

THE LEDE

# WHAT ICE SHOULD HAVE LEARNED FROM THE FUGITIVE SLAVE ACT

*Americans took to the streets to defend their neighbors in the nineteenth century, too.*

**By Jelani Cobb**

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Illustration by Adam Maida; Source image courtesy Boston Public Library



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One measure of the numbing effect that the constant heedless and cruel assault on democracy and on simple reason that Trumpism has imposed upon American life is the fact that we no longer flinch at the word “unprecedented.” Now, a full decade since Donald Trump’s arrival on the national scene, we have reached a point where the violation of norms has become a norm in itself. At the same time, however, there has been a tendency to overlook the ways in which various of the President’s policies are consistent with those of some of the darker moments of American history.

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Trump’s mendacity and conspiratorial reasoning, along with his contempt for journalism, recall the attitudes of Senator Joseph McCarthy—a connection that some early Trump observers attributed to the fact that the Senator’s chief counsel in the Army-McCarthy hearings, Roy Cohn, became something of a mentor to Trump in the nineteen-seventies. Trump’s incendiary populism mirrors the tradition of reactionary populists from Senator Thomas Watson to Governor George Wallace. The aggressive xenophobia of Trump’s immigration policies shares DNA with the anti-immigration raids launched by Attorney General A. Mitchell Palmer during the Presidency of Woodrow Wilson. The point is not simply that so much of what Trump represents is unprecedented as that, where his actions have echoes from the past, they are almost universally troubling.

Difficult history has been particularly significant in recent weeks, as the Department of Homeland Security’s immigration crackdown in Minneapolis has come to increasingly resemble an armed occupation. The upheaval there is notable not only for the violence of federal agents who killed two American citizens—one

of whom, Renee Good, was unarmed, and the other of whom, Alex Pretti, appears to have been disarmed of a gun he was legally permitted to carry before agents fired off at least ten shots—but for the recalcitrance of residents who braved below-zero temperatures to protest the government’s actions. The protesters’ sense of democracy, as they articulate it in interviews, the signs they carry, and the graffiti on public buildings, is all strikingly local. Note the frequency of the use of the word “neighbor” in people’s explanations for why they’ve taken to the streets. As a witness to Pretti’s death explained in a lawsuit filed against the D.H.S. Secretary, Kristi Noem, and others, “I’ve been involved in observing in my community because it is so important to document what ICE is doing to my neighbors. Connecting to your local community and knowing who your neighbors are is something I profoundly value.” This is not, of course, the first time that the enforcement of a federal detention policy has collided with a community’s sense of responsibility for its members, though the precedent is not comforting. During the tumultuous period that preceded the Civil War, the United States passed a series of bills that came to be collectively known as the Compromise of 1850. The Compromise allowed for California’s entry into the Union as a free state, and outlawed the slave trade (but not slavery itself) in the District of Columbia. The most controversial element of the legislation, however, was the Fugitive Slave Act. Article IV of the Constitution already required that an enslaved person who escaped into a free state be returned to bondage, but the 1850 law created a federal bureaucracy to facilitate it. As the historian Andrew Delbanco notes in his book “The War Before the War,” a history of the national conflict over fugitive slaves, the Compromise “was meant to be a remedy and a salve, but it turned out to be an incendiary event that lit the fuse that led to civil war.”

The law was heavily weighted, in that it offered a fee of ten dollars to magistrates who ruled that an individual should be returned to slavery, but only five to those who ruled that the person should remain free. Even more controversially, it charged federal commissioners with enforcing the law, and they worked with

loosely regulated agents, who made it their own business to track down fugitives and return them to slavery. These so-deemed slave catchers had a long reputation for conducting rogue operations. As Delbanco notes, “Even free black people in the North—including those who had never been enslaved—found their lives infused with the terror of being seized and deported on the pretext that they had once belonged to someone in the South.” Given that as many as a hundred thousand people escaped slavery and found refuge in free states in the nineteenth century, fugitives represented a population residing illegally within largely sympathetic communities—a fact that incensed hard-liners on the slavery issue. Seeking a middle ground, Senator Henry Clay, of Kentucky, who introduced the Compromise, imagined that the law would placate irate Southerners who fumed at the monetary losses that escaped slaves represented, but few lawmakers foresaw the impact that it would have in the North.

Even in the free states, attitudes toward slavery were complicated. A raft of economic, social, and religious dynamics had resulted in the abolition or prohibition of slavery, but that did not automatically mean that the entire population favored racial equality or abolition in general. (When Northern states began abolishing slavery after the American Revolution, many slaveholders opted to sell their chattel to buyers in the South rather than manumit them.) At the same time, the Fugitive Slave Act replaced the more complicated questions about the institution with a single, less complicated one: Were Northerners prepared to watch their neighbors, many of whom had lived in their communities for years, be violently removed from their homes or grabbed off the streets? For many, the answer was no.

Attempted enforcement of the law met with immediate resistance. In 1851, an armed mob surrounded a group of agents led by a slaveholder, Edward Gorsuch, in Christiana, Pennsylvania, who were attempting to return four fugitives to his farm, in Maryland; Gorsuch was shot and killed. The four, along with others who participated in the standoff, escaped, and some reached Canada with the

assistance of Frederick Douglass. In Syracuse, New York, Oberlin, Ohio, and other cities, crowds swarmed jails where captured fugitives were held in other successful efforts to free them, at the risk of their own prosecution. (In 1854, fifty thousand people filled the streets of Boston, a center of abolitionist resistance, to protest against returning Anthony Burns, a Black man who had escaped from slavery in Virginia, to that state. (When that effort failed, a group privately purchased Burns's freedom and facilitated his return to Massachusetts.)

The significance of this history is twofold. The Fugitive Slave Act was rhetorically useful for a certain element of the political class, but for most people it took an issue that they may have felt ambivalent about—or hadn't much thought about at all—and gave them a direct, visceral reason to feel very strongly about it. Slavery might have been an abstract national concern, but the fate of a neighbor, whom people may have depended upon as a part of their community, was very much a personal one. Something akin to that reaction is occurring in communities across the U.S. now, as social-media feeds fill with images of children being harassed by ICE agents as they leave school and of a five-year-old boy being detained, and of adults being shoved to the ground and pepper-sprayed or pulled from their cars after agents smash the windows. The Fugitive Slave Act is remembered by historians for its ironic effect: designed as a means of cooling the simmering regional tensions over slavery, the law effectively made it the most contentious issue facing the nation. It pushed Americans toward the realization that the nation was bound in what William Seward later termed an "irrepressible conflict." In Minnesota, the distance between the past and the present is small. Americans hold complex views on immigration and deportation, but as early as last summer more than sixty per cent of Americans opposed undocumented immigrants being sent to the CECOT facility in El Salvador, where they were likely to suffer abuse. (It's significant that the Administration's campaign in Minneapolis began amid renewed discussions of the reported torture that detainees experienced after being deported there.) In this regard, many Americans are asking themselves the same question that an earlier generation asked a hundred and seventy-six years ago.

Judging by the bundled, frostbitten crowds that return to the streets day after day despite the violence directed at them, they have come to the same answer. ♦

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