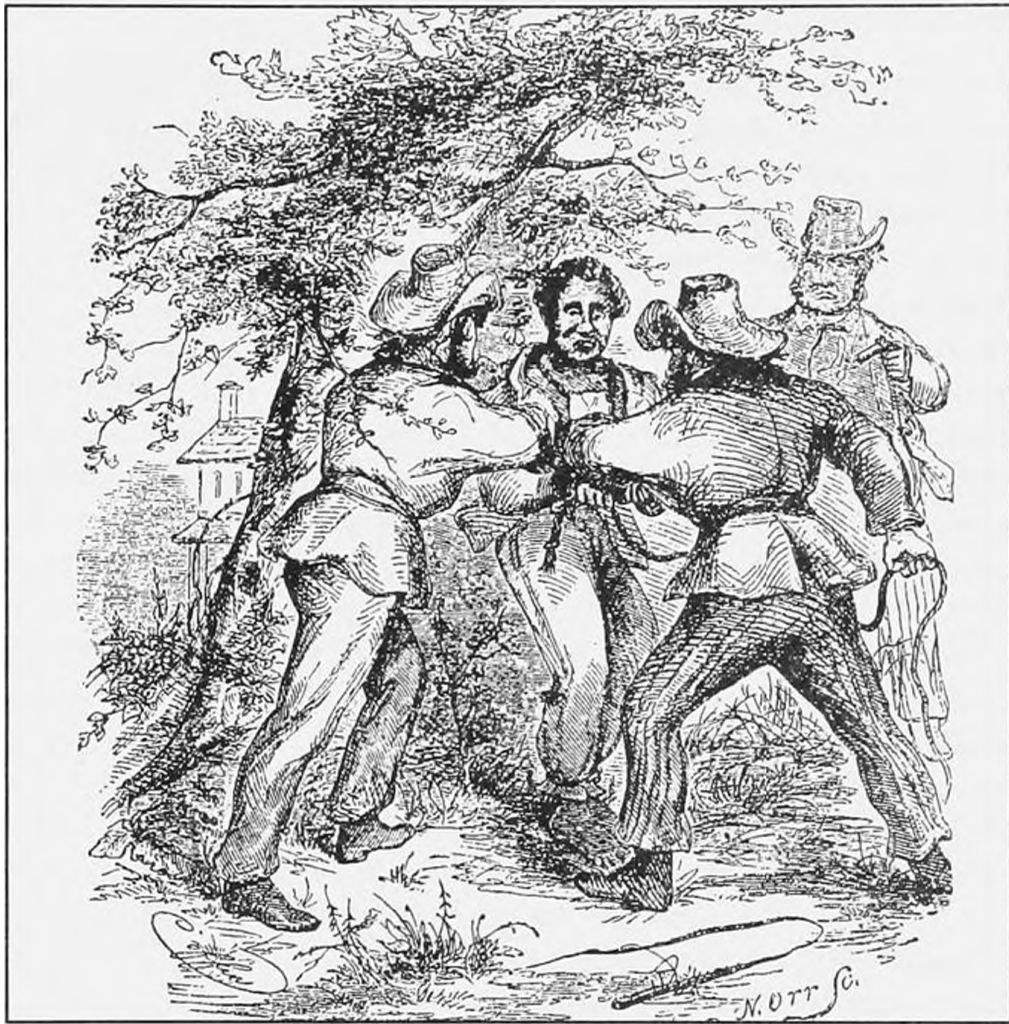


JERRY R. DESMOND

THE ATTEMPT TO REPEAL MAINE'S
PERSONAL LIBERTY LAWS

Many issues divided the nation before the Civil War. One in particular involved the passage of Personal Liberty laws in the northern states, which circumscribed the conduct of officials handling fugitive slaves. While Maine was not a prominent destination for runaway slaves, its Personal Liberty laws, redrafted in 1857 by the state's new Republican majority, were particularly forceful and therefore particularly odious to Southern planters. As the secession crisis loomed, Maine reconsidered the constitutionality of the laws and their political expediency: Would the state bend to the needs of national reconciliation? Mr. Desmond, born in Island Falls, Maine, received M.A. degrees in education (1979) and History (1991) from the University of Maine and taught for twelve years in Maine public schools. He has published several articles (NEW ENGLAND QUARTERLY, TENNESSEE HISTORICAL QUARTERLY, CHATTANOOGA REGIONAL HISTORICAL JOURNAL), and a book: IMAGES OF AMERICA: CHATTANOOGA. A resident of Lookout Mountain, Georgia he is currently employed as Curator of Collections for the Chattanooga Regional History Museum.

Following the election of Abraham Lincoln in 1860, it became evident to moderates in both the Republican and Democratic parties that concessions to the South were necessary to avoid secession and civil war. One issue that seemed promising in this regard was the possible repeal of the various Personal



The issue of how runaway slaves were to be handled in the North sparked a legal crisis in the 1850s involving questions of property rights and personal liberty. The controversy brought into question the federal Fugitive Slave Law, the Personal Liberty laws passed by northern states, and indeed the Constitution itself. *Solomon Northup, TWELVE YEARS A SLAVE (1853).*

Liberty laws passed in the North during the 1850s. As a state clearly controlled by the Republican party, demonstrated by the huge majority of votes given to Lincoln in the November election, Maine held the unique position of having the opportunity to send a message of conciliation to the South by repealing its Personal Liberty laws. Instead, the state legislature, in concert with the State Supreme Judicial Court, turned its back on compromise, voting to retain its the laws in the face of the possible destruction of the Union. The sequence of events which led to this decision are the subject of this article.

MAINE'S PERSONAL LIBERTY LAWS

One of the most troublesome issues of the 1850s was the continuing problem of runaway slaves. It is not possible to give an exact total of the number of runaways in the decade prior to the Civil War, but 1,000 a year is the most common estimate. In 1850, 1,011 runaways were reported; in 1860 the total tallied 803.¹ If these two years were typical, which may not be true, it would be possible to estimate that a total of approximately 9,000 slaves ran away in the 1850s, from a total slave population of between 3.2 million in 1850 and 3.9 million in 1860. Thus an estimated .23 percent, or 1 slave out of 439, were runaways. Certainly Southern estimates of these numbers were greater. J.F.H. Claiborne's estimate of 100,000 in 1860 over the previous fifty years represented obviously a guess.²

Regardless of these totals, the idea that slaves were escaping to the North rankled the Southerners. They wanted those slaves back, and thus needed to establish procedures for their recovery. In 1787, during the Constitutional Convention, a compromise on the fugitive slave question was reached and written into Article IV of the Constitution. Without actually mentioning the word slavery, the article stated that "no person held to Service or Labour" who escapes to another state shall be considered free and must be "delivered up on Claim of the Party to whom such Service or Labour may be due." Herein lay the basic problem of the fugitive slave question: ambiguity. If the founders had been more specific in the phrasing of this section of the Constitution, the next seventy-three years would have been less disputatious. Only a few carefully chosen words about who would enforce the guarantees provided for in this section — the states or the federal government — were needed. If the wise men in Philadelphia intended that the master could recover his property by himself, by his own means, they certainly did not explain this in the Constitution. As it was, six years later in 1793, Congress attempted to define this section with the first Fugitive Slave Law.

The 1793 law seemed, on the surface, to provide definitive answers to the questions of procedure and jurisdiction. It established uniform extradition procedures between states, provided a \$500 fine for anyone who obstructed an owner, or his

agent, or concealed a runaway. Clearly it empowered the slave owner or his agent to “seize or arrest such fugitive from labour, and take him before a federal judge within the state, or before any magistrate of a county, city, or town corporate where the seizure was made.”³ After the owner proved to the satisfaction of the official that the person was a runaway, the slave could be returned and restored to the owner.

However clear these procedures were, many important questions remained unanswered. Could the state or local magistrate refuse to provide assistance to the slave owner or his agent? Would such an action be considered obstruction and, thus, subject the official to a possible fine of \$500? Were the state or local officials required to assist in locating and capturing the alleged runaways? Would the accused runaways be allowed to speak at a hearing, provide for their own defense, submit evidence contrary to the charge, or have witnesses speak in their behalf?

Obviously, Southerners believed that the owner had the right to recapture his property or to have that property delivered by professional agents. Many Northerners, in contrast, believed that they had the obligation to protect the rights of citizens — and others — within their state boundaries. Thus, in one of the great ironies of the fugitive slave issue, the Southern states, defenders of states’ rights, yielded to the federal government the power to enforce the law — in fact, insisted that it do so. The Northern states, more inclined towards federalism, began to pass statutes, known as Personal Liberty laws, to protect the states from federal encroachment upon the rights of their citizens.

In the early nineteenth century New York and Pennsylvania took the lead in passing Personal Liberty laws which restricted the state’s role in enforcing the Fugitive Slave Law of 1793, including acts to prevent the kidnapping of free people of color and certain guarantees of due process. Maine, after statehood in 1820, enacted several such laws, including “An Act for the protection of the Personal Liberty of the Citizens, and for other purposes” in 1821, “An Act establishing the Rights to the Writ for replevying a person” in 1821, and

MAINE'S PERSONAL LIBERTY LAWS

“An Act against kidnapping or selling for a slave” in 1838.⁴ By the later date, most of the Northern states had some sort of Personal Liberty law among their statutes. This fact, along with an alarming increase in the number of fugitive slaves and a growing agitation by Northern abolitionists, led the South to challenge these laws in the federal courts.

In the most important of these cases, *Prigg v. Pennsylvania* (1842), a grand jury in Pennsylvania indicted Edward Prigg for kidnapping certain alleged runaways in 1837. At issue was the right of a master “to reclaim and remove his property from a free state without a recourse to the courts.”⁵ The Northern view held that the state had the right to grant a jury trial, under the laws of Pennsylvania, to the alleged runaways. The court decided unanimously that the national government had exclusive power of legislation upon the question of fugitive slaves and that the Pennsylvania law upon which Prigg had been indicted was unconstitutional. One judge, John McLean of Ohio, while concurring with the majority, wrestled with two fundamental propositions: First, while admitting that slaves were property, Justice McLean questioned the right of a master to remove the alleged runaway without proof of right or ownership. “Is this not an act which a state may prohibit?” he asked.⁶ Second, if the owner’s claims were not just, how could his act of force be remedied?

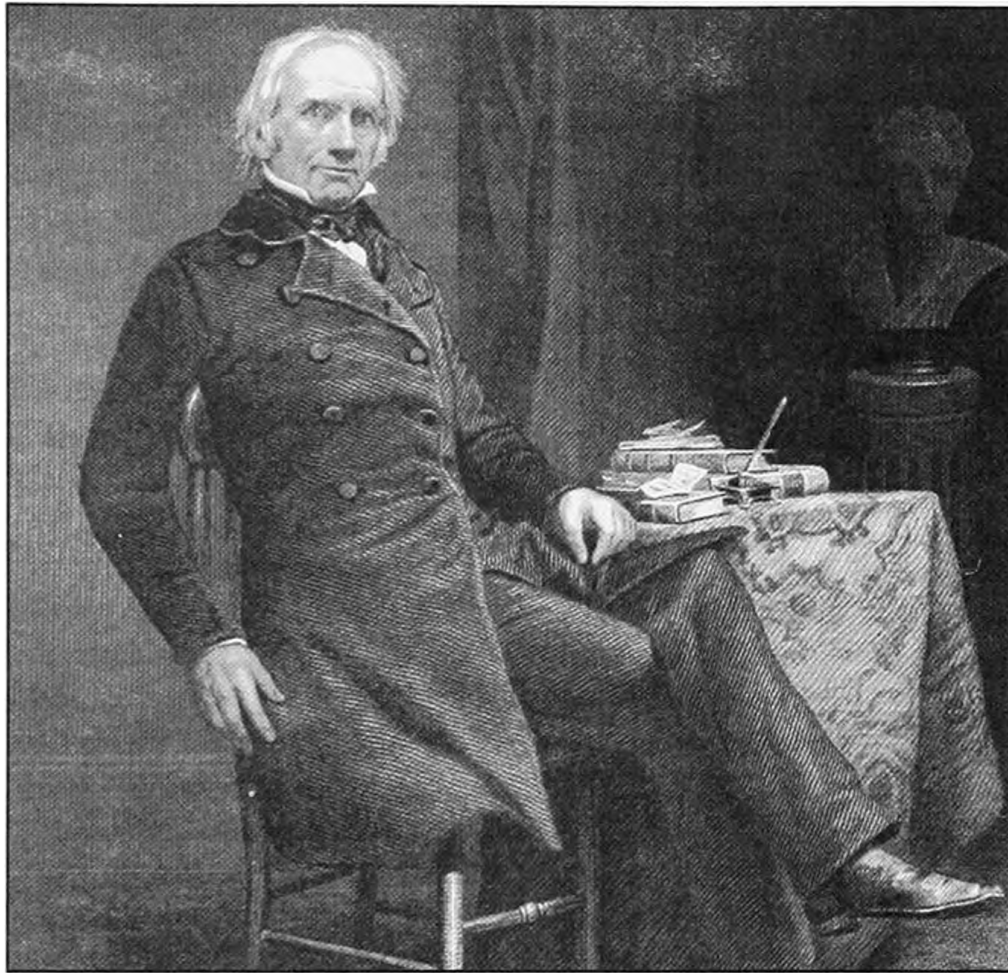
Events following *Prigg* could hardly have pleased the South. Massachusetts, Rhode Island, New Hampshire, Ohio, New Jersey, and Vermont passed laws similar to the Pennsylvania law declared unconstitutional by the Supreme Court. Pennsylvania, New York, and Maine refused to drop their Personal Liberty laws from their statutes, justifying their nullification of Supreme Court edicts with talk of “a higher law.” This issue, coupled with the disputes over the expansion of slavery into the new territories won in war from Mexico and the proposed admittance of California to statehood, led to the Compromise of 1850 and a new Fugitive Slave Law.

The Compromise of 1850 was in reality a very complex series of maneuverings in Congress. Both sides, as in most

compromises, gave in on key issues in order to reach an agreement, and neither was completely happy with the outcome. The Fugitive Slave Act of 1850, as a section of the seven-part compromise, was written from the Southern viewpoint. This was done to reward the South for relenting on the admittance of California as a free state and for agreeing to end the slave trade in Washington, D.C. The act had several controversial sections, including a provision that allowed commissioners to summon the aid of bystanders in catching runaways, a provision that subjected those helping runaways to a \$1,000 fine and a six-month jail term, and a provision that disallowed the right of the alleged runaway to testify at hearings. Certainly, the most controversial provision paid ten dollars to commissioners who found in favor of the claimant and only five dollars to those who found in favor of the alleged runaway.⁷

The howl that went up in the North following the passage of the Fugitive Slave Act has scarcely been matched in the country's history, and never, except perhaps during the actual secession of Southern states in 1860-1861, have so many state governments ignored or passed laws to circumvent a federal statute. Only during Prohibition have so many Americans purposely broken a law of the country. In a flurry of activity, several Northern states actually strengthened their Personal Liberty laws. Wisconsin went so far as to declare the Fugitive Slave Act unconstitutional. Almost weekly, stories of the "kidnapping" of black men and women or the "heroism" of those who resisted the new law found their way into Northern newspapers. Shadrach Wilkins and Anthony Burns in Boston, William Henry in Syracuse, Joshua Glover in Milwaukee, and John Price in Oberlin were the more notable examples of these.

While there were no such celebrated cases in Maine, probably because the state was somewhat off the track of the Underground Railroad, the Maine legislature did strengthen its Personal Liberty laws in 1855.⁸ There can be no doubt that these revisions were intended to circumvent the Fugitive Slave Act of 1850. Entitled "An Act Further to Protect Personal Liberty," the new statute prohibited judges, sheriffs, jailers, and other state



The Compromise of 1850, introduced in the Senate by Kentuckian Henry Clay, contained a series of resolutions designed to address sectional conflict, including a more effective provision for returning fugitive slaves. In passing Personal Liberty laws, the northern states seemed to be reneging on the compromises reached in 1850 – compromises in which the South had surrendered a great deal. *E. A. Duyckinck, NATIONAL PORTRAIT GALLERY OF EMINENT AMERICANS (1862).*

officials from assisting in the capture or detention of alleged runaway slaves or granting certificates of removal. The fine for such actions was up to \$1,000 and a possible one year jail term.⁹ Federal marshals, however, could execute the provisions of the Fugitive Slave Act without hindrance or obstruction.

In 1857, during a general revision of all of the Maine Statutes the Personal Liberty laws were rewritten and strengthened, making them among the most potent in the country. No retreat in the 1857 statutes occurred, and coming as they did on the heels of the Dred Scott decision in March 1857, there is little

surprise in this fact. The new provisions required that the district attorneys of each county provide legal assistance in fugitive slave cases, all costs to be paid by the state. Jail keepers in Maine were not allowed to hold persons claimed as fugitive slaves, and municipal judges were not allowed to hear fugitive slave cases. The Maine legislature, controlled by the new Republican majority, overwhelmingly endorsed these revisions.¹⁰

"The surrender of a human being," the New York *Evening Post* commented bitterly, "who has exhibited his fitness for freedom by encountering the dangers of escaping from slavery, is a most repulsive task."¹¹ In Maine, such a task would not be performed without first applying due process. A slave owner would find it impossible to recover a runaway in Maine. His only recourse was to employ the offices of the federal marshal in Maine. The slave owner or his agent would be lucky to escape the state unharmed, as the provisions of the statute seemed to imply that Maine would not punish "affrayers, rioters, or breakers of the peace" in any cases related to a fugitive slave.

To Southerners these statutes were clearly unconstitutional. More importantly, however, it seemed to the South that the Northern states were reneging on the compromises reached in 1787 and the Compromise of 1850 — compromises in which the South had surrendered a great deal. If the North backed away from these, it would certainly be read as an act of nullification, endangering the Union; any talk of Southern secession would only occur after the fact. A central campaign issue of the election of 1860 became the Southern demand that the Personal Liberty laws in the North be repealed; Lincoln's election seemed to end all hopes of effecting that repeal.

However, some Republicans were disturbed by the charges of the unconstitutionality. Now that their candidate had been elected and Republican majorities established in Congress, perhaps some sort of gesture towards the South would be in order: if not repeal, at least a promise to look into the issue of constitutionality.

Democratic newspapers in Maine, of course, insisted that repeal should be the prime option. Appealing to "all conserva-

MAINE'S PERSONAL LIBERTY LAWS

tive men in the republican ranks,” the editors of the *Eastern Argus* wrote in November 1860: “Their enactment was a departure from national good faith, and every State guilty of it, is bound in honor to repeal them and thus place themselves right before the country.”¹² The *Argus* also gave a compelling political reason for repeal: “Such a course would have a decided effect to allay excitement in the South and would very much strengthen Mr. Lincoln’s hands in meeting the revolutionary movements.”¹³ The *Machais Union* also called for repeal, stating that “a more deliberate use of nullification was never heard of....Is there any wonder that the South has come to the conclusion that the Northern States are not friendly to them?”¹⁴

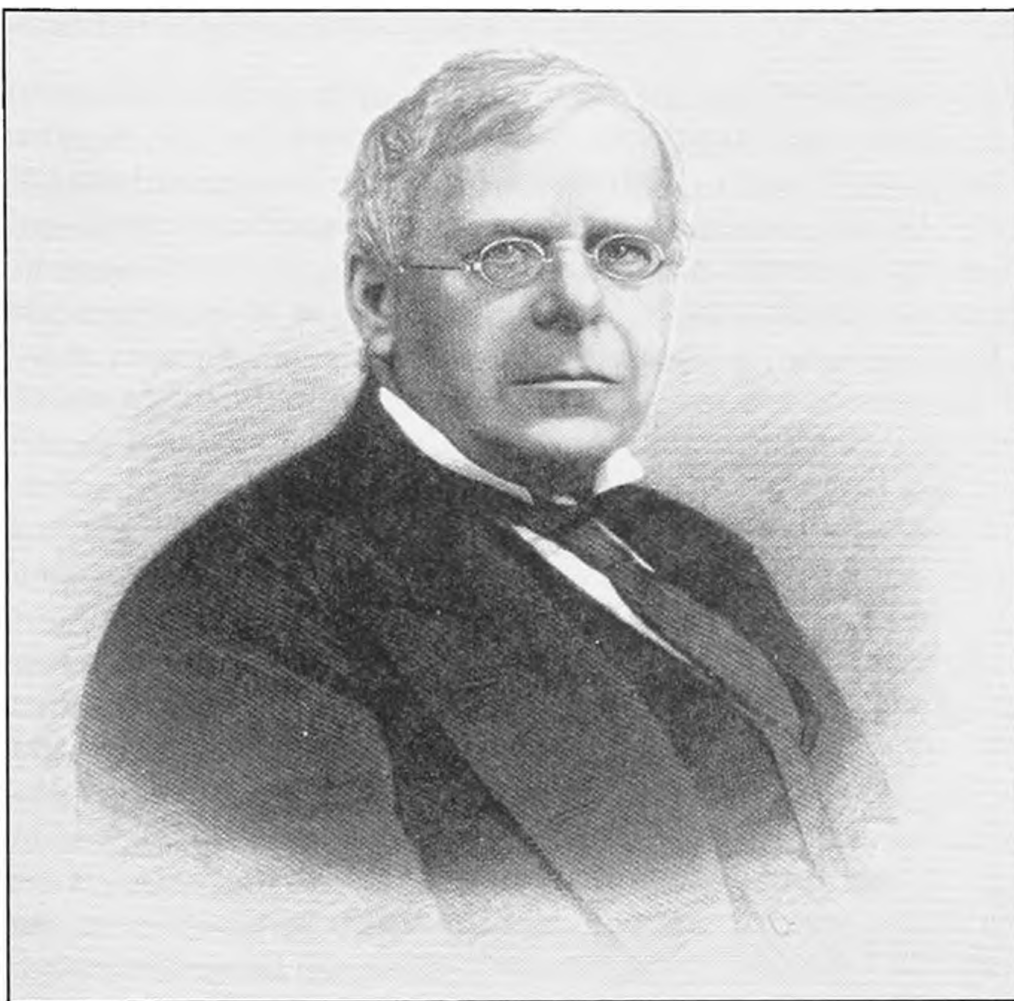
None of the Republican journals in the state actually came out in favor of repeal. The three largest and most influential of these, the *Bangor Whig and Courier*, the *Kennebec Journal*, and the *Portland Daily Advertiser*, all violently opposed such a policy. “As usual, the evil which the South is supposed to endure in consequence of the existence of personal liberty laws,” wrote the *Daily Advertiser* editor, “have been very much exaggerated.”¹⁵ When presented with the possibility that the repeal would help ease tensions between the sections, the *Whig and Courier* editor asked “if there be any person who thinks that the repeal of the personal liberty laws by Northern States would ‘satisfy the South’?”¹⁶ The *Kennebec Journal* reminded Maine citizens that the Personal Liberty laws protected the rights of trial by jury and the writ of Habeas Corpus. “Can Maine do less, and preserve her honor?”¹⁷ Of all the Republican journals, only the *Ellsworth American* seemed willing to consider a compromise on the issue, but one unlikely to appeal to the South. “We would not hasten to repeal the Personal Liberty Law, but if an arrangement [in which] the hard features of the Fugitive Slave Act shall be softened down, and that arrangement should call for the repeal for our law, I would do it at once, promptly and fully.”¹⁸

State Republican leaders state waited for word from President-elect Lincoln before proceeding with questions of constitutionality or repeal. On December 20, 1860, Lincoln sent a set of brief resolutions on the issue, through

Thurlow Weed, the alter ego of William Seward, to Hannibal Hamlin for his consideration. Lincoln wrote that the Fugitive Slave Law should be enforced with certain “safeguards to liberty”; that all unconstitutional state laws should be repealed, and that the “Federal Union must be preserved.”¹⁹ Unfortunately, these words did little to help direct policy in Maine, for while Lincoln showed support for the enforcement of the Fugitive Slave Law, he did not go all the way in calling for the repeal of personal liberty laws. He only stated that any laws in conflict with the Fugitive Slave Law, “if there be such,” should be repealed. Lincoln, obviously a man who choose his words carefully, led some in the party to believe that the laws were not to be repealed.

In Maine, Union meetings held in Portland and Bangor reviewed the situation. Several prominent Republicans, including James G. Blaine, William W. Thomas, and John Neal, called for repeal.²⁰ Most Republicans, however, were reluctant to yield to Southern pressure. In his first address to the Maine legislature, newly elected Governor Israel Washburn took the lead in asking for a “candid examination of the laws of the State.” If the legislature found “any provisions that are in violation of the federal Constitution,” he pleaded, “there can be no doubt that they ought to be repealed.”²¹ But he warned the legislature, in strong language, that to repeal laws that were constitutional — in order to make concessions — would “establish a precedent of incalculable mischief and danger, through which would be wrought, at no distant period, a practical subversion of the Constitution, and a transfer of the government from the hands of the many to the power of the few.”²²

On February 13, 1861, James G. Blaine, speaker of the Maine House of Representatives, requested that the Maine Supreme Judicial Court review the state’s Personal Liberty laws to determine their constitutionality. Within two weeks the eight justices on the court returned their opinions to the legislature. The results, as shown in Table I, were mixed, as the eight justices presented five different opinions.



In late December 1860 President Lincoln sent word to Republican state officials that the Fugitive Slave Law should be enforced, with certain "safeguards to liberty." Newly elected Governor Israel Washburn asked the Maine legislature for a "candid examination" of Maine's Personal Liberty laws, but he cautioned against sacrificing them to Southern demands. *IN MEMORIAM: ISRAEL WASHBURN, JR. (1884).*

The judges had no problems with the constitutionality of requiring county attorneys to assist in the defense of alleged runaways (Chapter 79, Section 20) or a similar mandate that prohibited state jailers from receiving and keeping fugitive slaves (Chapter 80, Section 37). By a majority of five to three, the judges also reaffirmed the constitutionality of prohibiting municipal officials from taking cognizance of fugitive slave cases or aiding

OPINIONS OF THE EIGHT JUSTICES
OF THE SUPREME JUDICIAL COURT OF THE
STATE OF MAINE

Question: Are the relevant sections repugnant to the Constitution of the United States, or in contravention of any law of the United States made in pursuance thereof?

Justice	Ch 79: 20	Ch 80: 37	Ch 80: 53	Ch 132: 4
John Tenny	No	No	Yes	Yes
Jonas Cutting	No	No	Yes	Yes
Richard Rice	No	No	Yes	Yes
Seth May	No	No	Yes	No
Daniel Goodenow	No	No	Yes	No
John Appleton	No	No	No	No
Edward Kent	No	No	No	No
Woodbury Davis	No	No	No	No

Table I

in their arrest (Chapter 132, Section 4). Justices Tenny, Cutting, and Rice were in the minority in this. They pointed out, in a very brief opinion, that justices of the peace in Maine would not have jurisdiction over such a case anyway, but the section violated the clause of the Fugitive Slave Act that required "all good citizens" to assist in such if their services were requested by a marshal.

Of the four Personal Liberty laws under review, the statute that prohibited state officials from "aiding" a marshal in the capture of a fugitive slave was the strongest in purpose and language (Chapter 80, Section 53). Five of the justices felt that this section was repugnant to the Constitution; of the five,

MAINE'S PERSONAL LIBERTY LAWS

Justices May and Goodenow expressed their displeasure with the Fugitive Slave Act of 1850:

We regret the existence of such provisions in the federal constitution as constrain the highest judicial tribunal in the nation to decide that such a statute, with all its harshness, is constitutional...that a man or a woman and her posterity may, in effect, be made slaves forever with less legal protection and ceremony than is permitted under our state laws to establish title to the smallest article of property.²³

Justices Appleton and Kent combined to write the longest of the five opinions, running fourteen pages. (However, over two-thirds of their opinion reviewed the history of the issue.) They did not find the statute to be repugnant to the Constitution, writing that it should be held to be so only if “shifting uses” of some words — if state officers could be interpreted to be acting as private citizens, for example — were allowed.

Justice Davis gave the most remarkable opinion of the three dissenters. Joining Appleton and Kent in their assessment of this statute, Davis went further than any of the judges in expressing his abhorrence with the Fugitive Slave Act and with slavery.

I assume that every man is presumed to be free, and that slavery nowhere exists except by positive provisions of statute. The law of slavery is therefore bounded by the territorial jurisdiction of the state governments by which it is established. If the master voluntarily carries a slave into a free state, or permits him to go there, the slave thereby becomes free.

It follows, that, if a slave escapes into a free state, without the consent of the master, he also thereby becomes free while remaining there, and the master has no right to recapture him, unless there is some provision in the Constitution of the United States for that purpose.²⁴

Davis then launched an attack on Article IV, section two, paragraph three, of the United States Constitution. As the article did not mention slavery specifically it must be assumed, said Davis, that it applied to free persons. He opined:

MAINE'S PERSONAL LIBERTY LAWS

It does not describe a slave. A slave is not held to service or labor under the laws of a slave state. Those laws make him an article of property, to be bought and sold, like other chattels. And though it is said, and I have no doubt truly, that the framers of the constitution meant to apply this language to slaves, they did not use language that could properly be applied to slaves. There was no inadvertence, or mistake. They meant to use language that could not be applied to slaves, because they believed that slavery was speedily to be abolished.²⁵

It followed from this line of argument that since the Constitution makes no mention of slaves or slavery, the laws that protected that institution were unconstitutional. While clearly overstepping his bounds here, Davis recognized that the Supreme Court in *Prigg* had decided that the Fugitive Slave laws did not violate the Constitution. In most compelling language, he declared it was his duty to speak against them. "No weight of authority, and no lapse of time, can establish that which is wrong, or prevent it from ultimately being overthrown."²⁶

By the first week in March 1861, the Fortieth Legislature was ready to take action, based on the opinions of the court. Motions to repeal the Personal Liberty laws were made in both the Senate and the House of Representatives, although some members attempted to delay an actual vote hoping that the session would end. The Senate voted to repeal by a vote of seventeen to ten. The House vote produced excitement, as Speaker Blaine came down from his chair to plead for repeal. However, in a speech thought by many to be the finest of the session, Representative William H. McCrillis of Bangor spoke for over an hour against the motion to repeal.²⁷ The final vote tallied forty-seven in favor — including all the Democrats present — and sixty-seven opposed.²⁸

The split in the Maine Legislature reflects the fact that the issue had lost much of its partisan steam. At the time the legislature was voting, seven southern states had already seceded from the Union; Abraham Lincoln was three days short of taking the oath of office, and sixty-eight federal troops in a small pentagonal brick fort on an island near the mouth of Charleston



James G. Blaine, Speaker of the Maine House, requested a judicial review of the Personal Liberty laws, and in March 1861 the Speaker pleaded before the legislature for their repeal. A House vote of 47 to 67 allowed them to stand. The split among Republicans reflected the crisis at hand: Already seven southern states had seceded, and South Carolina shore batteries were besieging the federal troops at Fort Sumter. *Willis Fletcher Johnson, LIFE OF JAMES G. BLAINE (1893).*

Harbor were about to run out of supplies. The country had turned away from the issue of Personal Liberty laws to confront the greater issues of secession and armed conflict. The laws were retained in the Maine Statutes until the passage of the Thirteenth amendment to the United States Constitution made them redundant.

NOTES

¹Allan Nevins, *The Emergence of Lincoln* (New York: Charles Scribner's Sons, 1950), p. 489.

²*Ibid.*

³Thomas D. Morris, *Free Men All: The Personal Liberty laws of the North* (Baltimore: John Hopkins University Press, 1974), p. 21.

⁴*Ibid.*, p. 219.

⁵*Ibid.*, p. 95.

⁶Henry Steele Commager, ed., *Documents of American History* (New York: Appleton-Century-Crofts, 1968), p. 293. See Morris, *Free Men All*, pp. 145-146.

⁷It is ironic, considering the acrimony which the Personal Liberty laws created, that very few, if any, fugitive slaves were ever taken out of Maine. The state was not along the usual routes for runaways, and the cost for a Southern slave owner to retrieve a slave from Maine was prohibitive. See Stanley W. Campbell, *The Slave Catchers* (Chapel Hill: University of North Carolina Press, 1970).

⁸*Laws of Maine, 1854-1855* (Augusta, 1855), pp. 207-208.

⁹Maine's Personal Liberty laws were revised in 1857. See *Opinions of the Several Justices of the Supreme Judicial Court on the Constitutionality of the Personal Liberty laws of the State of Maine*, pp. 3-4.

¹⁰Kenneth M. Stampp, *America in 1857: A Nation on the Brink* (New York: Oxford University Press, 1990), p. 139.

¹¹*Eastern Argus*, November, 22, 1860.

¹²*Ibid.*

¹³*Machias Union*, December, 11, 1860.

¹⁴*Daily Advertiser*, December, 11, 1860.

¹⁵*Whig and Courier*, December 6, 1860.

¹⁶*Kennebec Journal*, December 7, 1860.

¹⁷*Ellsworth American*, December 16, 1860.

¹⁸David Morris Potter, *Lincoln and His Party in the Secession Crisis* (New Haven: Yale University Press 1962), pp. 167-168. There is some doubt as to how Lincoln actually felt about the possible repeal of the Personal Liberty laws.

¹⁹Louis C. Hatch, *Maine: A History* (New York, 1919), p. 430.

²⁰*Address of Governor Washburn to the Legislature of the State of Maine, January 3, 1861* (Augusta, 1861), p. 6.

²¹*Ibid.*, p. 7.

²²*Opinions of the Several Justices of the Supreme Judicial Court on the Constitutionality of the Personal Liberty laws of the State of Maine* (Augusta, 1861), p. 38.

²³*Ibid.*, p. 41.

²⁴*Ibid.*, p. 42.

²⁵*Ibid.*, p. 46.

²⁶Hatch, *Maine*, p. 431.

²⁷*Proceedings of the Maine State Legislature: Journal of the House, 40th Session* (Augusta, 1861), pp. 283-284.