

“A new Champion in the Ranks of Freedom”: Vermont’s Whigs React to the Fugitive Slave Act  
of 1850

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In the early 1850s the Union faced growing political tension and discourse as the question of slavery drove a wedge through the country. Following the Mexican-American War (1840-1848) the United States government faced a challenging situation in deciding how to address the newly acquired territory. The discussion of whether or not to allow slavery in any new states formed in this land polarized the already divided Northern free states and Southern slave states. Political tension was created as states formed their own opinions, and parties on the national scale struggled with what stance to take.

The Whig Party was beginning to splinter on a national level as the issue of slavery demanded more attention. The party featured a conglomerate of people with different stances on many issues. The question of slavery was one such issue that the party had been straddling, with each side of the party making concessions to keep the party whole. The breaking point came with the Compromise of 1850 and the modified Fugitive Slave Act that required, for the first time, state officials to take action in returning runaway slaves to their owners. Many Northerners saw this as a direct act of aggression by the Slave Power on the rights of Whites in the North.<sup>1</sup>

By the early 1850s, Vermont had seen the emergence of the Liberty and the Free-Soil Party over the issue of slavery. While the Liberty Party formed after the creation of the Anti-Slavery Society in 1834, the Free-Soil Party had been created as Vermonters broke away from both Democratic and Whig Parties with stronger abolitionist beliefs. It became clear to Vermont Whigs that in order to keep their voter turnout up, they needed to adopt a stronger

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<sup>1</sup> Michael Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (Oxford University Press, 1999).

anti-slavery stance. These Whigs in Vermont became known as the anti-slavery Whigs, a faction slowly splintering from the National party over the question of slavery and the Fugitive Slave Act.<sup>2</sup>

Due to the growth of the abolition movement in Vermont and the multiple parties' vying for each other's voters, the parties started to collide. Despite taking different stances on other issues, the Liberty, Free Soil, and anti-slavery Whig voters in Vermont all adopted the stance that the Fugitive Slave Act needed to be repealed. Throughout 1851 the different parties would express in local Vermont newspapers their dissatisfaction with Fugitive Slave Act, demonstrating the appeal of the abolition movement and the effect it had on Vermont political parties.

An important reaction to the Fugitive Slave Act was the Habeas Corpus Act, which was passed unanimously in the House by the overwhelmingly Whig Vermont legislature. Where the Fugitive Slave Act took away the option for a trial, which would afford the accused fugitive an opportunity to defend him or herself, the Habeas Corpus Act allowed judges in Vermont to speak for the accused and determine whether or not there was enough evidence to turn the fugitive over to the slave owner or catcher. If the writ did not do its intended job of freeing the fugitive for lack of evidence, the accused was able to appeal for, and ultimately receive, a chance at a trial by jury. This Habeas Corpus Act allowed the anti-slavery Whigs in Vermont to take a stronger abolitionist stance and showed President Fillmore and the pro-administration Whigs throughout Vermont and the Union that they were strongly anti-compromise.

Vermont's abolitionist and anti-slavery Whig newspapers from 1851 present not only defenses for the Habeas Corpus Act but also numerous arguments against the Fugitive Slave Act. Their initial reaction was that the Fugitive Slave Act was unconstitutional because the act took away basic human rights, such as a trial by jury. In order to appeal to the Democratic voters in Vermont, the abolitionist and anti-slavery Whig parties also explained that the Fugitive Slave Act was a direct violation of states' rights. In contrast to what pro-administration Whigs believed, Vermont abolitionists and anti-slavery Whigs took the stance that Congress had no power to pass such a law or dictate whether or not a state could

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<sup>2</sup> William Doyle, *The Vermont Political Tradition: And Those Who Helped Make It* (Northlight Studio Press, 1984), 110.

issue writs of habeas corpus and provide a trial for the accused fugitive. The matter of slavery was meant to be dealt with on the state level. These arguments against the Fugitive Slave Act aligned the many parties in Vermont as anti-slavery Whigs and abolitionists alike fought for the repeal of the Act.

Historians have long discussed the consequences of the Fugitive Slave and what it meant for the Union as they approached the Civil War. Since the late nineteenth century, many historians who have studied the consequences of the Fugitive Slave Act have been fixated on the Underground Rail Road. The clandestine Underground Rail Road has held a certain fascination, not only for historians, but the general public as well. Due to this fixation, many historians that set out to discuss the anti-slavery movement in the years leading up to the Civil War tend to focus on the Underground Railroad. Other historians have studied the political tensions throughout the Union and Vermont after the controversial Fugitive Slave Act left many Northern states denouncing the law. Vermont's reaction to this new law was the most radical at the time and faced scrutinization throughout the Union but lacks the attention it deserves from historians studying the reactions to the Fugitive Slave Act.

Michael Holt's *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* and William Doyle's *The Vermont Political Tradition: And Those Who Helped Make It* provide valuable accounts of how Vermont was affected by the growing anti-slavery sentiment and how the state reacted to the political turmoil that resulted. Horace Houston Jr.'s article "Another Nullification Crisis: Vermont's 1850 Habeas Corpus Law" relays the most relevant way in which the Vermont government reacted to the Fugitive Slave Act. Despite this, many historians have failed to closely examine how the arguments expressed through newspapers immediately increased the appeal of abolitionism and demonstrated the fusion of political parties based on anti-slavery sentiment and hatred of the Fugitive Slave Act.<sup>3</sup>

To understand how the political parties in Vermont reacted to the Fugitive Slave Act of 1850, it is first important to understand why the act came about and what it did, as well as the general reaction from Vermont as a state. The original Fugitive Slave Act, instituted in

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<sup>3</sup> Holt, *The Rise and Fall of the American Whig Party*; Doyle, *The Vermont Political Tradition*; Horace Houston Jr., "Another Nullification Crisis: Vermont's 1850 Habeas Corpus Law," *The New England Quarterly* (2014).

1793, guaranteed that any runaway slave would be returned to its owner by giving the right to the owner or any slave catcher to seize the fugitive no matter what state he was found in. Laws passed by individual states continually weakened this original Fugitive Slave Act. Named “personal liberty laws,” these laws required owners or slave catchers to provide ample evidence of ownership. These personal liberty laws protected runaway slaves and made it near impossible for the Fugitive Slave Act to work effectively as slave catchers and owners did not always have proof, nor would it always be considered “ample” by the state judges.

The strengthened Fugitive Slave Act of the Compromise of 1850 required law-enforcement officials to arrest a runaway slave. Under Section 3 of this act, it was stated that the number of officers should be and could be increased for this very purpose. Section 5 of the act explains that if any state official failed to do this task as stated, then they were subject to be “fined in the sum of one thousand dollars.” If any suspected fugitive were to escape after being arrested, the officer who failed to complete his duty would be responsible for paying the full value of the service or labor owed by the fugitive in question. This was determined by the fugitive’s value at the time they departed from the State, Territory, or District he or she came from. Any sworn oral or written testimony of ownership or description of the accused fugitive was good enough to warrant an arrest, and the suspected slave could not ask for a trial by jury or testify for his or herself. Any person who was found helping a runaway slave in any form faced a fine “not exceeding one thousand dollars” as well as jail time “not exceeding six months.”<sup>4</sup> This new law opened up the possibility for free blacks to be kidnapped and taken into slavery, as they had no way to defend themselves in court.

A general response to this controversial act was the growth of the Underground Railroad. Instead of many escaped slaves stopping once they reached the free states of the North, they continued on until they reached Canada.<sup>5</sup> Another general reaction from Northern states was jury nullification. If any person was accused of helping a runaway slave they would be acquitted by a jury of peers in court. Vermont’s largely anti-slavery Whig

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<sup>4</sup> “The Avalon Project – Fugitive Slave Act of 1850,” *Yale Law School*, accessed October 19, 2015, [http://avalon.law.yale.edu/19th\\_century/fugitive.asp](http://avalon.law.yale.edu/19th_century/fugitive.asp).

<sup>5</sup> Fred Landon, “The Negro Migration to Canada after the Passing of the Fugitive Slave Act,” *The Journal of Negro History* Vol. 5 No. 1 (1920): 22-27.

legislature took stronger steps towards nullification of the Fugitive Slave Act by passing the Habeas Corpus Act on November 13, 1850. The Habeas Corpus Act effectively made the Fugitive Slave Act useless in Vermont by stating that the state's attorneys had a duty to defend and help any person in Vermont accused of being a fugitive slave. As stated in Section 1 of the act and reiterated in Section 7, all circuit courts were granted an extension of powers to match those of the State Supreme Court. This meant that any attorney could get a writ of habeas corpus for any person and the number of judges who could issue the writ of habeas corpus increased from three to seven.<sup>6</sup> Judges were able to issue a writ as soon as judicial officers alerted them to the need for one. Section 4 made it the duty of any judicial or executive officer to notify the judge if they believed there was a need for a writ of habeas corpus to be issued. As explained in sections 5 and 6, if any person was not freed after obtaining a writ of habeas corpus, they could appeal to the next court session, and it would involve a trial by a jury of peers.<sup>7</sup> This allowed jury nullification to take place and secured the freedom of the accused.

Southerners and even many Northerners, whom aligned themselves with the pro-administration Whigs and the Democratic Party, quickly denounced the Habeas Corpus Act as being in violation of the federal law. Vermont's anti-slavery Whig legislature and the abolitionist supporters were soon under fire for passing the Habeas Corpus Act, and took to the papers to defend themselves. The editors of the *Albany Argus*, the *Boston Courier*, the *Washington Republic*, the *New York Herald*, and the *National Intelligencer* among many others charged Vermont with having "treasonable or rebellious purposes."<sup>8</sup> Despite Vermont's anti-slavery aligned thinkers and other Northerners declaring that the Fugitive Slave Act was unconstitutional, Vermont upheld the belief that they had not taken any steps to nullify the act. Rather, they had simply taken steps to allow the constitution to work despite the Fugitive Slave Act.

Through the local newspapers, Vermont abolitionists and anti-slavery Whigs attempted to explain that the right to habeas corpus was a constitutional right guaranteed to

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<sup>6</sup> "Vermont Nullification," *Vermont Watchman & State Journal*, December 19, 1850. CA.

<sup>7</sup> "No. 16 – An Act Relating to the Writ of Habeas Corpus to Persons Claimed as Fugitive Slaves, and the Right of Trial by Jury," in *The Acts and Resolves Passed by the Legislature of the State of Vermont at the October Session, 1850* (Montpelier: E. P. Walton and Sons, 1850), pg. 9-10. GB.

<sup>8</sup> "Vermont Nullification," *Vermont Watchman & State Journal*, December 19, 1850. CA.

every man. As pointed out by the anti-slavery Whig newspaper, *Vermont Watchman & State Journal*, Vermont's very own State Constitution held in its 12<sup>th</sup> Article of Amendments that "the writ of *habeas corpus* shall, in no case, be suspended. It shall be a writ issuable of rights: and the general assembly shall make provision to render it a speedy and effectual remedy in all cases proper therefore."<sup>9</sup> Vermonters influenced by the abolition movement worried that this right had been taken away from any accused fugitive through the Fugitive Slave Act. Anti-slavery Vermont's also pointed out that the writ of Habeas Corpus is guaranteed in the federal Constitution.<sup>10</sup> In fact, Article 1, Section 9 of the Constitution of the United States declares, "the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion, or invasion, the public safety may require it."<sup>11</sup> Vermonters did not see themselves as attempting to nullify federal law. Rather, Vermont's mainly anti-slavery Whig legislators had "directed her officers to give every man seized under [the Fugitive Slave] act the benefit simply of the *relief provided by the Constitution*."<sup>12</sup>

There were some Vermonters who seemed unsure of the legality of this Habeas Corpus Act, especially once they came to realize they had come under fire from other states. Some political groups of Vermont, such as the pro-administration members of the Whig Party, started to speak up claiming that this new act had been rushed through the state legislature. In order to defend themselves the pro-administration Whigs claimed that they "have refrained from all allusion to this most unfortunate enactment from mere chagrin and shame."<sup>13</sup> The *Vermont Union Whig* had published an explanation of the pro-administration Whig view of the new act of the Vermont legislature. While they admitted they could not make an excuse for the substance of the act, they explained that they could not agree with the way it was presented in the session. The Habeas Corpus Act, they printed, had been "whirled through the two Houses on the last day of the session" and had not been truly considered by the legislators in session that day.<sup>14</sup> This article was reprinted by the *Vermont Watchman & State Journal*, a Whig paper aligned with the anti-slavery sentiment, which

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<sup>9</sup> "To the Editor of the Watchman & Journal," *Vermont Watchman & State Journal*, December 19, 1850. CA.

<sup>10</sup> "Vermont and the writ of Heabeas Corpus. THE RIGHT OF TRIAL BY JURY," *Vermont Watchman & State Journal*, January 09, 1851. CA.

<sup>11</sup> "To the Editor of the Watchman & Journal," *Vermont Watchman & State Journal*, December 18, 1850. CA.

<sup>12</sup> "Vermont Nullification," *Vermont Watchman & State Journal*, December 19, 1850. CA

<sup>13</sup> "For the Watchman and Journal," *Vermont Watchman & State Journal*, January 02, 1851. CA.

<sup>14</sup> Ibid.

promptly tried to straighten out the series of events leading up to the passage of the Habeas Corpus Act. According to the *Vermont Watchman & State Journal*, the Habeas Corpus Act had been reported by a select committee on November 11, 1850. On that day the many resolutions of the act were presented, and, after having been read through twice, were referred to the Judiciary committee. Two days later, on November 13, the Judiciary committee reported on the act with a resounding “yes.” It was then amended before being read again and discussed. It was at this time that the House passed the Habeas Corpus Act “*nem. con.*” meaning there was no division of the House and it was passed unanimously.<sup>15</sup> Later that day it was read twice in the Senate where it was referred to a committee before being read again and then passed.<sup>16</sup> Despite Vermont’s pro-administration Whig population trying to escape the scrutiny of people around the Union and the Whig party on a National level, the abolitionist population proudly fortified the idea that the Vermont Whig legislature knew exactly what they were doing when they passed the Habeas Corpus Law. This division of the voters in Vermont belonging to the Whig party displayed the growing attraction of the abolition movement and the growing discontent over the Fugitive Slave Act.

The growing anti-slavery population in Vermont concluded that the Fugitive Slave Act was unconstitutional and needed to be repealed. By taking away the right to a trial by jury, the Fugitive Slave Act effectively took away a basic human and constitutionally binding right. It also allowed for an easy transfer of accused fugitives to the slave catcher or owner and for complete control over the situation by the “tyrannical oppressor.”<sup>17</sup> A popular Southern argument at this time was that slaves were not considered humans, but rather a piece of property, much like a piece of furniture. To this, people with growing abolitionist views f all over the country responded that blacks were not a piece of property. Abolitionist and anti-slavery Whig newspapers printed many articles expressing strong disagreement with the notion that any person could lay claim of personal ownership on any other man. By quoting the Bible, abolitionists found proof that black men and women could not be a piece of furniture because “*God hath made of one blood all men, to dwell on all the face of the whole*

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<sup>15</sup> “The Abusers of Vermont,” *Vermont Watchman & State Journal*, March 20, 1851. CA.

<sup>16</sup> “For the Watchman and Journal,” *Vermont Watchman & State Journal*, January 02, 1851. CA.

<sup>17</sup> “The Unconstitutionality of Slavery and the Fugitive Law,” *Green-Mountain Freeman*, March 27, 1851. CA.

*Earth.*"<sup>18</sup> The slaves were much more than a piece of furniture, and as a human they have the constitutional right to a trial by jury.

Anti-slavery voters in Vermont continued on by pointing out that even if they were a piece of furniture, the case would still require a trial by jury. The constitution says that a trial by jury must be carried out if the article in question has a value equal to or greater than \$20.<sup>19</sup> Vermont's anti-slavery voters utilized this portion of the constitution by asking their audience that even if a slave is not considered a person and therefore is not allowed a trial by jury, what slave worth catching is not worth more than \$20? This query was asked throughout the anti-slavery Whig and abolitionist papers: "What slaveholder [sic] would be satisfied with twenty dollars as the price of any fugitive slave? If he were not worth more than twenty dollars, he would not be pursued."<sup>20</sup> In fact, the Fugitive Slave Act itself points out the very fact that the fugitives are valuable. If they were only worth twenty dollars, then state officers and citizens would not be fined \$1,000 or sentenced to jail time. A weekly series, featured in the anti-slavery Whig newspaper, *Vermont Watchman and State Journal*, boasted the following adamant stance on the situation:

But whether it is *liberty* or *money* or *both* which entitles any man to the right of trial by jury, one thing is absolutely certain: Congress has *no right* to prohibit a state from according trial by jury in *any case* within its jurisdiction – whether it be to protect a criminal against the sheriff, or a free-man against man-stealers.<sup>21</sup>

Even if a slave did not qualify for a trial by jury because they were considered property, the Fugitive Slave Act unconstitutionally avoids a trial by jury in cases in which the fugitive is worth more than \$20.<sup>22</sup>

Prior to the current Federal Constitution, the old Confederacy of the States had given primary power to the state. In order to solve many of the national issues caused by this system, the states very reluctantly transferred their "*sovereign power* [sic] to the General Government for *national purposes* and *under certain restrictions*."<sup>23</sup> In the eyes of the

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<sup>18</sup> "For the Freeman: The Fugitive Slave Bill," *Green-Mountain Freeman*, May 22, 1851. CA.

<sup>19</sup> "The Federal Constitution on the Habeas Corpus," *Vermont Watchman & State Journal*, May 08, 1851. CA.; "Fugitive Slave Law in Marshfield," *Green-Mountain Freeman*, March 27, 1851. CA.

<sup>20</sup> "A Review of a Slave Case by Titus Hutchinson," *Green-Mountain Freeman*, July 10, 1851. CA.

<sup>21</sup> "CAN A STATE PROTECT THE LIBERTY OF ITS INHABITANTS?: The Federal Constitution on Trial by Jury," *Vermont Watchman & State Journal*, May 8, 1851. CA.

<sup>22</sup> *Ibid.*

<sup>23</sup> "For the Freeman: State Rights," *Green-Mountain Freeman*, August 14, 1851. CA.

members of the Liberty Party, the Free Soil Party, and the growing anti-slavery Whig faction, in the case of the Fugitive Slave Act the people first and foremost owed their allegiance to the state.<sup>24</sup> Printed in the abolitionist paper, the *Green-Mountain Freeman*, if you asked any abolitionist in Vermont, and – at this point – any anti-slavery Whig, they would tell you “this is the old question of Federal power and States rights.”<sup>25</sup>

The pro-administration Whigs in Vermont and the Whig party on a national level expressed the opinion that whether or not the Fugitive Slave Act violated human rights, Congress made the law, and so it was higher law that needed to be adhered to.<sup>26</sup> The abolitionists and, especially, the anti-slavery Whigs in Vermont could not disagree more with the National Whig party and Vermont’s pro-administration Whigs. Vermont citizens with anti-slavery beliefs stood behind the idea that “our rulers can do no wrong... [is] a most dangerous idea.”<sup>27</sup> This idea that Congress was the highest power left no room in the system for reform and change, no room for progress. In order to secure the safety of the people, you could never shy away from questioning the government. This argument was also aimed to appeal to the Democratic voters who not only may have agreed with the anti-slavery movement but who also favored a stronger state government. As some Democrats were leaving their party to join the abolition movement the anti-slavery voters hoped to gain more support from the outlying parties.

It was clear to the abolitionists that according to the Constitution, Congress had no such power to institute this law. No part of the Constitution could be found that clearly gave this power to Congress, nor could it be derived from any part of the Constitution. In fact, the abolitionist population declared, you could ask any person to find the place in the constitution where it delegated the power to pass the Fugitive Slave Law to Congress. Most people, if asked, would pause at Article 4 Section 2, where the third clause explains that any person running from service or labor to which they are bound must be delivered up to the party to which this labor is due. However, the abolitionist *Green-Mountain Freeman* pointed out, this clause never states that this power is delegated to congress. In fact, it bears no

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<sup>24</sup> Ibid.

<sup>25</sup> “Hon. John M. Niles’ Letter, To the Boston Anti-Fugitive Slave Law Convention April 8<sup>th</sup> 1851,” *Green-Mountain Freeman*, May 01, 1851. CA.

<sup>26</sup> “The Whig State Convention,” *Green-Mountain Freeman*, July 03, 1851. CA.

<sup>27</sup> “The Fugitive Slave Act and the Higher Law,” *Green-Mountain Freeman*, January 13, 1851. CA.

resemblance to the article of the Constitution that does explain the powers of Congress.<sup>28</sup> By quoting the Constitution throughout the local newspapers, abolitionists boasted their adamant belief that Article 10 of the Constitution, which states, “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people,” proves the question of slavery is a states issue.<sup>29</sup> The anti-slavery Whigs also expressed the belief that the duty of restoring fugitives to their owners was a duty placed on the shoulders of the States and must be performed through the State’s legislature.<sup>30</sup> These anti-slavery voters agreed that the Fugitive Slave Law was unconstitutional for taking away this right of the state.

The anti-slavery faction of the Whig party continued to grow closer to the abolitionist parties in Vermont throughout the early 1850s due to their common goal. It was on July 13, 1853 that many of the anti-slavery voters in Vermont abandoned their parties for good to create Vermont’s Republican party based on their common uncompromising stand against the issue of slavery and the Fugitive Slave Act.<sup>31</sup> E. P. Walton, a staunch anti-slavery Whig, had called for a mass state convention to address “the usurpations of the propagandists of Slavery.” All those in attendance agreed to create a new party called the Republican party. As stated in their platform, these abolitionist thinkers had come together over the issue of the Fugitive Slave Act and the accompanying territorial questions: “Our rallying cry shall henceforth be the repeal of the Fugitive Slave Law..., the abolition of slavery in the District of Columbia, the prohibition of slavery in all the Territories of the United States, and the admission of no more slave states into the Union.”<sup>32</sup> Vermont, which had once held a Whig majority, quickly became Republican. By the summer of 1855 even a large majority of the Whig leaders in Vermont had joined the Republican Party.<sup>33</sup>

It was the political tension on a national scale coupled with the growing abolitionist movement through Vermont and other Northern states that helped further the collapse of the Whig party. Fault lines had been created throughout the Whig party around the question

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<sup>28</sup> “The Fugitive Slave Law,” *Green-Mountain Freeman*, July 03, 1851. CA.

<sup>29</sup> “CAN A STATE PROTECT THE LIBERTY OF ITS INHABITANTS?: The Federal Constitution on Trial by Jury,” *Vermont Watchman & State Journal*, May 8, 1851. CA.

<sup>30</sup> *Burlington Free Press*, May 16, 1851. CA.

<sup>31</sup> Doyle, “The Vermont Political Tradition,” 101-102.

<sup>32</sup> *Ibid.*, 132.

<sup>33</sup> Holt, “The Rise and Fall of the American Whig Party,” 940.

of slavery. Despite the pro-administration faction staying loyal to the national party, Vermont's anti-slavery Whigs took a stand against President Fillmore and the national Whig party by passing the Habeas Corpus Act in response to the controversial Fugitive Slave Act of 1850. The anti-slavery Whigs felt the need to deal with their state issues over the national issues and, in the process, attempted to recruit voters from the other anti-slavery parties in Vermont.

Abolitionist parties, the Liberty Party and the Free Soil Party, and the anti-slavery Whigs spent the early 1850s using the local newspapers to defend the Habeas Corpus Act, called rebellious and treasonable, and argue the constitutionality of the Fugitive Slave Act. These anti-slavery thinkers believed the Act to be unconstitutional because it took away the basic right of trial by jury, something the Habeas Corpus Act attempted to provide. They also thought the Act was unconstitutional because Congress did not have the power to address the question of slavery. Anti-slavery Whigs and abolitionists believed this was a power reserved for the state in question. It was through these arguments that the parties in Vermont came to realize they were arguing the same thing; by 1854 the parties had collided onto the same path. Their common goal of the repeal of the Fugitive Slave Act, shared interest of gaining voter numbers within their parties, and the similar arguments they made against the infamous act helped sever the Whig party as the anti-slavery faction fully committed to the abolition movement that was growing throughout Vermont.

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