with the southern fear of an abolitionist plot to destroy the peculiar institution."¹⁴³ Paranoia, mutual suspicion, and sectional hostility led abolitionists and slaveholders to create an environment in which both "conspiracy theories were mutually self-fulfilling. Belief in an abolitionist plot caused Southerners to behave just as the opponents

¹⁴² (quoted in) Jeffrey Rogers Hummel. "Deadweight Loss and the American Civil War." Ph.D. Diss. The University of Texas at Austin, 2001, 261.

¹⁴³ Hummel. *Emancipating Slaves, Enslaving Free Men*, 80.

of Texas annexation predicted, and belief in a Slave Power plot caused Northerners to behave just as the advocates of annexation predicted.”¹⁴⁴

With the conclusion of the Mexican-American War, “the single issue that commanded for abolitionists the greatest northern sympathy was slavery’s extension into new territories.”¹⁴⁵ With many northern states passing personal liberty laws, partisans like Calhoun perceived that the very foundation of slavery was under attack. If states were free to pass these personal liberty laws with impunity, incoming states could be assured of the same ability. Now, with new territory coming into the Union, the fight was on to gain legislative dominance and guarantee slavery’s protection. However, blocking additional territory “allowed Northerners to take steps against slavery in a distant sphere while honoring their constitutional obligation to leave the local institutions of the southern states alone. Here also was an antislavery position that could be made consistent with Negrophobia. Keeping slaves out of the territories was an excellent way to keep blacks out together.”¹⁴⁶ Thus, marginal abolitionist positions began to acquire an air of legitimacy.

Sectional tension increased over these territorial acquisitions as two very different legal philosophies of slavery took hold. “In one, slavery was stigmatized at the national level and legally permitted only at the state level. In the other,

¹⁴⁴ Ibid 82.

¹⁴⁵ Ibid 86.

¹⁴⁶ Ibid.

slavery was a national institution sanctioned and protected by the central government. These two irreconcilable visions of the Union would continue to clash until the Civil War.”¹⁴⁷ The clash over fugitive slaves fueled by *Prigg* played into this conflict as Justice Story definitively ruled in the camp of the latter interpretation, but state legislatures, owing to the federal “nonbureaucracy,” were implementing a vision that closely resembled the former vision.¹⁴⁸ The ability of states to direct officers to remove themselves from the fugitive recovery process drove straight to the heart of the matter of sectional tension and mirrored the sectional tension that was heating up over the role of slavery in newly acquired territory. This is why Calhoun was so insistent on the “legal right of slaveholders to take their human property into all the territories as a matter of principle, fearing that legal exclusion of slavery [and fugitive recovery, by default] implied moral disapproval of the institution and constituted the thin end of a wedge of eventual general emancipation.”¹⁴⁹

The issues of fugitive recovery and territorial acquisition were linked. Fugitive recovery may have been established by law, but without an effective mechanism to enforce it, many slaveholders, Calhoun most prominently, feared

¹⁴⁷ Ibid 88.

¹⁴⁸ As Freehling has noted, though there was no federal stigmatizing of slavery, the federal nonbureaucracy made it, at least in the eyes of many slaveholders, made it so as there were no federal mechanisms in place to compel states to act according to the wishes of slaveholders. See William W Freehling. *The Road to Disunion: Secessionists at Bay, 1776-1854*. (New York: Oxford University Press, 1990), 489.

¹⁴⁹ Walker Howe. *What Hath God Wrought*, 821.

for the sanctity of slavery. Any slave could run to a state that directed its officers to block recovery. Without a strong federal bureaucracy, Calhoun feared the slaveholder would be powerless. New territory, without effective fugitive recovery, added attractive options for runaway slaves. Thus, while the sectional tension in place over fugitive recovery in no way supplants the hostility unleashed by the Mexican-American War, this paper argues that a sole focus on the hostility located in newly acquired territory ignores the hostility resulting from the ability of slaveholders to guarantee fugitive recovery in already established states of the Union.

Tensions Mount

These new personal liberty laws were viewed by some in the South not only as legislative and judicial attempts to undermine fugitive slave recovery but also as attacks on the institution of slavery. “No proposition can be plainer,” Charles James Faulkner of Virginia wrote, “than that the slaveholding interest in this country is everywhere one and the same. An attack upon it here is an attack upon it in South Carolina and Alabama. Whatever weakens and impairs it here weakens and impairs it there.”¹⁵⁰ The satisfaction among slaveholders following the *Prigg* ruling by the Supreme Court seemed to have evolved into an utter contempt for the legislatures that were subverting the will of the United States

¹⁵⁰ Chauncey C. Boucher and Robert P. Brooks (eds.). *Correspondence Addressed to John C. Calhoun, 1837-1849*. (Washington American Historical Society, 1929). (quoted in) Jeffrey Rogers Hummel and Barry R. Weingast. *The Fugitive Slave Act of 1850 – Symbolic Gesture or Rational Guarantee?* <http://politicalscience.stanford.edu/faculty/documents/weingast-the%20fugitive%20slave%20act.pdf>

Supreme Court. Southerners found it “infuriating to have a fugitive set free by legal artifice.”¹⁵¹

The inflamed rhetoric that once characterized the post-*Prigg* abolitionist commentary shifted to pro-slavery Southerners. An 1849 report issued by the Virginia legislature stated that,

“[n]o citizen of the South can pass the frontier of a non-slaveholding state and there exercise his undoubted constitutional right of seizing his fugitive slave...without imminent danger of being prosecuted as a criminal kidnapper, or being sued in civil action for false imprisonment – imprisoned himself for want of bail, and subjected in his defence to an expense exceeding the whole value of the property claimed, or finally of being mobbed or being put to death in a street fight by insane fanatics or brutal ruffians.”¹⁵²

Instead of being more secure in their slave property, pro-slavery southerners by the end of the 1840s perceived themselves harassed and bullied by northerners even as they lived under a pro-slavery Supreme Court ruling made seven years earlier. Some slaveholders believed that unrecoverable fugitive slaves posed a threat to slavery’s maintenance. “Such hostile statutes could severely impede the slaveholder’s legal privilege to head north and personally retrieve his chattel. Not just abolition but any step that increased enforcement costs consequently threatened slaveholders with massive capital losses, as it depressed the value of the income stream from their chattels.”¹⁵³

¹⁵¹ Fehrenbacher. *The Slaveholding Republic*, 225.

¹⁵² Ibid.

¹⁵³ Hummel. *Emancipating Slaves, Enslaving Free Men*, 52.

Even Congress, in a report, noted the effect of these new set personal liberty laws:

What remedy have the slaveholding States now left for the enforcement of their Constitutional right to the delivery of their property escaping into non-slaveholding communities? They have the parchment guarantee of the constitution, without the ability to enforce it themselves, and with the hostile legislation of the non-slaveholding States to defeat them....¹⁵⁴

When they looked at the laws that had followed *Prigg*, slaveholders and the politicians that represented them saw the protections afforded to slavery evaporate. As historians Franklin and Schweninger have noted, "In 1860, there were about 385,000 slave owners in the South, among whom about 46,000 were planters. Even if only half of all planters experienced a single runaway in a year, and if only 10 or 15 percent of other slaveholders faced the same problem (both extremely conservative estimates) the number of runaways annually would exceed 50,000."¹⁵⁵ Thus, clearly slaves were running away.

Repeated calls from pro-slavery advocates emerged to change the constitution to undo the effect of the personal liberty laws passed by some Northern states. Without the ability of the South to recapture fugitive slaves

¹⁵⁴ "Senate Reports." *The Congressional Globe*. 31st Congress, 1st Session. 5. 1849-1851. <http://memory.loc.gov/ammem/amlaw/lwcg.html>. The use of the terms "parchment guarantee" references James Madison's warning that a Bill of Rights was only a theoretical check on federal power. Indeed, "James Madison was skeptical of the value of a listing of rights, calling it a "parchment barrier."

¹⁵⁵ John Hope Franklin and Loren Schweninger. *Runaway Slaves: Rebels on the Plantation*. (New York: Oxford University Press, 1999), 282.

themselves, and facing hostile legislatures, many slaveholders felt helpless and demanded that something be done:

A single clause of the act of 1793 is all that is left, and is a dead letter, so far as it regards the power of giving it practical efficacy. All that is left of it is the right to bring an action against those in the non-slaveholding states who may conceal, or protect from seizure, a runaway slave. The right to sue a mob of irresponsible persons, without the power of procuring witnesses, and before a tribunal administering justice in a hostile community: Who would venture such a litigation?¹⁵⁶

The concern over the inability to recover fugitive slaves seemed to emanate most strongly from states like Virginia and Kentucky. They perceived their ability to recover fugitive to be threatened because they bordered free states. If a fugitive was able to flee to a free state that had personal liberty laws on the books, the prospect of recovery was dim. While many slaveholders attempted to raise the clarion call that this was an issue that affected all slaveholders equally, it seems that the loudest calls of alarm emanated from border state slaveholders and legislators. It is interesting to note the regional variations in slave prices:

Slave prices fell [on average] as one approached the border with the free states. Of course, factors other than the risk of a bondsman running away could have caused north–south price differences. The Lower South grew most of the country’s cotton, and the Upper South grew very little. Yet this would hardly explain the chasm separating slave prices in Virginia and Maryland.¹⁵⁷

Upper South states earned a smaller return on slave sales. However, they were critical to the internal slave trade. As historian Lacy K. Ford notes:

¹⁵⁷ Hummel. “Deadweight Loss and the American Civil War,” 276.

With the foreign trade banned and the cotton revolution still on the march in the lower South, that region's demand for slave labor could be legally filled only by the importation of slaves from the Upper South. Demand for slaves in the domestic slave market provided an outlet for surplus slaves from the upper South, reduced the enslaved proportion of the upper South population, returned capital to the upper South, and supplied the desired labor for lower South staple growers.¹⁵⁸

Indirectly then, these new personal liberty laws possessed the ability to divert capital away from the Upper South. If slaves were able to abscond with impunity, the Upper South slave markets would not be able to provide labor to the Lower South slave markets. Slaveholders in the Upper South were aware of this and perceived this set of developments as a threat to the profit gained from their part in the domestic slave trade.

Some slaveholders in the Lower South were sensitive to problems introduced by making fugitive slave recovery more difficult. Senator John Calhoun was incensed over certain Northern states passing new personal liberty laws calling these actions "one of the most fatal blows ever received by the South and the Union."¹⁵⁹ By passing these laws, legislatures were undermining Prigg's pronouncement that gave national protection and sanction to fugitive slave recovery. In Calhoun's eyes:

The citizens of the South, in their attempt to recover their slaves, now meet, instead of aid and co-operation, resistance in every form; resistance from hostile sets of legislation, intended to baffle and defeat their claims by all sorts of devices, and by

¹⁵⁸ Ford. *Deliver Us From Evil*, 7.

¹⁵⁹ *Frederick Douglass' Paper*, 1849.

interposing every description of impediment –
resistance from judges and magistrates...¹⁶⁰

Calhoun considered these laws an indirect violation of a Constitutional provision and commented that “we doubt, taking it all together whether a more flagrant breach of faith is found on record.”¹⁶¹ One newsman responded to Calhoun’s manifesto by commenting, “It is nothing but the old story, without even a new vamp – the Missouri question – the case of Prigg – the Columbia District Slavery – the Abolition Societies of the North, etc, etc.”¹⁶² For this journalist, then, *Prigg* was something discussed alongside the most important events in antebellum America.

One must wonder why historians have underappreciated *Prigg*’s role in exacerbating sectional tension when so many linked the case to sectional tension in the 1840s. Several factors are likely involved.

For one, Prigg is overshadowed by territorial expansion, the cause most often associated with sectional tensions in the 1840s. With each new territorial acquisition a question arose: would slavery be legal there or not? “Florida and Texas had just joined the Union as slave states, and if newly captured California and Mexico, an area nearly twice as large as the new free-soil Oregon Territory, were also left open to slavery – to say nothing of any additional Mexican territory won by the United States – the South and its iniquitous practice would dominate

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² *Boston Daily Courier*, February 1, 1849.

American social, political, and economic life.”¹⁶³ With so much political power tied to ownership of slaves, territorial acquisition meant the securing of political power. Legislators could use this political power to expand or reduce the influence slavery had over the nation’s economic life. One could assume that the fight shifted from dealing with the idea of how to recover fugitives to guaranteeing that territory would be open to slavery. All of these problems were answered by the new Fugitive Slave Act of 1850. Thus, while territorial expansion overshadowed fugitive recovery, the two issues were linked.

Indeed, “the single issue that commanded for abolitionists the greatest northern sympathy was slavery’s extension into new territories.”¹⁶⁴ Blocking additional territory “allowed Northerners to take steps against slavery in a distant sphere while honoring their constitutional obligation to leave the local institutions of the southern states alone.”¹⁶⁵ The personal liberty laws in response to *Prigg* also raised the possibility that new territories could become places where fugitive slave recovery was difficult. If states were free to pass these personal liberty laws with impunity, incoming states could be assured of the same ability. New territory, without effective fugitive recovery, added attractive options for runaway slaves. Thus, the increasing tensions over fugitive recovery fed into the hostility surrounding the Mexican-American war and the issue of newly acquired territory.

¹⁶³ Richard Kluger. *Seizing Destiny: How America Grew from Sea to Shining Sea*. (New York: Knopf, 2007), 460.

¹⁶⁴ *Ibid* 86.

¹⁶⁵ *Ibid*.

Additionally, *Prigg v. Pennsylvania* is a dense legal case. What started as a kidnapping case turned into a flashpoint of political disagreement, animosity and suspicion. The trial of the four kidnappers ultimately led to a Supreme Court case that the implications of which ranged so far beyond the initial facts of the case, it is, as historian Paul Finkelman has commented, “not surprising that *Prigg* confuses modern scholars because contemporary observers were also confused.”¹⁶⁶ Given the amount of attention legal historians such as Thomas Morris and Paul Finkelman have given the case, we know that the legal scholars and lawyers have not neglected the case. However, situating the case within the socio-political developments of the day is no less important since the two issues were linked. Territorial expansion may have garnered more attention and generated the most vitriol, but lack of a mechanism for fugitive recovery also served to amplify sectional hostility in the 1840s.

Third, the Fugitive Slave Act of 1850, called “one of the harshest congressional measures ever,” in part mollified the tensions that followed on the heels of *Prigg*.¹⁶⁷ The Compromise of 1850 stated that the alleged fugitive enjoyed no right to a jury trial or even to testify. To enhance enforcement, Congress empowered commissioners to conscript the physical aid of any private citizen, thereby extending the principle behind compulsory slave patrols in the North. Obstructing the law could result in a \$1,000 fine, six months in prison,

¹⁶⁶ Finkelman. “Sorting Out *Prigg v. Pennsylvania*,” 628.

¹⁶⁷ Hummel, *Emancipating Slaves, Enslaving Free Men*, 94.

and \$1,000 civil damages for each escaped slave.”¹⁶⁸ Each of these provisions is a strong congressional counter to the personal liberty laws that many states had enacted throughout the 1840s.

One of the most contested parts of the Fugitive Slave Act of 1850, and one that highlights much of the regional difference that existed in the slaveholding South, was a proposed amendment from Senator Thomas George Pratt of Maryland. This amendment would have “required the U.S. Treasury to reimburse any slave-owner for the value of the escaped slave plus all legal expenses whenever northern hostility blocked return. Border South representatives tended to support this indemnity. Senator Jefferson Davis of Mississippi, and others from the deep and upper South, couched their adamant objections in states’ rights terms. But Lacy Turner Hopkins, Senator from Tennessee, revealed their paramount concern. By weakening the incentives to prevent flight and to recover fleeing bondsmen, the proposal’s effect “will be to emancipate the slaves of the border States and to have them paid for out of the Treasury of the United States.”¹⁶⁹ It is easy to deduce that slaveholders in the border and Upper South, then, were more concerned about the capital that slaves were bringing in. This bill would guarantee that capital investment, even if a slave were to flee. Thus, for some in the Upper South, the concern was not for the ability to maintain slavery, but to guarantee a financial return on a slave who wasn’t a central

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

component to their economy. “The successful runaway thus lowered the value of slaves who stayed behind,” writes Hummel.¹⁷⁰ Thus, the successful fugitive introduced market volatility into a business based on the buying and selling of human beings. When slaveholders thought slaves could abscond with impunity, this fear introduced downward pressure on prices in areas where slaves were perceived to have more access to flight. In essence, “Not every slave had to take off for the institution to be compromised. Just imagine how much investors would pay for shares of Microsoft stock, if a critical number of those shares might get up at any moment and run away. Southern planters were consequently quite concerned about the probability of successful escapes.”¹⁷¹ As it related to *Prigg*, the wave of liberty laws enacted in the wake of the decision impeded the slaveholder’s legal right to head north and claim his fugitive as slave property. As Hummel writes, “That is why Southerners demanded a tougher fugitive slave law. Preventing flight was of dire importance to the slave system. If blacks could simply obtain freedom by slipping across an open border, enforcement throughout the upper South was compromised, and the lower South would feel the repercussions.”¹⁷²

For slaveholders in the Lower South, Treasury reimbursement was not an option, as the labor provided from a slave was much more important than the

¹⁷⁰ Hummel. “Deadweight Loss and the American Civil War,” 251.

¹⁷¹ Ibid 260.

¹⁷² Ibid.

capital investment into the Upper South the slave purchase provided. Thus, once again, while many slaveholders seemed to have issued pronouncements intending to unite chattel owners against Northern aggression, even in 1850 sectional differences amongst southern slaveholders abounded. Border state economies, with ancillary ties to slavery, seemed to be introducing legislation that would guarantee financial returns on lost fugitives. Slaveholders from the Lower South seemed to be zeroing in on the philosophies and pronouncements of individuals such as John Calhoun who warned of the dangers of a society not committed to ensuring fugitive recovery. When viewed alongside the philosophies of Thornwell, apologist for the rights of slaveholders, who saw any threat to slavery as a threat to republican liberty, it is easy to see why the amendment generated such hostility from those committed to perpetuating slavery. Hiding behind the rhetoric of states' rights, "southern congressmen surrendered California to the North in exchange for a new Fugitive Slave Law," according to William W. Freehling.¹⁷³ Considering how much of the sectional tension of the 1840s was tied to the second wave of personal liberty laws, it is fair to see that, in part, the Fugitive Slave Act of 1850 was a "corrective" to the loopholes that Story unleashed in his *Prigg* ruling.

Conclusion

Prigg v. Pennsylvania was not the sole source of sectional tension in the 1840s. It was, however, a crucial source. Justice Story's decision and states' passage of liberty laws in its wake exacerbated regional mistrust. Created to solve

¹⁷³ Hummel. *Emancipating Slaves, Enslaving Free Men*, 289.

the issue of fugitive recovery, *Prigg v. Pennsylvania* served to confuse the issue further and broadened anti-slavery appeal by raising critical jurisdictional issues. *Prigg* began to broaden the appeal of anti-slavery forces, which, in turn, only strengthened the growing conflict. Thus, this court case and the legislative debate that echoed into the 1840s is a critical issue of importance in understanding sectional tension in antebellum America.

Prigg v. Pennsylvania's importance has been underappreciated. In the early 1840s, a simple case of fugitive recovery exploded into a debate that cut to the very heart of the federalist experiment in America. In a country that shared responsibility between a state and national legislature, whose laws would determine that status of a human being who sought escape from chattel slavery? In a country that already felt a sectional divide over the issue of slavery, *Prigg* twice amplified this tension. First, when the ruling declared the national government as the sole arbiter of fugitive recovery, those opposed to slavery found themselves raging over what they perceived to be a betrayal of federalism in deference to slavery's maintenance. Then, in the wake of the second wave of personal liberty laws, those opposed to slavery's disappearance found themselves raging at the thought of not being able to secure their property. In a government that claimed to cherish life, liberty and the pursuit of happiness and property, *Prigg* isolated the fatal contradiction that existed in America over slavery. Slaveholders demanded a thorough national jurisdiction over slavery in a society that, constitutionally, seemed to share this responsibility between state and federal level. The Constitution directed states to assist in fugitive recovery, but did not

direct procedure. This put the onus on states to comply, but gave them free reign in how to implement the directive. Slaveholders, as this court case demonstrated, were unsatisfied with anything other than a full nationalization of slavery. While overshadowed by the territories that came from the Mexican-American War, this court case demonstrated that in a country not united in slavery's maintenance, federalism would never be an effective arbiter for fugitive recovery. This case also led, in no small part, to the Fugitive Slave Act of 1850 which further amplified sectional tension. In sum, the Civil War resulted from implacable mistrust on pro and antislavery sides which spread from radicals outward into the larger population. *Prigg*, the liberty laws passed in the wake of the decision, and the response to these liberty laws quickened that spread. Thus, *Prigg v. Pennsylvania* was instrumental in amplifying sectional hostility and regional mistrust. *Prigg* may have only been one of the episodes that served this agenda, but it was a crucial one.

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