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THE ENSLAVEMENT OF FREE BLACKS

AND THEIR LEGAL STATUS IN THE UNITED STATES, 1780-1860

By

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Solomon Northup, a freeborn black American from Saratoga, New York, never feared that he could lose his freedom until 1841. He considered himself a prosperous man and lived comfortably with a wife and three children. Northup was searching for work in Saratoga when he met two white men claiming to be Merrill Brown and Abram Hamilton. Having heard that Northup was an expert violinist, they asked him to perform with their travelling circus. They offered one dollar per day and three dollars per performance in addition to his travel expenses. The unusual generosity of the proposal astounded Northup, and he happily accepted. Brown and Hamilton wished to leave immediately, and Northup departed without informing anyone of his intentions. His wife and children were out of town, and he expected to be finished before they returned.

Northup and his employers eventually arrived in Washington, DC. The day after their arrival, Brown and Hamilton took Northup to a saloon and drugged his drink. That night he became violently ill and passed out on the bed in his hotel room. When he regained consciousness, he found himself chained and fettered in a windowless cell. Brown and Hamilton had carried him to the Williams Slave Pen on 7th Street and sold him to James Birch for 650 dollars.[1] When Birch's men brought Northup outside, he found himself in the shadow of the Capitol dome. The irony of that moment made a profound impression on him. He later wrote, "The voices of patriotic representatives boasting of freedom and equality, and the rattling of poor slaves' chains, almost commingled."[2] The slave traders took Northup to Louisiana, where he spent the next twelve years of his life in slavery.

Solomon Northup saw irony in his enslavement under the shadow of the Capitol, but he based his judgment on the dubious assumption that the United States protected the liberty of free blacks. The legal status of free blacks was tenuous at best, even before *Dred Scott v. Sandford* ruled that the Constitution did not protect them. Until the abolition of slavery, free blacks in the United States lived under the constant threat of losing their freedom.[3] Slave catchers and professional criminals seized free blacks from all over the country and sold them as slaves in the South. The federal government facilitated kidnapping through the Fugitive Slave Law, which provided minimal protection against the wrongful seizure of falsely accused defendants. Kidnapping was not the only way free blacks lost their freedom; state governments in the South created a variety of legal means to enslave free blacks. Dual federalism allowed Southerners to dominate policy in the northern states when the issue threatened to exacerbate sectional conflict. The government's responses to the kidnapping and enslavement of free blacks show that their legal status declined after the American Revolution and throughout the antebellum period.

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[1] Elizabeth Marsden, "Solomon Northup." *African American Autobiographers: a Sourcebook*, Ed. Emmanuel S. Nelson (Westport Conn.: Greenwood Press, 2002), 291-293. Marsden writes that Brown and Hamilton used aliases. Their real names were Alexander Merrill and Joseph Russell.

[2] Solomon Northup, *Twelve Years a Slave* (Auburn, N.Y.: Miller Orton & Mulligan, 1855), 42-43.

[3] Carol Wilson, *Freedom at Risk: The Kidnapping and Enslavement of Free Blacks in America, 1780-1865* (Lexington, Kentucky: University Press of Kentucky, 1994). "Slave catchers" refers to people that returned runaway slaves to the South. Initially, this group only included private parties that profited from returning slaves to their masters. After the Fugitive Slave Act of 1850, the group also included government authorities, whom the law required to arrest "fugitive" slaves and render them to their masters. For the sake of brevity, I refer to victims as "free blacks" throughout the paper.

The Fugitive Slave Issue, 1775-1787

The recovery of runaway slaves troubled slaveholders since the colonial period. British common law allowed slaveholders to recapture runaway slaves without interference from the government. This right rarely came into question until the American Revolution. British commanders offered freedom to any slaves who enlisted in the British army. Moreover, they threatened to enslave any blacks that sided with the rebels. Slaves ran away in droves to join loyalist forces, and others sought refuge on British ships along the coast. The loss of a single slave could cost a slaveholder hundreds of dollars. When the war ended, approximately three thousand blacks left with the British army and American loyalists.[4]

The massive loss of slaves prompted the federal government's first defense of slaveholders' rights. After the war, the Continental Congress sought to reclaim escaped and captured slaves in the peace treaty with Great Britain.[5] The Treaty of Paris made no provision for the restitution of lost slaves, but the attempt set a precedent for protecting the interests of slaveholders.[6] The American Revolution also prompted many Northern politicians to call for the abolition of slavery, which they claimed to be a contradiction of the revolution's spirit of liberty and equality. Many northern states began the process of gradual emancipation when opposition to slavery became practical for white elites.[7] Southern slaveholders feared that their right to reclaim fugitive slaves was in jeopardy, and began to call for federal protection against losing their slaves who fled to free territories.

In 1787, politicians laid the groundwork for a federal fugitive slave policy in the Northwest Ordinance and the Constitution. Thomas Jefferson and the other contributors to the Ordinance prohibited slavery in the Northwest Territory. However, slaves who fled to the territory did not become free, and their owners had the legal right to recapture them.[8] The fugitive slave issue arose again in the last two weeks of the Constitutional Convention. South Carolina delegates Pierce Butler and Thomas Pinckney proposed that runaway slaves "should be delivered up like criminals," which would obligate the state to pay for the extradition of fugitive slaves to their owners. James Wilson of Pennsylvania and Roger Sherman of Connecticut initially defeated the proposal. Sherman argued that a state was no more obliged to pay for the capture and extradition of a runaway slave than it was obligated to return a runaway horse. The next day, Butler presented a revised version of the proposal that did not explicitly mention extradition. The measure passed without opposition, appearing in Article IV, Section 2 of the Constitution. It declared that slaves would not be freed when entering a state in which slavery was prohibited, and

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[4] Douglas Harper, "Northern Emancipation," Slavery in the North, www.slavenorth.com.

[5] Don E. Fehrenbacher and Ward McAfee, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (New York: Oxford University Press, 2001), 206.

[6] Treaty of Paris, 1783, *International Treaties and Related Records, 1778-1974* (General Records of the United States Government, Record Group 11, National Archives).

[7] Douglas Harper, "Northern Emancipation." Slavery in the North. www.slavenorth.com (Accessed 8 March 2009). Dr. Harper discusses the ideological, religious, and economic reasons for northern emancipation in greater detail.

[8] Fehrenbacher, *The Slaveholding Republic*, 207.

that runaway slaves should "be delivered up" to their master. The ambiguity of this phrase virtually assured that the issue would become a source of contention.[9]

The framers of the Constitution made no provisions to protect free blacks from kidnapping, and there is no evidence that they even discussed the issue. Perhaps the delegates were exhausted from the strain of that summer's infamous heat wave or the months of incessant debate, or perhaps they simply did not foresee moral and legal complications in the recovery of runaway slaves.[10] The racial attitude reflected in the Three-Fifths Compromise suggests that the framers may not have cared about the rights of blacks. Contrary to the framers' expectations, Southerners' dependence on slavery and Northerners' abolitionist sentiment increased in the following decades.

The Fugitive Slave Act of 1793

The fugitive slave issue came into question in a dispute between Pennsylvania and Virginia. The conflict began in 1783, when a slave named John Davis became free under Pennsylvania's Gradual Emancipation Act of 1780. The law required Pennsylvania slaveholders to register their slaves by January 1, and any unregistered slaves would become free under the state's authority. In 1788, long after the date had passed, Davis's owner took him to Virginia and hired him out to a man named Mr. Miller. Miller's neighbors happened to be members of the Pennsylvania Abolition Society (PAS). When Davis told them that he was free under Pennsylvania law, they helped him escape across the state line to Washington County.

Miller, fearing that Davis's owner would make him pay for the loss of his slave, hired three Virginians to recapture John. The three Virginians, Francis McGuire, Baldwin Parsons, and Absolom Wells, seized John in Pennsylvania and carried him back to Virginia. The PAS reported the incident to the authorities in Washington County, who indicted the three Virginians for kidnapping in November 1788. The government took no further action for two years, during which time Virginians continued to force Davis to work as a slave. In May 1791, the leaders of the PAS finally appealed to Pennsylvania Governor Thomas Mifflin to order the extradition of the three kidnappers. Mifflin sent an extradition request to Virginia Governor Beverley Randolph, who replied with an official refusal based on a tenuous defense of the three kidnappers. Mifflin responded by sending the details of the case to President George Washington.[11]

Washington initially decided not to interfere, hoping that the governors would solve the problem themselves. Although Mifflin produced more evidence against the three kidnappers, Randolph continued to refuse Mifflin's extradition requests. State legislators in Western Virginia charged that John Davis had been a fugitive slave and claimed that the three Virginians had captured him out of a sense of moral duty. Moreover, the Virginians accused abolitionists of "kidnapping" fugitive slaves. Washington, a Virginia slaveholder, knew firsthand about the fugitive slave issue. He and Martha Washington had placed many newspaper advertisements for the recovery of their own runaway slaves.[12] With the conflict between Pennsylvania and Virginia

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[9] Fehrenbacher, *The Slaveholding Republic*, 207.

[10] Paul Finkelman, "The Kidnapping of John Davis and the Adoption of the Fugitive Slave Law of 1793," *The Journal of Southern History* 56, no. 3 (August 1990): 398.

[11] Finkelman, 400-405.

[12] Fehrenbacher, 205.

growing more contentious, Washington appealed to Congress. On 27 October 1791, Washington requested the creation of federal legislation to provide for the extradition of fugitives from justice and the rendition of fugitive slaves.[13]

Southern representatives dominated the debate over the legislation, resulting in a bill that favored slaveholders and endangered free blacks.[14] The bill contained two sections concerning the extradition of fugitive criminals and two for the rendition fugitive slaves. The first two sections outlined the process through which governors were to extradite fugitive criminals, but they proved to be superfluous. Although these sections created an orderly process for the extradition of fugitives, this half of the law was effectively useless because it did not punish governors who refused to comply with an extradition request.[15] The second two sections of the law streamlined the rendition of fugitive slaves. The law gave slaveholders and their agents the right to arrest runaway slaves who fled into free states or territories. The arrestors were to bring accused fugitives before any judge in the judicial district in which they had arrested the slave. To prove the accused was actually a slave, the claimant only needed to provide evidence "to the satisfaction of the judge or magistrate" in the form of oral testimony or an affidavit from the state of the slaveholder. Finally, the law dictated that those who "obstructed or hindered" the efforts of slaveholders to recover an accused fugitive would be fined five hundred dollars.[16]

George Washington signed the bill on 12 February 1793, creating the Fugitive Slave Law. The passage of the law was a stinging defeat for the PAS. The John Davis case, the crime that prompted the creation of the law, was never resolved. Virginia never extradited the three Virginians, and the Washington County Court abandoned the trial. The victim, John Davis, remained a slave for the rest of his life.[17] Moreover, what began as an attempt to rescue one free man from slavery ended with a law that threatened the liberty of every free black person in America. By appealing to the government, abolitionists inadvertently played a role in legalizing the sale of free men into slavery.

Kidnapping after the Fugitive Slave Act of 1793

The Fugitive Slave Law had dire consequences for fugitive slaves and free blacks accused of being slaves. Unlike the policy on fugitive criminals, there was no statute of limitations on the recovery of runaway slaves. This would become a painful consequence of the law for those who lived in freedom for several years. The law did not allow accused fugitives to claim their free status. The law denied that blacks had constitutional protections against unreasonable seizure and right to a trial by jury. Kidnappers took advantage of the law's minimal evidence requirement. Working in teams of two, the kidnapper used an accomplice to provide false testimony against the accused.[18] The five hundred dollar penalty for interfering with recaption deterred most people from assisting

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[13] Finkelman, 405-407.

[14] Wilson 40-41, Finkelman 420-421, Fehrenbacher, 212-213.

[15] 1 *U.S. Statutes at Large* 303-305; Finkelman, 416-420.

[16] 1 *U.S. Statutes at Large* 303-305; Finkelman, 416-420.

[17] Finkelman, 422.

[18] Wilson, 50

kidnapping victims. As Don Fehrenbacher observed, the Fugitive Slave Law of 1793 was "an invitation to kidnapping, whether the result of honest error or deliberate fraud."[19]

Although historians have been unable to determine how often kidnappings occurred, abolitionists suggested that kidnappings were a serious problem before the antebellum period. In 1803, Philadelphian Thomas Cope wrote in his diary, "Not a day passes but free blacks are stolen by force or decoyed by the most wicked artifices from the Northern and Middle States and sold for slaves in the Southern."[20] In 1839, the New York Anti-Slavery Society wrote, "In all probability, each United States' census of the slave population is increased by the addition to it of thousands of free colored persons, kidnapped and sold as slaves."[21] Most cases of kidnapping and enslavement were undocumented; like most criminals, kidnappers made a conscious effort to leave no evidence. Abolitionists may have exaggerated these estimates, but historians estimate that there were at least three hundred recorded cases similar to Solomon Northup's kidnapping.[22]

One kidnapper accidently gave an account of his activities to a reputable witness. In a roadside tavern in Virginia, a slave trader was boasting to a younger man about his experiences when James K. Paulding, Secretary of the Navy, sat down at an adjacent table. Paulding overheard the entire conversation, which he related in one of his letters.[23] The slave trader recruited helpers along the road to aid in the kidnapping of free blacks. Once he had captured about half a dozen victims, he tied their hands behind their back and led them off to the South. If anyone along the way inquired about the victims, he claimed that he was returning runaway slaves to their masters. When one of the victims cried out that she had been kidnapped, the man took her into the woods and beat her "till her back was white."[24] They travelled through the countryside during the day and stopped at isolated houses at night. He slept with loaded pistols in each hand, locked the door, and placed a table with a chair on top in front of the door to wake him in case one of his victims tried to break into his room. Married slaves brought higher prices at market, so he made the men and women sleep together and call themselves husband and wife. After a march of three or four hundred miles, the slave trader sold his victims in Carolina and Georgia. It was a morbid version of the Underground Railroad running in reverse.

Once victims reached the South, it was extremely difficult for them to regain their freedom without the assistance of whites. For example, Solomon Northup was unable to

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[19] Don Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), 21; quoted in Wilson, 41.

[20] Wilson, 8.

[21] Theodore Weld, *American Slavery as It Is: Testimony of a Thousand Witnesses* (New York: American Anti-slavery Society, 1839), 140.

[22] Marsden, 293.

[23] Weld, 176. There is no date attached to the story, but it occurred sometime before 1817. According to Weld's note, Paulding described the account in a collection of correspondence called "Letters from the South," Vol. I. (1817), 121.

[24] Weld, 176.

escape Louisiana until he procured the assistance of a white lawyer in New York.[25] Jesse, a free black from Maryland, had no advocates and remained in slavery for over fifty years. Jesse was sixty-eight years old when he finally confided his story to a Baptist pastor named Dr. Tichenor. Three slave traders kidnapped Jesse when he was eighteen years old. They sold him on an auction block in Richmond while he screamed that he was a free man. The buyers brought him to Montgomery, Alabama, where he spent the next fifty years of his life in the service the Goldthwaite family. Jesse claimed that he slowly lost his will to escape, sinking deeper into despair as the years passed.[26]

In some cases, the assistance of white friends was not enough to overcome the obstinacy of the Southern legal system. In 1818, Amy Butcher and her daughter Caty sued for their freedom in Huntsville, Alabama. The plaintiffs claimed that they had been legally free in Prince George County, Virginia. They alleged that James Dowell had kidnapped them under the guise of larceny charges, brought them to Huntsville, and sold them to Thomas Miller. The plaintiffs presented "respectable witnesses" and "had indeed established their freedom."[27] However, the court avoided making a decision. After six years of inexplicable delays, the plaintiffs dropped the lawsuit. Amy, Caty, and their children remained in slavery.

In 1839, a black servant named Mary Smith disappeared during a sea voyage from New Orleans to Boston. After the ship arrived in Boston without Mary, her friends discovered that someone had kidnapped her when the ship stopped in North Carolina. Mary's white friends contacted the authorities in North Carolina, demanding her safe return. After some initial hesitation, the authorities "complied" by sending a woman named Mary Smith back to Boston. Mary's friends were shocked to find that the North Carolinians had sent a different woman.[28]

Between 1793 and 1842, the federal fugitive slave policy remained unchanged. The federal government refused to acknowledge its complicity in the kidnapping of free blacks despite numerous appeals.[29] Unlike the state governments of the South, the US government would not be directly responsible for the enslavement of free blacks until the passage of the Fugitive Slave Act of 1850. While the federal government continued to allow slave catchers to seize free blacks in the North, state governments directly enslaved free blacks in the South.

The Antebellum Black Codes

Southern states directly enslaved free blacks under laws designed to suppress the black population. These laws arose out of Southerners' belief that the presence of free

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[25] Northup, 18-19; Marsden, 291-293. This lawyer was Henry Northup, who was Solomon's father's former master's relative.

[26] James Sellers, *Slavery in Alabama* (Tuscaloosa: University of Alabama Press, 1964), 158. Jesse came to Dr. Tichenor because he was illiterate and needed help to write a letter to his family. Dr. Tichenor helped Jesse send the letter, but the family never responded. After his kidnapping, Jesse never saw his family again.

[27] Sellers, 157. These "respectable witnesses" had to be white or else their testimony would have been inadmissible against Dowell.

[28] Weld, 141. The writer of the story assumed that the original Mary Smith was still in slavery at the time of the writing.

[29] Fehrenbacher, 214-219

blacks threatened the institution of slavery.[30] The states created many legal avenues to enslave free blacks. For example, prison officials sold black prisoners into slavery to cover jail fees. Many of these prisoners had committed no crimes, but the authorities had arrested them without filing charges. When masters manumitted slaves in their wills, the masters' relatives often overturned the manumission in civil court. The state could also reverse the manumission of slaves that did not leave the state quickly. Under certain circumstances, authorities enslaved free blacks for the simple act of entering the state.

Many states prescribed enslavement as an acceptable way to punishment free blacks. Southern state policies authorized jailers to sell any free black prisoner into slavery to cover jail fees, creating a quick and easy method to generate revenue for the jail and the state. This allowed Virginia, Maryland, and Delaware to deal with prison overcrowding and budget crises simultaneously.[31] Some jailors used this practice to supplement their income. Tinch Ringold, a jailor in Washington, DC, "made a small fortune" selling free blacks that he advertised as unclaimed runaway slaves.[32] The value of slaves increased during the Antebellum Era, allowing jails to make thousands of dollars per sale.

Southern law enforcers ensured that prisons had a steady supply of black prisoners. Mississippi allowed authorities to enslave any blacks who could not prove their free status, and Florida authorities enslaved free blacks for being "idle and dissolute."[33] In 1837, Jacob Barker toured Maryland jails to investigate the issue and found that jailers were holding many blacks without charge. In the case of one prisoner, the jailers admitted to Barker, "no one seemed to know why he had been confined or arrested."[34] To whites that believed all free blacks were a threat to society, filing charges would have seemed unimportant.

Some black codes required manumitted slaves to leave the state within a certain time. If the freed slave did not leave within these windows of opportunity, the state could sell them back into slavery. Some states, such as Virginia, gave manumitted slaves up to twelve months to leave. In South Carolina, manumitted slaves had only fifteen days to leave before the state auctioned them back into slavery. This often meant that recently freed slaves had insufficient time to gather the necessary resources for their journey to the North.[35] Law enforcers' eagerness to arrest blacks compounded the difficulty of travelling to the North.

The Negro seamen acts were the most notorious antebellum black codes, leading to the enslavement of countless black sailors. South Carolina passed the first of these laws after the discovery and suppression of Denmark Vesey's slave rebellion in 1822.[36]

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[30] Peter Kolchin, *Unfree Labor: American Slavery and Russian Serfdom* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1987), 330.

[31] Berlin, 182-183. Intense protest eventually compelled Virginia and Maryland to stop enslaving prisoners.

[32] Wilson, 65.

[33] Wilson, 63.

[34] Weld, 141.

[35] Wilson, 57.

[36] Ira Berlin, *Slaves Without Masters* (New York: Pantheon Books, 1974), 188-189; Kolchin, 330.

Vesey was a free black, which bolstered Southerners' suspicions that free blacks posed a serious threat. The law dictated that authorities should arrest all black sailors onboard ships entering a South Carolina port. If the ship's captain failed to pay the expense of their imprisonment, the jailers could sell the sailors into slavery to cover their jail fees. Every other Southern coastal state created its own version of the law in the following years. The Negro seamen acts endangered black sailors because their captains often left them behind rather than pay their jail fees. Many ship captains preferred to find replacements for their lost crewmembers rather than pay hundreds of dollars to free a cook or a steward. Some deliberately brought black sailors to Southern ports to sell to jailers, who then sold the prisoners into slavery.

Although port authorities reportedly imprisoned and enslaved thousands of free black sailors under the Negro seamen acts, Southern judges and legislators ignored the practice. Ship captains began opposing the law within weeks. The first controversy occurred when Charleston authorities arrested all the black sailors aboard an American ship in their port. The ship's captain challenged the arrests in court, claiming that the Negro seamen law was flagrantly unconstitutional. Other captains made similar challenges, but the lower courts of South Carolina upheld the law.[37]

The Southern states demonstrated their intense dedication to this law when it became a source of numerous international incidents with Great Britain. Southern port authorities imprisoned, abused, and enslaved black sailors from British ships.[38] The response of British captains varied from case to case. Many captains were content to pay the jail fees without incident, but some responded with outrage. In 1845, port officials in Wilmington, North Carolina ordered the *Susan King* to hand over its black sailors. The captain responded by arming the crew, fortifying the deck with cannons, and challenging the Americans to take the black sailors by force; the authorities backed down and allowed the sailors to stay.[39] British officials implored the federal government to intervene, reminding them that the imprisonment and enslavement of foreign sailors was an egregious violation of International Law. The US government apologized but recognized South Carolina's right to control its own borders.[40] Ultimately, dual federalism allowed the southern states to damage US foreign relations without federal interference.

Southerners in Congress downplayed the enslavement of free blacks under the law. During a debate in 1850, a representative from Louisiana declared that authorities had never arrested a single black sailor under the Negro seamen laws in his state. Robert C. Winthrop responded with evidence of "over one thousand imprisonments, within three years, in the port of New Orleans alone."[41] Historians have not determined how many black sailors were enslaved, but federal legislation after the abolition of slavery implies that it happened frequently. Congress passed a federal anti-kidnapping law in 1866 to prevent all forms of kidnapping and enslaving free blacks. In a law designed to prevent

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[37] Philip M. Hamer, "Great Britain, the United States, and the Negro Seamen Acts, 1822-1848," *The Journal of Southern History* 1, no. 1 (February 1935): 3-4.

[38] Hamer, 3-28.

[39] Hamer, 24.

[40] Hamer 5-9.

[41] Wilson 50, 62.

all forms of kidnapping, half of the legislation specifically forbid the imprisonment and enslavement of free black sailors.[42]

Prigg v. Pennsylvania

While Southerners enslaved free blacks under the antebellum black codes, kidnapping under the Fugitive Slave Law continued to occur all over the country. In 1842, *Prigg v. Pennsylvania* made important changes in the government's fugitive slave policy for the first time since 1793. In 1832, a black woman from Maryland named Margaret moved to Pennsylvania with her new husband, a free black man from Pennsylvania named Jerry Morgan. Margaret's parents were slaves owned by John Ashmore, who died several years before. John Ashmore had allowed Margaret's parents to live as if they were free. Although Margaret may have been a slave under Maryland law, she never experienced slavery. Five years after Margaret moved to Pennsylvania, John Ashmore's widow decided to claim Margaret as her slave and sent four men to retrieve her from Pennsylvania.[43]

The four men went to Pennsylvania and obtained a warrant from Justice of the Peace Thomas Harrison to arrest Margaret and her children. The men went with a constable to the Morgans' home, took Margaret and her children, and carried them back to Henderson to certify their claim. Henderson learned that the children's father was free, meaning that at least two of the children were free, and refused to certify their rendition to Maryland. Undeterred, the four men took the victims back to Maryland without certification. Pennsylvania indicted the four men under its 1826 anti-kidnapping law and sent a request to Maryland for their extradition. Maryland only agreed to extradite one of them, a man named Edward Prigg, whom the Pennsylvania court subsequently convicted. Prigg and his attorney appealed the decision to the Supreme Court. The Court ruled that the Pennsylvania law was unconstitutional because it contradicted federal law, which guaranteed the right of slaveholders and their agents to reclaim their slaves. Therefore, the Court overturned Prigg's conviction and set the kidnapper free.[44]

The majority opinion written by Justice Joseph Story leaves out many important details of the case.[45] Story based his decision on the assumption that Morgan was legally enslaved, but records show that Margaret Morgan and her children may have been free. Margaret Ashmore claimed that Morgan was still her slave because she never conducted the formal process of emancipation. However, Morgan could be free without formal emancipation under abandonment laws that apply in Pennsylvania and Maryland, and a census from 1830 lists Margaret and her children as "free blacks."[46] Even if the census was wrong, it indicates that Margaret lived independently of her owner.

Story justified the Court's decision by claiming that slavery was the key to the union of the states. He claimed that the Southern states would not have agreed to the

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[42] 14 *U.S. Statutes at Large*. 50, 1866.

[43] Finkelman and Joseph Story, "Story Telling on the Supreme Court: Prigg v Pennsylvania and Justice Joseph Story's Judicial Nationalism," *The Supreme Court Review* 1994 (1994): 273-276; Wilson, 71-72.

[44] *Prigg v. Pennsylvania*, 41 U.S. 539, 1842.

[45] Finkelman, "Story Telling," 247-294

[46] Finkelman, "Story Telling," 275.

Constitution without its guarantee to the slaveholder's right to property. However, there is no evidence to support this claim. Records from 1787 show that Southern delegates thought of the fugitive slave clause was a bonus, but there is no indication in any of the records that any Southerner considered this right to be a key issue.[47]

Story's opinion would have dire consequences for free blacks. The ruling invalidated the anti-kidnapping laws of every free state based on the Constitution's Supremacy Clause, which states that federal law supersedes state law. As Paul Finkelman observed, "By striking down the Pennsylvania law, the Court seemed to leave Pennsylvania powerless to prevent the kidnapping of its own citizens."[48] Furthermore, the Court declared that the common law right of recaption gave slaveholders and their agents the ability to retrieve fugitive slaves without certification as long as it did not constitute a "breach of the peace."[49] Kidnappings were legal as long as no one observed the capture, even if it involved a black being "shackled, intimidated, and perhaps beaten into submission."[50] This meant that any slave catcher or kidnapper could legally seize any black person in a free state and carry them to the South without permission from the authorities.

The Court made a temporary concession to opponents of slavery by ruling that state authorities were not obligated to enforce federal law.[51] In response, many Northern states passed new personal liberty laws that forbade state officials from enforcing the Fugitive Slave Act of 1793. Northern authorities and private citizens became less cooperative with slave catchers, who found it increasingly difficult to recover fugitive slaves by legal means. In one case from 1847, an angry crowd stopped a group of Kentucky slave catchers from pursuing six runaway slaves, and the authorities charged the Kentuckians one hundred dollars for trespassing. This infuriated the Kentucky legislature, which called for Congress to pass new legislation to strengthen penalties against those who interfered with the recapture of slaves. Under the pressure of sectional conflict, the federal government granted Southerners' requests.

The Fugitive Slave Law of 1850

In 1850, the federal government became directly involved in the kidnapping and enslavement of its own people. The sectional crisis threatened to tear the country in half as Southerners openly discussed the possibility of secession. The Clay Compromise temporarily averted the crisis by giving slaveholders unprecedented concessions. Southerners assented to the admission of California as a free state and the cessation of the slave trade in Washington, DC, and the federal government agreed to become slave catchers for slaveholders.[52] Ultimately, the federal government delayed the Civil War by selling the freedom of Americans.

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[47] Finkelman, "Story Telling, 259-266."

[48] Finkelman, "Story Telling," 282.

[49] *Prigg v. Pennsylvania*; Wilson, 71; Fehrenbacher, 220.

[50] Finkelman, "Story Telling," 254.

[51] *Prigg v. Pennsylvania*; Wilson, 71-72; Fehrenbacher, 220-225.

[52] Christine Compston and Rachel Filene Seidman, ed., "Compromise of 1850." *Our Documents: 100 Milestone Documents from the National Archives* (New York: Oxford University Press, 2003), 74.

On September 18, 1850, President Millard Fillmore signed the new Fugitive Slave Act into law. It created a system for federal officials to execute warrants to seize fugitive slaves, though the slaveholder and his agents could still catch the fugitive on their own. The arresting party would bring the accused before a federal magistrate to obtain a certificate of removal. The accused had no right to habeas corpus. If the accused was found to be a fugitive, the magistrate received ten dollars; if they were found to be free, they received five dollars. Anyone who obstructed the capture of an accused fugitive could be fined one thousand dollars and imprisoned for up to one year.[53] If the law of 1793 was an invitation to kidnapping, the law of 1850 was a declaration of war.

The president pledged full support for enforcing the law in hopes of avoiding secession. In 1851, a black Boston waiter named Shadrach was arrested under the new law, but abolitionists helped him escape prison and flee to Canada. In response, President Fillmore asked Congress for legislation that would allow him to more easily use "the army, navy and militia forces" to help recover fugitive slaves.[54] In 1860, President Buchanan declared that his administration had "carried into execution every contested case since the commencement of the present Administration."[55] Although state governments in the North continued to resist the Fugitive Slave Law, the federal government vigorously supported it to placate the South.

The new law led to an increase of kidnapping and false arrests.[56] The first person captured under the law, Adam Gibson, was a free man. Among the first eight people accused of being fugitives, four were found to be free.[57] Many Northerners cried out against the injustice of the law. Opponents attacked the provision that gave ten dollars to magistrates for claiming fugitives. Defenders justified this by claiming that it paid for the additional paperwork it required, though Pennsylvanian George Stroud proved this to be false. Pennsylvania newspapers railed against the "bribery" of federal magistrates "who choose to convert themselves into willing kidnappers of free negroes."[58] Nevertheless, the threat of a one thousand dollar fine and imprisonment deterred most complainers from assisting free blacks.

The danger of being enslaved compelled many free blacks to flee the country or resort to vigilantism. Most free blacks felt degraded by the idea that they had to flee their own country to escape racism and slavery.[59] The passage of the Fugitive Slave Act of 1850 convinced many of them to change their minds. Between 1850 and 1860, twenty thousand blacks fled to Canada alone.[60] William Craft and his wife, fugitive slaves from

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[53] 9 *U. S. Statutes at Large* 462-5; Compston, 74; Fehrenbacher, 231-233; Wilson, 40-55.

[54] Fehrenbacher, 233-234.

[55] Fehrenbacher, 246.

[56] Wilson, 116.

[57] Wilson Armistead. *Five Hundred Thousand Strokes for Freedom: A Series of Anti-Slavery Tracts*, (London: W. & F. Cash, 1853), No. 32, p. 2.

[58] Wilson, 54-55.

[59] Berlin, 204-207. Many whites supported the idea of sending blacks to the colony of Liberia as a solution to racial tensions, but this movement often led to increased racism.

[60] Fred Landon, "The Negro Migration to Canada after the Passing of the Fugitive Slave Act." *The Journal of Negro History* 5, no. 1 (January 1920): 22-36.

Georgia, chose to flee to England. Craft admonished the government for forcing his decision: "Oh shame, shame upon us, that Americans, whose fathers fought against Great Britain in order to be free, [...] must fly the American shores, and seek, under the shadow of the British throne, the enjoyment of 'life, liberty, and the pursuit of happiness.'"[61] Most free blacks chose to stay in America, and many resorted to vigilantism to defend themselves. The passage of the 1850 law led to an increase in weapons sales and the formation of black gangs in the free states.[62] Black leaders supported violent resistance to the law. Frederick Douglass declared that anyone who resorted to kidnapping "had forfeited his right to live."[63] The rule of law broke down in direct response to the government's passage of the Fugitive Slave Law.

The line between free blacks and slaves was dissolving in the years leading up to the Civil War. In the North, abolitionists saw no difference between free blacks and fugitive slaves. They used the word "kidnapping" to refer to all aspects of slaveholding.[64] In the South, the "positive good" argument for slavery became more popular than the "necessary evil" theory. In 1851, George Fitzhugh wrote, "Humanity, self-interest, and consistency all require that we should enslave the free negro."[65] Under the weight of this ideology, free blacks had no place in the South.

Conclusion

One of the final actions of Southern legislatures before they seceded was to embrace the wholesale enslavement of free blacks. Southerners had debated this idea in the 1850s, but questions over its constitutionality kept it from taking hold. The Supreme Court removed this obstacle when *Dred Scott v. Sandford* officially renounced the citizenship of free blacks in 1857. In 1858, Arkansas ordered all free blacks to leave the state by January 1, 1860; all those that stayed "would be allowed to choose a master or would be sold into slavery, with the benefits of their sale going to the state school fund."[66] Florida and Missouri issued similar declarations in early 1860. In the full context of America's enslavement of blacks, the enslavement movement seems to be a natural conclusion.

From the American Revolution to the Civil War, the American government gradually stripped away the rights of free blacks and increased the ways in which they could lose their freedom. The federal government encouraged the kidnapping of free blacks with its fugitive slave policy. Southern states directly enslaved free blacks through the antebellum black codes. The federal government failed to protect free blacks from enslavement because it yielded to the pressure of Southern politicians' cries to protect the slaveholder's right to property. For the sake of preserving the union and slavery, the government sold its own people into slavery.

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[61] Craft, 91.

[62] Wilson, 114.

[63] Wilson, 113.

[64] Wilson, 4-5

[65] Berlin, 343.

[66] Berlin, 371-372.

Bibliography

Primary Sources

Armistead, Wilson. *Five Hundred Thousand Strokes for Freedom: A Series of Anti-Slavery Tracts,* London: W. & F. Cash, 1853.

Compston, Christine and Rachel Filene Seidman, ed. *Our Documents: 100 Milestone Documents from the National Archives*. New York: Oxford University Press, 2003.

Craft, William, and S. S. Schoff. *Running a Thousand Miles for Freedom: or, The Escape of William and Ellen Craft from slavery*. London: William Tweedie, 1860.

Northup, Solomon. *Twelve Years a Slave: The Narrative of Solomon Northup.* Auburn N.Y.: Miller Orton & Mulligan, 1855.

Prigg v. Pennsylvania, 41 U.S. 539, 1842.

Statutes at Large of the United States of America, 1789-1873, 17 vols. (Washington, 1850-73).

Treaty of Paris, 1783. *International Treaties and Related Records, 1778-1974*. General Records of the United States Government, Record Group 11, National Archives.

Weld, Theodore, and American Anti-Slavery Society. *American Slavery as It Is: Testimony of a Thousand Witnesses.* New York: American Anti-slavery Society, 1839.

Secondary Sources

Berlin, Ira. *Slaves Without Masters: The Free Negro in the Antebellum South.* New York: Pantheon Books, 1974.

Fehrenbacher, Don Edward. *The Dred Scott Case: Its Significance in American Law and Politics*. New York: Oxford University Press, 1978.

Fehrenbacher, Don Edward and Ward McAfee. *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*. New York: Oxford University Press, 2001.

Finkelman, Paul. "The Kidnapping of John Davis and the Adoption of the Fugitive Slave Law of 1793." *The Journal of Southern History* 56, no. 3 (August 1990), 397-422.

Finkelman, Paul and Joseph Story. "Story Telling on the Supreme Court: Prigg v Pennsylvania and Justice Joseph Story's Judicial Nationalism." *The Supreme Court Review* 1994 (1994): 247-294.

Harper, Douglas. "Northern Emancipation." Slavery in the North. www.slavenorth.com (Accessed 8 March 2009).

Hamer, Philip M. "Great Britain, the United States, and the Negro Seamen Acts, 1822-1848." *The Journal of Southern History* 1, no. 1 (February 1935): 3-28.

Kolchin, Peter. *Unfree Labor: American Slavery and Russian Serfdom*. Cambridge, Mass.: Belknap Press of Harvard University Press, 1987.

Landon, Fred. "The Negro Migration to Canada after the Passing of the Fugitive Slave Act." *The Journal of Negro History* 5, no. 1 (January 1920): 22-36.

Marsden, Elizabeth. "Solomon Northup." *African American Autobiographers: A Sourcebook*. Edited by Emmanuel S. Nelson. Westport Conn.: Greenwood Press, 2002.

Sellers, James. *Slavery in Alabama*. Tuscaloosa: University of Alabama Press, 1964.

Wilson, Carol. *Freedom at Risk: The Kidnapping and Enslavement of Free Blacks in America, 1780-1865*. Lexington, Kentucky: University Press of Kentucky, 1994.

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