Fields of Practice. The maturation of the economy provided new opportunities for lawyers to make money. Even in large cities, few attorneys practiced in lucrative specialties in 1850; the noteworthy exception had traditionally been marine insurance. Even leaders of the bar spent much of their time on conveyances of real estate, the drafting of wills and the administration of estates, and routine debt collection. Industrialization placed a premium on different fields such as patent law, torts, and eminent domain. In the more advanced stage of economic development that characterized the years after 1850 the problems of corporate finance and management became specialties broad enough to support a much larger number of commercial lawyers. Although railroads and other corporate clients affected practice in every city of significant size, the trend was most advanced on Wall Street, New York, where leaders of the bar focused on the issuance of stocks and bonds and on the designing of increasingly complex corporate structures. The appearance of law firms that would long remain influential illustrated the entrenchment taking place in the period. The forerunner of the firm of Cravath, Swaine and Moore moved to New York in 1854. The founders of Shearman and Sterling met in the practice of David Dudley Field, who represented the famous Wall Street operators Jim Fisk and Jay Gould. As one of the most distinguished practitioners in the country, Field confirmed young John W. Sterling's sense that the era of the legal generalist was over and guided him into developing an expertise in the law of corporations.

Bar Associations. Concern over the involvement of attorneys in corrupt machinations prompted the founding of the first professional organizations. The Association of the Bar of the City of New York was organized in 1870 to combat the tainting of the law through the highly publicized battle over control of the Erie Railroad. Organizations quickly spread to other parts of the country; Chicago lawyers founded a bar association in 1874. By 1878 eight city and eight state bar associations had been founded in twelve states. In the same year, the American Bar Association was founded at the resort in Saratoga, New York, with a charge to "advance the science of jurisprudence . . . uphold the honor of the profession . . . and promote cordial intercourse among members of the American Bar." Like farmers who were at the same time organizing to bargain collectively with railroads over shipping rates, and like laborers who were organizing to bargain collectively with employers over the conditions of work, attorneys saw themselves as organizing to deal collectively with corporations in asserting professional independence, including ethical standards. As one founder put it, the early bar associations were troubled that lawyers "do simply what their employers desire." And like the organization of physicians, bar associations also sought to suppress competition, actively seeking to suppress informal training by apprenticeship and supporting the reforms in legal education spearheaded by Langdell.

Lincoln the Lawyer. The legal practice of Abraham Lincoln reflects the changes in the profession that affected lawyers in modest towns such as Springfield, Illinois. After serving as a junior partner first to the politically connected John Todd Stuart and then to Stephen T. Logan, Lincoln opened a firm with the younger William Herndon in 1844. As the head attorney of the firm he assumed responsibility for spending about ten weeks twice each year riding with Judge David Davis and other attorneys to each courthouse in the eleven thousand square miles of the Eighth Judicial District. (He would later appoint Davis to the U.S. Supreme Court.) In each town he handled a wide variety of cases, many of which were small disputes among neighbors. In 1851 he handled his first significant case for a railroad, enforcing a stock subscription by an investor unhappy about a change in the planned route of the road. By middecade Lincoln was spending much of his time on cases involving railroads. For example, he successfully represented the powerful Illinois Central in a suit brought by a county challenging the state's authority to exempt the railroad from all local taxes. He also defended the builders of the first railroad bridge to cross the Mississippi River in a suit brought by the owners of a steamboat that crashed into a pier. Although one of the leading lawyers in Illinois, he encountered the exclusivity of nationally prominent attorneys when he became the local counsel in patent litigation over the mechanical reaper invented by Cyrus McCormick. "Why did you bring that d—d long armed Ape here," Pittsburgh attorney Edwin Stanton asked the Philadelphia lawyer who headed McCormick's legal team; "he does not know anything and can do you no good." Snubbed, Lincoln dropped out of the litigation; as president of the United States seven years later, he appointed Stanton to the position of Secretary of War.

Sources:

Maxwell Bloomfield, *American Lawyers in a Changing Society, 1776–1876* (Cambridge, Mass.: Harvard University Press, 1976);

David Herbert Donald, *Lincoln* (New York: Simon & Schuster, 1995);

Lawrence M. Friedman, *A History of American Law,* second edition (New York: Simon & Schuster, 1985);

Arthur E. Sutherland, *The Law at Harvard: A History of Ideas and Men, 1817–1967* (Cambridge, Mass.: Harvard University Press, 1967).

RESISTANCE TO THE FUGITIVE SLAVE ACT

Expanded Federal Role. The Fugitive Slave Act that formed part of the Compromise of 1850 supplemented the mechanisms established by Congress in 1793 for the retrieval of runaways. Under the 1793 law, slaveholders could seize an alleged runaway in free territory and bring the accused before a federal judge or local magistrate to prove title to the slave and obtain a certificate of rendition entitling the master to remove the slave from the free jurisdiction. The law placed most of the burden of slave catching on masters, including the burden of deal-

ing with uncooperative Northerners, and it made rendition hearings inconvenient to arrange because few federal judges were available to participate. The 1850 Fugitive Slave Act provided for federal circuit courts to designate commissioners specifically to hear rendition proceedings, and it authorized commissioners and federal marshals to form a posse of bystanders to capture runaways. The latter provision made every adult male a potential slave catcher. In addition, the act obligated the federal government to pay all expenses associated with foiling escape attempts, and it provided that obstruction of the law was punishable by a fine of $1,000 and imprisonment for six months.

Perversion of Justice. The Fugitive Slave Act enraged Northerners not only because it represented federal intervention in support of slave catching but also because it trampled on basic guarantees of fairness. Alleged slaves were barred from testifying on their own behalf and precluded from invoking the legal process of habeas corpus, the traditional method for courts to review whether or not a person was being held in custody lawfully. The commissioners who heard rendition cases earned a fee of $10 if they found in favor of the slaveowner but only $5 if they found that the alleged slave had been misidentified. Comparing the commissioners' fees with the fine for obstruction of the law, abolitionist Anson Burlingame commented that the Fugitive Slave Act set the price of a Carolina black at $1,000 and a Yankee soul at $5. The apparent unfairness of the legislation made it difficult for the act to find support even among more moderate Northerners willing to accept some sort of federal role in the capture of runaways.

Constitutional Challenges. Resistance to the Fugitive Slave Act proceeded along several fronts. In Washington, Free Soil members of Congress called in vain for repeal of the legislation. In the Northern states, many black residents left for Canada; the black population of Ontario doubled to eleven thousand during the 1850s. Meanwhile, batteries of antislavery lawyers argued that the law was unconstitutional. They relied on several arguments. The commissioners created by the Fugitive Slave Act were not judges, they reasoned, and therefore not authorized to make final decisions in rendition hearings. They maintained that the legislation denied the rights of alleged slaves to a jury trial, to the writ of habeas corpus, and to cross-examination of their accusers. They also argued that the Constitution may have permitted the rendition of fugitive slaves but did not authorize the federal government to participate in the process. In the leading decision on the issue, however, Lemuel Shaw upheld the constitutionality of the law against a legal attack in Massachusetts led by prominent antislavery attorneys Richard Henry Dana, Samuel Sewall, and Robert Rantoul.

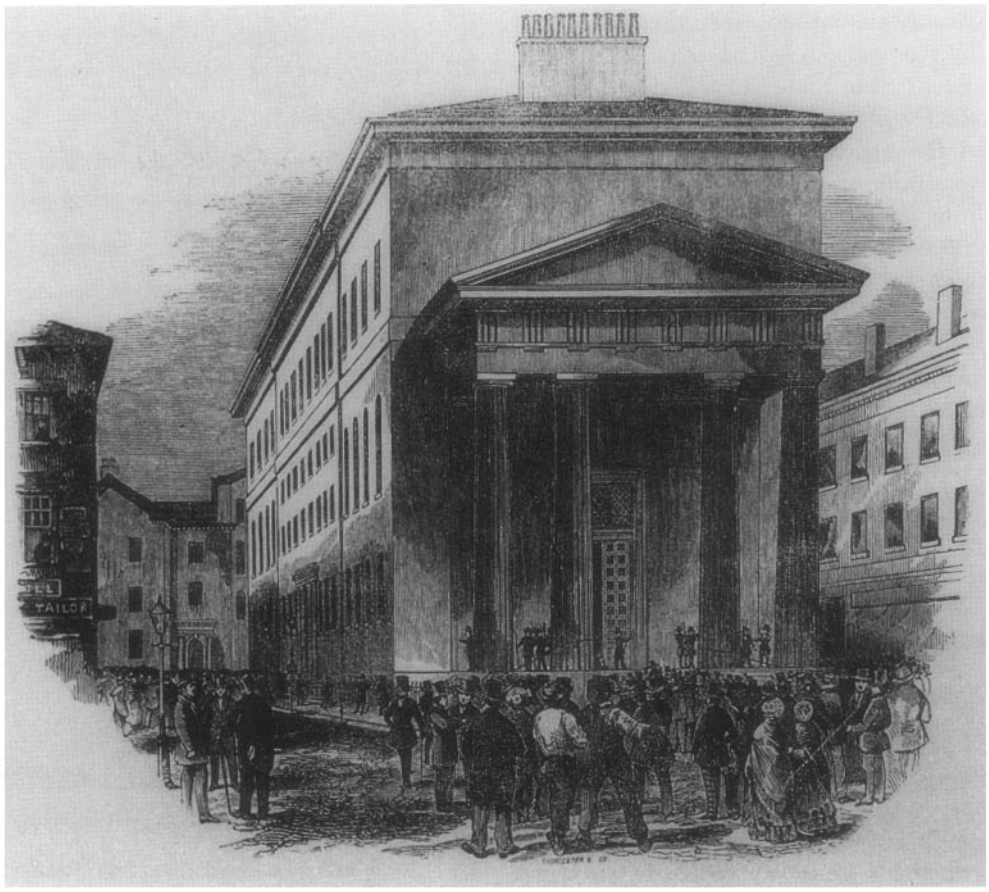
Forcible Resistance. When legislative appeals and litigation campaigns broke down, some Northerners resorted to direct action to rescue alleged slaves. When Georgia slave catchers arrived in Boston a few weeks after the passage of the Fugitive Slave Act to bring back the runaways William and Ellen Craft, abolitionists hid the couple while a vigilance committee harassed the agents into leaving the town. A runaway from Virginia

IS VIRTUE CONSTITUTIONAL?

The judges and lawyers,—simply as such, I mean,—and all men of expediency, try this case by a very low and incompetent standard. They consider, not whether the Fugitive Slave Law is right, but whether it is what they call *constitutional*. Is virtue constitutional, or vice? Is equity constitutional, or iniquity? In important moral and vital questions, like this, it is just as impertinent to ask whether a law is constitutional or not, as to ask whether it is profitable or not. They persist in being the servants of the worst of men, and not the servants of humanity. The question is, not whether you or your grandfather, seventy years ago, did not enter into an agreement to serve the Devil, and that service is not accordingly now due; but whether you will not now, for once and at last, serve God,—in spite of your own past recreancy, or that of your ancestor,—by obeying that eternal and only just CONSTITUTION, which He, and not any Jefferson or Adams, has written in your being.

. . . I have lived for the last month—and I think that every man in Massachusetts capable of the sentiment of patriotism must have had a similar experience—with the sense of having suffered a vast and indefinite loss. I did not know at first what ailed me. At last it occurred to me that what I had lost was a country. I had never respected the government near to which I lived, but I had foolishly thought that I might manage to live here, minding my private affairs, and forget it. For my part, my old and worthiest pursuits have lost I cannot say how much of their attraction, and I feel that my investment in life here is worth many per cent. less since Massachusetts last deliberately sent back an innocent man, Anthony Burns, to slavery. I dwelt before, perhaps, in the illusion that my life passed somewhere only *between* heaven and hell, but now I cannot persuade myself that I do not dwell *wholly within* hell. The site of that political organization called Massachusetts is to me morally covered with volcanic scoriae and cinders, such as Milton describes in the infernal regions. If there is any hell more unprincipled than our rulers, and we, the ruled, I feel curious to see it.

Source: Henry David Thoreau, "Slavery in Massachusetts" (1854).



Guards stationed on the front steps of the Boston Court House in April 1851 to prevent attempts to rescue the runaway slave Thomas Sims

named Shadrach, seized in February 1851 in a Boston coffeehouse by slave catchers to whom he was serving coffee, was rescued from a federal courthouse by a group of African Americans who overpowered the marshals guarding the fugitive. The most violent clash took place in the Quaker community of Christiana, Pennsylvania, in September 1851, where a Maryland slaveowner was killed and his son seriously wounded in a gunfight with a group of African Americans resisting an attempt to seize three former slaves. Shortly afterward a group of black and white abolitionists broke into a police station in Syracuse, New York, rescued a captured runaway known as Jerry, and helped him cross Lake Ontario into Canada.

Federal Response. Resistance to the Fugitive Slave Act deeply disturbed President Millard Fillmore, who called a special meeting of his cabinet to discuss the rescue of Shadrach. Vigorous enforcement of the law became a central priority of the administration. One measure of this determination was the willingness to invoke the ultimate sanction against rescuers: prosecution for treason, punishable by execution. After the Christiana massacre, federal prosecutors brought treason charges against two Quakers who had refused to help recapture the runaways, along with some forty other defendants, but the court ruled that the evidence did not justify the charges. Another measure of the administration's commitment to the Fugitive Slave Act was the expense it assumed to defeat rescue attempts. An escort of three hundred armed deputies and soldiers guarded the runaway Thomas Sims when he was removed from the Boston courthouse to the navy yard in April 1851 and put on a ship bound for the South. This show of force ended open attempts to rescue fugitives in Boston for three years, but the arrest of runaway Anthony Burns in March 1854 reopened the contest. After one federal marshal died in an abolitionist assault on a courthouse, the administration of President Franklin Pierce spent approximately $100,000 to return Burns to Virginia, refusing to allow the slaveowner to consider offers for the purchase of the fugitive's freedom.

Personal Liberty Laws. The rendition of Anthony Burns, which occurred at the same time as the passage of the Kansas-Nebraska Act, prompted increasing numbers of Northern states to adopt so-called personal liberty laws in an effort to frustrate the Fugitive Slave Act. Vermont had already led the way in 1850 with legislation that defied the federal mechanism by offering the writ of habeas corpus to detained fugitives, affirming their right to a jury trial, and requiring the state's attorney in each county to intervene on behalf of fugitives in rendition proceedings. In 1854–1855 Vermont extended its pro-

tections, and Maine, Massachusetts, Rhode Island, Connecticut, Ohio, Wisconsin, and Michigan passed laws to prevent state officials from taking part in the enforcement of the federal law. The Massachusetts personal liberty law vacated the office of any state official who authorized the rendition of a fugitive, barred any such person from holding state office, and disbarred attorneys who represented slaveholders. The Fugitive Slave Law and personal liberty laws thus presented a striking reversal in the alignment of sectionalism and constitutionalism that had become familiar in the 1830s. The Southern states now called for an extension of federal power in support of slavery; the Northern states sought to block the initiative through an exercise of state sovereignty.

Vindication of Federal Authority. The U.S. Supreme Court examined the constitutionality of the personal liberty laws in *Ableman* v. *Booth* (1859). The case arose in Wisconsin, where abolitionist Sherman Booth had helped to rescue the alleged slave Joshua Glover and send him to Canada. Writing for a unanimous court, Chief Justice Roger B. Taney held that the personal liberty laws were unconstitutional. "Although the State of Wisconsin is sovereign within its territorial limits to a certain extent," Taney wrote, "yet that sovereignty is limited and restricted by the Constitution of the United States." A few years later the Wisconsin Supreme Court conceded that the state had been in error and apologized for disturbing the proper relations between state and federal government. By that time, however, Wisconsin might have been expected to be deferential to the principle of national authority, for thousands of state citizens were serving in a federal army organized to suppress the secession of the Southern states.

Sources:

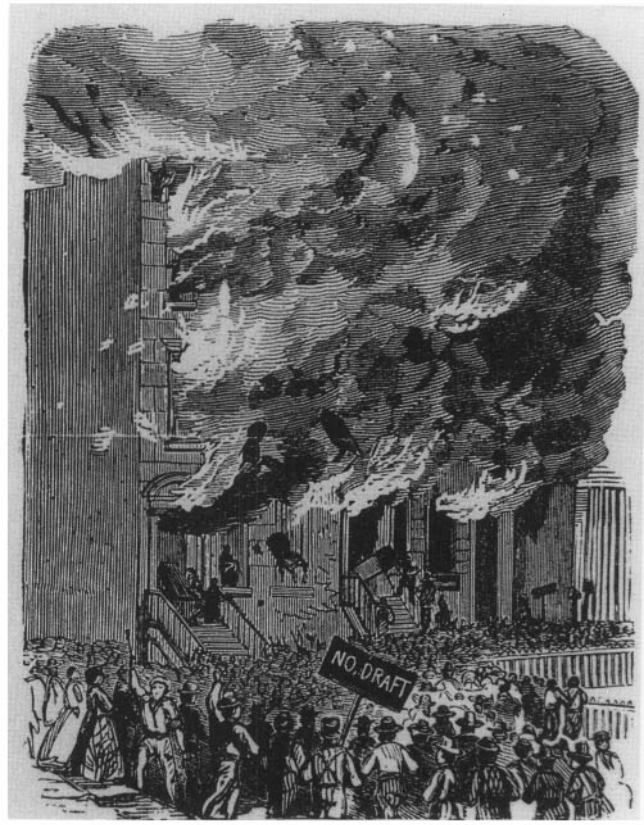
Stanley W. Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850–1860* (Chapel Hill: University of North Carolina Press, 1970);

Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: University of North Carolina Press, 1981);

Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North, 1780–1861* (Baltimore: Johns Hopkins University Press, 1974).

WARFARE AND THE RULE OF LAW

Civil Liberties in Wartime. War and the apprehension of war have tested and sharpened American ideas about free speech and the judicial process ever since the sedition controversy of 1798–1800. During the Civil War, a conflict fought to enforce allegiance to the federal government, the problem of reconciling duties of loyalty and rights of expression was particularly acute. Not surprisingly, at times the federal government significantly restricted the liberties of its citizens, especially at moments and in places of particular peril to Union authority. For the most part, however, the federal government interfered with constitutional freedoms less aggressively in the Civil War than it would in either World War I or World War II. The political leaders of the mid nineteenth century were not necessarily more libertarian than their successors, but the government machinery available to suppress dissent was much weaker and less rationally organized.



A draft riot in New York City in July 1863

Maryland. Some of the most forceful federal measures took place at the outset of the war, while Maryland debated disunion. The secession of the state would have compelled the abandonment of the federal capital in Washington, D.C., and the Lincoln administration moved decisively to suppress supporters of the Confederacy. In May 1861 Army officials imprisoned suspected Baltimore secessionists in Fort McHenry, including the grandson of Francis Scott Key, who had written the "Star Spangled Banner" during a British attack on the fortress during the War of 1812. When the state legislature met in Frederick four months later, the army arrested thirty-one suspected secessionist delegates and several of their supposed allies, including the mayor of Baltimore. All of these prisoners were held until Unionist sentiment stabilized and the state elected a new legislature in November. The army then released prisoners who took an oath of allegiance to the federal government; the last of the group remained in prison until December 1862.

Suspending the Writ of Habeas Corpus. The writ of habeas corpus (Latin for "you should have the body") is a document that a law enforcement individual must possess in order to bring a party before a court or judge. The "Great Writ," as it is called, is part of Anglo-American