

Rescuing Joshua Glover

Again I say, let the people abandon their state courts and consent to their being disarmed of the writ of Habeas Corpus, and their liberties are gone.—Not only the liberty of the citizen, but the sovereignty of the state require a firm resistance to this monstrous assumption of power on the part of the federal courts.

—*Milwaukee Sentinel*, March 16, 1854

IT WAS Friday night, March 10, 1854. Seven men stood outside Joshua Glover's cabin. They had departed from the port city of Racine in two wagons just before dusk to make the four-mile journey to Glover's home. The last hundred yards or so they walked, ensuring a stealthy approach. Among the men was Benammi Garland, of St. Louis, the man who claimed Joshua Glover as a fugitive slave owing him service under the laws of Missouri.

Garland had made that claim a month earlier at the court of common pleas in St. Louis. There Garland made proof of his ownership of a slave named Joshua Glover and of Glover's escape in 1852. Garland further swore that he had credible information that his slave was living close to the town of Racine in Wisconsin. How he learned this is something of a mystery. Wisconsin did not have a reputation as a state friendly to the interests of slaveholders. Some suggested later that one of Glover's friends—a mulatto named Nelson Turner with freedom papers from Natchez, Mississippi—played the turncoat. Whatever evidence Garland had was enough to satisfy the St. Louis court, which issued him a certificate of removal.

The certificate licensed the removal of a fugitive slave from one state to another. It gave Garland the authority to take hold of the fugitive and

present him before a federal judge or commissioner in Wisconsin. If the proof satisfied the judicial officer—and the threshold for evidence was notoriously low—the fugitive could be removed from Wisconsin to the slave state of Missouri. This was all the legal process needed under the Fugitive Slave Act of 1850, but Garland assiduously attended to legal detail. He took the additional step of securing a warrant for Glover's arrest from Judge Andrew Miller of the U.S. District Court for the Eastern District of Wisconsin. Strictly speaking, the warrant was superfluous. But Garland now had direct authority from a federal court in a free state.¹ Armed with certificate and warrant and aided by two deputy U.S. marshals and four assistants, Garland was ready to apprehend his fugitive slave.

Glover lived in a cabin owned by Duncan Sinclair, a local businessman who employed Glover at his sawmill.² Glover was apparently something of a skilled carpenter, for he showed up from time to time in Racine with handcrafted goods for sale. On March 10, Glover was inside with two friends, William Alby and Nelson Turner, playing a game of cards when Garland's party knocked. Glover was suspicious. The U.S. marshals had been there the day before but, finding no one home, had left. A black woman residing there had fled, thinking the men were after her. Glover may not have known any of this, but he undoubtedly knew that slave hunters were abroad in the countryside. Glover told his friends not to answer until they knew who it was. But Turner unbolted the door.³

Garland and the marshals rushed in. Glover surely knew their purpose even without the formality of presenting the warrant. He did not give up his freedom willingly. One of the party pressed a pistol to Glover's head, and when Glover pushed it away, Deputy Marshal John Kearney struck him with a cudgel. The blow knocked Glover to the floor, where three men attempted to manacle him, but Glover was strong enough to ward them all off. The others in the arresting party assisted and finally succeeded in manacling Glover. If one is to believe the report of the *Racine Advocate*, he then broke these irons from his wrists. During the fray, William Alby escaped through the window and made haste for Racine, where he tipped off abolitionists about the arrest. The arresting party finally subdued Glover and put him, manacled and bleeding from the head, in one of the wagons.⁴

The other wagon, carrying Kearney and his assistant Daniel F. Houghton, made the four-mile trip back to Racine. There, at the livery stables, they

met a welcoming party that included Racine's county sheriff. The cry had gone up that slave catchers were at work, and hundreds had gathered in the immediate excitement. They had sent the delegation to await the marshals and to find out what they had done with Glover. Now they questioned Kearney and his assistant. Houghton denied having taken part in the affair. Kearney curtly replied that he had arrested a man on the authority of a warrant. When interrogated as to where the prisoner had been taken, Kearney retorted that it was none of their business. Sheriff Timothy D. Morris arrested the two officers on suspicion of kidnapping and assault and battery.

Glover was in the wagon with Garland and Deputy Marshal Charles Cotton, headed due north for Milwaukee. Garland and the arresting party had sent the two wagons on different paths to disguise the whereabouts of the fugitive. That they chose to make a thirty-mile journey in the dead of night when Racine was only a few miles away indicated that they expected no hospitality in that staunchly abolitionist town. Milwaukee was larger and more anonymous, and it represented more diverse interests. It had the added benefit of being the seat of Judge Miller and of the U.S. commissioner for Wisconsin, Winfield Smith. Either was authorized by the Fugitive Slave Act to hold a summary proceeding to determine whether Garland could remove Glover from Wisconsin and carry him to Missouri. In Milwaukee, Garland could obtain a hearing and remove his fugitive to Missouri much faster than if he spent the night in Racine. There was less chance of trouble.

Federal officers had reason to be nervous. The year 1854 had not begun auspiciously for the Union, and public sentiment was much agitated on the question of slavery. For nearly two decades, it had invaded almost every political issue and election. The Compromise of 1850 had temporarily papered over the nation's fissures by opening territory gained from Mexico to the possibility of slave settlement, prohibiting it in the Oregon territory, admitting California as a free state, and passing a stringent new fugitive slave law. The law evoked conscientious rants from northerners squeamish about sending people back to slavery, and the first attempts at enforcement led to spectacular and sometimes violent rescues in Boston, Syracuse, and Christiana, Pennsylvania. Nevertheless, the outrage abated with time, and by 1853 many of the fugitives recovered under the new law had been sent back to the South.⁵

Enforcement became markedly more difficult in January 1854, when Senator Stephen Douglas, of Illinois, reported a bill out of committee to organize the Nebraska Territory. The bill contained provisions initially permitting slavery within the territory and giving the territorial legislature, when formed, the power to revisit the issue. His term “popular sovereignty” loosely described the idea that the people who moved to the territories could express their sovereign will about the inclusion or exclusion of slavery. Douglas’s own motives had little to do with settlement or slavery; rather, they had to do with enterprise.⁶ Like many savvy Illinois businessmen and eastern capitalists, Douglas had invested heavily in the burgeoning metropolis of Chicago and wanted to ensure that the western railroads ran from his city.⁷ Because the northern territory was unorganized, however, the more likely route was through New Orleans or St. Louis in the South.⁸ Douglas worked hard to get the bill onto the Senate floor quickly. To gain votes from his proslavery colleagues, he included the popular sovereignty clause in the bill.

The Kansas-Nebraska bill fell like a sledgehammer, shattering the earlier compromises. Popular sovereignty, meant by Douglas as a solution to placate all, pleased no one.⁹ Southern Whigs and Democrats, with few exceptions, argued that the territories were common property and that not even a territorial legislature could keep slavery out. They defended the extension of slavery on principle. Popular sovereignty, many southerners believed, was a northern ruse to open territories to settlement faster than southerners could fill them. For northerners, popular sovereignty was an outright attempt to extend slavery north of the 36° 30' line agreed to in the Missouri Compromise of 1820. What was worse, a slave territory controlling access to the far West threatened to isolate the free states. In Wisconsin, as elsewhere across the North, outraged citizens organized in opposition to the bill. They formed Nebraska societies, sent petitions to Congress, and contemplated political coalitions to organize this opposition into a third party.

So the arrest of Joshua Glover took on a greater significance than it might otherwise have had. Emotions ran high over slavery in the territories, and the intrusion of federal officers to protect slave property in a free state now looked something like a conspiracy. If free states had to recognize slave property within their borders, then it required no great leap of imagination to reach the next proposition—that slave property was an absolute

right protected by the Constitution and enforceable everywhere.¹⁰ What would prevent slaveholders from claiming the right to bring their slaves permanently into states that prohibited slavery? However farfetched this response, it carried force. Douglas's introduction of the Kansas-Nebraska bill to the floor of the Senate still reverberated across Wisconsin in March 1854. It was reason enough for Cotton and Garland to make the nearly six-hour journey on a cold March morning and lodge Joshua Glover in Milwaukee's county jail in the hours just before dawn.



March 11, 1854, began as most any other Saturday morning in Milwaukee must have, as wagons from the surrounding countryside rumbled over one of the dozen plank roads that led to the city's shops and laborers contemplated the construction work that lay ahead on a cold day by Lake Michigan. Milwaukee was a city on the move in the 1850s. The bluffs that greeted Milwaukee's visitors by lake were constantly being graded to allow for easier construction and settlement. Thousands flowed into the city every year—ten thousand between 1850 and 1855 alone—and tens of thousands more spread to Wisconsin's prairies in search of farmland to buy or lease. Entrepreneurs erected hundreds of dwellings and business blocks each year: not just frame buildings of timber on "the California model" but permanent edifices in Milwaukee's trademark cream-colored brick, "unequaled," said one visitor from New York City, "in point of architectural beauty, by those of any other city in the West."¹¹ Nearing completion was the first leg of the Milwaukee & Mississippi Railroad, connecting the city with the state capital, Madison. More railroads were planned. These new transportation routes brought grain from the hinterland to Milwaukee en route to New York. Between 1850 and 1860, Wisconsin farmers more than quadrupled the acreage devoted to tillage and nearly doubled their yield. And all moved through Milwaukee, the city that was Wisconsin's wholesaler, marketer, supplier, and banker.¹² Saturday, March 11, 1854, was just another busy morning. Except for federal officers, no one knew that a fugitive slave lay bleeding in the county jail.

Abolitionists in Racine knew, and they rang the bells to awaken the city. Shortly after 9:00 AM, the "largest meeting of citizens ever assembled in Racine" gathered in the courthouse square. While speakers addressed the crowd, a committee worked up a set of resolutions. The preamble



Figure 1.1. Bird's-eye view of Milwaukee, 1853. *Photo courtesy of the Milwaukee County Historical Society*

decried the “kidnapping” of Glover, “a faithful laborer and honest man.” The first resolution condemned the arrest as “an outrage upon the peaceful rights of this assembly,” as it was made “without the exhibition of any papers” but by knocking him down with a club. The second resolution stated that “as citizens of Racine,” the assembly demanded that Glover be afforded a fair and impartial trial by jury. To these resolutions defending Glover, they added a third. Blaming the Senate for repealing “all compromises heretofore adopted by the Congress of the United States,” the citizens of Wisconsin “declare the Slavecatching law of 1850, disgraceful, and *also repealed.*”¹³ After adjourning the meeting until 1:00 PM, the committee telegraphed its proceedings and resolutions to Milwaukee’s abolitionist printer, Sherman M. Booth.

Booth was a stalwart antislavery man with an established reputation as a radical, a bombast, and a hothead. He wore a long black beard, and his intense dark eyes contrasted with the gentleness of his round face. His father, a schoolteacher active in New York State’s temperance reform movement, had instilled a hatred of slavery deep within him. Sherman Booth went to Yale, where he assisted in the famous *Amistad* cause by helping to teach the African slaves how to read and write English. He graduated as a member of Phi Beta Kappa and delivered the society’s commencement address on the “duties of the citizen at the ballot box.”¹⁴ After Yale, Booth

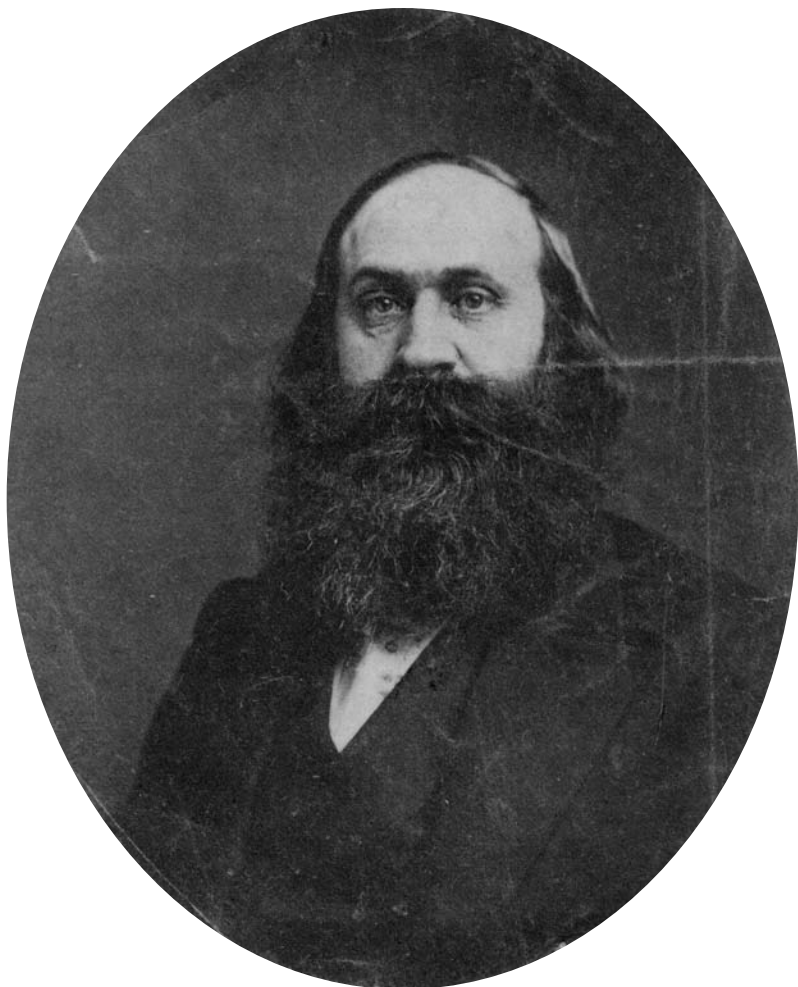


Figure 1.2. Sherman Booth was the first Milwaukee abolitionist notified of the presence of Joshua Glover in the county jail. He alerted the city of Glover's incarceration by printing handbills and riding about town shouting, "A man's liberty is at stake!" Some also said that he shouted, "Freemen to the rescue!" but Booth denied uttering these specific words. He had reason enough to deny them in 1854 and 1855—they were evidence for the prosecution that he had planned a rescue from the start. Later in his life, Booth admitted that he had played a role in encouraging the rescue. But as for shouting, "Freemen to the rescue"? "I respectfully decline the honor," said Booth, "of a deed which I never performed." *Wisconsin Historical Society, image number WHi-9485*

worked for the *Christian Freeman*, an abolitionist newspaper in Connecticut, where he was active in the eastern wing of the Liberty Party. When the newspaper's editor moved to Prairieville, Wisconsin (just outside Milwaukee), Booth followed him and assisted him in publishing the *American Freeman*.

Booth's abolitionism was harsh and unrelenting. He brooked no compromise with the Slave Power and condemned out of hand any attempts to do so. But as hardheaded and moralistic an abolitionist as Booth was, he had a pragmatist's instincts. His work in Connecticut had elevated him to high ranks within the Liberty Party, and there he encountered the difficulties of party formation. It was difficult enough to attract people to an untested third party that lacked the power to dispense patronage, but he also found himself defending the party from attacks by radical abolitionists like William Lloyd Garrison. Before long, he was advocating an alliance with like-minded Democrats. After attending the convention in Buffalo, New York, that announced the emergence of the Free Soil Party, Booth joined with Barnburner Democrats in building the new party. He relocated to Milwaukee and began publishing his own paper, the *Daily Free Democrat*. He became the most vocal of Wisconsin's abolitionists.

At nine o'clock on the morning of March 11, Booth received the Racine cable announcing that the Milwaukee jail held a fugitive slave. He went immediately to see the clerk of the district court, who told Booth to talk with Judge Miller. On his way to Miller's office, Booth ran into Deputy Marshal Cotton. He asked Cotton whether he had kidnapped a man in Racine and showed him the cable he had received. Cotton denied kidnapping anyone, although he neglected to mention that he had *arrested* a fugitive slave.¹⁵ Booth, for his part, began to wonder whether the entire dispatch had been a rumor but went to see Judge Miller anyway. Miller confirmed that he had issued a warrant a few days earlier but claimed to have no idea whether it had been executed. Befuddled, Booth left Miller's office. He then crossed paths with the prominent abolitionist lawyer James H. Paine, who told him that a fugitive slave had indeed been deposited in the Milwaukee jail. They hurried there together to see the fugitive.

Like Sherman Booth, James Paine had cut his teeth on the Liberty Party revolt and the Free Soil synthesis in the 1840s. Paine had been active in Ohio's Liberty Party, in which he and Salmon P. Chase had been among the early leaders. He left little in the way of a record, but it is clear that he

led the wing that rejected reconciliation with either Whigs or Democrats.¹⁶ In 1847, Paine left Painesville—a town named after his family—to pursue more lucrative opportunities in Milwaukee. He opened a law firm with his sons and practiced primarily commercial law.

Paine never abandoned his passion for the age's great reform issues of temperance and abolition. When a fugitive slave turned up in the county jail, his principles demanded action. He took an affidavit from Glover, obtained a copy of the warrant for his arrest, and left for the residence of Charles E. Jenkins, judge of the Milwaukee County Court. There he applied directly to the judge for a writ of habeas corpus for Joshua Glover. Habeas corpus was an ancient writ and one of the key elements of the common law's due process. It commanded an officer detaining a person to "have the body" in court and to explain by what authority the person was detained. If the detention was according to law, then the judge who had issued the writ was bound to return the prisoner to jail. If not, the prisoner could be set free. Judge Jenkins issued the writ and ordered the city marshal to serve it on the federal marshals and the county sheriff who held Glover.

While Paine busied himself obtaining Glover's writ of habeas corpus, Booth printed a handbill publicizing Glover's arrest. It made sensational claims. Slave catchers had "kidnapped" a man. They had "pressed" the county jail and local officers into service, making them hold the slave while "fetters were being riveted on his limbs." Slave catchers planned a secret trial to deny Glover the aid of counsel. Booth ended with a plea: "Citizens of Milwaukee! Shall we have Star Chamber proceedings here? and shall a Man be dragged back to Slavery from our Free Soil, *without an open trial of his right to Liberty?*"¹⁷ Few educated Wisconsinites would have missed the historical analogy. In the great story of the triumph of liberty over absolutism, the seventeenth century had been the watershed.¹⁸ As Americans understood it, the Stuart monarchs of England had spent much of that century employing every available means to aggrandize their own power. Star Chamber was particularly valuable court to the absolutist Stuarts because royal judges decided cases without a jury. Booth extended the analogy when he referred to Judge Miller as Judge Jeffries, the chief justice of the most pernicious of all the Stuarts, James II. Jeffries had affirmed the right of his king to suspend habeas corpus and had engineered the "bloody assizes" in 1685 to punish rebels. Booth used these images

consciously to analogize the federal government to absolutist monarchs operating under color, but not substance, of law. The analogy also implicitly invoked popular sovereignty. The victors in the seventeenth-century struggle against absolutism were the English people, who had jealously defended their right of trial by jury and recourse to habeas corpus, even removing the head of Charles I in 1649 and running James II out of England in 1688. Booth now asked whether Milwaukee's citizens were ready to surrender these hard-won freedoms. It was a powerful plea.

Booth, Paine, and other Milwaukeeans reconvened in Booth's office at one o'clock to telegraph a report of the events to Racine and decide what to do next. They understood that Judge Miller, despite the writ of habeas corpus, intended to proceed with Garland's hearing on the removal of Glover to Missouri. After a few minutes of discussion, they decided that a general meeting was in order and that they would call it by ringing the church bells and distributing handbills. The men set to work. But as time ran short, Booth abandoned the handbills and took up the reins of his horse. From his office at West Water Street and Spring, he rode north on Third Street into the heavily German Second Ward, crossed the river, rode south down East Water through the heart of Milwaukee's business district, and down to the Fifth Ward, where he returned via Main and Milwaukee through the Third Ward. It was a tremendous distance to travel in twenty minutes, particularly when stopping at street corners and shouting "A man's liberty is at stake!"¹⁹ Booth called for all freemen who did not wish to be made slaves to meet in the courthouse square. Some later swore that he shouted "Freemen to the rescue," but Booth denied it.

Whatever he yelled, it brought people by the hundreds to the courthouse. By 2:30 PM, several thousand—including Milwaukee's acting mayor, the city marshal, newspaper publishers, and wealthy businessmen—had turned out, motivated by sympathy or curiosity.²⁰ Garland's hope of removing Joshua Glover quietly from Wisconsin was dashed. The fugitive slave's status was now the concern of a large crowd that gathered in the courtyard square.



Milwaukee's courthouse was built in 1836 on land donated by Solomon Juneau, one of the city's earliest promoters. The site was equidistant from the Milwaukee River and Lake Michigan, a little more than one-half mile

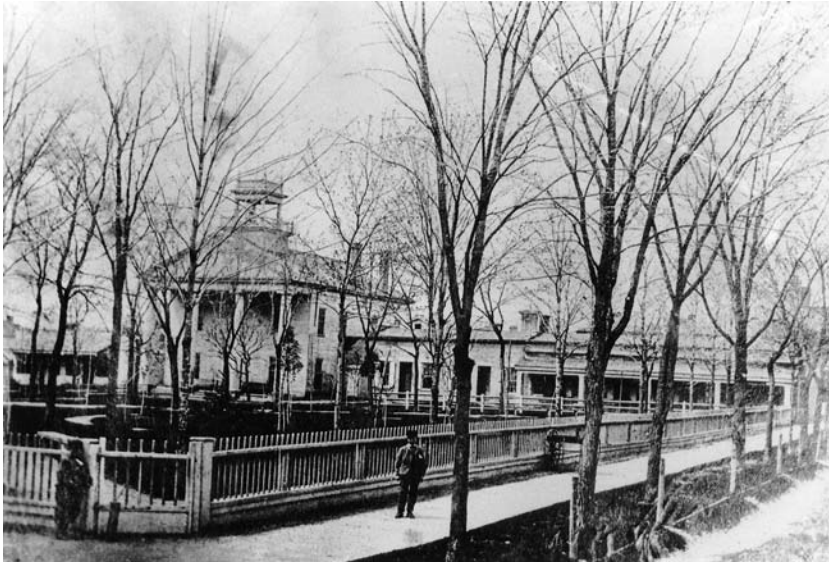


Figure 1.3. Milwaukee's courthouse square was home to the Milwaukee County Circuit Court, the U.S. District Court for the Eastern District of Wisconsin, and the county jail (located behind the courthouse). Hasty frontier-style construction created an awkward aesthetic. The courthouse in the center was a rather blockish, unimaginative two-story frame building with narrow windows. A pediment supported by four Tuscan columns gave it a Greek Revival veneer, but the building's gabled roof had merely been extended into a portico, and a bell tower stood where a dome should have been. The intent had been fashionable solemnity. The effect was, at best, an uncomfortable imbalance. Additions had been built in asymmetric wings connected to the central courthouse and spanning the entire block, more reminiscent of a commercial mall than of a public square. Still, this was the popular destination of political marches and parades in Milwaukee. It was the center and the symbol of public life for the city and the county. *Photo courtesy of the Milwaukee County Historical Society*

north of the confluence of the Milwaukee and the Menominee rivers. When the three separate settlements at Milwaukee—Juneautown, Kilbourntown, and Walker's Point—were joined by charter in 1846, the courthouse stayed there on the east side, close to Milwaukee's central business district. Because commercial paper and debt were often registered with and litigated through Milwaukee's courts—Milwaukee in the late 1830s registered one lawsuit for every eighteen residents—this proximity was key. The courthouse

expanded with Milwaukee. By 1854, it was home to the U.S. District Court for the Eastern District of Wisconsin, the Milwaukee County Circuit Court, the Milwaukee County Court, and the county jail.²¹

The courthouse square had been hastily constructed and was somewhat awkward in appearance, but it served as Milwaukee's only true public forum. The courthouse steps served as a natural platform for speakers, and larger crowds could be addressed from the roof of the courthouse or from those of buildings directly adjacent. The quadrangle provided enough space for hundreds or, if they spilled over fences onto the sidewalk and into the streets, even thousands to gather. For these reasons, it was a common destination for political marches, rallies, and parades. Such was the typical scene during the city's Fourth of July celebrations. Long parades wound through every ward in the city and ended at the courthouse steps. Celebrants lounged in the quad while speakers delivered orations in English and German. Political assemblies followed the same formula. The 1847 rally in support of the proposed state constitution marched through all the wards before settling at the courthouse steps, where citizens of note delivered speeches.²²

Not every crowd that gathered in the courthouse square followed a peaceful parade. Milwaukee saw its share of angry mobs in the 1840s and 1850s. On April 1, 1848, a riot broke out in the predominately Irish Third Ward. Particularly vexing to the English-language press were its origins in "some disturbance at the 'democratic' caucus." Irish rioters attacked a German boardinghouse, the residents returned gunfire, and many people were badly injured. Rufus King, editor of the *Milwaukee Sentinel* and a key supporter of the antislavery cause, noted with more than just a little anxiety that "a good deal of excitement got up between some of our Irish and German fellow citizens. But we trust that the matter will end here and not lead to disturbances, which would bring discredit upon our fair city."²³ On March 4, 1850, Germans rioted at a speaking engagement of Senator J. B. Smith, a temperance advocate. The English-language press expressed its outrage, and two weeks later a mass meeting of native-born Americans publicly condemned the riot. Several Germans felt the need in the days following the riots to quell fears that their countrymen did not know how to behave in a democracy.²⁴ One man, German-born but a naturalized citizen of the United States, protested the "imputation that the Germans by nature were disorganizers and disturbers."²⁵ Two more Ger-

man citizens contributed to the debate in both the German- and English-language papers, revealing divisions in the German community as well as deep-seated fears that the Germans were prone to demagoguery and disturbance.²⁶ Less than one year later, German Catholics and Protestants clashed in the Second Ward, a riot that produced fourteen arrests but no convictions.²⁷

Much of the concern expressed both within and without the German community dealt with the danger of class-based riots. Those who condemned the riots often pointed fingers at demagogues “pretending to be friends of the laborer.”²⁸ The issue came to a head in 1853, when German railroad workers went on strike after being stiffed on wages. They organized and marched around the city, ending at the railroad company’s headquarters. Despite entreaties by the mayor and by a German-born alderman, the crowd remained agitated. When officers arrested a man taking handfuls of sugar from a hog’shead that had been forced open, the crowd turned angry. Officers arrested all who resisted and took them to the county jail. The Germans rallied around a man wielding a tricolor flag and marched after them. Sheriff Herman Page met them at the jailhouse steps and told them in no uncertain terms that the full weight of the law would come down on any who attempted a rescue. Meanwhile, the police and fire companies assembled across the square. The mayor attempted to defuse the situation by walking coolly into the crowd and removing the tricolor flag. This act did not have the intended effect: “he was instantly assailed by a number of men around it and a general melee at once commenced. Sticks, stones and fists were freely used; the Engines commenced playing on the mob and the latter, in turn, pelted the Firemen with brickbats. Thereupon the Firemen and Police charged upon the mob and drove them fairly off the ground.”²⁹ As dramatic as the scene was, it ended with few injuries. The *Sentinel*, for its part, weighed in on the side of the laborers but added that “the moment they undertake to right themselves *by force*, both the community and the law will be marshalled [*sic*] against them.”³⁰

Riots such as these pricked the popular consciousness. Most everyone was aware of the troubling rise in urban disorder. Contemporaries fretted about this trend, which was not simply the result of random crime or growing pockets of poverty in northern cities. The frequency and lethality of urban riots escalated in the nineteenth century. By the eve of Civil War, riots had claimed nearly a thousand lives.³¹ But casting this as a mere escalation

in urban violence disguises much. Riots themselves had changed in character from the eighteenth to the nineteenth century, as had their relationship to the political process. In the eighteenth-century Atlantic world, riots were highly disciplined affairs that usually occurred during times of exigency.³² These crowds derived their legitimacy from three primary factors: a purpose for gathering, a consensus among the community about the nature of the danger, and an urgency that justified extraordinary action. Remarkably, social elites often supported crowd action if it helped restore order or cured perceived disorder within the community.³³

Even if tolerated, such crowd action was strictly extralegal. In the development of American constitutionalism, the extralegal crowd played its part. From the revolutionary committees of correspondence and the enforcement of nonimportation agreements to the Boston Tea Party, extralegal assemblies formed a vital part of the revolutionary movement. What some might have condemned as riotous violence, others defended on the principle of popular action.³⁴ Deeply embedded in the American Revolution was the concept that the people, properly organized, might act on their own.

This idea of direct popular action became central to American government in the first decades of the nineteenth century. As the population expanded and the Democratic-Republicans held the federal government in check, a need for basic services arose. The people responded. In the first two decades of the nineteenth century, voluntary associations organized for mutual benefit, charitable purposes, or the provision of civic services mushroomed.³⁵ They proved to be a particularly useful tool on the trans-Appalachian frontier, where settlement quickly outran the reach of the territorial government.³⁶ Voluntary associations filled the void and, by the 1850s, were well established in American law.³⁷ Several generations of usage had made them commonplace, and they had existed in Wisconsin since its days as a territory. Merchants, artisans, and professionals formed mutual benefit societies. Charities, orphanages, and schools were run by private associations. Milwaukee's first library, lyceum, and lecture series were established by such groups. Newspapers regularly published resolutions adopted by voluntary associations and praised their efforts.³⁸

The cumulative effect was to connect popular sovereignty to democratic procedure. The fundamental right of the people to assemble was an ancient one, derived from the English constitutional tradition and confirmed

by the principles of the American Revolution.³⁹ The 1848 Wisconsin constitution granted this right in the fourth section of its first article in simple and forceful language: “The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.” The achievement of the Democratic-Republicans was to expand this right into a governmental practice. If the Revolution had removed the need for direct crowd action in theory, Jeffersonian politics removed the need in practice by incorporating the crowd into the polity.

This was what made Jacksonian-era riots so terribly frightening. The participants did not assemble properly in the American traditions of popular action and voluntary association. They did not pretend to represent the community or to enforce its values. Instead, these riots rumbled in the crowded metropolises of the East, in neighborhoods formed from the swell of immigrants arriving in the 1840s. Riots often pitted one ethnicity against another, particularly when immigrants competed with native-born Americans for jobs during lean times or when strange cultural practices stirred nativist sentiments. Some feared that this violence was endemic in foreigners who were unable to understand and participate in democracy. Others pointed to the brutal poverty of city life, voicing fears that American cities were developing a European-style underclass. This raised the chilling specter of class warfare.⁴⁰ The overblown antiriot literature of the period continually asked the rhetorical question: how could the poor rise up against a government established in their name?⁴¹ There seemed to be no answers to this question when urban violence was random and contemptuous of the rule of law. Beneath these questions lurked a greater fear, that democracy was too fragile to keep order.⁴²

This fear intensified on the frontier. Lacking established roots and situated far from centers of power, businessmen and capitalists believed that the frontier could degenerate into violence at any time. Rather than leading to an abhorrence of violence, this belief produced an ambivalence that tolerated it on certain occasions. When respected members of the community used extralegal violence to maintain order, the community permitted and even condoned it.⁴³ This phenomenon on the rural frontier occurred primarily because fledgling settlements lacked formal institutions or an established elite that kept order. The same was not true on the urban frontier. Fast-growing frontier cities like Milwaukee depended on the sinews

of commerce that extended directly from eastern centers to the rural hinterland. Violence disrupted commerce, in turn discouraging investment and potentially putting Milwaukee at a disadvantage in its competition with Chicago to become the premier port of the Great Lakes.

In order to compete, Milwaukee had to accept the very conditions that had seemingly destabilized cities in the East. Milwaukee required a large labor supply, and the city's promoters advertised in Europe for settlers. Immigrants had clustered together during the fast-paced growth of the 1840s and 1850s. Native-born Americans had settled the north and the east in Milwaukee's First and Fifth wards. The Irish gravitated to the Third Ward, settling close to the industry along the Milwaukee River. The Germans settled to the west, across the river in the Second Ward. Residential segregation did not deter commercial mixing, however. The vast majority of retailers, wholesalers, and professionals did business in a set of buildings totaling roughly eight city blocks, all in the First Ward.⁴⁴ As Milwaukee grew in the 1850s, business expanded slowly outward from this center, forcing manufacturing farther downriver, southward into the Third Ward.⁴⁵ Importantly, the business divisions that had pushed commission merchants and wholesalers downriver kept German and American wholesalers alike within the business district. Professionals and retailers advertised directly to Germans in Milwaukee in the city directories, offering special services (primarily legal services) designed to integrate them immediately into the city's commerce.⁴⁶

These were the tensions that pulled in every direction during the 1850s. The need for labor encouraged the foreign immigration that many nativists feared would endanger democracy. The desire to integrate foreigners into the city's commerce went hand-in-hand with deep suspicions about the cultural habits of Germans and Irish. Frighteningly, Milwaukee's riots resembled those of eastern cities and polarized the city along ethnic and class lines. Democratic politics, instead of acting as the glue to hold these disparate groups together, proved to be the hammer and chisel that could fracture the city at any moment. The fact that democratic caucuses and political speeches served as contact points for ethnic rioting suggested that foreigners were particularly susceptible to demagoguery or simply lacked the ability to understand Anglo-American democracy.

The city elections on March 7, 1854, confirmed these fears. At the First Ward polls at Market Square, right on the edge of Milwaukee's business

district, an Irishman challenged the election return of a German. As the two groups began to argue, a German vociferously challenged the Irish to fight. This continued “until the Irish blood was up,” and a bloody riot ensued. The Irish won the ground, chased away the Germans, and kept a “murderous fire of stones and brickbats upon the windows of buildings in the neighborhood, and upon every one who came near.”⁴⁷ The sheriff was “badly hurt,” as were an alderman and the former sheriff who attempted to quell the riot. Newspaper editors uniformly recoiled in horror at this display of ethnic violence. The *Milwaukee Sentinel* lamented that “the moral injury done to the good name of our city is incalculable.”⁴⁸

Understandably, then, it was with some trepidation that Milwaukeeans regarded the gathering of thousands in the courthouse square only four days after the election day riots. They watched closely for signs of violence and disorder, and they measured the crowd against the standards set by the tradition of voluntary association and its parliamentary procedures. The antislavery men who called together the meeting also worked hard to ensure that its proceedings not only would conform to these standards but would gain the community’s approval. When James Paine called the meeting to order—and thus gave the assembly its legal sanction—he nominated for its president Dr. Edward B. Wolcott. An antislavery man, Wolcott was also a prominent citizen of Milwaukee. He had invested heavily in real estate and was one of the directors of the Milwaukee & Mississippi Railroad Company. His presence was a firm reminder that this crowd was led by people deeply invested in the community.

Abram Henry Bielfeld was nominated secretary of the assembly, to keep its minutes and official records. Bielfeld was German by birth, originally from Bremen. He had immigrated to New York and spent several years testing his fortunes there and in Mexico before settling permanently in Milwaukee in 1845. He alternately practiced law and provided services as a translator, and invested in real estate in the city’s commercial district.⁴⁹ Bielfeld had a talent for this kind of work. He had served as the city’s clerk in 1847, well enough to be asked by the mayor to conduct Milwaukee’s census that year. He earned praise in the English-language press for his efficient and reliable work as a public servant, and he appeared as secretary for various political meetings in the 1840s and 1850s.⁵⁰ Bielfeld also acted

as a political and cultural bridge between Milwaukee's German and Native populations.⁵¹ He was a liberal German who had joined the Barnburner wing of the Democratic Party in 1848, serving as secretary for the party and delivering orations in favor of the Adams and Van Buren ticket. The *Milwaukee Sentinel* noted that Bielfeld was "a fine speaker" and was of "no small influence among his countrymen."⁵² Here was a German familiar with parliamentary proceedings, active politically in the city, and widely respected among a population that harbored strong suspicions about slavery. For the abolitionists, there could be no better choice to serve as secretary of the meeting.

In his capacity as president, Wolcott nominated a committee of five, one from each ward, to draft resolutions. Among those selected were two who had organized the meeting itself: Sherman M. Booth and James Paine. The selection of a member from each ward was intended to create a broader democratic consensus on the resolutions, or at least to give the appearance that the mass meeting represented the sentiments of the entire community. The committee set about drafting resolutions.

Out of view of the crowd, local and federal officers sparred over legal process. Deputy Marshal Cotton faced a tough situation. He had in his custody a federal prisoner, arrested on the authority of a warrant issued by a U.S. district court judge. The city marshal had served him with a writ of habeas corpus commanding him to take the prisoner before the judge of the county court and explain this detention. He turned to Judge Miller of the federal court for advice. Miller advised him to make no return on the writ—essentially to ignore it. Sheriff Page was in less of a bind. At three o'clock, he made return on the writ, explaining that the prisoner was in his jail, but not in his custody. Wisconsin law bound him to accept federal prisoners in his county jail, but he had no power to remove them. Frustrated, Glover's lawyers returned to the county court judge's residence for a new writ of habeas corpus directed solely to the U.S. marshal.

Meanwhile, the crowd milled about in the courthouse square. Questions arose about the writ of habeas corpus and the Fugitive Slave Act, and people from the crowd called loudly for Byron Paine to explain the legal technicalities. Byron was James Paine's youngest son, and possibly his brightest. He had developed a stronger taste for politics and reform than had his brothers. He began addressing political meetings as early as 1845, at the age of eighteen. He attended the Free Soil convention in Buffalo

and returned to Wisconsin to address abolitionist political meetings. He continued to do this for the next several years, lecturing on free soil, on temperance, and in 1850 on resistance to Congress's new Fugitive Slave Act.⁵³ In 1853, he went to Madison to report on the legislature's sessions for Booth's *Daily Free Democrat*. His abilities as a reporter—both in the legislature and in the courts—attracted great praise. Rufus King, the antislavery editor of the *Milwaukee Sentinel*, engaged Paine to report on lectures and trials in 1853 and 1854. He did so despite having bristled earlier at the suggestion that Paine—“the child among us,” as one editor referred to him—had taken better notes on court trials than the *Sentinel*'s stenographic reporter.⁵⁴ Paine's abilities, despite his youth, marked him among abolitionists and commanded respect even from his political enemies.⁵⁵ One Democratic paper, although noting that it had little sympathy with Paine's abolitionism, denounced his slanderers: “His abilities and his unbending integrity will hardly yield to sneers and ridicule. He is one who will be a man of mark in this State, respectable and respected as he deserves to be, when those who have attacked him with low bred insolence and indecency are quite forgotten.”⁵⁶

So when people from the crowd called for speakers to provide the legal background, they called for Byron Paine. Paine explained to the crowd that the Fugitive Slave Act was unconstitutional “inasmuch as it denied the Writ of Habeas Corpus and the right of trial by jury, which were sacredly guaranteed to us by the Constitution of the United States, and of this State.”⁵⁷ No more than a summary of his speech was provided by the city's newspapers, but one can be sure that Paine delivered it in his usual style, a blend of forensic argument and romantic rhetoric. This was the man, after all, who later called Supreme Court justice Samuel Nelson “that arch-enemy of liberty, that traitor to the rights of the states,”⁵⁸ the same lawyer who, when addressing Milwaukee's German citizens, quoted Schiller and compared Sherman Booth to William Tell.⁵⁹ But while Paine was a fervent abolitionist and an admitted romantic, he was at heart a lawyer and a very good one. Sentimental prose supplemented rather than replaced reasonable arguments: the Fugitive Slave Act was illegitimate because it violated constitutional guarantees. Constitutions in the United States emanated from the sacred sovereign—the people—and could not be circumvented by any branch of government—executive, judicial, or legislative.

Sherman Booth also spoke, giving the crowd a history of the case to that point. Booth's short speech ended when the committee appointed to draft resolutions finished its work and came forward to present them to the assembly. The preamble recited the facts of Glover's arrest, presumably taken from Glover himself and from the Racine cable. Marshals had held a gun to Glover's head and beaten him "before any legal process was served upon him." He had been "brought by night to this city" and incarcerated. The preamble also stated that federal officers had refused to obey a writ of habeas corpus issued by the judge of the county court. Three resolutions followed. The first declared that "every person" had a right to a fair and impartial trial in all matters regarding personal liberty. Byron Paine, from his place in the crowd, moved that the resolution be amended to read that he was "entitled to a fair and impartial trial *by jury*." The assembly adopted the motion and amended the resolution.⁶⁰ The second resolution exalted the writ of habeas corpus, noting that it was "the great defense of Freedom," and demanded "for this prisoner, as well as for our own protection, that this Sacred Writ shall be obeyed." The third resolution pledged that the assembly would stand by the prisoner and do its utmost to secure him a trial by jury.⁶¹ The chairman put the resolutions to the crowd. According to Sherman Booth's *Daily Free Democrat* and Rufus King's *Milwaukee Sentinel*, the people adopted the resolutions without a dissenting voice.⁶²

The president next called for the appointment of a vigilance committee to see that federal and state officers heeded the meeting's resolutions. The assembly affirmed the appointment of twenty-five men and delegated to them the power to call public meetings and to add to their numbers if need be. The chosen men possessed the requisite antislavery credentials, but, even more importantly, they hailed from the ranks of the professional and entrepreneurial elite of the city. Lawyers like Byron Paine and Edwin Palmer and entrepreneurs like John Furlong and John Rycraft were among the members. Herbert Reed, a grocer and real estate owner of the First Ward, was appointed chairman of the committee.⁶³

Speeches continued in the courthouse square. Bielfeld addressed the crowd in German while the assembly's leaders conversed with the editors of the city's German-language newspapers. At some point during Bielfeld's address, the clerk of the Milwaukee County Circuit Court approached the crowd and complained that the meeting was disrupting the court's proceedings. To accommodate the court, Bielfeld and the other officers moved

to the northwest corner of the courthouse square and gave their speeches from the roof of the clerk's office. His speech explained the Fugitive Slave Act and the constitutional guarantees of habeas corpus and trial by jury for the benefit of those Germans unfamiliar with American legal practice. James Paine spoke next, warning the members of the crowd that Glover's fate was part of the larger national drama. The Kansas-Nebraska bill threatened the liberty of all free men, said Paine, and this was but another encroachment of the Slave Power upon the people of the North. Sherman Booth spoke last. The issue was not Joshua Glover, claimed Booth; the issue was every man. If the federal government could make laws suspending the writ of habeas corpus and trial by jury, then any man, "German, Irishman, or American," could be made a slave.⁶⁴

This fiery rhetoric alarmed federal officers already nervous about the crowd's intentions. Deputy Marshal Cotton sent requisition orders to local militia companies to protect the prisoner. The U.S. district attorney for Wisconsin, John Sharpstein, came to Cotton's aid. Until then, the district attorney had not involved himself in what the law defined as the essentially private matter of fugitive slave reclamation. The presence of several thousand men outside the jail convinced him otherwise. Sharpstein called on a nearby U.S. military battalion to obey the marshal's requisition, going so far as to guarantee in writing that they would receive payment for their services. Although the commander of the battalion seemed satisfied with Sharpstein's promise, neither the federal battalion nor the local militia arrived to protect the prisoner.⁶⁵ Passing time did little to quell these anxieties. Although Wolcott adjourned the meeting sometime after four o'clock, several hundred people still milled about in the square.⁶⁶ The vigilance committee remained at the courthouse steps, and a committee of two stood inside the courthouse, waiting to hear how federal officers would respond to the writ of habeas corpus.

At five o'clock, the abolitionists returned with a new writ directed to Deputy Marshal Cotton. The sheriff himself served the writ on the marshal, ordering him to have Glover before the county court judge immediately. Cotton went to Judge Miller, who advised him not to respond. Obeying the writ meant marching Glover out of the jail and through the crowd gathered in the courthouse square while protected only by several deputy marshals. Miller, Cotton, and Sharpstein believed this would be tantamount to discharging the prisoner. They resolved to hold tight, remain

firm, and postpone any hearing on Glover until Monday. Plenty could happen—passions could cool, the crowd could disappear, or reinforcements could arrive.

Just as Miller was informing the assembly's representatives that Glover would receive a fair hearing in his court at ten o'clock on Monday morning, the afternoon ferry arrived, carrying a delegation of one hundred from Racine's meeting. They marched "in a solid column" from the dock to the courthouse. The procession attracted attention, bringing back those who had left the meeting and others curious about the proceedings. The crowd's numbers swelled again. The committee emerged from the courthouse and informed the crowd that Deputy Marshal Cotton would not obey the writ of habeas corpus.

As dusk fell, the mood was tense. Cotton's requisition orders to the local militia and the U.S. Army were now common knowledge. Rumors spread that the fugitive would be taken away that night, after the assembly dispersed. Men argued about whether he should go back to slavery, regardless of any constitutional imperative to return fugitives to southern states. Some spoke openly of rescue. Tempers rose, and several speakers addressed the crowd. This time, however, the subject was not the proper limits of constitutionally inspired resistance. Charles Watkins, an abolitionist lawyer working with Sherman Booth, told the crowd that sometimes the people must take the law into their own hands or become slaves themselves. Whether this was such a time, Watkins coyly declined to say. Sherman Booth spoke too, saying that if the community only made its sentiments known, then the Fugitive Slave Act would never be enforced. No lawyer would aid the slave catchers, and federal officers would resign their posts before aiding in the execution of that odious law. Exactly how the people were to make their sentiments known, Booth left to the popular imagination. Booth and the rest of the vigilance committee then self-servingly counseled the crowd to break no laws and voted to retire to the America House to take tea and discuss their next course of action.

The committee never made it to tea. The crowd demanded the keys to the jail, and the jailer refused. A burly blacksmith—a recent emigrant from Cornwall, England, by the name of James Angove—borrowed a six-by-six-inch wooden beam from the lumber lying about for the construction of St. John's Cathedral. Declaring it a good enough key, the crowd rushed the jail and broke down the door with pickaxes and Angove's makeshift

battering ram.⁶⁷ The men guarding the jail offered no resistance, and they were not treated violently by the crowd. William Parsons, the assistant jailer, saw the crowd break down the gate separating the jail yard from the street and enter the premises. He told the crowd there was “no communication with the jail” through the back door, which was locked, and “most of them then went back.”⁶⁸ They went straight to the front door and battered it open. It was messy, but the crowd did no more damage than was necessary to free Glover.⁶⁹

The crowd led Glover out of the jailhouse while the federal marshals stood by helplessly. They made for the bridge to Walker’s Point, where local businessman John Messenger offered up his two-horse buggy. Sherman Booth rode horseback next to the buggy as the crowd cheered, and Glover doffed his cap to them, crying “Glory, Hallelujah!”⁷⁰ The buggy disappeared, bound for the Underground Railroad station at Waukesha. Glover remained there until abolitionists could make arrangements for passage to Racine and then across the lake to Canada. Garland never saw Joshua Glover again.⁷¹

In the months that followed, much was made of the breaking of the jail. For most observers, it had marked the end of the assembly’s lawful behavior. Still, one can sense a collective sigh of relief over the crowd’s restraint. The German-language newspaper *Der Milwaukee See-Bote* remarked that “[t]he meeting occurred without any excessive behavior.”⁷² The *Wisconsin Daily*, edited by the Democrat William Cramer, described the crowd as “sober” and “composed of Americans, Germans and Irishmen.” The refusal of Deputy Marshal Cotton to obey the writ of habeas corpus “intensely exasperated the crowd,” wrote Cramer, and led to the breaking of the jail. He reported no other violence on that day. Cramer was no friend of Booth’s, nor was his paper supportive of the antislavery meetings. He called the actual breaking of the jail an “outrage upon law” and continued to denounce it for the next year. Still, he took care to note the crowd’s restraint and made distinctions between violence done against the Fugitive Slave Act and violence done against the public peace.⁷³

The distinction was an important one. Antebellum Americans felt no need to defend direct action by the people. Two generations of practice had cemented voluntary association and popular government into the

foundations of American democracy. But these same generations also understood the difference between citizens assembled to protest and a mob gathered to riot. Milwaukee's sheriff—the same man injured while quelling a riot on March 7—made no effort to stop the rescue of Joshua Glover on March 11. When questioned, he bluntly explained that the prisoner belonged to the marshal and that the marshal could defend him. The state militia companies stood on the same ground. They refused to come to the aid of federal officers unless their requests met every technical requirement of the law. In essence, they stalled. The Fugitive Slave Act failed to command the consensus and respect of the community, a necessary element for its enforcement.

Although the distinction could be made, danger accompanied it. Sherman Booth cautioned that Glover's rescue might be used as precedent by the unscrupulous, "and the distinction may not be made between resistance in an attempt to destroy our liberties, under the color of law, and an unjust decision affecting property or individual interests."⁷⁴ It was a good standard, though one that Booth himself had trouble living up to. The leaders of the crowd had molded their own actions to it. They had made simple demands based on the principle that federal officers must observe the fundamental rights of trial by jury and recourse to habeas corpus, secured by Wisconsin's constitution for the prisoner "as well as for our own protection." They made these demands in the form of a petition submitted by an assembly of law-abiding citizens. Their protest had been, at its heart, a legal one. Milwaukee's assembly had not gone as far as Racine's, which had declared the Fugitive Slave Act repealed; but they had trenchantly asserted a position of constitutional liberty. In the face of a federal statute that purported to quash these rights, they firmly stated that the people themselves would enforce those rights. It was an unsettling doctrine that they invoked, one traceable to revolutionary origins.

The rescue also raised a number of troubling questions. Who was Joshua Glover? Few knew anything more than that he was a fugitive from slavery. Almost nowhere in America did blacks claim full republican citizenship. In the South, African features—the dark skin, the wooly hair, the flat nose—were the mark of perpetual bondage, putting the onus on blacks to prove their own freedom. But even those who could prove it did not share in freedom's benefits. North and South, blacks lived under a harsh legal regime that restricted their movement, limited their privileges and

immunities, and denied them political participation. Few whites questioned these laws, either in practice or principle. In the popular imagination, blacks were a degraded race not possessed of the qualities necessary for republican citizenship. However a Frederick Douglass or a William Lloyd Garrison might labor to prove the contrary, literary and popular images of blacks cast them as buffoonish and dim-witted. The resistance in Glover's name had to consider, at some point, Joshua Glover himself.

Then there was the question of resistance. If citizens had a right—a duty, even—to resist unconstitutional encroachments on their liberty, how did this intersect with the duty of citizens to obey the law? The federal government prosecuted several participants in the rescue and returned indictments on John Rycraft and Sherman Booth. This question took center stage at the public trials of Glover's rescuers over the next two years. Those who believed in the legitimacy of resistance had to defend it from those who charged that it would lead to disunion and eventual anarchy. Those who opposed it had to explain why the people owed fidelity to a law that suspended civil liberties arbitrarily. The rescue of Joshua Glover became a six-year struggle not only to determine whether the Fugitive Slave Act was unconstitutional but to determine the substance and meaning of the Constitution itself.