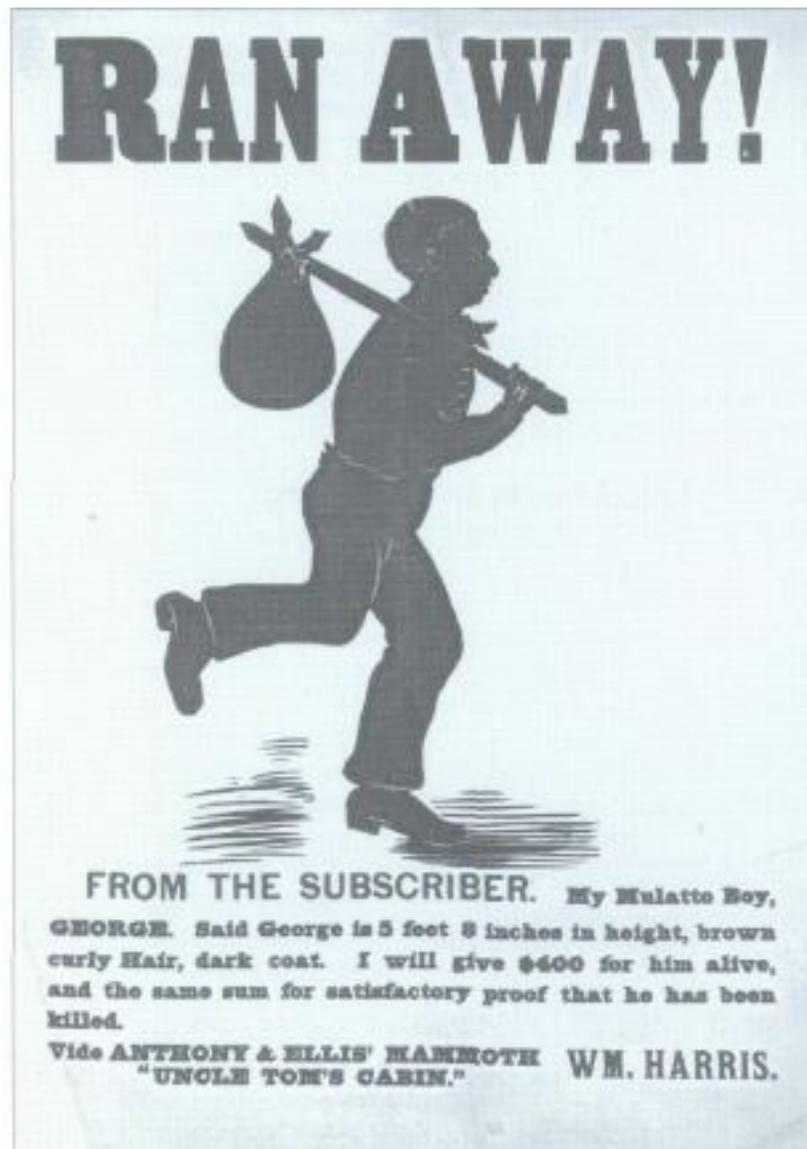


HUMAN RIGHTS BRANDEIS UNIVERSITY

Andreas Teuber
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“The Fugitive Slave”

Preamble: The Dilemma

Imagine that you are miraculously transported back in time to the year 1856, to Massachusetts before the outbreak of the Civil War, to a time in American history when slavery is still practiced throughout the South. Massachusetts is a free State, but that much you know. Imagine, too, that you (not so unsurprisingly) find the practice of slavery morally repugnant. You have even spoken out against it at numerous social gatherings.

You also happen to be a Federal judge; that is your job; and you have just been asked to hear a case involving one named "Jim" (last name unknown), a slave from Virginia who fled from Virginia to Massachusetts nearly three years ago. A little more than a month ago a slave-catcher located Jim and now his owner wants his "property" back.

1. The Legal Defense Fund

Several prominent members of the community of Lancaster where you live have come to know Jim over the last three years. He has been working for the Rowlandson family and during this time has been treated as a human being with many of the rights and respect that a human being can reasonably be expected to enjoy. Jim loves his new home in Massachusetts and does not want to go back to Virginia. The people of Lancaster have secured Jim the best attorney they could find.

2. The Hearing

A hearing has already been held at which it was determined that Jim should be returned to his owner. Jim's lawyer has, however, objected to these proceedings and the case has come before you on appeal and by special writ. Jim's lawyer contends that the hearing was a mockery of justice. There was no jury and the federal official who presided knew that he stood to gain a higher fee if Jim was returned than if he was not.

"How can we," Jim's lawyer argued, "honestly presume that this official's judgment was impartial?" Jim was arrested without a warrant and was given no opportunity at his hearing to question his status as a slave. For three years now Jim has been living in a free State, in the City of Lancaster in the State of Massachusetts. "Surely," Jim's attorney argued, "this should count for something."

3. The Procedures

Jim's attorney does, however, acknowledge that the procedures that he found objectionable were established by Congress in [1793](#) and [1850](#) in statutes known as "[The Fugitive Slave Acts](#)." These laws are the law of every state throughout the country. Jim's attorney believes that Massachusetts as a free state has the power to establish its own procedures to ensure that the rights of individuals like Jim to both due process and a fair hearing are strictly observed, i.e., that Massachusetts as a free state has the power to impose restrictions on the hearing process in the interests of the alleged slave. And, indeed, Massachusetts has enacted such restrictions. But so far, i.e., up to this point, Massachusetts has adhered to The Fugitive Slave Acts and abided by the procedures the Acts establish.

4. The Constitution

Jim's owner from Virginia has not even bothered to hire an attorney for the scheduled appeal. He himself has come from Virginia to make the case before you (you, the judge, remember) since he believes that the case is open and shut. Even though, he points out, Massachusetts has adopted its own procedures to deal with matters of this kind, the Constitution of the United States ([Article IV, Section 2](#)) clearly states that

“No person held to service or labor in one State, under 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.”

This provision in the Constitution was adopted as part of what is generally known as "the grand compromise" between the slave states and the free states. The compromise consisted of the agreement of the slave-holding states to join the union, provided that the new nation's Constitution recognized and promised to preserve the legal legitimacy of slavery in those states that wanted to keep the practice, and Virginia was one of those states.

5. The Fugitive Slave Laws

The Fugitive Slave Acts were simply enacted to give effect to this Constitutional provision. Indeed, Jim's owner has serious doubts whether this appeal is even legal since the Fugitive Slave Acts simply required a hearing. That hearing has now been held and all the procedures specified by Congress and in the Acts have been followed to the letter. Indeed the Fugitive Slave Acts themselves set out the procedures to which Jim's attorney objects, which Jim's attorney believes "offend" Jim's rights to "due process": The federal official who presided at a hearing and who returned the alleged slave to his purported master was entitled to receive a higher "commission," than if he were not; there was no provision for a jury trial, and the defendant was not allowed, according to the Acts, to contest whether he was in fact a slave, that issue being left to be decided in the slave state from which he came after his return.

And now, at his hearing, it has been determined that Jim should be returned to Virginia. Jim's owner has been overheard to say several times: "What's wrong with those folks up North? The issue is settled; enough already," or words to that effect.

6. Due Process

One of the first arguments, however, that you shall hear from Jim's attorney is that the procedures followed at the hearing violated ordinary notions of **due process** as well as the restrictions on such proceedings imposed by Massachusetts law. Jim's owner argues that the original hearing in Massachusetts was only intended to be preliminary. He says the Fugitive Slave Acts make this clear. Jim was not deprived of due process of law; due process will take place in Virginia after Jim is returned. In any event it is wrong to require a full scale trial in Massachusetts to determine Jim's status as a slave since this would in turn require Jim's owner to bring a large number of witnesses more than 500 miles to be heard before a jury which is likely to be opposed to the very institution of slavery on which his claim is based and would, in effect, deprive him (Jim's owner) of his slave, that is, of his property without due process of law, to say nothing of his (Jim's owner's) Constitutional rights.

Jim's attorney retorts (snorts) that Jim can hardly expect to get "a fair trial in Virginia" where everyone, "and their uncle" believes in the institution of slavery.

As a Federal Judge, you know that whatever private doubts you and your fellow Massachusetts judges might have about the legal respectability of the Virginia Courts, it was an integral part of the national compromise that federal judges should not be guided by such doubts in their legal opinions. Article IV, Section 1 of the U.S. Constitution says that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of any other State."

You have taken all this in and heard the arguments on both sides.

Did the procedures followed at his hearing violate Jim's rights to due process?

And if so, should he not be returned until - at the very least - he has a "fair" trial or hearing? What do you think?

In this instance, what does procedural justice require? Will procedural justice best be secured by sending Jim back to Virginia or by giving him a new and "fair" trial in Massachusetts?

You're the Judge; what's your opinion?

7. Interpreting the Constitution

In a final flurry of argument, Jim's owner argues that whatever "technical" defects may be found in the procedures established by the Fugitive Slave Acts, it was understood at the outset, from the very founding of the country that the states have diverse institutions and ways of life and that the Union of States exists and can survive only through compromise on issues and in situations where these diverse institutions and ways of life come into conflict. One principle enshrined in the Constitution as clearly as anything can be is that the rights citizens have by virtue of the various institutions of the States in which they live are to be protected - not just within the boundaries of their own states - but throughout the Union. A Virginia slave-owner's property in his slaves is one of these rights; the clear meaning of [Article IV, Section 2 of the Constitution](#) and the Fugitive Slave Acts is to protect this right. And then for emphasis he pounds the table and shouts: "MY RIGHT!" Jim should be returned, he argues, to Virginia where it can be properly decided by the evidence of many witnesses, many of whom shall know and recognize Jim, whether he is in fact "my slave."

Jim's attorney replies that there are parts of the Constitution that clearly presuppose a conception of freedom antagonistic to slavery; in particular, in the first ten amendments, in the so-called Bill of Rights. Jim's owner retorts that Jefferson who wrote the Declaration of Independence and was primarily responsible for the amendments was himself a slave-owner. The original intent of the amendments was never meant to apply to slaves.

Jim's attorney replies that the conception of federalism implicit within the Constitution gives the State of Massachusetts the power to supervise the capture of men and women in its own territory. Jim's owner replies that this power must be exercised, however, in ways that respect the institutions of Virginia and the rights of Virginian citizens "LIKE ME," he parenthetically cries, suddenly pounding the table with his fist again, adding, after collecting himself, "especially as these rights are further protected by federal law."

8. Duty vs. Conscience

In one last ditch effort to save the day, Jim's attorney makes an appeal to your conscience. Common human decency requires the decision, he says, to go in Jim's favor. Whatever else one might say about the law, the pro-slavery provisions of the Constitution and the Fugitive Slave Acts violate Jim's more fundamental, natural right to be free, adding "you cannot, you must not, in good conscience, return Jim to his Southern master."

Jim's owner, having restored himself to a semblance of calm, looks you in the eye and says "you have solemnly sworn, your Honor, with great publicity, to uphold the highest law in the land, the Constitution itself. Please, your Honor, do not violate this most sacred promise to the public in order to satisfy personal conscience."

What do you think?

How would you decide?