Dear MRSEAH Readers,

Thanks very much for reading my chapter! It's drawn from dissertation, "'Secession's Moving Foundation': Fugitive Slave Rendition and the Politics of American Slavery." The dissertation examines the long conflict over the legal/procedural rights of people accused of being fugitive slaves. African Americans claimed legal remedies like due process and a jury trial as vital safeguards against kidnapping, while slaveholders claimed that any recognition of Black legal rights weakened their vital property right. That conflict, I argue, revealed to many on both sides that a half-slave, half-free settlement in the federal system was untenable.

Part I of my dissertation runs from the colonial period through 1830 or so, building a case that the relationship between Black legal rights, fugitive slave rendition, and the future of American slavery was being hashed out far earlier than many scholars acknowledge. The chapter I've given you is the last in that section and argues that pro- and antislavery solutions to the problem of legal procedure in fugitive slave rendition had hit a clear stalemate by the 1820s while gesturing toward the preconditions of more radical arguments that would emerge in the 30s and beyond.

I'd welcome any feedback you have of the chapter or the argument as a whole. I did not expect to address the Missouri Crisis as much as I do and feel a bit out of my depth doing so. Therefore, I am especially grateful to share this with a group on the vanguard of that scholarship.

Look forward to our discussion!

Evan Turiano

"Secession's Moving Foundation": Fugitive Slave Rendition and the Politics of American Slavery

PART I

Ch. 1: "The Law Must Rule Us": *Somerset* and the Limits of the 1793 Fugitive Slave Law

Ch. 2: The "Entering-Wedge": Nationalizing the Fight over Black Legal Rights, 1796-1821

Ch. 3: "This National Crime": Kidnapping and Interstate Comity in the 1820s

PART II

Ch. 4: Human Rights, not Human Property: The Abolitionist Case for Black Legal Rights

Ch. 5: The Reinvention of the Fugitive Slave Clause and the Making of the 1850 Fugitive Slave Law

CHAPTER THREE
"This National Crime": Kidnapping and Interstate Comity in the 1820s

Evan Turiano

Dissertation Title: "Secession's Moving Foundation": Fugitive Slave Rendition and the Politics of American Slavery

John Read knew that the second time he escaped his enslaver would be the last. Read had first slipped away from Samuel Griffith in Maryland, sometime around 1817. Since then, he had married, had a child, and established a life in Kennett Township, Pennsylvania. On December 14th, 1820, near midnight, Griffith, his overseer Thomas Shipley, and two other men banged on Read's door. Read attempted to barricade himself in and issued a warning to the slave catchers: "It is life for life!" The posse doubted his resolve; one called out, "Damn the n[----]r, he won't shoot."[1] John Read kept his promise. As Samuel Griffith forced his way through the door, Read shot him. Shipley entered next and Read struck him twice with a club. Griffith would be dead by morning, and Shipley succumbed to his injuries after a week. Read fled to a neighbor's home, where he was later arrested.[2]

John Read's arrest and trials came in the wake of Pennsylvania's 1820 anti-kidnapping law. That law had made it a felony for slaveholders (or kidnappers posing as such) to capture and remove a supposed fugitive slave without first obtaining a warrant from a Pennsylvania judge.[3] The late Samuel Griffith had failed to follow this procedure, instead electing to pursue a common law right of recaption and go for Read himself. He had good reason to, as going to a judge first might have tipped Read off to his presence, especially in a small community like Kennett

---

[1] "What Right Had a Fugitive Slave of Self-Defence against His Master?," *The Pennsylvania Magazine of History and Biography* 13, no. 1 (April 1889): 106–7.

[2] [Doylestown] *Pennsylvania Correspondent, and Farmers' Advertiser,* May 29, 1821; "What Right Had a Fugitive Slave of Self-Defence against His Master?" 106–7.

[3] John Codman Hurd, *The Law of Freedom and Bondage in the United States*, (Boston: Little, Brown, 1862), 2:70.

Township. Did this give John Read a right to self-defense? His lawyers argued that it did. Read, they claimed, was on the cusp of falling victim to a felony kidnapping, and his defensive actions were justified. The prosecution argued that Griffith should have expected an unobstructed right of recaption under the 1793 Fugitive Slave Law. The 1820 Pennsylvania law, they argued, was about kidnapping, not fugitive slave rendition. The judge in John Read's case acknowledged that differentiating between those two procedures was not always easy, and he was not convinced that Read could have identified the intruder as his lawful enslaver. In the end, John Read was not returned to slavery, and a jury acquitted him of murdering Griffith.[4] He was, however, later found guilty of manslaughter for killing Thomas Shipley, and was sentenced to nine years imprisonment.[5]

It is difficult to call this outcome a victory for John Read. Nor, though, would any slaveholders have celebrated the decision. The case embodied the legal impossibility of the implied compact over fugitive slave rendition in the wake of the 1793 Fugitive Slave Law. The slaveholder's right of recaption was, by the letter of the law, dead in the North. But their persistence in attempting to claim it clearly remained, and the recourse available to people like John Read was unclear. He bore more rights than a fugitive from slavery would expect in much of the rest of the United States, but clearly did not have the full protection of the law.

The 1820s revealed the unsustainability of this status quo.[6] The second crisis over Missouri's admission to the union, spurred by the proposed state constitution's ban on Black settlers, laid bare the incompatibility of northern state citizenship for Black Americans and a

---

[4] [Doylestown] *Pennsylvania Correspondent, and Farmers' Advertiser,* May 29, 1821

[5] "What Right Had a Fugitive Slave of Self-Defence against His Master?" 108-9.

[6] Thomas D. Morris argued that, on the contrary, the 1820s were a watershed period for pro-Black legal rights action in Northern politics: Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North, 1780-1861* (Baltimore, MD: The Johns Hopkins University Press, 1974), 42-58.

slaveholder property right beyond the Old South. Those debates showed that the legal assumptions that oiled the gears of interstate comity—who could claim the title of American, what rights and privileges that title carried, and what role the federal government played in answering those questions—had split along sectional lines. The question of Black legal rights in fugitive slave renditions hung over the debates and were their most urgent iteration. But northern congressmen did not articulate a fully-fledged assertion that Black legal rights and due process protections were inimical to slaveholder property rights. Southerners, who had long pined for stronger property rights through fugitive slave legislation, were strategically subdued on the issue through the Missouri debates.[7]

In the wake of these elemental articulations of the conflict, activists on both sides of the issue pursued new avenues. Slaveholders on the border, frustrated by a decade of struggles to secure stronger property rights through a new federal fugitive slave law, mounted a campaign of interstate agitation. These efforts saw mixed results, ambiguous outcomes, significant erosions of goodwill across state lines, and real intimations that the issue threatened to tear apart the union. For antislavery activists, the inadequacy of extant channels of debate was made clear by a crisis of kidnapping in the heart of abolitionism, Philadelphia's African American community. Efforts to protect Black legal rights in court faltered before judges who began to prioritize national unity over natural rights. Furthermore, the interstate struggles to limit Black legal rights launched by border state slaveholders revealed to many on the antislavery vanguard that their coalition partners who were willing to facilitate lawful renditions made for weak allies. By the end of the 1820s, the extreme ends of both sides knew that new approaches were necessary.

---

[7] Donald Ratcliffe, "The Surprising Politics of the Missouri Compromise: Antislavery Doughfaces, Maine, and the Myth of Sectional Balance," in *A Fire Bell in the Past: The Missouri Crisis at 200*, ed. Jeffrey L. Pasley and John Craig Hammond (Columbia: University of Missouri Press, 2021), 1:215-16.

Articulating National Black Citizenship in Congress

In the weeks leading up to John Read's pivotal act of self-preservation, members of Congress faced the deadlock that historians have called the second Missouri crisis. After the conflict over Missouri's admission in 1819 ended by way of Maine's admission and the establishment of the 36' 30" line, the territory-turned-state submitted a constitution to Congress that empowered the state general assembly to pass laws "to prevent free negroes and mulattoes from coming to, and settling in, this state, under any pretext whatsoever."[8] In the waning months of 1820, when antislavery New Yorker John W. Taylor took up his new role as Speaker of the House, Missouri's succession into statehood ground to a halt once again. Northern Congressmen argued that the Black exclusion clause violated the U.S. Constitution's promise that the "Citizens of each States shall be entitled to all the Privileges and Immunities of Citizens in the several States."[9] The debate that followed this assertion raised a question familiar to activists but new to Congress: were free African Americans state citizens?

James Burrill, Jr., suffering under a pulmonary illness that would kill him just a few weeks later, struggled to disentangle his overcoat from his chair when he attempted to rise and address the Senate. James Barbour of Virginia asked mockingly whether Burrill might give up now, seeing his awkward fumbling as an "omen of defeat." Burrill replied somberly, "I fear no omen in my country's cause."[10] When he finally reached the dais, Burrill argued that the definition of an American citizen was simple: "If a person was not a slave or a foreigner—but born in the United States, and a free man—going into Missouri, he has the same rights as if born in Missouri."[11] Denying free African Americans' equal claim to citizenship, Burrill asserted,

---

[8] Missouri Constitution of 1820, Art. 3, Sec. 26.
[9] U.S. Const. Art. 4, Sec. 2, Clause 1.
[10] Annals of Congress, 16th Cong., 2nd Sess., Senate, December 7, 1820, 45.
[11] Annals of Congress, 16th Cong., 2nd Sess., Senate, December 7, 1820, 47-48.

made it impossible for Missouri to stop kidnapping: "According to it, all people of color who are carried there must, *ipso facto,* be slaves, inasmuch as a free negro could in nowise go there."[12]

William Smith of South Carolina responded the next day, having spent the evening collecting supporting evidence.[13] Smith made two arguments that would remain influential through the *Dred Scott* decision nearly 40 years later. First, he contended that free African Americans—"the late offspring of slaves"—had no claim to citizenship at the founding, and were not meant to fall under the protections of the privileges and immunities clause.[14] Second, he argued that the host of civic discriminations Black Americans faced, even in northern states, demonstrated their exclusion from citizenship. Smith explained that "almost all the States in the Union have excluded them from voting in elections. There is no State that admits them into the militia. Very few States admit them to give evidence." He then paraded out several racist provisions from other state constitutions and territorial laws as evidence of the implicit exclusion of Black people from the American body politic.[15]

Harrison Gray Otis responded to Smith the following day. Otis had equivocated on the fugitive slave bill a few years earlier, but in this more general context supported Black citizenship and the protections it contained. Where Smith had argued that voting, militia service, and the right to testify against a white man were all baseline rights of citizenship, Otis provided an alternative definition. A citizen, Otis argues, was anyone who carried "a right to reside within the jurisdiction, to be secure of life, liberty, and property," and could expect "redress when injured by a foreign Power[, and] to be reclaimed when unjustly captured or detained." Otis

---

[12] Annals of Congress, 16th Cong., 2nd Sess., Senate, December 7, 1820, 48.

[13] On Smith's intention to gather evidence overnight, see: Annals of Congress, 16th Cong., 2nd Sess., Senate, December 7, 1820, 48.

[14] Annals of Congress, 16th Cong., 2nd Sess., Senate, December 8, 1820, 57-58.

[15] Annals of Congress, 16th Cong., 2nd Sess., Senate, December 8, 1820, 58-71.

asserted that, "In Massachusetts, many persons of color existed in this relation to the State, and he should believe, until the contrary was shown, that the same was true in every State in the nation."[16] He built a case that legal disabilities crossed racial lines and did not preclude citizenship. For example, of Massachusetts' ban on interracial marriage, Otis asked, "Why was a black person disqualified as a citizen by being inhibited from marrying a white person, more than a white person was so under a reverse of the rule?"[17] According to Burrill and Otis, then, American citizenship had a baseline threshold that free African Americans met, the right to legal redress from kidnapping sat above that threshold, and Missouri's clause posed a threat to that right.

Simultaneously, slaveholders in the House provided a very different vision of citizenship. Virginia's Philip P. Barbour argued that "the term citizen" did not apply to anyone who did not possess "all at least of the civil rights, if not of the political, of every other person in the community."[18] Kate Masur argues that this distinction was well understood by Americans of the period. Political rights included "the right to vote, hold office, and serve on juries," privileges from which women, convicted criminals, and unpropertied white men were excluded from at various junctures, while civil rights referred "the rights to enter into contracts, sue and be sued, testify in court, and more generally to receive protections under the law," rights associated in the abstract with the Declaration of Independence's guarantee of "life, liberty, and the pursuit of happiness."[19] Barbour argued that free Black people in the United States had been denied rights

[16] Annals of Congress, 16th Cong., 2nd Sess., Senate, December 9, 1820, 93.
[17] Annals of Congress, 16th Cong., 2nd Sess., Senate, December 9, 1820, 96.
[18] Annals of Congress, 16th Cong., 2nd Sess., H of R, December 8, 1820, 545.
[19] Kate Masur, *Until Justice Be Done: America's First Civil Rights Movement, from the Revolution to Reconstruction* (New York: W. W. Norton, 2021), xviii.

in both categories in enough states that they could not be considered anything more than "a non-descript class."[20]

Fellow Virginian Alexander Smyth agreed. He asked, "Can it be shown that free negroes are…in any one of the States entitled to all the privileges and immunities of citizens? A citizen is he who is entitled to the freedom and privileges of the body politic, and has a share in its government."[21] Smyth expanded on his definition to argue that Black people, "found…a slave" during the Revolution, were excluded from citizenship not only by law and history, but also by nature. "A savage," he argued, "cannot be a member of a civilized community; he is incapable of exercising political rights; and nature seems to have made the negro a perpetual alien to the white man."[22] Another Virginian, William Archer, argued that natural racial orders superseded literal interpretations of the Constitution. To claim, he asserted, that Black citizenship in the northern states could, via the privileges and immunities clause, grant African Americans rights and privileges in the several states would be "altogether erroneous…That clause, like every other…must receive a construction which would not violate reason."[23]

Delaware Federalist Louis McLane similarly reduced the issue to racial distinctions. When confronted with the Roman analogy—that via the Justinian Code, emancipated slaves became Roman citizens—McLane asserted, "Among the Romans the bondman wore the same color with the free population, and was no[t] otherwise distinguishable from the rest of the community than by his subjection to his master." Everything was different "for the unhappy

[20] Annals of Congress, 16th Cong., 2nd Sess., H of R, December 8, 1820, 548.
[21] Annals of Congress, 16th Cong., 2nd Sess., H of R, December 9, 1820, 555.
[22] Annals of Congress, 16th Cong., 2nd Sess., H of R, December 9, 1820, 556-557.
[23] Annals of Congress, 16th Cong., 2nd Sess., H of R, December 9, 1820, 581.

African race within the United States. Their servitude is not their only distinguishable feature; they never can mingle or assimilate with the white population, more than oil with water."[24]

Opponents of the Missouri Constitution responded to white supremacist arguments head-on, continuing to assert a baseline of legal rights. Pennsylvania Congressmen Joseph Hemphill argued that the government denied certain rights to various classes of white citizens, including women ("political rights"), ministers ("ineligible to [hold] office"), and the poor ("not allowed even to choose the place of their residence").[25] As for African Americans, Hemphill continued, they carried a common set of citizenship rights that stemmed from their submission to the obligations of American law: "They are entitled to the same rights of religion and protection, and are subjected to the same punishments." They were, he continued, counted in the census, liable to taxation and militia service, and—critically for those accused of being fugitive slaves—"denied none of the privileges contained in the bill of rights."[26] Sustaining the fifty-year-old claims of Somerset's legal counsel, Hemphill argued that procedural protection against kidnapping into slavery was, for African Americans, the payoff for subjection to society's laws and liabilities.

Hemphill then drew a connection between the fight over Black citizenship and another problem of citizenship that had vexed Congress for its entire three decades of existence. A series of maritime conflicts between France and Britain in the 1790s found American merchant mariners—at risk of impressment— urgently needing to be able to define, prove, and wield national citizenship on the high seas.[27] Hemphill revived this issue, asking, "If our free black

---

[24] Annals of Congress, 16th Cong., 2nd Sess., H of R, December 12, 1820, 617.
[25] Annals of Congress, 16th Cong., 2nd Sess., H of R, December 11, 1820, 596-597.
[26] Annals of Congress, 16th Cong., 2nd Sess., H of R, December 11, 1820, 598-599.
[27] Nathan Perl-Rosenthal, *Citizen Sailors: Becoming American in the Age of Revolution* (Cambridge: The Belknap Press of Harvard University Press, 2015).

population should be impressed in a foreign port, how could we redress the wrong if we have no political connexion with them, if they do not belong to our political family?"[28] William Eustis from Massachusetts agreed that Congress was bound against depriving the rights of individuals, even "if their number be small, and they are feebly represented." Their right to the protections of citizenship, according to Eustis, "rests on the immutable principles of justice."[29]

Hemphill concluded by addressing the larger historical arc of the conflict. He pointed to the failed effort by South Carolina's confederation delegates to insert a "white" qualification into the Articles of Confederation's privileges and immunities clause. "Here it is acknowledged expressly that there were other free citizens besides white citizens. If this will not convince gentlemen that free negroes and mulattoes were, from early times, considered as citizens and composed a part of the people who chose the delegates to frame the Federal Constitution, it will be in vain for me to urge the matter further."[30]

In the Senate, meanwhile, David Morrill rejected the southern account of Black participation in American military and civil society. After profiling a series of upstanding individual Black citizens of the New England states, Morrill argued that southerners "not only exclude these citizens from their Constitutional 'privileges and immunities,' but also your soldiers of color, to whom you have given patents for land. You had a company of this description. They have fought your battles; they have defended your country; they have preserved your privileges, but have lost their own."[31] He also returned to the threat of kidnapping and enslavement posed by Missouri's rejection of the privileges and immunities of citizenship. He reversed the proslavery argument that state governments could not make citizens, arguing

[28] Annals of Congress, 16th Cong., 2nd Sess., H of R, December 11, 1820, 599.
[29] Annals of Congress, 16th Cong., 2nd Sess., H of R, December 12, 1820, 639.
[30] Annals of Congress, 16th Cong., 2nd Sess., H of R, December 11, 1820, 600.
[31] Annals of Congress, 16th Cong., 2nd Sess., Senate, December 11, 1820, 109.

that "the salubrious air and fertile soil of Missouri can never metamorphose a free citizen into a slave; neither can the constitution and law of Missouri do it. Were the proposition true, then a black or yellow free citizen of Maine, going into Virginia, would be a slave. As I before intimated, it is *citizen* only, and *not* color, that comes into consideration in deciding this question."[32] Morrill clearly understood, on some level, the relationship between the present debates and those over the fugitive slave bill a few years earlier: any instance where race was allowed to serve as an indicator of access to legal rights both secured the slaveholder property right and put Black Americans at significant risk of kidnapping.

The day after Morrill spoke, though, the Senate resolved to accept Missouri's constitution. Their resolution, however toothless, reflected northern reservations: "nothing herein shall be so construed as to give the assent of Congress to any provision…which contravenes that clause of the Constitution of the United States, which declares that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several states.'"[33] It passed 26-18, on the support of a handful of northern Democrats.[34] The following month, Henry Clay managed to compel the House to accept Missouri's constitution, conceding slightly more ground to antislavery interests than the Senate's timid resolution. That vote, which passed by six votes, was only made possible by the nearly two dozen bonus seats the southern states held through the three-fifths clause.[35] The House resolution made it a "fundamental condition" that Missouri's state legislature promise to "never pass any law preventing any description of persons from coming to and settling in the said State, who now are or hereafter may become citizens of any of

---

[32] Annals of Congress, 16th Cong., 2nd Sess., Senate, December 11, 1820, 114-115.

[33] Annals of Congress, 16th Cong., 2nd Sess., Senate, December 6, 1820, 41.

[34] https://voteview.com/rollcall/RS0160071

[35] https://voteview.com/rollcall/RH0160133; Leonard L. Richards, *The Slave Power: The Free North and Southern Domination, 1780-1860* (Baton Rouge: Louisiana State University Press, 2000), 57.

the States of this Union."[36] The Missouri legislature accepted that deal in July 1820, and five years later quietly reneged. The state's 1825 Black exclusion law barred entry to any African Americans who could not produce naturalization papers. In 1847 they officially nullified the agreement with Congress.[37]

This outcome aside, the discursive shift evident in the Missouri debates is significant. Just two decades earlier, claims to some of the baseline protections of citizenship launched by Philadelphia's Black community had found few in Congress—even among those committed to antislavery—willing to attach the word "citizen" to the Black claimants. Now, two decades later, members such has Harrison Gray Otis who had decried the "irritating tendency" of Black citizenship claims in 1800 now framed those claims as essential.[38] This paradigm shift clarifies the long-term success of those Black petitions, their numerous local counterparts, and the early political overtures of the abolitionist movement. With it came a new connection between abolitionism and the Constitution's promises that would inform political antislavery for the next four decades.

Similarly, it is worth noting that the Missouri constitution did not spell the death of legal protections for Black Americans in the state. Just after the Black exclusion clause that led to the crisis, the Missouri Constitution guaranteed that "in prosecutions for crimes, slaves shall not be deprived of an impartial trial by jury…and courts of justice before whom slaves shall be tried, shall assign them counsel for their defense."[39] This protection built upon an 1807 territorial law that had given enslaved people in Missouri access to courtroom protections through freedom

---

[36] Glover Moore, *The Missouri Controversy, 1819-1821* (Lexington: University Press of Kentucky, 1953), 144-147.

[37] John R. Van Atta, *Wolf by the Ears: The Missouri Crisis, 1819-1821* (Baltimore, MD: The Johns Hopkins University Press, 2015), 120-121

[38] *Annals of Congress*, January 2, 1800, 6th Cong. 1st Sess., H of R, 231.

[39] Missouri Constitution of 1820, Art. 3 Sec. 27

suits. Enslaved people in the "American Confluence" would spend the subsequent decades using their knowledge of the law to put this constitutional safeguard to work. Four years after its passage, a long legal struggle by an enslaved woman named Winny culminated in the Missouri Supreme Court upholding the freedom principle first elaborated in the *Somerset* decision.[40] Conditions particular to Missouri, in short, made it so that the Congress' failure to secure Black citizenship did not close courtroom doors entirely.

And yet, when the grand incompatibility of Black citizenship and the slaveholder's property right was all but evident, few on either side were willing to openly expose it. While some northerners drew connections between the Black exclusion clause and the fugitive slave rendition fight, none on either side were willing to make explicit the underlying problem that connected the two. Every juncture where the question of Black legal rights across state lines appeared, from that point forward, would be fought in zero-sum opposition against the slaveholder property right. Neither could exist alongside the other.

The result of the silence about this problem was, in no small part, the compromise itself. The problem was perhaps not yet fully articulated in the mainstream of antislavery politics. Southerners, seemingly aware of the problem in fugitive slave debates a few years earlier, may have tempered their messaging for strategic reasons. Donald Ratcliffe has recently argued that the relative proslavery silence on the fugitive slave issue during the Missouri Crisis—wedged in a period where they frequently appealed to Congress for a stronger fugitive slave law—might reveal the sort of narrow discipline required by southerners to attain their compromise.[41] That necessity, at least in part, represented an acknowledgement of the incendiary nature of the

---

[40] Anne Twitty, *Before Dred Scott: Slavery and Legal Culture in the American Confluence, 1787-1857* (New York: Cambridge University Press, 2016), 6-12.

[41] Ratcliffe, "The Surprising Politics of the Missouri Compromise," 1:216.

question of fugitive slave rendition and Black legal rights. That question not probed, the westward march of a half-slave, half-free empire remained viable.

Alongside this strategic compromise, though, slaveholders demonstrated a new, aggressive position from which they would assert power in the future. Specifically, the course and result of their effort to extend slavery and thwart Black citizenship demonstrated two tools that slaveholders would employ time and again in the coming decades. The first is representative power, won through the three-fifths clause. Slaveholders would increasingly cherish this wellspring of authority in stopping slave flight and Black legal rights, working to consolidate authority over the issue in the federal government, particularly the executive branch. The second tool slaveholders rolled out in the Missouri debates that would remain central was the threat of secession. In 1820 Henry Clay told a correspondent that "the words, civil war, and disunion, are uttered almost without emotion" among his colleagues.[42] Those calculated threats would re-emerge at every juncture at which the airtight property right in human beings was seriously threatened.

The Kidnapping Crisis and the Failure of State Solutions

These debates, significant as they were, were abstract. Free Black people in the North knew their stakes concretely and knew that existing protections of Black legal rights in the northern states were wholly inadequate. Without practical interstate procedures for asserting Black legal rights, the threat of kidnapping hung over every free African American, particularly those who were children or parents to children.

---

[42] James F. Hopkins and Mary W. M. Hargreaves, eds., *The Papers of Henry Clay* (Lexington: University Press of Kentucky, 1961), 2:766.

By force, deception, or manipulation of the Fugitive Slave Law (and often by a combination of the three), African Americans were snatched from centers of free Black life like New York City and Philadelphia into the bowels of the cotton kingdom.[43] The simultaneous abolition of the transatlantic slave trade and growth of cotton production created a demand for enslaved people in the Deep South that often surpassed the supply provided by the legally sanctioned interstate "second middle passage." Kidnappers stepped into this void, and free African Americans and abolition societies knew that heightened protections would require profound legal changes.

Some kidnappings happened by force. In late June 1820, two men, one Black and one white, "of genteel appearance," summoned a young African American man for help under pretense their carriage was broken. When he approached, they "seized him by the throat, and drew their pistols." The young Black man only avoided enslavement by intervention of "some persons travelling the road at the same time.[44] Some abductees, like Sam Scomp, were subjected to force after being deceived. Scomp, just fifteen years old but strong and able, accepted a 25-cent job from a Black man unloading crates in the Philadelphia Navy Yard in the early hours of an August 1825 morning when a member of that boat's crew shoved him below deck and forcibly bound him.

The ship was the *Little John,* and its crew were members of an infamous kidnapping ring operated by Patty Cannon and Joseph Johnson, the man who had assaulted Sam Scomp.[45] According to a report by Philadelphia mayor Joseph Watson, Scomp was just one of "at least

---

[43] For an overview of the kidnapping of free African Americans into slavery, see: Carol Wilson, *Freedom at Risk: The Kidnapping of Free Blacks in America, 1780-1865* (Lexington: University Press of Kentucky, 1994), 9-39.

[44] *New-York Daily Advertiser*, July 3, 1820.

[45] Bell, *Stolen*, 11-14, 75-76.

twenty free coloured persons, *principally* children," who had been abducted by this gang on the *Little John* during the spring and summer of 1825.[46] Sam Scomp and two other Black boys he had been kidnapped with were only rescued when he managed to convince John Hamilton, a Mississippi farmer who had intended to purchase the boys, that they were born free. The three kidnapped boys made it back to Philadelphia nearly a year after their abduction and gave testimony that contributed to the arrest of members of the Cannon/Johnson ring, including the man who had first lured Sam Scomp off the street. The vast majority of abductees did not meet Scomp's good fortune; days before he reclaimed freedom, Sam had seen his kidnappers beat another boy from Philadelphia to death.[47]

Sam Scomp knew precarious legality before his kidnapping. In fact, the week preceding his abduction had been his first in freedom. He was born into slavery in New Jersey, wrapped up in the complicated gradualism of northern abolition. Technically bound as an apprentice until he turned 25, Scomp was traded away from his parents to a man he suspected might illegally sell him out of state. So, he fled south across the Delaware River into Philadelphia seeking work on the docks.[48] Ironically, that pursuit very nearly landed him the same fate he had feared in New Jersey.

Sam's two brushes with unfreedom, first as a fugitive from bondage and second as a victim of kidnapping, were different in obvious ways. As a fugitive he was outside of the law; he could not expect the support of northern courts and could offer no testimony that would put his captor in prison. The opposite was true on every account when he was kidnapped by the Cannon/Johnson gang. The fact that Scomp received the protections he did, given his formerly

---

[46] *National Gazette and Literary Register,* Philadelphia, PA, January 24, 1827.
[47] Bell, *Stolen,* 120-125, 183-202, 116
[48] Bell, *Stolen,* 16-23.

enslaved status, is a testament to the Philadelphia Black community's sustained power. Despite those differences, the facts and laws dictating his precarity in both instances overlapped significantly. The 1793 Fugitive Slave Law, in practice, blurred distinctions between freedom, term slavery, and permanent slavery. For all the weaknesses slaveholders had identified and fought against, it meaningfully impeded African American access to the protections of citizenship that northern congressmen had asserted during the Missouri debates.

Abolitionists recognized and tried to cast light on these weaknesses. Their complaints were largely the same ones raised by the Philadelphia petitioners two decades earlier. While they reveled in the protections won over the last few decades through activism and state law reform, a new problem had begun to repeatedly emerge. The absence of personal liberty protections in southern states, and the difficulties associated with those that did exist, made the prospects of proving freedom and citizenship incredibly slim for those erroneously claimed as fugitive slaves.

Chester County, Pennsylvania's anti-kidnapping society reported at the American Convention in fall 1821 that, the year prior, they had intervened to secure the freedom of an African American man from their community who had been jailed in Bel Air, Maryland "on suspicion of his being a fugitive slave." When the man "asserted that he was free" and the society provided evidence that "succeeded in convincing the authorities there…that the man was legally entitled to his freedom," they faced a second legal hurdle, over the "expenses of his confinement." Officials in the Chester society were intimately familiar with Maryland law and knew that such expenses could not be placed on a wrongly imprisoned person per an 1817 law. The abolitionists invoked the law, of which the jailers "professed themselves totally ignorant," and freed the man "without the payment of fees."[49] The lesson in this case, no matter its happy

[49] *The American Convention of Abolition Societies, 1794-1829* (New York: Bergman, 1969), 2:777.

ending was that abolitionists had to focus efforts outside their local boundaries toward facilitating the enforcement of any favorable laws. Without proactive intervention, they warned, these laws could "lie…like the *code noir* of St. Domingo, a dead letter."[50]

The PAS warned of similar problems at the 1821 convention. They celebrated recent success preventing kidnapping "under colour of law," giving special credit to Pennsylvania's 1820 Personal Liberty Law for securing "a more solemn hearing" and a more public opportunity for accused fugitives to "procur[e] the aid of their friends."[51] Difficulties still attended situations where individuals were taken out of state, "a great distance from the means of proving and defending their rights." These victims, the PAS reported, were then subjected to a legal system very different from Pennsylvania's, one where "the black or mulatto is always presumed to be a slave until he shews to the contrary." Providing that evidence, or contacting allies for "the transmission of testimony to distant places," proved nearly impossible.[52] The difficulty Philadelphians taken into slavery faced was captured in an 1823 letter sent by a woman named Phillis Cox to Dr. James Rush, son of the late famous Benjamin Rush. Cox addressed Rush, to her a stranger, out of desperate hope that he would "look at the re[c]ording-office and get a coppy of my free papers." She sent the names of individuals "that well noes me to be free Borne in that state" who she had seemingly been unable to successfully contact.[53]

What did these challenges mean for the early abolitionist movement? From the PAS's point of view, state-level action was no longer viable. To secure the rights of the most vulnerable African Americans, PAS representatives explained, the movement needed to avail of interstate

---

[50] *The American Convention of Abolition Societies,* 2:777.
[51] *The American Convention of Abolition Societies,* 2:752.
[52] *The American Convention of Abolition Societies,* 2:753-754.
[53] Herbert Aptheker, *A Documentary History of the Negro People in the United States* (1951; repr., New York: Citadel Press, 1990), 1:78-79.

collaborations like the American Convention to approach "general rather than local laws."[54] In response, the interstate convention formed a new committee dedicated to stopping the "odious practice of kidnapping," with a clear new set of directives. The committee's duty would be to obtain judicial decisions in favor of, or "a repeal or a modification of the laws hostile" to, any interference with Black personal liberty "throughout the union." Through these legal and political efforts, they hoped, the committee could "diminish the evil, if it is impossible to destroy the existence of *this national crime.*"[55]

Legal Power and Judicial Conservatism

In the wake of the Missouri debates, it looked like the antislavery movement held a potent legal argument about Black state citizenship and the Constitution's protection of privileges and immunities across state lines. Courtrooms were a logical site for these arguments. Each step in the struggle—ambiguous constitutional settlement, a conflict of laws problem, difficult differentiations between free people and fugitive slaves—created a situation wherein judges held tremendous power, both over the lives of hundreds of individual African Americans and in tipping the scales in the broader struggle between Black legal rights and slaveholder property rights. Robert M. Cover argued that, in the absence of explicit legislative will, judges tended to defer toward "eternal principles." In the case of slavery in America, he argued, the *Somerset* decision and its prominence in American legal education fixed the morality of slavery against natural law, and judges leaned in that direction.[56] Fugitive slave cases generally reveal the opposite. Whether out of partisanship or a commitment to the union, judicial rulings remained,

[54] *The American Convention of Abolition Societies*, 2:754

[55] *The American Convention of Abolition Societies*, 2:762. Italicization by the author.

[56] Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven, CT: Yale University Press, 1975), on deference to natural law, 93, on *Somerset,* 16.

relative to legislative machinations, a conservative presence in the fight over fugitive slave rendition.[57]

Northern state officials took the arguments that had gestated in the Missouri debates into courtrooms. In the 1823 *Commonwealth v. Griffith* case, for example, state officials argued that Massachusetts' right to define its citizenry, coupled with the Fourth Amendment's due process protections, rendered the 1793 Fugitive Slave Law inoperable in Massachusetts and in fact unconstitutional.[58] Furthermore, they argued, the Constitution gave the slaveholder no right to infringe upon the property, domicile, or public peace of northerners in pursuit of a fugitive slave. Even if, the state attorney general argued, the fugitive was by law like "cattle which have strayed into this state," a claimant would have no right "to take them out of [another person's] barn."[59] This argument was particularly tangled because Randolph, the accused fugitive slave, was both the cattle and barn owner in the analogy; because he was claimed from "his own house," lawfully purchased in Massachusetts, the state argued that his seizure under the 1793 Fugitive Slave Law violated constitutional rights that Massachusetts was bound to protect on his behalf.

Where this line of argument demonstrates the relative radicalism of Black legal rights claims in the political mainstream of northern states, state supreme court chief justice Isaac Parker's decision reflected the limits of that vision. Constitutional interpretation, he asserted, must not indulge the "prejudice" of "persons who are not inhabitants of slaveholding states." He asserted firmly that the fugitive slave clause gave Congress the power to outline rendition

---

[57] Don E. Fehrenbacher argues that, among other causes, an "anxiety about the future of the American Union" drove judicial conservatism on the fugitive slave issue. Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*, ed. Ward M. McAfee (New York: Oxford University Press, 2001), 218.

[58] H. Robert Baker, *Prigg v. Pennsylvania: Slavery, the Supreme Court, and the Ambivalent Constitution* (Lawrence: University Press of Kansas, 2012), 61-62.

[59] Octavius Pickering, ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of Massachusetts* (Boston: Little, Brown, 1866), 2:15.

procedures, which they lawfully did in 1793. "It is very obvious," he wrote, "that slaves are not parties to the constitution."[60] So, although the potential for tremendous interpretive leeway existed in the legal fog of the 1820s, judges often did with that power what William Tilghman had on the eve of the Missouri Crisis: they adopted the role of nationalist compromiser.

On the vital question of jury trial, judges remained a particularly conservative force. The writ *de homine replegiando*, a writ against unlawful detainment, had largely been supplanted by *habeas corpus* but remained a valuable judicial backchannel for accused fugitive slaves to receive a jury trial. Where state legislatures fought to maintain jury trials of any kind in the face of the 1793 law's stipulation of a summary hearing, judges were generally quick to favor an expansive reading of the 1793 law's procedural requirements. *Wright v. Deacon*, Judge William Tilghman's placatory 1819 decision discussed in Chapter Two, effected the end of the *de homine replegiando* writ in Pennsylvania. *Jack v. Martin* led to the same result in New York in the 1830s.[61]

Not every ruling leaned on national unity and judicial formalism. Out of the void between state and federal law, some judges claimed a great deal of discretionary authority. Supreme Court Justice Bushrod Washington demonstrated this in 1824, hearing a case for the U.S. Circuit Court in eastern Pennsylvania. That case revolved around Tom, an alleged fugitive from slavery, and a sheriff's deputy in Bucks County. Tom, after being captured under the 1793 law, escaped from jail while awaiting a hearing. His enslaver's son sued the sheriff's deputy, arguing that the escape represented the neglect of a duty to which he was obligated by the fugitive slave law. Washington, in his decision, explained that the period of time in which the accused fugitive was

---

[60] Octavius Pickering, ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of Massachusetts* (Boston: Little, Brown and Company, 1866), 2:19.

[61] Morris, *Free Men All*, 42-44; Fehrenbacher, *The Slaveholding Republic*, 216-217.

in legal custody had become a serious gray area, one that he and other judges took advantage of, having "always considered ourselves at liberty to commit, from day to day, till the examination is closed, or else the fugitive could not safely be indulged with time to get his witnesses to disprove the claim of the asserted owner, should he have any." Washington found in favor of the lax jailer, and Tom seemingly remained free.[62]

Exceptions aside, through this period the judiciary was a fundamentally conservative presence in fugitive slave rendition. Don E. Fehrenbacher described the trend as a "mixture of judicial formalism and moral regret," with formalist deference to the 1793 law nearly always prevailing.[63] Robert J. Kaczorowski argued that judges during the period were "consistently deferential to Congress, not only in recognizing its power to enforce the Fugitive Slave Clause, but in refusing to pass upon the justice, fairness, and policy considerations of the legislation as well."[64] The 1793 Fugitive Slave Law's constitutionality was regularly upheld, the writ *de homine* replegiando—a powerful means of maintaining jury trial—was whittled away, and antislavery activists developed an unwillingness to test the 1793 Fugitive Slave Law in court. Slaveholders, ever on the offensive, became increasingly enthusiastic about challenging state personal liberty laws before an often-friendly judiciary.

Fugitive Slave Legislation in the Shadow of Black Citizenship

The tumult over Missouri's admission into the union and the mounting scourge of kidnapping did little to deter Maryland slaveholders, a primary "victim" of slave escape, from their mission of securing a new fugitive slave law with a more explicit property right. In December 1821, soon

---

[62] Worthington v. Preston, 30 F. Cas. 645, 4 Wash. C.C. 461 (1824).

[63] Fehrenbacher, *The Slaveholding Republic,* 217.

[64] Robert J. Kaczorowski, "Fidelity through History and to It: An Impossible Dream," *Fordham Law Review* 65, no. 4 (1997): 1677-78.

after the Missouri Crisis had quieted, Eastern Shore congressman Robert Wright submitted a resolution from the Maryland state legislature to the House floor. The state legislature complained that "the owners of slaves in this State are frequently subjected to great imposition and serious inconvenience, from the constant and ready protection afforded their runaway negroes by the citizens of Pennsylvania." Maryland slaveholders who attempted to reclaim a fugitive found "every possible difficulty thrown in the way," first by legal proceedings, then, "not unfrequently," by force. The 1793 law not only failed to protect the rights of slaveholders but was "calculated to destroy the contentment and happiness of slaves."[65] Wright, in response to this resolution, called on the House to create a new committee "to inquire into the expediency of providing, by law, more effectually to protect the rights" of slaveholders who claimed a fugitive, "agreeably to the provisions of the Constitution." Wright, according to the congressional recorder, "warmly deprecated the interference of Quakers and others to prevent the reclamation of slaves in some of the States," and warned that, if action were not taken, "he did not know but they might be driven to take up arms to protect them."[66]

The judiciary committee took up the request and drafted a bill in response. It reached the floor the following March.[67] The language of the bill was not entered into the record, but from debates it is possible to glean that Marylanders had requested a bill that allowed any justice of the peace—not just any judge—to process claims filed through the 1793 Fugitive Slave Law. This represented a great risk to opponents of slavery and proponents of Black legal rights. At hand, they were beginning to realize, in every fugitive slave case was a determination of

---

[65] American State Papers (38 vols., Washington, 1832-1861), Miscellaneous, II, 752.
[66] Annals of Congress, 17th Cong., 1st Sess., H of R, December 17, 1821, 557.
[67] Annals of Congress, 17th Cong., 1st Sess., H of R, December 17, 1821, 557, March 27, 1822, 1379.

citizenship status versus property status. Every proslavery effort to streamline this process cheapened Black citizenship claims in favor of slaveholder property rights.

Caldwaller D. Colden, formerly president of the New York Manumission Society and then mayor of New York City, then serving a lone term the House of Representatives, made this case. There were "great powers contemplated" in the new law, he argued, the power to decide the status of a person as citizen or property. Colden maintained that those powers "ought not to be given to justices of the peace, who were, in rank, the most inferior officers to whom the administration of justice is confided." He went on, arguing that the bill was "inconsistent with the principles of liberty, and had a direct and efficient agency to promote the traffic…of seizing free blacks and selling them for slavery." In sum, Colden asserted, Congress could not "violate the principles of civil liberty merely because some districts had sustained injury."[68] Congress's constitutional mandate favored civil rights over property rights, full stop.

Slaveholders responded that their property right and the "injury" it had sustained were far from trifling. After all, they were—as Wright had intimated—ready to take up arms to defend it. Thomas Love Moore of northern Virginia "felt a strong and peculiar interest in the passage of the bill." He estimated that his district "sustained an annual loss of four or five thousand dollars by runaway slaves. His slaveholding constituents had found the 1793 law "inadequate to the object it proposed to effect."[69] Francis Johnson, a Kentucky Democratic-Republican who would support John Quincy Adams's presidential bid, tried to find common ground. While "willing to legislate on the subject," he feared that the bill was "calculated to introduce new and unknown rules in relation to property," particularly outside of the slave states. He also expressed concerns about the bill's "suspension of the right of the writ of habeas corpus." Johnson moved that he, Colden,

[68] Annals of Congress, 17th Cong., 1st Sess., H of R, March 27, 1822, 1379-1380.
[69] Annals of Congress, 17th Cong., 1st Sess., H of R, March 27, 1822, 1379-1380.

Wright, and a few others form a committee to address the problems raised in debates.[70] That committee proposed some amendments on April 1st, but the bill was ordered to lie and remained unfinished.[71]

Cutting the Federal Government Out

After yet another defeat in Congress, at the same moment abolitionists realized they needed to mount their struggle to protect Black rights on a national stage, Border South slaveholders came to realize they needed to take their fight against fugitives to the state level. In spring 1822, the Maryland House of Delegates called on Governor Samuel Sprigg to submit a resolution directly to the governments of Pennsylvania and Delaware complaining of "the encouragement given to negroes running away from their owners in this state," and calling on the legislatures to "interpose their authority, and make such provision to prevent the evil herein."[72] When nothing came of those demands, the Maryland state legislature stepped up pressure on its neighboring states. At the beginning of 1826 they sent three of their members—Archibald Lee, Ezekiel Forman Chambers, and Robert H. Goldsborough—on a diplomatic mission to try to compel the state legislatures of Delaware, Pennsylvania, and New Jersey to loosen their personal liberty protections.[73] Their prominence in Maryland politics—Chambers was on his way out of the state senate to assume a seat in the U.S. Senate, and Goldsborough had served a term in the U.S. Senate from 1813-1819 and would return to replace Chambers in 1835—demonstrates the importance of the mission.

---

[70] Annals of Congress, 17th Cong., 1st Sess., H of R, March 29, 1822, 1415.

[71] Annals of Congress, 17th Cong., 1st Sess., H of R, April 1, 1822, 1444.

[72] George Edward Reed, ed., *Pennsylvania Archives, Fourth Series* (Harrisburg: State of Pennsylvania, 1900), 5:372-373

[73] For the names of the Maryland commissioners: *Poulson's American Daily Advertiser,* Philadelphia, PA, February 7, 1826.

The Maryland delegation found quick success in Delaware. In January, they convinced the Delaware legislature to pass a law that empowered "any sheriff or constable" to enforce the 1793 Fugitive Slave Law, issued a five hundred dollar fine to anyone who obstructed a fugitive slave rendition, and empowered state officials to arrest "any suspicious colored person" found travelling without legal documentation.[74] This law posed a significant challenge for Black Delawareans and threatened to streamline both fugitive slave rendition and kidnapping. The law did not provide an unabridged right of recaption, and another law passed shortly after dissuaded would-be kidnappers with a fine up to two thousand dollars, "sixty lashes on the bare back well laid on," solitary confinement, and sale into servitude. If they offended again, they would "suffer death."[75] Still, the law accomplished something Maryland slaveholders had sought for over two decades: the mobility of free Black people was significantly restricted, and they were presumed fugitive until proven otherwise. Maryland commissioners won these protections swiftly and without much resistance. It was only after the law's passage that Delaware residents began to complain, gathering "in town meetings, to declare their dissatisfaction and to remonstrate against the proceedings of the Legislature."[76] When the delegation turned its sights on Pennsylvania—the primary destination for Maryland fugitives—the residents of that state steeled for a fight.

Goldsborough, Lee, and Chambers arrived in Pennsylvania in the first week of February 1826, and within a few days compelled the state legislature to debate a new fugitive slave bill. Unlike in Delaware, the effort was met with "much excitement."[77] Antislavery Pennsylvanians believed with good reason that their 1820 personal liberty law had been a vital safeguard against

---

[74] *Laws of the State of Delaware* (Dover), 6:580-582. An 1849 case before the Delaware Superior Court referred to the 1826 law as "passed on the application of the States of Maryland and Virginia, and was designed to be in aid of the acts of Congress relating to fugitives from labor." Collins v. Bilderback, 5 Del. 133, 5 Harr. 133 (1849).

[75] *Laws of the State of Delaware*, 6:715-716.

[76] *Poulson's American Daily Advertiser,* Philadelphia, PA, February 10, 1826.

[77] *National Gazette and Literary Register,* Philadelphia, PA, February 10, 1826.

Maryland kidnappers during the decade. Many found the prospect of slaveholders from that state violating their sovereignty outrageous. One essayist called the Maryland effort a flagrant attempt "to render the people of Pennsylvania subservient to the cruelty, injustice and avarice of a Neighbouring State."[78] Another critic warned Pennsylvanians not to be fooled by the presence of anti-kidnapping language in the bill's title, which was "calculated, if not designed, to avert the scrutiny of the friends of the coloured population."[79] William Rawle, President of the PAS, penned a memorial to the state legislature which called the bill "an infringement upon those Constitutional rights and legal privileges in the exercise of which our fellow citizens have frequently received the Legislature's sanction." While the "benevolent of the world are struggling in the…glorious cause" of abolitionism, Rawle argued, Pennsylvania must not step backwards in service of states that have "sprung to increase the domestic slave trade."[80] The rights of Black Pennsylvanians, long recognized by the state, could not be sacrificed at the altar of proslavery comity.

A few provisions drew particular ire. The bill provided that, if a dispute arose about whether supposed rendition was legitimate or not, the would-be slaveholder was given the time and opportunity to collect evidence, while, in the words of one of the bill's critics, "the poor Negro is to be thrown into jail, or dragged into some distant part of the country, there to have a hearing before some interested, perhaps unprincipled Magistrate, who with very slight appearance of evidence, will be easily induced to convict him of the unpardonable crime of being a Slave, and thus seal his fate forever."[81] Additionally, opponents of the bill complained about an enforcement clause that charged anyone who interfered with a slave catcher or attempted a

[78] *Poulson's American Daily Advertiser,* Philadelphia, PA, February 10, 1826.
[79] *Poulson's American Daily Advertiser,* Philadelphia, PA, February 15, 1826.
[80] *National Gazette and Literary Register,* Philadelphia, PA, February 13, 1826.
[81] *Poulson's American Daily Advertiser,* Philadelphia, PA, February 10, 1826.

rescue with a misdemeanor. This clause, critics accused, meant that the bill not only denied "just and human interposition" of due process to the accused fugitive, but to "the white citizen" too.[82]

Eventually, PAS activists realized that they would not be able to kill the bill and shifted course toward influencing specific clauses. They battled over jury trials and the obligations of law enforcement officials. William Meredith, a prominent conservative in the state legislature, acknowledged in a letter that the final bill "does not go a jot beyond our Constitutional obligation…secures the *rights* of the free negro, which have *never* been secure in this state before…[and] gives to the unfortunate fugitives themselves, whom we are *bound* to deliver up- all that we *can* give them."[83] The bill began with a series of clauses punishing anyone who attempted to kidnap a free African American under the guise of fugitive slave rendition. After that, it effectively created a parallel process to the 1793 Fugitive Slave Law. A slaveholder seeking redress needed to appeal to a Pennsylvania judge, alderman, or justice of the peace and swear to the identity of the alleged fugitive, in which case they would receive a warrant for the arrest of the supposed fugitive by a sheriff or constable. If the claimant was a hired slave catcher, or anyone other than the slaveholder, they also needed to show an affidavit from the slaveholder that had been certified by a judge in their home state. The bill then provided that the sheriff or constable who received the warrant was legally required, under threat of imprisonment, to arrest and incarcerate the alleged fugitive.[84] All of this, aside from the extra step for slave catchers, mirrored and seemingly added force to the federal law.

Pennsylvania's divergence from the 1793 Fugitive Slave Law—and the influence of antislavery agitators in the state—becomes more evident in the process that followed the arrest of

---

[82] *National Gazette and Literary Register*, Philadelphia, PA, February 10, 1826.

[83] Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North, 1780-1861* (Baltimore, MD: The Johns Hopkins University Press, 1974), 49-51.

[84] Prigg v. Pennsylvania, 41 U.S. 539, 16 Pet. 539, 10 L. Ed. 1060 (1842), 550-554.

the alleged fugitive. Once the African American in question was arrested and the case brought before a judge, the law gave both parties the opportunity to appeal for time to gather additional evidence. During that time, the supposed fugitive would be held in jail, at the daily expense of the alleged slaveholder, who also needed to post bond on promise to return. When the summary case proceeded, moreover, the testimony of the owner "or other person interested"—i.e. a hired slave catcher, would not be permitted as evidence of enslavement.

This result, without a doubt, represented a serious concession to slaveholders. Where in 1820 Pennsylvania had altogether banned low-level jurists from participating in rendition proceedings, those officials were now forbidden from participating in proceedings conducted under the 1793 law but could be compelled into action via the state law.[85] The opposition to holding accused fugitives in pretrial detention had largely failed. So long as a slave catcher posted bonded and paid jail fees, a fugitive could be made to languish in jail while evidence was collected against them.

Still, the bill bore the imprint of Pennsylvanians' vocal resistance to the Maryland delegation. In fact, in the eyes of at least one PAS member, the bill was "Better than the law of 1820" in the limits it placed on slaveholder testimony.[86] The most controversial element of the original bill, the penalization of citizens who interfered with a fugitive slave rendition, was scrapped. Some of the resistance to this clause surely stemmed from that fact that it, as one critic had noted, threatened "the white citizen" alongside Black Pennsylvanians. But, in the preserved right of accused fugitives to gather evidence and retain council and the financial burden placed on slave catchers in cases of pretrial detention, the law clearly sought to preserve Black civil rights in practice as well as in the letter of the law. Compared to the Delaware law, wherein any

[85] Prigg v. Pennsylvania, 41 U.S. 539, 16 Pet. 539, 10 L. Ed. 1060 (1842), 553-557.

[86] Thomas Shipley to Isaac Barton, February 15, 1826, quoted in: Morris, *Free Men All*, 50.

legal official could enforce the 1793 law and any free Black person could be held without due process on suspicion of being a fugitive, the Maryland envoy was surely disappointed by the opposition they found in Pennsylvania. According to one observer, Maryland ambassador Robert H. Goldsborough went so far as to suggest the bill should be retitled as an act to *prevent* the rendition of fugitive slaves.[87]

The relative security that Pennsylvanians clawed back from the Maryland delegation was, in part, reflected in cases that followed. Some Maryland slaveholders in the late 1820s found the law so arduous that they left wishing they had never bothered attempting to pursue their former property. In the case of Charles Brown, an African American child reclaimed as a fugitive slave from Pennsylvania in 1835, the slave catcher's attorneys claimed that the law obstructed fugitive slave rendition, and argued that any such "impediment" enacted through state law was "at variance with the constitution of the U. States and the acts of congress on this subject."[88] The proslavery commitment to securing an unfettered right of recaption had, this argument shows, survived many blows in state and federal law. It would find new life in the 1830s.

By February 1826, the Maryland delegation had already visited the New Jersey state legislature. The final law that emerged from their efforts, though, would not appear until December.[89] That law, like the Pennsylvania act, created a state procedure that mirrored the general process of the 1793 Fugitive Slave Law, with an elaboration of due process for the accused fugitive. Anyone attempting to reclaim a fugitive from slavery needed to bring a signed affidavit from a judge in their home state, that confirms "the said claimant's title to such

---

[87] Morris, *Free Men All*, 50.

[88] Baker, *Prigg v. Pennsylvania,* 91.

[89] On the Maryland delegation's visit to New Jersey: *Poulson's American Daily Advertiser,* Philadelphia, PA, February 13, 1826. On this law being a response to the Maryland envoy, see: Diemer, *The Politics of Black Citizenship*, 57-60; Masur, *Until Justice Be Done*, 112.

fugitive," along with the "name, age and description of the person of such fugitive." Upon the arrest of the alleged fugitive, like in the Pennsylvania law, both the claimant and the defendant, if "not prepared for trial by reason of absence of some material witness," was allowed to call for the trial to be delayed. During the delay, the would-be fugitive was detained "to the common jail for safe keeping," at the plaintiff's expense. Finally, anyone who failed to follow this procedure—regardless of whether they captured a legally-claimed fugitive slave or conducted a kidnapping under that pretense—would be fined $1,000 or sentenced to two years of hard labor.[90]

Comparing this law to the one passed in Pennsylvania reflects the persistence of proslavery politics in New Jersey. Still, the evidentiary requirements placed on slave catchers were significantly more arduous than those created by the 1793 federal law, and the required "description" of the fugitive left significant space for judges to throw out cases in favor of Black New Jerseyans. More generally, the law's ban on any renditions not conducted through this process represented a clear assertion of the primacy of state law over the federal fugitive slave law, as well as a thorough rebuke of the common law right of recaption.

For 25 years, Marylanders had been most vocal in support of restricting Black legal rights and a securing a stronger fugitive slave law. They were, however, not alone. To their west, along another contested borderland of slavery, Kentuckians waged a simultaneous struggle against Black due process in Indiana, to similar ends. That fight, like the Maryland delegation's effort, resulted in a state settlement which seemingly reconciled claims that state personal liberty laws

[90] *Acts of the Fifty-First General Assembly of the State of New-Jersey* (Trenton: Joseph Justice, 1826), 90-92.

were unconstitutional, while both maintaining state sovereignty and the essence of procedural protections for Black citizens.[91]

The conflict emerged in 1818, when a Kentucky slaveholder tried to claim a Black woman named Susan, who lived just across the Ohio River from Louisville in the southern Indiana town of Corydon, as a fugitive slave under Indiana's 1816 personal liberty law. That law secured a jury trial for accused fugitives, and the jury declared Susan a free woman. Her enslaver then appealed to a federal circuit court, on the grounds that Susan should have never received a jury trial. The judge in that case ruled narrowly; in Susan's case specifically, the 1793 federal law's summary hearing process should have prevailed over the Indiana law's jury trial process.[92] Susan was, per the ruling, forcibly brought to Kentucky.

Confusingly, it would be the capture and enslavement of another Black woman named Susan that would drive Indiana and Kentucky into non-accommodationist, even hostile relations.[93] The second Susan had been purchased by Kentuckian Richard Stephens in the early 1790s, from a man who lived on the often-contested Virginia/Pennsylvania border. Susan fled from Kentucky to Indiana in 1815 or 1816 and sued Stephens for her freedom, on the grounds she was in fact legally freed by unregistered residence in Pennsylvania during her time under her prior enslaver. An Indiana state court received the suit and summoned Stephens to stand trial on charges of holding Susan unlawfully and against her will.[94]

---

[91] H. Robert Baker, "The Fugitive Slave Clause and the Antebellum Constitution," *Law and History Review* 30, no. 4 (November 2012): 1144-1151.

[92] *In re Susan*, 23 F. Cas. 444, 2 Wheeler, Cr. Cas. 594 (1818).

[93] Emma Lou Thornborough, "Indiana and Fugitive Slave Legislation," *Indiana Magazine of History* 50, no. 3 (September 1954): 201–28. H. Robert Baker mistakenly conflates the case at hand in *In re Susan* with the conflict over kidnapping that followed a few years later. See Baker, "The Fugitive Slave Clause and the Antebellum Constitution," 1149-1151.

[94] Glen A. Blackburn, Nellie Armstrong Robertson, and Dorothy Riker, eds., *The John Tipton Papers* (Indianapolis: Indiana Historical Bureau, 1942), 1:146.

While Stephens was ultimately acquitted, he was unsatisfied so long as Susan remained free. By that time an elderly man, he enlisted the help of his son, Robert, a member of the Kentucky state legislature. Robert Stephens wrote to the sheriff in Harrison County—where Susan lived—asking "whether She sleeps so situated that she can be come at without alarming the family." Over the coming months, Stephens launched several kidnapping attempts; that winter, Susan survived one only by evacuating a boat headed down the Ohio River. Eventually, though, Robert Stephens and two other men succeeded in stealing Susan back into slavery.[95]

In Stephens's eyes, this was a lawful exercise of his right of recaption. An Indiana court had, at least tacitly, acknowledged the legitimacy of his claim over Susan when they did not find him at fault in her 1816 suit. Regardless, as far as the state was concerned, this most recent act was without a doubt kidnapping. Susan's supposed enslaver and his posse were legally required to obtain a warrant from an Indiana judge and have the arrest conducted by a sheriff or constable. Having not followed this process they were kidnappers who had, "with force and arms, forcibly arrested" her.[96] A Harrison County judge issued a warrant for his arrest.[97]

The Governor of Indiana, Jonathan Jennings, requested the criminal extradition of Stephens and the two other men who had seized Susan. The Kentucky Governor refused to give them up and enclosed a copy of the *In re: Susan* decision in his correspondence.[98] The Kentucky legislature, one of their own members accused, passed a series of resolutions declaring the unconstitutionality of Indiana's personal liberty law.[99] At that point, the Indiana state legislature's judiciary committee opted to investigate the source of the stalemate. The committee

---

[95] Blackburn, Robertson, and Riker, eds., *The John Tipton Papers*, 1:146.

[96] Stephen Middleton, ed., *The Black Laws in the Old Northwest: A Documentary History* (Westport, CT: Greenwood Press, 1993), 228-229, 232.

[97] Blackburn, Robertson, and Riker, eds., *The John Tipton Papers*, 1:147.

[98] Middleton, ed., *The Black Laws in the Old Northwest*, 230-232.

[99] Baker, "The Fugitive Slave Clause and the Antebellum Constitution," 1150.

found that Kentucky's claim of unconstitutionality, and their refusal to extradite the men on those grounds, was unfounded. The fugitive slave clause "only prohibited [states] from discharging the obligations to serve," not from regulating the procedure of fugitive slave rendition. Furthermore, they argued, the tenth amendment's reservation of unenumerated powers to the states proved that "no more was intended [from the fugitive slave clause] than to prohibit one state from emancipating the slaves of another."[100]

Having laid out a constitutional defense of the 1816 personal liberty law, the committee issued a demand and a warning. They called on the Governor Jennings to relay the Kentucky governor's abdication of his duty to return fugitive criminals to "the President of the United States, or to Congress," and with the federal government involved to "enter into such negotiations on the subject as he may deem most for the honor of the state." If Kentucky continued to refuse to extradite the kidnappers—and in so doing continued rejecting Indiana's right to secure due process for Black residents—the committee predicted "a speedy dissolution of those bonds, under which we have hitherto acted as members of one family-when our rights are again invaded force may be repelled with force."[101]

A legal problem remained. While Indiana's judiciary committee built a strong case that their 1816 law complied with the Constitution, it clearly did not align with the federal 1793 law, particularly in its provision of a jury trial.[102] Instead of letting the law stand in defiance of the federal fugitive slave law—with knowledge of the Federal Circuit Court's evident preference for the federal law's summary hearing in Susan's case—the Indiana legislature passed a new personal liberty law in 1824. Under that law, a slaveholder or agent brought an affidavit to an

[100] Middleton, ed., *The Black Laws in the Old Northwest,* 236-237.
[101] Middleton, ed., *The Black Laws in the Old Northwest,* 238.
[102] Baker, "The Fugitive Slave Clause and the Antebellum Constitution," 1150.

Indiana state circuit court, which issued a warrant for the arrest of the accused fugitive from slavery.[103] This, notably, was a practical impediment relative to the 1793 law or most other state rendition laws, which allowed would-be slaveholders to appeal to any judge or magistrate in the state.

Once the slave catcher travelled to a state circuit court, secured a warrant, and had the alleged fugitive arrested, the supposed runaway was "let to bail until the parties shall be ready for trial, which time shall not exceed sixty days." After evidence collecting, the judge would process the case per a summary hearing rather than a jury trial.[104] This seemingly bent into compliance with the 1793 federal law and retreated from Kentucky's challenge of the constitutionality of their jury trial. Yet, under the new law, both parties could appeal the judge's summary judgement and, upon payment of fees, have their case tried before "a good and lawful jury of the county."[105] This was, on paper, a powerful protection. It appears, though, that no Black residents under threat of enslavement successfully employed the appeal.

What emerged from these interstate conflicts, for a moment, was not so much an interstate consensus but a legislative stalemate. Northern legislators who had opposed fugitive slave intervention from their colleagues in the Border South had, to varying degrees, conceded to amending their own laws. The results did not seem to fully secure Black civil rights, nor substantively make rendition easier, nor necessarily bring states into line with the federal fugitive slave law. One group that may have pushed laws into this position was a cadre of white northerners for whom "moderate" is not an accurate label, but who do not fit on the slavery-partisan binary through which most of these conflicts were filtered. Many did not see a

---

[103] Middleton, ed., *The Black Laws in the Old Northwest,* 241-242.
[104] Middleton, ed., *The Black Laws in the Old Northwest,* 242.
[105] Middleton, ed., *The Black Laws in the Old Northwest,* 242-243.

contradiction between being horrified by, and wanting to prevent, the kidnapping of free African Americans under the guise of fugitive slave rendition on one hand, and still being entirely willing, even enthusiastic, about permitting the expedient rendition of fugitive slaves to their southern neighbors. In these interstate negotiations, perhaps, they believed a balance had been struck. Radical changes to the American abolitionist movement would disrupt that balance soon.

If the 1810s demonstrated a connection between the antislavery/Black civil rights movement and a more mainstream politics of anti-kidnapping, the events of the 1820s revealed the limits of that alliance. The dissonance between the state citizenship of African Americans and slaveholder property rights hung over the Missouri Crisis. A combination of strategic slaveholder silences and northerners lacking foresight or fortitude, though, kept that dissonance from causing a rupture. Similarly aware of the issue's fragility, judges shut down every consideration of the 1793 Fugitive Slave Law's constitutionality and significantly undermined Black jury trial rights in the process. At the same time, abolitionists were made painfully aware that protective measures internal to northern states were entirely insufficient to prevent the kidnapping of free African Americans from Philadelphia. The geographic heart of the movement and the community at the vanguard of Black political activism for over two decades were, leaders felt, under attack. Furthermore, those already inadequate protections in northern state law were proving to be friction points in interstate comity that threatened to bring a challenge to the constitutionality of personal liberty laws to the Supreme Court and to peel off moderate allies of personal liberty who remained committed to national unity in the aftershocks of the Missouri Crisis.

That crisis made it clear that national recognition of Black legal rights threatened the slaveholder imagination. Leaving behind three decades of failed efforts to kill these rights and to re-secure the right of recaption, slaveholders entered the 1830s knowing that political diplomacy was insufficient. Meanwhile, interstate conflicts had demonstrated a divergence between the mainstream of northern politics and the abolitionist movement. Many northerners had found a status quo that worked for them and, to some extent, for slaveholders. At this impasse, different groups with different agendas saw the potential for broader, more structural change. In the 1830s, abolitionists and slaveholders would, in a myriad of ways, confront national constitutional politics. Both would come to see the legal rights of accused fugitive slaves as a fundamental constitutional litmus test for the security of property in slaves, and would recognize and exploit that fight's incendiary potential.