Chapter 131 – *Prigg v Pennsylvania* Adds To Mounting Tension Over "Fugitive Slaves"		
	Dates: March 1, 1842	**Sections:** • The Supreme Court Upholds The Fugitive Slave Law • A Loophole In the *Prigg* Decision Leaves Enforcement In Doubt • The *Prigg* Decision Prompts Garrison To Call For Disunion

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Date: March 1, 1842

The Supreme Court Upholds The Fugitive Slave Law

A Ruling Delivered

Slavery is also in the headlines in early March 1842, when the Supreme Court decides another case dealing with run-aways.

This one centers on a black woman, Margaret Morgan, whose parents were slaves to a mill owner named John Ashmore, in Hartford County, Maryland. While never signing formal manumission papers, Ashmore "constantly declares that he has set them free" as of 1820. Their daughter, Margaret, marries a free black man, Jerry Morgan, and they start a family. After living for several years in Maryland, the couple decides to move to York County, Pennsylvania. Ashmore makes no protest to these outcomes.

Then, five years later in 1837, John Ashmore dies and a female heir, his niece Margaret Beamis, claims that both Morgan and her children are now her property.

She hires a neighbor, Edward Prigg, to capture and return "the runaways." While Prigg has a warrant, the constable in York County refuses to act on it, so Prigg forcibly abducts Morgan and her two children, and sells them to a slave dealer, who plans to ship them South.

A grand jury in Pennsylvania indicts Prigg and his three accomplices for violating the state's 1826 Personal Liberty statute, and asks Maryland to arrest and extradite him. It agrees to do so, with the understanding that, if convicted, he will not be jailed until the U.S. Supreme Court rules on the case.

Prigg is tried in Pennsylvania and found guilty of kidnapping under the state law in question:

If any person…after the passing of this act, by force and violence, take and carry away…any negro or mulatto, from any part or parts of this commonwealth…with a design and intention of selling and disposing of…such negro or mulatto, as a slave or servant for life…his or their aiders or abettors, shall on conviction thereof…be deemed guilty of a felony..

This decision alarms the slave-holding states, especially Maryland, which appeals the decision in May 1840 on behalf of Prigg. It argues that the 1826 Pennsylvania law violates the euphemistic "Fugitives From Labor Clause" in Article IV of the Constitution, and the subsequent 1793 Fugitive Slave Act:

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due.

While clear about intent, neither law spells out whether enforcement belongs at the state or federal level.

On appeal, the Prigg case finally reaches the Supreme Court, where arguments are heard by Roger Taney and his associates on February 8-10, and a judgment is rendered on March 1, 1842.

Justice Joseph Story issues the overall "Opinion of the Court" which, by an 8-1 majority, strikes down the Pennsylvania law and rules in favor of Maryland and Prigg.

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A Loophole In the *Prigg* Decision Leaves Enforcement In Doubt

That apparent unanimity, however, is diminished when seven of the justices feel compelled to publish their own individual interpretations.

One such clarification belongs to Chief Justice Taney, ever a state's rights advocate and a stickler for detail. He agrees that it is the right of the master to arrest a run-away in any state where found, but objects to the notion that local laws to support the effort have no bearing vis a vis federal statutes.

I concur in the opinion pronounced by the Court that the law of Pennsylvania, under which the plaintiff in error was indicted, is unconstitutional and void, and that the judgment against him must be reversed. But…I do not assent to all the principles contained in the opinion…(and) I agree entirely in all that is said in relation to the right of the master, by virtue of the third clause of the second section of the Fourth Article of the Constitution of the United States, to arrest his fugitive slave in any State wherein he may find him… But, as I understand the opinion of the Court, it goes further, and decides that the power to provide a remedy for this right is vested exclusively in Congress, and that all laws upon the subject passed by a State since the adoption of the Constitution of the United States are null and void...

A second opinion comes from the lone dissenter in the case, the formidable John McLean of Ohio. McLean is nominated to the high court in 1829 by Andrew Jackson and serves for 32 years, while repeatedly being offered various cabinet posts (including by Tyler), and even considered as a presidential candidate.

He is nicknamed the "Politician on the Supreme Court" and is outspoken in his life-long opposition to slavery. His dissent in the *Prigg* decision is one that will be heard in many future run-away cases under the rubric of "once free, forever free."

Thus McLean contends that Margaret Morgan was de facto a free woman, having lived as such for five years without objection from Ashford in the Free State of Pennsylvania. Hence she was no longer a slave and the plaintiff had no right to abduct her in the first place.
This basic logic will be embraced by abolitionists and repeated over time. McLean himself will rely on it in his 1857 dissent from Taney in the landmark *Dred Scott* case.
None of the ongoing legal debates help either Margaret Morgan or her children. With the verdict in, they are returned to captivity in Maryland, and no records exist as to their subsequent fates.
But ironically the 8-1 decision in *Prigg* is not an entire loss for anti-slavery forces. A close reading of Story's majority opinion, opens a loophole around enforcing the law. It says that local magistrates will not be bound to cooperate with slave catchers if "prohibited by state legislation" from doing so.
This caveat leads to passage of just such "non-cooperation" statutes across the North which serve to infuriate Southern slave-owners.

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Date: March 1842

The *Prigg* Decision Prompts Garrison To Call For Disunion

Lloyd Garrison (1805-1879)

Abolitionists are shocked by the high court's ruling in the *Prigg* case and none more so than Lloyd Garrison, who characterizes the decision as follows:

The slaveholding power (may now) roam without molestation through the Northern states seeking whomever it may devour.

In typical fashion, Garrison uses the adverse news to notch up his inflammatory rhetoric in *The Liberator*.

His first barrage calls upon the slaves to continue to free themselves by running away from their masters.

His inner circle, including Lucretia Mott, support this plea, but others feel that inciting slaves to escape will only lead to greater hardships and repression. Garrison is unbowed. The timid may embrace caution, but he will not.

And thus comes his second salvo – an outright call for Disunion.

Ever the investigative journalist, Garrison has now read Madison's "secretarial notes" on the closed door debates from the 1787 Convention, finally published in 1840, three years after the ex-president's death. He is appalled by the litany of immoral compromises made on slavery to achieve the union.

> *This was a Union at the expense of our coloured population.*

In turn, he throws his outrage directly into the faces of the Boston Brahmins who are ever ready to defend the wisdom and courage of the founding fathers.

The Constitution, he writes, is “the Devil’s pact” and he declares the time has come to break the bond.

> *The repeal of the Union between Northern liberty and Southern slavery is essential.*

Garrison is virtually alone in 1842 in his call for Disunion.

Mainstream Americans, both South and North, dismiss him as a radical trouble-maker – and those within the emerging “political wing” of the abolitionist movement see one more reason to distance themselves from him.

Yet his core supporters, often members of the New England Anti-Slavery Society he founded in 1831, remain loyal. On May 31, 1844, this regional group votes 250-24 in favor of Disunion.

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Sidebar: The Shifting Size And Make-up Of The Supreme Court

While *Prigg* is decided by a total of nine justices in 1842, that number varies over time. The U.S. Constitution establishes the Supreme Court, but leaves it up to the first Congress to settle on its size. In 1789 that number is set at six. Adams tries to reduce it to five in 1801, but Jefferson bumps it back up to six in his first term and then seven in his second. It stay there until Jackson's final day in office, when it moves up to nine.

Number of SCOTUS Justices

Date	**Legislation**	**# Justices**	**President**
Summer 1787	U.S. Constitution	TBD	----
Sept 24, 1789	Judiciary Act of 1789	6	Washington
March 2, 1801	Judiciary Act of 1801	5	Adams cuts by one
April 29, 1802	Judiciary Act of 1802	6	Jefferson adds back
Feb 24, 1807	Seventh Circuit Act	7	Jefferson
March 3, 1837	8th and 9th Circuit Acts	9	Jackson

From the beginning, Presidents attempt to "stack the court" in favor of judges who share their political views. Federalist-minded judges dominate until Jefferson moves toward Democratic-Republicans in 1804, aided by the expansion to seven seats. Van Buren completes Jackson's shift toward Democrats achieving a 9-0 majority by 1841. This configuration holds until Fillmore names a Whig in 1851. Lincoln names four Republicans and one Democrat during his tenure. It is not until 1870, under Grant, that the Republicans control the court.

Political Make-Up Of The Justices

President	Ends	# Named	Split at Start	Split at End
Washington	1797	11	6 Federalists	6 Federalists
J. Adams	1801	3	6 Federalists	6 Federalists
Jefferson	1809	3	6 Federalists	4 Fed – 3 Dem/Rep
Madison	1817	2	4 Fed – 3 Dem/Rep	2 Fed – 5 Dem/Rep
Monroe	1825	1	2 Fed – 5 Dem/Rep	2 Fed – 5 Dem/Rep
JQ Adams	1829	1	2 Fed – 5 Dem/Rep	2 Fed – 5 Dem/Rep
Jackson	1837	5	2 Fed – 5 Dem/Rep	2 D/R – 5 Dem
Van Buren	1841	3	2 D/R – 7 Dem	9 Dem
Harrison	1841	0	9 Dem	9 Dem
Tyler	1845	1	9 Dem	9 Dem
Polk	1849	2	9 Dem	9 Dem
Taylor	1850	0	9 Dem	9 Dem
Fillmore	1853	1	9 Dem	8 Dem – 1 Whig
Pierce	1857	1	8 Dem – 1 Whig	8 Dem – 1 Whig
Buchanan	1861	1	8 Dem – 1 Whig	9 Dem
Lincoln	1865	5	9 Dem	5 Dem – 4 Republicans

Over this period, six men serve as Chief Justice, with two of them – John Marshall and Roger Taney – dominating their contemporaries in terms of influence on the cases taken and the final rulings.

Chief Justices Of The Court

Name	Tenure	Nominated By	Politics
John Jay	1789-1795	Washington	Federalist
John Rutledge	1795	Washington	Federalist
Oliver Ellsworth	1796-1800	Washington	Federalist
John Marshall	1801-1835	Adams	Federalist
Roger Taney	1836-1864	Jackson	Democrat
Salmon Chase	1865-1873	Lincoln	Republican