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“EFFUSIONS OF FOLLY AND FANATICISM:” RACE, GENDER, AND CONSTITUTION-MAKING IN OHIO, 1802-1923

DISSERTATION

Presented in Partial Fulfillment of the Requirements for the Degree Doctor of Philosophy in the Graduate School of The Ohio State University

By

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1999

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This dissertation argues that Ohioans used their constitutional conventions as arenas in which to contest competing visions of their community, particularly racial and gendered constructions of that community. On the simplest level, the dissertation is the story of how the words "white male" came into Ohio's first constitution in 1802 and how, eventually, they came out. On another level, it describes what Eric Foner calls "the battles at the boundaries:" the struggle of Ohio's African-Americans and women to break down the boundaries that excluded them from full participation in the political and civic community.

The dissertation also analyzes the role of the Ohio Supreme Court in judicially defining the boundaries of the political and civic community. By construing the word "white" to mean any person with more than one-half white blood, the Court included people of color in the political community by deciding who could vote, and, in the civic community, by deciding who could attend public schools. The Court's opinions themselves and the repeated challenges to the Court's decisions reflected that the Court did so against the wishes of many white Ohioans.

For Ohio's African-American men, suffrage came with ratification of the Fifteenth Amendment. But white opposition remained long after the Fifteenth
amendment and the legislature's decision to eliminate separate schools. The refusal to remove the word "white" from the Ohio constitution in 1912 illustrates the persistence of a white-only vision of the community by a large segment of Ohio's white men.

Ohio suffragists, although primarily white and middle-class, continued to link their own status as disfranchised citizens and the rights of African-Americans well past ratification of the Fifteenth Amendment. They sought to remove not only the word "male" but also the word "white" from Ohio's definition of voting qualifications. Only once Ohio women could vote, as a result of the nineteenth amendment, did Ohioans change their Constitution, a symbol of the community, to reflect a community of black and white, male and female on equal terms, by removing the words "white" and "male."
Dedicated to my parents, Roger and Jean Terzian
and to Fred
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INTRODUCTION

States have constitutions, too. Yet, historians and legal scholars have equated the American constitutional tradition almost exclusively with the Federal Constitution. The omission of a state tradition is particularly surprising for the nineteenth century. The states had greater experience in constitution-making and greater impact on the economic and social problems of that century. Recognizing this omission, legal historians have called recently for a "rethinking" of the United State's constitutional tradition to incorporate the state's role.¹ Constitutions, particularly state constitutions in the nineteenth century, reflect the boundaries of the community. A constitution provides a framework for how people will live and creates the rules of the community. But it also defines who is a member of the community.

This dissertation contributes to our knowledge of the states’ role in the United States constitutional tradition by examining Ohio’s constitutional conventions from its statehood convention in 1802, to its conventions in 1850-51, 1872-3, and its last convention in 1912. A study of these conventions reveals that Ohioans viewed them as arenas in which to contest competing visions of ‘imagined communities,’ particularly

racial and gendered constructions of those communities. On the simplest level, this
dissertation is the story of how the words “white male” came into Ohio’s first constitution
in 1802 and how, eventually, they came out. On another level, it describes what Eric
Foner calls “the battles at the boundaries:” the struggle of Ohio’s African-Americans and
women to break down the boundaries that excluded them from full participation in the
political and civic community.²

The inclusion of any single state's contribution to the American constitutional
tradition will enhance our knowledge of that tradition, but Ohio has a particularly
significant role within it. In 1802, Ohio stood at a pivotal moment to decide whether the
northwest, where so much of the country's future lay at the time, would be free or slave.
Ohio's decision would influence western states to follow. If Ohio was to be free, what
place would free African-Americans have in the political and civic community? Ohio's
answer would influence not only the west but other northern states who would revisit the
question in the following decades.

Ohioans revisited the question of African-American's position in the civic and
political community at the Constitutional Convention in 1850 and debated for the first
time the role of women within that community. Ohio women activists insisted that the
new constitution reject any distinctions based on sex or color. They connected women's
suffrage with African-American suffrage for the first time before a constitution-making
body. In 1912, Ohio was the focal point of the national women's rights movement as

suffragists hoped Ohio would be the first state east of the Mississippi to grant women's suffrage. If it did so, Ohio would lead the way for the five eastern states with referenda scheduled soon after. Although Ohio's African-American men received the right to vote in 1870 with ratification of the Fifteenth Amendment, the debate over the role of African-Americans continued at each of the subsequent constitutional conventions in 1873-74 and in 1912. The debate continued because Ohio women's rights activists persisted in removing both words, "white" and "male," from Ohio's constitution. In 1912, when granting women's suffrage looked promising in Ohio, white male delegates to the constitutional convention offered an alternative amendment to Ohio's constitution to remove only the word "white." The vote on this amendment offers a distinctive opportunity to analyze white male Ohioans acceptance of black male Ohioans as members of the political community forty-two years after the national amendment mandated their inclusion.

The study of a single state, such as Ohio, not only reveals its constitutional tradition but also provides an excellent means to trace the growth of the Ohio African-Americans' and women's rights movements. Throughout the nineteenth century, most of the political activity of these groups took place at the state level. A study of their participation shows the extent to which ordinary people influenced the terms of constitutional debate and constitution-making. The debates concerning African-American's and women's suffrage raised many interesting questions concerning the role of race and gender in our constitutional tradition. A longitudinal study of the Convention
debates permits an analysis of the continuity and changes in the rhetoric of proponents and opponents of African Americans and women's rights.

Although they lacked what they considered to be a basic right of citizenship, the ballot, Ohio women engaged in all types of political activity in their effort to secure it. They held conventions, created organizations, generated news coverage, circulated petitions, and issued publications. Women historians have recognized that political activity in the nineteenth century should be broadly defined to include women’s efforts for suffrage, temperance, and government reform so that we uncover nineteenth-century women's political activism despite their inability to participate directly in the political process by voting or holding office. The same holds true for African-American men before they received the right to vote in 1870.

Chapter One describes the early settlement of Ohio, the role of the national government in that settlement, and the battle for statehood. Chapter Two analyzes the campaign debate over whether Ohio would be a free state. Chapter Three examines African-Americans’ rights under Ohio’s statehood constitution and the Ohio Supreme Court’s judicial construction of race. Chapter Four explores the colonization movement and African-American rights movement in Ohio on the eve of the 1850-51 constitutional convention. Chapter Five evaluates issues of race and gender at the 1850-51

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constitutional convention. Chapter Six explores racial politics and court interpretation in the aftermath of the Civil War. Chapter Seven carries race and gender issues through the 1872-73 and 1912 constitutional conventions.
CHAPTER 1
SETTLEMENT OF OHIO TERRITORY TO STATEHOOD CONVENTION

I
Introduction: Two Visions

On December 25, 1801, a young lawyer, Michael Baldwin, led a group of his Republican friends, nicknamed "the Bloodhounds" to the tavern in Chillicothe where Arthur St. Clair, the Federalist Governor of the Northwest Territory, had taken rooms. The Bloodhounds were furious that St. Clair had maneuvered a bill through the Territorial Legislature dividing the Ohio territory in two for purposes of creating future states—part of St. Clair's efforts to delay Ohio's statehood.¹ They planned to burn St. Clair in effigy. If that were not insult enough in an age of "honor," they intended to force him outside to view the insult personally. With difficulty, Thomas Worthington, a leader of the Chillicothe Republicans, restrained them. Although he and Baldwin were allies in the statehood movement, he did not want Baldwin to do anything that might discredit the movement. Worthington "would not suffer any such thing to take place and would prevent it at the risque of his life." If Baldwin persisted, Worthington would "kill him the

first person." Chastened for the moment, Baldwin and the Bloodhounds dispersed without confronting St. Clair.

But Worthington left town that night and Baldwin broke his promise to stay away from St. Clair. The next evening, after another bout of drinking, Baldwin and his group entered the tavern and began exchanging taunts with St. Clair-supporting members of the Territorial Legislature meeting in Chillicothe. One of the legislators, Jonathan Schieffelin, brandished pistols at Baldwin's group, and St. Clair sent for the Sheriff and the justice of the peace. Justice of the Peace Samuel Finley convinced the crowd to go home, but then St. Clair insisted that Baldwin and three others be charged. To St. Clair's chagrin, after taking the depositions from men present that evening, Finley dismissed the case. Pressured by St. Clair, Finley resigned his commission rather than prosecute Baldwin. In Finley's view, Baldwin's group had engaged in permissible political activity, not criminal conduct. "I . . . should have merited the contempt of every honest man had I ventured to deprive so many citizens of a liberty they are constitutionally entitled to," he explained.

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2Chillicothe Scioto Gazette, 2 January 1802; Alfred Byron Sears, Thomas Worthington: Father of Ohio Statehood (Columbus: Ohio Historical Society, 1958), 68-69, 71.

3St. Clair referred to their actions as "exciting a riot" and "unlawful assemblies." Arthur St. Clair to Samuel Finley, 28 December 1801 and Arthur St. Clair to Speaker of the House of the Territorial Legislature, 29 December 1801, both reprinted in Chillicothe Scioto Gazette, 2 January 1802.

4Samuel Finley to Arthur St. Clair, 28 December 1801, ibid.
The events of December 25th and 26th illustrate the two very different visions that Ohio Republicans and Federalists had of how Ohio's residents should be governed and who should do the governing. The debate over statehood reflected larger ideological differences between the Republicans and the Federalists. Much like the American Revolution, it involved not only the issue of home rule but also who should rule at home. In framing the debate, each side drew on the rhetoric of an earlier time to castigate its opponents: the American Revolution for the Republicans and the late 1780s for the Federalists.

St. Clair and his Federalist supporters wanted authority centered in the territorial government under the auspices of the national government. They believed the residents were "ill qualified to form a constitution and government for themselves." Statehood should not be granted "until the majority of the Inhabitants be of such Characters and

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5 There is some confusion in some of the accounts of these events concerning the dates on which they occurred. Andrew Cayton describes them as occurring on December 23rd and 24th. St. Clair wrote to Paul Fearing and James Ross on January 15th that the events occurred on "Christmas evening and the evening preceding." However, the correspondence between St. Clair and Finley, reprinted in the Scioto Gazette, make it clear that the two nights in question were a Friday and Saturday. This would make the dates December 25th and 26th. Andrew R. L. Cayton, The Frontier Republic: Ideology and Politics in the Ohio Country, 1780-1825 (Kent, Ohio: The Kent State University Press, 1986), 74; William Smith, The St. Clair Papers: The Life and Public Services of Arthur St. Clair (Cincinnati: Robert Clarke, 1882), 2:555-58.

6 The ideas in this and the following paragraphs are derived, in part, from Cayton, Frontier Republic and Donald J. Ratcliffe, "The Experience of Revolution and the Beginnings of Party Politics in Ohio, 1776-1816," Ohio History 85 (1976): 186-230.

property as may insure national Dependence and national Confidence."

Baldwin's actions confirmed for the Federalists that the Republicans were demagogues intent on destroying the people's confidence in public officials, thus, undermining the stability of society. The Chillicothe tavern incident reminded Federalists of "Shays and those times."

For the Republicans, St. Clair's manipulation of the Legislature and attempt to force Finley to prosecute them confirmed that he wanted to keep them in the shackles of "colonial " administration. They likened his governorship to the aristocratic, arbitrary, and tyrannical rule of the Royal Governors prior to the Revolution. They called on Ohioans to "shake off the iron fetters of the tory party." They demanded that local autonomy replace the centralized power of the territorial government. They were completely confident in their ability to govern themselves; the people were "the best and only judges of their own interests and concerns."

No longer content with the

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9Dudley Woodbridge to Ephraim Cutler, 29 December 1801, in Julia Perkins Cutler, Life and Times of Ephraim Cutler (Cincinnati: Robert Clarke & Co., 1890), 55n. The reference is to Shays's Rebellion, a 1787 uprising by western Massachusetts farmers against land foreclosures. At the time, George Washington and other leaders such as John Adams cited Shays's rebellion as a reason for a stronger national government to replace the weak one under the Articles of Confederation.

10Joseph Darlinton to Paul Fearing, March 1802, Hildreth Papers, Dawes Memorial Library, Marietta College.

11Chillicothe Scioto Gazette, 28 August 1802.
community Congress had imagined for the Northwest Territory when it had established the territorial government in 1787, the Republicans imagined a radically different one.

The Republicans drew on the rhetoric of the American Revolution to voice their grievances not merely to give credence to their cause, but also because their political situation had real parallels to that of the former American colonies to Imperial Britain a generation earlier. Those parallels resulted from the structure of the national land policy created by Congress in the 1780s.

II

The Western Lands and National Policy

Origins of National Policy

The Ohio Republicans' conviction that their liberty was imperiled by a colonial government had its source in the political structure imposed by Congress on the territory when it passed the Northwest Ordinance in 1787. Concern for the orderly, stable development of the Northwest Territory surfaced in the 1780s with reports to the Confederation Congress of uncontrolled settlement by squatters, unauthorized negotiations with Indian tribes, and potentially treasonous alliances with foreign governments. Recognizing the security threat these developments posed, and fearing the loss of a major source of revenue, Congress sought control of the western lands from


13 The geographical area of the Northwest Territory produced five future states: Ohio, Indiana, Illinois, Michigan, and Wisconsin.
those states claiming rights to them. One by one the states agreed, and with the cession by Virginia in 1784, Congress began to pass laws for the sale of the western lands and to provide for their political organization. These efforts would culminate in the passage of the Northwest Ordinance on July 13, 1787.14

Historians have recognized the land cessions and congressional development of western land policy as one of the few successes of the otherwise weak and inadequate Confederation Congress. They have wondered how Congress was able to unite and act decisively in this area but not others. Recent assessments of western land policy conclude that all of the states recognized the danger of inaction. They feared the loss of critical revenue and that the region would break away. In addition, they foresaw mutually beneficial trade between western farmers and eastern merchants.15 These complementary economic interests would bind the union politically, vitiating Washington's concern that the inhabitants of the west might "become a distinct people from us."16 New Englanders expected the first state to come out of the Northwest Territory to develop in alignment with them due to the Ohio Company's plans for settlement and its ties with New England. Yet the southern states also believed that development of the West would strengthen their position. According to Staughton Lynd, "the [Northwest] Ordinance made available a


15 Ibid., 4-5.

West just sufficiently specific that each section could read in it the fulfillment of its political dreams.\(^{17}\)

**Extinguishing Indian Titles**

As New York, Virginia, Connecticut, and Massachusetts ceded their claims to the western lands to Congress, it also pressured Indian tribes to relinquish their claims. Congress’ vision for the Northwest Territory did not include Native Americans. Congress considered the United States’ victory over Britain a military victory over England’s Indian allies, but it nonetheless established a policy of negotiating treaties so the Indians would “voluntarily” cede their claims. George Washington urged “the propriety of purchasing [Indian] lands in preference to attempting to drive them by force of arms out of their country; which, as we have already experienced, is like driving the wild beasts of the forest, which will return as soon as the pursuit is at an end.”\(^{18}\) In 1784 congressional commissioners signed a treaty at Fort Stanwix in which the Six Nations relinquished their claims to land west of the Ohio River. The next year, commissioners obtained the Treaty of Fort McIntosh in which minor chiefs of the Wyandots, Ottawas, Delawares, and Chippewas agreed to cede most of the Ohio territory. The commissioners overcame the chiefs’ reluctance by plying them with hard liquor. When Shawnees

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\(^{18}\)George Washington to James Duane, 7 September 1783, extract in Archer B. Hulbert, ed., *Ohio in the Time of the Confederation* (Marietta, Ohio: Marietta Historical Commission, 1918), 68.
objected to the treaty, Congress again sent a delegation. After alternately threatening war and serving the young warriors alcohol, the Americans coerced the Shawnees into signing the Treaty of Fort Finney in 1786. Under the treaty, the Shawnees agreed to vacate their villages in southwestern Ohio.¹⁹

However, most Indian chiefs did not recognize the validity of the treaties. When settlers began arriving, warriors attacked their flatboats on the Ohio river and their isolated settlements. Britain encouraged the attacks by providing arms and ammunition. Frontiersmen retaliated with raids on Indian villages. In 1791 when Indians attacked more established settlements in the Ohio Company’s tract, influential settlers convinced President Washington and Congress to provide aid. Congress authorized St. Clair to raise a force of 3000 men to fight the Indians. St. Clair’s troop suffered a humiliating defeat in the fall of that year. Although exonerated by a court of inquiry, St. Clair resigned his army commission.²⁰ Washington replaced him with “Mad” Anthony Wayne, known for his success in the revolutionary war and against southern Indians afterwards. In July 1794, Wayne’s army defeated the Indians at the Battle of Fallen Timbers. Peace negotiations resulted in the Treaty of Greenville which confined the Indians north and west of the boundary line.


²⁰St. Clair’s defeat also dashed his aspirations for higher office to which he expected his appointment as territorial governor would lead him.
The treaty changed how the settlers lived and farmed their land. Before Fallen Timbers, settlers stayed close to forts, either those of the national government or ones they built themselves. They lived in the forts and farmed out-lots some distance from the village. Wayne's victory permitted the settlers to move into the rural districts. The distinction between in-lots and out-lots lessened as a result. With the signing of the treaty, migration of white settlers increased significantly to the eastern and southern portion of the Ohio Country.

The treaty also accelerated Ohio's path to statehood in two ways. The surge in migration rapidly moved the Ohio Territory population toward the 60,000 inhabitants that would entitle it to statehood under the Northwest Ordinance and removed a major reason to be satisfied with the colonial nature of territorial status--essential security provided by the national government at national government expense.

Land Ordinance of 1785

To maintain control over the sale of the western lands and to encourage the orderly settlement of the Territory, Congress passed the Land Ordinance of 1785. The Ordinance's requirements for a survey, prior to any sales, reflected Congress' concern for "order." Congress wanted to encourage compact settlement and to avoid the title disputes

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22 Ibid., 73-81; Ralph Chandler Downes, Frontier Ohio, 1788-1803 (Columbus: The Ohio State Archaeological and Historical Society, 1935), 3-54.
that followed random settlement. Even southern Congressmen supported the survey-before-sale system.\(^{23}\) As mandated by the Ordinance, the Geographer o f the United States would survey the federal lands ceded by the states and purchased from the Indians into townships six miles square.\(^{24}\) North-south rows of townships formed "ranges." The survey started from a point on the Pennsylvania border continuing south along the Ohio river. The first range of townships, therefore, had an irregular eastern boundary, but all ranges to the west were rectilinear, made up of orderly rows of townships. Each township was further divided into one-mile square "sections" of 640 acres. Congress reserved section 16 of each township "for maintenance of public schools within the said township." It also held back three other sections for future sale, anticipating higher prices once the rest of the township was settled. The secretary of State was to take, by lot, one seventh of the surveyed land to compensate revolutionary war veterans. The remaining land was to be sold at auction in New York with some townships sold as a unit while other townships would be sold by section.\(^{25}\)

\(^{23}\)The southern system was reversed: locate desirable land, take out land warrants, then run a survey. For a discussion of the convergence of northern and southern views see Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington: Indiana University Press, 1987), 29-30.


To attract the right kind of settler, Congress set the purchase price relatively high at $1.00 per acre to be paid in specie or loan-office certificates, but not on credit. The smallest unit that could be purchased was a section and its $640.00 price made it prohibitively expensive for a potential settler of modest means. Further, one-half of the townships could be purchased only in their entirety. The Land Ordinance of 1785 favored compact migration on a larger scale: entire townships would have to be purchased by groups of settlers who pooled their resources or land developers who resold quickly to smaller purchasers. Congress wanted to discourage both the impecunious settler and the speculator. The minimum purchase and price per acre excluded the impecunious settler and the price per acre discouraged the speculator who wanted to buy large tracts of land for a nominal price and wait for demand to increase its value.

Prospective settlers of modest means petitioned Congress unsuccessfully for smaller sales with credit terms. One petition carried the names of one-hundred forty-one men who had already settled on the western frontiers of Pennsylvania and Virginia and hoped to cross the Ohio River to the vacant federal lands there. The minimum purchase was “more than many of the people on our frontiers are able to purchase,” they complained. It was unfair to patriotic pioneers, whose “time has been taken up during the late war, Not in heaping up of Treasure but in stoping [sic] the inrodes of the


Onuf, *Statehood*, 33-39. Peter Onuf argues that Congress did not object to private companies purchasing land with the expectation of making a profit but Congress wanted to insure control remained in its hands, not in the hands of speculators. Ibid., 33-34.
savages.” Instead of Congress’ careful and orderly plan, they petitioned to “be indulged with taking out Warrants according to [each petitioner’s] abilities, and locating the same in what manner they shall see fit.” Their proposal was precisely what Congress feared and was determined to prevent: random, dispersed settlements that would be difficult to defend against Indians and that would delay the economic integration of the west with the east.

Squatters

As Congress pursued the orderly settlement of the Northwest by the elimination of Indian land titles and passage of the Land Ordinance of 1785, it moved against the other perceived obstacle to controlled settlement: the presence of unauthorized white settlers west of the Ohio river. These settlers were primarily squatters who believed they would eventually get title by virtue of having cleared and settled the land. However, Congress viewed them as uncivilized “white savages” who were not the virtuous citizens upon which a republic’s survival depended. Just as Congress’ imagined community for the Northwest Territory had no place in it for Native Americans, neither did it include white squatters. Instead Congress wanted to attract industrious settlers who could eventually be trusted with self-government and permitted to take their proper place in the Union. The squatters also provoked trouble with the Indians yet their dispersed

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28Downes, 73.
settlements made it difficult for the military to protect them. Congress wanted a "better sort" of settler, one with some money who would settle in clustered settlements that not only were easier to defend but also encouraged institutions of social order such as churches and schools.29

Congress charged the Commissioners who were authorized to negotiate Indian treaties with the additional responsibility of removing unauthorized white settlers.30 Within days of signing the Treaty of Fort McIntosh in January 1785, the commissioners ordered Lieutenant Colonel Josiah Harmar to "employ such force as he may judge necessary in driving off persons attempting to settle on the land of the United States."31 Harmar sent Ensign John Armstrong who moved his troops through the area for two weeks "dispossessing" families and destroying their buildings. Occasionally he gave them additional time to relocate because they had "no rafts to transport their effects" or the weather was "too severe to turn them out of doors." Hearing that a group of seventy armed settlers planned to oppose him, he ordered his men to load their weapons and then sent an emissary to warn the settlers he would fire on them if they did not disperse. Confronted by Armstrong's threat, the settlers put down their weapons and agreed to abandon their settlements. One settler, Joseph Ross, persisted in opposing Armstrong. He challenged the Commissioners' authority. If Armstrong "destroyed his house he

29Ibid., 73-74; Cayton and Onuf, 7.

30The commissioners, George Rogers Clark, General Richard Butler, and Arthur Lee were the first agents of the national government for the Northwest territory.

31Quoted in Hulbert, Ohio in the Time of Confederation, 104n.
would build six more within a week,” he threatened. Armstrong arrested him and transported him to Fort McIntosh.

Another settler, John Amberson, also challenged Congress’ authority over the land. He distributed a notice for an election to be held April 10th for delegates to a constitutional convention. He argued that the settlers had “an undoubted right to pass into every vacant country, and there to form their constitution.” Congress neither had the power to forbid it nor to sell the lands for the public debt which was to be paid by the state legislatures. Amberson’s notice was “posted up in almost every settlement on the western side of the Ohio,” Armstrong observed. Indeed, the timing of Armstrong’s excursion seems to have been prompted by concern for Amberson’s proclamation. Armstrong set out on March 31, 1785 and completed his foray on April 12th—two days after Amberson’s proposed election.

Other settlers conceded Congress’ authority but petitioned it to recognize their right of preemption as settlers. Complimenting Congress for the successful resolution of the Revolution and for “laying the Foundation ... of the most Glorious form of government any People on Earth Could ever yet boast of,” they declared that they had “nothing more at hart [sic] than the Safety and happiness of the Common wealth” and had

32 Armstrong to Harmar, 12 April 1875, in Hulbert, Ohio in the Time of the Confederation, 106-109.


34 Armstrong to Harmar, 12 April 1785, in Hulbert, Ohio in the Time of the Confederation, 109.
no wish to act without “the Consent and Advice of the Legislature.” The revolutionary war had left them in dire circumstances and had “Reduced [them] allmost to the Lowest Ebb of Poverty.” Therefore, they had crossed the Ohio and entered the vacant lands “fully determined to Comply with Every Requisition of the Legislature . . . with hopes of Future Happiness we sat Content in the enjoyment of our scanty morsel: thinking ourselves Safe under the protection of Government.” Only through the army’s order to vacate had they discovered that Congress considered their settlements “prejudicial to the Common good; of which [they] had not the Least Conception till now.” They urgently asked Congress to grant “preference to our Actual Settlements when the Land is to be settled by order of government.”

Congress was unmoved. In June of 1785, it responded with a proclamation declaring that it had received reports that “several disorderly persons” had settled on “their unappropriated lands” contrary to Congress’ plans to survey the land and then sell it “in such proportions, and under such other regulations as may suit the convenience of all the citizens of the said states.” Premature settlement “tend[ed] to defeat the object [Congress] ha[d] in view and was “highly disrespectful to the federal authority.” Congress ordered the settlers to leave immediately or “answer the same at their peril.”

Neither Congress’ proclamation nor Armstrong’s destruction of the dwellings and crops prevented further unauthorized settlement, for the squatters returned once the troops

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35Petition of Inhabitants West of the Ohio River, 1787, in Hulbert, Ohio in the Time of the Confederation, 103-106.

36Ibid., 114-115.
left. In October Congress decided to station 700 troops on the frontier permanently and instructed Colonel Harmar to establish a fort as a base from which he could prevent squatters from crossing into the territory. As a result, the national government built Fort Harmar, part of a line of forts along the Ohio River: Forts Franklin, Pitt, McIntosh, Steuben, Harmar, and Vincennes with Fort Washington at Cincinnati added in 1789. Federal troops would enforce the federal vision for the Northwest Territory; a community that excluded Native Americans and poor white squatters.

III
The Northwest Ordinance

Congress passed the Northwest Ordinance at the same time delegates were writing the Constitution. Indeed, it is likely that Congressmen and delegates communicated between New York and Philadelphia. Both efforts reflected the contemporary concern that everywhere there was disorder and chaos. The delegates at Philadelphia believed the solution for the country was a stronger national government; Congress believed the

37Ibid., 112, n65.

38Knepper, 57-59; Barnhart, 41.


solution for the West was its systematic development under congressional control. As
Peter Onuf and Andrew Cayton have argued, the two documents together created the
basis for expansion of the United States: the stronger national government would create a
union sufficiently powerful to extend its authority to the West.\textsuperscript{41}

Territorial Government

In the Northwest Ordinance, Congress created a three phased system of
government. In the first phase, the Territory was under the control of the national
government through appointed officials. In the second phase, the appointed officials
governed with an elected territorial legislative assembly. In the final phase, the residents
gained the right to establish state governments and be admitted to the Union “on an equal
footing with the original States.”\textsuperscript{42} Congress set the requisite population for admission at
sixty thousand to allay concerns of the established states that they would be outnumbered
in Congress by sparsely populated western states.\textsuperscript{43}

The Ordinance provided that Congress appoint a Territorial Governor for a three-
year term. The Governor had to reside in the district, and own a freehold estate of one
thousand acres while in office. He would be assisted by a secretary, appointed by
Congress for a four-year term. He too was required to live in the district and to own a
freehold estate of five hundred acres while in office. Congress appointed a Territorial

\textsuperscript{41}Cayton and Onuf, 3.

\textsuperscript{42}Carter, \textit{Territorial Papers}, 2: 49.

\textsuperscript{43}Cayton and Onuf, 7.
Court, with common law jurisdiction, comprised of three judges who served "during good behavior," any two of which formed the court. As with the other appointed officials, the judges were required to reside in the Territory and maintain a freehold estate—five hundred acres—in the district while in office.44

The governor and the judges, or a majority of them, could adopt and publish laws of the original states, both criminal and civil, "as may be necessary and best suited to the circumstances of the district," subject to Congress' disapproval. The laws remained in effect until the creation of the General Assembly in the second phase of governance. The Assembly had the power to alter any laws previously passed by the Governor and the Judges.45

In addition to his legislative authority, the Governor had an array of other powers. He was the Commander in Chief of the Militia and appointed and commissioned all officers below the rank of general. Congress reserved the power to appoint and commission general officers. He appointed all magistrates and civil officers. Even after the creation of the General Assembly he continued to have the power to appoint, but the Assembly had the power to regulate the magistrates and civil officers. The Governor also had the power to create counties and townships.46

46Ibid., 2: 43-44.
The second phase began once the territory had five thousand "free male inhabitants of full age." Qualified electors could elect representatives from their counties or townships to represent them in a General Assembly. The Ordinance provided for one representative for every five hundred free male inhabitants up to twenty-five representatives; thereafter the legislature determined proportional representation. Candidates had to be either a three-year resident of an existing state and reside in the district or have resided in the district for three years; but in either case the candidate must own in fee simple two hundred acres within the district. Qualified electors either had to have been a citizen of one of the states currently residing in the district or had to have resided in the district for two years. In either case, the voter had to also own fifty acres in the district in fee simple. Although Congress restricted suffrage and office-holding to property-owning males, it did not restrict either to white ones. The word "white" did not appear in the Northwest Ordinance.

The General Assembly included the Governor, a Legislative Council of five members, with three representing a quorum, and a House of Representatives. Congress selected the members of the Legislative Council from a list of ten candidates submitted by the House of Representatives. The candidates had to own five hundred acres in freehold in the district. A majority of the House and a majority of the Council passed bills but only with the assent of the Governor. The Governor had the authority to convene, prorogue, and dissolve the Legislature "when in his opinion it shall be

\[47\]Ibid., 2: 44.
expedient.” Once the residents qualified for a General Assembly, they also had the right to send a representative to Congress who could participate in debates but not vote.48

Congress created a structure that was analogous to the colonial system under Great Britain. In some ways it was even more restrictive. Initially, there were no elected officials. All government functions—executive, judicial, and legislative—were performed by officials appointed by the national government. The Governor controlled both the executive and legislative, as well as all patronage for local positions. Even with the second phase— one house of the legislature elected—the governor still maintained control. He could prorogue and dissolve the legislature, he could veto any bills, and he kept his broad appointive powers. Under the system, the Governor was never dependent on the electorate for office, so his extensive power of patronage remained outside the control of electoral politics.49

The freehold requirements for candidates and electors reflected the concerns of the 1780s that the virtuous citizens necessary to sustain a republic needed to be economically independent. Tenant farmers were excluded from the polity. Small freehold owners could vote but not hold office. Interestingly, the framers of the Northwest Ordinance did not include an alternative to the freehold requirement such as owning property of a certain value—technically, wealthy merchants who did not own land would also be excluded from the polity. The freehold requirements for electors and electors.

48Ibid., 2: 44-45.
49Ratcliffe, The Experience of Revolution, 193.
candidates had more in common with the revisions of state constitutions that took place in the 1780s than with the broader suffrage clauses of constitutions written in the immediate aftermath of the American Revolution.

The Anti-Slavery Clause

Article VI of the Northwest Ordinance provided:

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in punishment of crimes whereof the party shall have been duly convicted; provided always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.\textsuperscript{50}

Article VI reflected earlier efforts to prohibit slavery in the northwest lands. In 1783, Colonel Thomas Pickering, petitioning Congress to open settlement of the lands to officers of the Revolutionary War, proposed that “[t]he total exclusion of slavery from the State form an essential and irrevocable part of the [state’s] Constitution.”\textsuperscript{51} After Virginia ceded its western lands in 1784, Congress appointed a committee, with Thomas Jefferson as its chair, to draft provisions for their governance. The proposed Act, which would have applied to all the western lands, including those south of the Ohio river, provided that “after the year 1800 of the Christian era there shall be neither slavery nor

\textsuperscript{50}Carte, \textit{Territorial Papers}, 2: 49.


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involuntary servitude in any of the said States, otherwise than in punishment of crimes, whereof the party shall have been duly convicted to have been personally guilty."^52

However, delegates from southern states voted to remove the clause from the act and the Ordinance of 1784 passed without the restriction. Jefferson later bemoaned the closeness of the vote which resulted in the spread of slavery in the western territory south of the Ohio river. “The voice of a single individual of the state which was divided, or one of those which were of the negative, would have prevented this abominable crime from spreading itself over the new country. Thus we see the fate of millions unborn hanging on the tongue of one man—and Heaven was silent in that awful moment.”^53

Pickering continued to agitate for an anti-slavery clause enlisting the support of Rufus King, a delegate from Massachusetts. He wrote to King on March 8, 1785 that

[to] suffer the continuance of slaves until they can be gradually emancipated in those States where they are already overrun with them, may be pardonable, because unavoidable, without hazarding greater evils—but to introduce them into countries where none now exist can never be forgiven. For God's sake, then, let one more effort be made to prevent so terrible a calamity.^54

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^53Of the ten states present six voted for the clause and one state’s delegates divided its vote. Passage required seven votes. Thomas Jefferson to James Madison, 25 April 1784, Boyd, Jefferson Papers, 8:118.

^54Pickering, Pickering, 1: 509.
A week later, King submitted a resolution to Congress:

That there shall neither be slavery nor involuntary servitude in any States described in the resolution of Congress of the twenty-third day of April, A.D., 1784, otherwise than in punishment of crimes whereof the party shall have been personally guilty; and that this regulation shall be an article of compact and remain a fundamental principle of the Constitution of the thirteen original States and each of the States described in said resolution of the twenty-third of April, 1784.55

A congressional committee revised the resolution to prohibit slavery after 1801 and to include a fugitive slave clause. However, Congress failed to act on the resolution. Efforts to prohibit slavery in the western lands finally succeeded in 1787 when Congress added Article VI to the Northwest Ordinance.

Congress added Article VI, banning slavery, at the last moment, to the pleased surprise of Nathan Dane, a delegate from Massachusetts who sat on the Territorial Government committee that produced the draft of the ordinance. Dane omitted the anti-slavery clause from the original draft because he “had no idea the States would agree,” he wrote King. “[B]ut finding the House favorably disposed on this subject, and after we had completed the other parts, I moved the article, which was agreed to without opposition,” he marveled.56 Several reasons have been suggested to explain the southern states’ acquiescence in the ban on slavery: southerners’ view at this time that slavery was


a “necessary evil,” a desire to prevent indigo and tobacco production in the northwest lands in competition with southern production, the personal influence of Virginia delegate William Grayson, and the lobbying efforts of Manasseh Cutler, representing The Ohio Company.57

Cutler and a group of former officers of the Continental Army, primarily from New England, created The Ohio Company, a joint stock company, to invest in and develop western lands. The Reverend Dr. Cutler58 acted as the company’s agent, successfully lobbying Congress to authorize the purchase of one and one-half million acres and to pass the Northwest Ordinance. While in New York to secure the contract, Cutler submitted proposals for amendments to the Ordinance. His role in securing the Anti-Slavery Clause is unclear.59 However, Cutler was strongly opposed to slavery and

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57 Charles Thomas Hickok, The Negro in Ohio, 1802 -1870 (New York: AMS Press, 1975; reprint, Cleveland: Williams Publishing & Electric Co., 1896.), 24. Staughton Lynd argues that southerners could view the Ordinance as strengthening slavery since implicitly it recognized that the territories south of the Ohio river would be open to slavery. Lynd, 189-200. In 1784 Jefferson had attempted to prohibit slavery in all of the territories. Paul Finkelman points out that the Northwest Ordinance contained a fugitive slave clause; there was no such clause in the Articles of Confederation and the clause in the Constitution had not yet been written. He argues that South Carolinians likely derived the constitution’s clause from the Ordinance. Paul Finkelman, “Slavery and the Northwest Ordinance: A Study in Ambiguity,” Journal of the Early Republic 6 (1986), 343-70, 345, n4.

58 Cutler was Yale educated, trained in law and theology; he had served as an army chaplain during the Revolutionary War. Knepper, 63.

59 Cutler’s son, Ephraim, claimed that his father was the author of the Anti-Slavery Clause, however, Cutler did not include this claim in his diary. Cutler and Cutler, Manasseh Cutler, 1:343-344. He indicated that Congress accepted all but one of his proposals but did not specify what they were. Ibid., 1:230, 242, 293.
Congressmen understood that passage of the Northwest Ordinance was essential to finalizing the Ohio Company purchase. Richard Henry Lee referred to the Ordinance as "preparatory to the sale of that Country."\(^{60}\)

Lee also explained that Congress felt it "necessary, for the security of property among uninformed and perhaps licentious people . . . to create a strong-toned government."\(^{61}\) The Northwest Ordinance was also "preparatory" for Congress’ imagined community: property owning electors voting for men of still greater wealth to rule them in a "strong-toned government"—a community that did not include Native Americans, poor white squatters, slaves, and slaveowners. The role, if any, that Congress envisioned for free African-Americans is unclear. Whether Congress imagined them as part of the community or not, at the very least, Congress had not expressly excluded them. Unlike women, African-American men counted for apportionment, could vote, and hold office.


Settlement Patterns After 1787

The Ohio Company

In April of 1788 General Rufus Putnam led the first 48 settlers of the Ohio
Company across the mountains of Pennsylvania to the banks of the Youghiogheny River.
They built boats, one of which they christened The Mayflower, and traveled down the
Ohio River to the mouth of the Muskingum river. There, near Fort Harmar, they founded
their village, Marietta—the first authorized settlement in the Northwest Territory.⁶²

Under Putnam's leadership, they surveyed the town into sixty squares, with four
reserved for public use and the remainder further divided into town lots. Outside the
town they surveyed eight-acre out-lots for farming. They built a stockade, named Camp
Martius, on one of the public squares. The territorial government had not yet been
organized, so they drew up their own set of rules, the Marietta Code. St. Clair's arrival
the next year established the beginning of the territorial government. He named the first
county Washington and made Marietta its county seat. The Ohio Company settlers
quickly created two institutions they deemed essential to civilization: church and school.
To induce non-shareholders to settle they offered some “donation lots”—100 acres to
which a settler could acquire a freehold title after five years of residence and
improvement. With the arrival of additional settlers, they began to create outlying

⁶²Samuel P. Hildreth, Memoirs of the Early Pioneer Settlers of Ohio (Cincinnati: H.
W. Derby, 1852), 101-105; Rowena Buell, comp., The Memoirs of Rufus Putnam and
Certain Official Papers and Correspondence (Boston: Houghton Mifflin, 1903), 103-
107.
Map 1.1 Principle Land Subdivisions and Surveys

Source: Gilkey, *The Ohio Hundred Year Book*, 147.
settlements, living within a palisaded area at night and traveling out in groups during the day to farm the fields. After the Treaty of Greenville, the flood of settlers traveling down the Ohio river from Pittsburgh no longer bypassed the Ohio territory on their way to Kentucky. By 1800 Marietta had sent its first sea-going vessel, the St. Clair, down the Ohio to New Orleans on its way to Cuba.\(^3\)

The Ohio Company’s founders were ardent supporters of the Constitution and, later, of the Federalist party. They agreed with the Federalist vision that the national authority should carefully control development. Serving the national interest, controlled development would also enhance the economic interests of their Company. It could profit from the sale of improved land sold in small tracts.\(^4\) The Company founders envisioned a West integrated commercially with the East, with Marietta a regional economic and cultural center. Their settlement would not be a colonial economy merely shipping raw materials to the east. It would be more than just farms; gentlemen property holders would employ craftsmen and laborers in manufactures and would engage in international commerce.\(^5\) An essential component of their plan was the creation of strong institutions to foster social order: churches, schools, courts. Even the physical lay-


\(^5\)Ibid., 30.
out of Marietta attested to their vision of ordered development; they designed what one historian has called a "monument to regularity." 

The Virginia Military District

Under the terms of Virginia's cession of its western lands, Congress agreed that Virginia would retain "good lands, to be laid off between the rivers Scioto and Little Miami, on the northwest side of the river Ohio" if lands southwest of the Ohio river proved inadequate to pay Virginia's obligations to its military veterans. When Kentucky lands set aside for the veterans proved insufficient to extinguish Virginia's debt, Congress, in 1790, authorized Virginia to issue warrants for the land in the Ohio territory. The Act gave Virginia the right to 3,900,000 acres which became known as the Virginia Military Tract. Because the district was exempt from the national system of prior survey and distribution, its settlement pattern differed from the rest of the Ohio territory. In contrast to the rectilinear standard (thirty-six square miles townships) Congress specified in the Land Ordinance of 1785, Virginia followed the "metes and bounds" surveying method. Under Virginia's system, a land purchaser identified an area of land then a surveyor ran "metes and bounds" around the perimeter using objects such as trees and rocks to mark changes in direction. As George Knepper has described it,

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66Ibid.


this system produced a “landholder’s nightmare and a lawyer’s dream” as disputes arose over lot lines.\textsuperscript{69}

A business in military warrants developed. Speculators in Virginia bought the warrants from veterans then sent surveyors to locate the land. In return the surveyors received a share of the land. Surveyors also purchased warrants themselves.\textsuperscript{70} One of these surveyors, Nathaniel Massie, became the key developer of the Virginia Military District. Massie, a native Virginian, moved to the Kentucky frontier when he was in his twenties. His father gave him land in Kentucky and encouraged him to learn surveying and engage in land speculation. He followed his father’s advice and began surveying and selling lands to eastern clients. He shifted his attention to the Ohio country, establishing towns to enhance the value of his land.\textsuperscript{71}

In 1791 Massie founded the first settlement in the Virginia Tract, Massie’s Station,\textsuperscript{72} contracting with nineteen men to settle the town in return for out-lots and in-lots. It was the fourth permanent settlement in the Ohio Territory—following Marietta, Cincinnati, and Gallipolis. Continuing to explore the Scioto Valley, Massie decided to create a town further upriver. In 1795 he offered free lots to the first one-hundred settlers


\textsuperscript{70}For further discussion of the surveyor-speculators’ methods, see Ellen Susan Wilson, “Gaining Title to the Land: The Case of the Virginia Military Tract,” \textit{The Old Northwest} 12 (1986): 65-82.

\textsuperscript{71}Massie, \textit{Massie}, 65-92.

\textsuperscript{72}He subsequently renamed it Manchester after the city of his English ancestors.
but when they tried to reach the site they were turned back by Indians. The next year they
returned and built the first cabins of Chillicothe, which would become the dominant town
of south central Ohio and the center of Kentucky and Virginia influence in the territory.\textsuperscript{73}

In 1796 twenty-three year old Thomas Worthington visited Chillicothe as he
traveled the Virginia District to locate warrants he had purchased. There he found the
twenty or so scattered cabins of the first settlers, who had received one hundred acre lots
from Nathaniel Massie. The descendent of an English Quaker family that had moved
along the Appalachian valley route and settled south of Harper’s Ferry, Worthington had
considerable property, including slaves he had inherited. On his second trip to the
District in 1797, to locate more than seven thousand acres of warrants, he reported his
amazement at the growth of Chillicothe. It was now a settlement of almost one hundred
cabins with another one hundred families located within ten miles. In 1798 he moved to
the Scioto Valley permanently, accompanied by his brother-in-law Edward Tiffin.\textsuperscript{74}

According to Worthington’s biographer, he was an ardent opponent of slavery
and welcomed the prohibition against slavery in the Northwest Ordinance. Prior to their
trip to the Ohio Country, Worthington and Tiffin had freed their slaves, bringing some of

\textsuperscript{73} Roseboom, 58; Downes, 81.

\textsuperscript{74} Tiffin, born in England in 1766, came to America with his family in 1784. He
studied medicine in Philadelphia and settled in Charleston, Virginia. He married Mary
Worthington, sister of Thomas Worthington. He and Worthington inherited slaves from
Mary’s father. Tiffin was an ardent Methodist, he combined lay preaching with his
physician duties; he served in two sessions of the territorial legislature; and would
become Ohio’s first governor. Utter, 12.
them as servants.\textsuperscript{75} However, Worthington's primary motivation for settling the Ohio country was the opportunity he saw there—economic success but also the ability to be an influence in building the new territory, opportunities no longer available for a third-generation Virginian in the Shenandoah valley.\textsuperscript{76}

The Virginia Military District attracted other young gentry from southern states. Deeply involved in land speculation, these Scioto Valley Jeffersonian-Republicans disagreed with the Federalist vision of slow, orderly development under the control of the national government. Not as concerned with order as the Federalists, they were more laissez-faire, more optimistic about human nature, and not as fearful of an open, expanding society. They wanted the government to leave people free to control their own destiny.\textsuperscript{77}

### Symmes Purchase

In accordance with the Land Ordinance of 1785, John Cleves Symmes, a New Jersey judge, and two associates, Elias Boudinot and Jonathan Dayton, negotiated a contract with Congress for the purchase of a million acres between the Great Miami and the Little Miami rivers. Congress then appointed Symmes to a territorial judgeship, and he moved to the Ohio Country in 1788. However, Symmes failed miserably in his land speculation scheme. He had purchased the land on credit expecting quick resales to make

\textsuperscript{75}Gilmore, 10; Sears, 14-21.

\textsuperscript{76}Sears, 22.

\textsuperscript{77}Cayton, \textit{Frontier Republic}, 51, 56.
payments and generate profits. Sales to other speculators—"land jobbers from Kentucky," he called them—fell through. Indian hostilities retarded immigration and poor management led to haphazard settlement. Symmes sold land he never acquired from Congress. He and his associates in New Jersey sometimes sold the same land to different parties. Years of litigation ensued to sort out the tangled titles.

Within the Symmes Purchase, New Jersey and Kentucky residents settled Cincinnati. In 1789 the federal government established Fort Washington nearby, assuring Cincinnati its prominence as the area's business center. St. Clair subsequently made it the county seat of Hamilton county. There were approximately 2400 residents in the area by 1793. As with the other areas of settlement in the territory, emigration increased dramatically after the Treaty of Greenville in 1795. A census of Hamilton County taken in 1798 revealed a population of more than 10,000.

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78 Jacob Burnet recounts a colorful story concerning the decision to locate Fort Washington at Cincinnati instead of North Bend. According to the rumor circulating at the time, Major Doughty, the commander of the fort, made his decision to select Cincinnati instead of Fort Bend because a married woman in whom he was romantically interested had moved from North Bend to Cincinnati. Burnet notes, however, that one of the circulators of the rumor was Symmes, who had lobbied for his own settlement, North Bend, to be the location of the fort. Burnet, *Notes on the Early Settlement of the North-Western Territory* (Cincinnati: D. Appleton, 1847), 54-56.


80 "Return of Inhabitants of Hamilton County [July 12, 1798]," in ibid., 2:648-49.
Western Reserve

In 1786 when Connecticut ceded its western lands to the national government, it retained three million acres in the Ohio Country. The Western Reserve, as it became known, was bounded by Pennsylvania on the east, Lake Erie on the north, the forty-first parallel on the south and extended west one hundred and twenty miles. Connecticut granted one-half million acres in the western portion of the Reserve to Connecticut residents whose property had been destroyed during the Revolution. In 1795, the state sold the balance of the reserve to private speculators for a total of $1,200,000, with the proceeds allocated to its common school fund. Oliver Phelps, a prominent land speculator, organized The Connecticut Land Company, with Moses Cleaveland, a Yale graduate and attorney, acting as its general agent. Cleaveland moved to the territory in 1796 and named a new settlement at the mouth of Cuyahoga river after himself. Later its spelling changed to Cleveland. The Western Reserve grew from about fifteen families in 1798 to over 1300 residents by 1800.  

National Lands

By 1787, Thomas Hutchins, the Geographer of the United States, had completed the survey of the first four of the so-called Seven Ranges first surveyed under the Land Ordinance of 1785. However sales that year in New York proved disappointing--

\[81\] Knepper, 50-51; Wittke, 358-364; see also Alfred Mathews, Ohio and Her Western Reserve (New York: D. Appleton and Company, 1902).

\[82\] The Seven Ranges referred to the government lands first surveyed under the Land Ordinance of 1785.
In 1796 the national government set aside additional land in the Ohio Country to compensate Continental soldiers. The tract was located between the upper parts of the Seven Ranges and the Virginia Military District and south of the Greenville Treaty Line. However, administration of the act proceeded slowly and few people moved in before Ohio became a state.\(^{84}\)

In the same year, Congress passed a new land act to survey and sell the land freed from Indian claims by the Treaty of Greenville. The act provided for the sale of land below the Greater Miami river at Cincinnati, the land between the Scioto and the Ohio Company purchase at Pittsburgh, and the portion of the Seven Ranges still in government hands at Pittsburgh and Philadelphia. Although the act provided land offices closer to the lands being sold, the terms remained unfavorable. The government increased the price to $2.00 an acre while the minimum purchasable quantity remained one section of 640 acres. The minimum purchase would cost $1280, with one twentieth due in cash at the time of sale and the balance within a year. No surveying occurred for two years and the impact on settlement was minimal.\(^{85}\)

Congress finally changed its land policy when it passed the Harrison Act of 1800, named for its sponsor, William Henry Harrison, the Northwest Territory’s congressional delegate. Harrison convinced Congress to offer liberal terms to potential settlers. Under

\(^{83}\)Barnhart, *Valley of Democracy*, 141.

\(^{84}\)Ibid., 142.

\(^{85}\)Ibid.
this act, lands west of the Muskingum River were to be sold in sections and half sections. The government accepted payments in four annual installments with an additional grace year before forfeiture. A settler could buy 320 acres with $160 down and three subsequent annual payments of $160. The idea was to permit a settler to raise crops from which to make the later payments. Land offices were opened in Steubenville, Marietta, Chillicothe, and Cincinnati.  

Large sales resulted. Almost 400,000 acres were sold between July 1800 and the end of 1801 with another 340,000 sold in 1802. The Harrison Act contributed to the large migration that would justify the statehood movement in Ohio.  

V

Territorial Politics and the Statehood Movement.

After passing the Northwest Ordinance, Congress implemented the first phase of territorial government by appointing the governor, secretary, and judges. Arthur St. Clair, a major general in the American revolution and the former President of the Confederation Congress, received the appointment to governor. Historians traditionally have viewed him as completely incompetent. However, a more recent view, according to Cayton and Onuf, is that while he certainly was not a brilliant administrator much of the criticism directed at him comes from his political opponents who held a different view of how the territory should develop. Cayton, Frontier Republic, 34; Cayton and Onuf, 17-19.

\[^{86}\text{United States Statutes at Large, 2:73-78.}\]
\[^{87}\text{Barnhart, Valley of Democracy, 143.}\]
\[^{88}\text{Historians traditionally have viewed him as completely incompetent. However, a more recent view, according to Cayton and Onuf, is that while he certainly was not a brilliant administrator much of the criticism directed at him comes from his political opponents who held a different view of how the territory should develop. Cayton, Frontier Republic, 34; Cayton and Onuf, 17-19.}\]
reflected the influence of New England and the Ohio Company. Winthrop Sargent, Samuel Holden Parsons, and James Varnum, all associates of the Ohio Company, were named to important territorial offices. Sargent, a native of Massachusetts became the territorial secretary, Parsons, a former major general and a member of Connecticut's state legislature in the 1780s, received one of the three territorial judgeships, as did James Mitchell Varnum, a native of Rhode Island. The other judgeship went to John Cleves Symmes, the representative in Congress from New Jersey who had contracted to purchase the large tract of land described above. All of the appointees were strong supporters of the Constitution.  

Governor St. Clair arrived in Marietta in July, 1788 and soon created the first county in the territory, Washington county. Pennsylvania bordered the county on the east, the Scioto river on the west, the Ohio river on the south, and Lake Erie on the north. The Ohio Company's tract lay within this county and St. Clair made Marietta the county seat and filled all of the county offices--judges of the court of general quarter sessions, judges of common pleas court, and the sheriff--with Ohio Company associates. The court of general quarter sessions had the broadest power over local life. It supervised local taxation, created public roads, set township boundaries and appointed township officials.  


90 Cayton, Frontier Republic, 26.
As Andrew Cayton pointed out, the appointment of Ohio Company associates to the new territorial positions reflected the symbiotic nature of the relationship between the national government and the Ohio Company. The Ohio Company’s local hegemony in the territory depended on the authority of the national government, while the national government’s authority depended on the Ohio Company’s local influence. The national government controlled local appointments which went to firm believers in a strong national government like Rufus Putnam, the secretary of the Ohio Company. In turn, Putnam emphasized his national connections to strengthen his local position and status. Putnam and the other leaders of the Ohio Company agreed with the Federalist vision that the west should be developed gradually under the paternal guidance of the national government. They carefully integrated themselves into the national political system. As long as the Federalists controlled Congress, the Marietta-based Ohio Company associates would wield disproportionate power in territorial politics. Comfortable with this vision, content with their power, they opposed early statehood.

The young, southern-born gentry who settled the Scioto valley in the Virginia Military District had a different vision of the Ohio Community and began to chafe under the control of St. Clair and the Marietta Federalists. Dominant economically in their area, the Scioto Valley Republicans became frustrated with a lack of commensurate political influence. Naturally, the Scioto Valley elite came to believe the territorial government was too centralized. In the 1790s, their leaders Nathaniel Massie, Edward Tiffin, and

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91Ibid., 34.

92Ibid., 51.
Thomas Worthington increased their opposition to St. Clair over issues relating to local control such as creation of county seats and appointment of local officials. The fight over the location of a county seat for newly created Adams county reflected the growing alienation of the Scioto gentry from the territorial government and provided an impetus to push for statehood as a way of breaking down St. Clair's control. The showdown began in 1798 when St. Clair rejected Massie's preference for Manchester, a town Massie had founded, for the county seat, and selected Adamsville instead. The local justices sided with Massie, much to the outrage of St. Clair, who declared their actions "a most unwarrantable assumption of power and contempt of authority." St. Clair attempted a resolution by locating the county seat at a third town. Prior to creation of the territorial legislature, St. Clair had held undisputed authority to create counties. Now Massie could use an alternate power base. He petitioned the territorial legislature to override St. Clair and locate the county seat at Manchester. When the legislature granted Massie's petition, St. Clair vetoed the legislation, insisting he continued to have the sole right to select county seats. The Scioto Valley Jeffersonian Republicans increasingly saw St. Clair and the territorial government as the threat to their liberty.

St. Clair also came into conflict with tradesmen in Cincinnati. With its proximity to Fort Washington, Cincinnati became a military and economic center of the Ohio valley, with a large number of taverns, warehouses, and trading posts. The town had a

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93St. Clair to Massie and other Justices of Adams County, 29 June 1798, Smith, St. Clair Papers, 2:425n.

94Cincinnati Western Spy, 15 October 1799, 5 November 1799, 24 December 1799.
history of local self-government, enacting its own code of laws. When the territorial government imposed a license fee on taverns and shops, local businessmen spoke the rhetoric of the revolution, complaining about the tyranny of the government. "The history of the American revolution fully proves to us," wrote "Manlius," that "taking away [our] money without [our] consent, was the highest species of oppression."95 Another writer posed the question, "[a]re not the people in this territory in a much worse situation than the United States before the late Revolution? Are we not obliged to pay taxes without our consent? . . . [H]ave we a representative in any legislature?"96

Acting as governor in St. Clair's absence, Secretary Winthrop exacerbated Cincinnatians' concerns about the autocracy of the territorial government in 1793, when, he changed the commissions of the justices of the peace from tenure during good behavior to tenure at the governor's pleasure. Winthrop believed the justices had been influenced by popular wishes to abandon their duty to uphold authority. He upbraided them for failing to restrain "disorders" in local taverns and accused them of choosing "to go with the multitude even to do Evil."97

Winthrop's concern that the justices were more sympathetic to local interests than territorial interests seemed confirmed when a local justice of the peace, William Goforth, presided over a meeting of residents to "enquire into the grievances of the citizens." The list of grievances the meeting generated included lack of representation in Congress and

95Cincinnati Centinel, 30 November 1793.

96Ibid., 11 October 1794.

97Sargent to St. Clair, 6 February 1793, in Carter, Territorial Papers 2:456.

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the territorial legislature, and the governor's control of all offices. The aggrieved residents expected that the territory would soon qualify for the second stage of government, in which they would soon be able to pass their own laws in an elected legislature.98

However, St. Clair refused to order a census that might lead to a shift in power to the Scioto and Cincinnati settlers. Hamilton County residents decided to take matters into their own hands and to push for statehood. They held a series of meetings in 1797 and established a Committee of Correspondence to generate support in the other counties in the eastern portion of the territory. They instructed the constables of each township in Hamilton County to conduct a census and urged residents of Adams, Wayne, and Washington counties to do the same. They did not expect the census to count sixty thousand free residents in the territory, which automatically qualified them for statehood under the Northwest Ordinance. Instead they pointed to an alternative provision of the Ordinance: that “so far as it can be consistent with the general interest of the Confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.” They argued that the provision in the U.S. Constitution, adopted after the Northwest Ordinance, providing one representative per thirty thousand inhabitants should apply equally to them. They had not given up any rights as citizens merely because they had settled in the territory. The Constitution had been adopted “while most of us were citizens of the States in union, and to the formation of which Constitution we gave our assistance, surely then it cannot

98Cincinnati Centinel, 20 February 1796.
possibly be conjectured that we have forfeited that right by becoming adventurers to this Territory. 99

St. Clair, on the other hand, believed that they had indeed forfeited their rights as citizens and that when they moved to the Territory they “ceased to be citizens of the United States and became their subjects.” 100 According to St. Clair, they would not acquire the rights of citizens until they became citizens of a new state. However, the agitation forced St. Clair to order a census of free males and on October 29, 1798 he declared the population sufficient to proceed to the second stage of territorial government, an elected legislature.

The creation of the legislature had an unforeseen consequence that forced even Cincinnatians who supported statehood temporarily into allies of St. Clair and the Marietta Federalists. Residents of the Illinois and Indiana sections petitioned Congress for a division of the Northwest Territory so that they could remain under the first phase of government, which they deemed more suitable to their needs and less expensive. They preferred to rely on the national government for support, particularly in providing protection against the Indians. This posed a dilemma for Cincinnatians, since the proposed division would locate Cincinnati in the far southwest corner of the eastern division. This would no doubt lead to the relocation of the territorial capital from Cincinnati to Chillicothe and eliminate Cincinnati as a contender for capital of the new state.

99 Pamphlet, 16 November 1797, quoted in Downes, 182-84.

100 St. Clair to Oliver Wolcott, 1795, in Smith, St. Clair Papers, 2:383.
When Congress responded to the Illinois and Indiana requests by creating the Indiana Territory, a group of Cincinnatians devised a new strategy that, while it might delay statehood, would at least protect Cincinnati’s potential to be the capital of a future state. They proposed a new division of the Ohio Territory at the Scioto river to the east of Cincinnati and a second division to the west of Cincinnati which would locate Cincinnati centrally in a future second state. This plan appealed to St. Clair and the Marietta Federalists, because Marietta would be the logical capital for the eastern state while the Chillicothe Republicans would be marginalized on its western border. Thus St. Clair saw the possibility that the first state created out of the Northwest Territory would come into the nation under Federalist control. Furthermore, the division would delay statehood because the population in each of the newly divided territories would be half that presently in the Ohio region.

Historian Randolph Downes suggests that the Cincinnatians and St. Clair collaborated on a number of occasions, although no explicit agreement was reached. By 1800, St. Clair was in serious danger of losing his appointment as governor due to opposition within his own party. William McMillan, leader of the Cincinnatians, with the assistance of the Marietta Federalists, had been elected the territorial delegate to Congress. There he lobbied successfully for St. Clair’s reappointment. St. Clair, the Marietta Federalists, and the Cincinnatians then united to pass the Division Act in the territorial legislature, over the strong objections of the Scioto Valley delegates. Within a
Map 1.2
A: Indiana Territory Act of 1800 Boundaries
[with boundary of the State of Ohio, 1802, dotted line]
B: Proposed Boundaries, Division Act, 1801
X= Cincinnati; Y= Chillicothe; Z = Marietta

Source: Downes, Frontier Ohio, 142.
few days, the same coalition passed an act to move the capital from Chillicothe to Cincinnati.\textsuperscript{101}

However, St. Clair’s success in the Territorial Legislature proved short-lived. News of the Cincinnati-Marietta coalition’s actions prompted Michael Baldwin’s December 25th and 26th political demonstrations in Chillicothe.\textsuperscript{102} Within days, the Republicans devised a campaign to defeat the acts in Congress.\textsuperscript{103} A public meeting selected Baldwin and Worthington to coordinate lobbying in Washington. Samuel Finley became the chairman of a standing committee to organize petitions.\textsuperscript{104} Republicans in Jefferson and Belmont counties quickly organized as well.\textsuperscript{105} Back-country residents in Hamilton County rejected the Cincinnati deal. Massie wrote to Worthington that “there will be considerable opposition [to the Division Act] from Hamilton,” urging him to work to postpone action in Congress until petitions from Cincinnati arrived. It was important

\textsuperscript{101}Downes, 189-200.

\textsuperscript{102}Although St. Clair had been unable to convince Finley to prosecute Baldwin, he did not give up. He took the matter to the Territorial Legislature and demanded an investigation. The legislature created a committee to investigate and issue a report. Massie wrote to Worthington that “the committee of inquisition has not made their report . . . I attended at their taking depositions, and every exertion was made to implicate some persons with a design to raise a riot to disturb the Governor and certain members [of the legislature] but they failed. Indeed, it appeared that some members were greatly to blame. Mr. Baldwin was particularly aimed at, but nothing could be raked up.” Apparently the committee never issued a report and the legislature took no further action. Massie to Worthington, 18 January 1802, Massie, Massie, 182-83.

\textsuperscript{103}Territorial laws were subject to Congress’ approval.

\textsuperscript{104}Chillicothe \textit{Scioto Gazette}, 16 January 1802.

\textsuperscript{105}Chillicothe \textit{Scioto Gazette}, 13 March, 20 March 1802.
that congressmen knew that many Cincinnatians opposed the proposed division. "They must have their proportionable weight," Massie wrote.\textsuperscript{106} A few days later he was able to report to Worthington that "a large packet of petitions from Hamilton County was on its way to Worthington. The county was "more than one-half opposed to the [Division Act], and "the more the subject [was] examined, the more it [was] deprecated."\textsuperscript{107}

Worthington was elated with the response he received from the Republicans in Congress. Within days of his arrival in Washington, he informed Massie, "[S]o far as I can determine have reason to believe we shall obtain our utmost wishes yet exertions must not be slackened." By January 25th, Worthington reported jubilantly not only that he could "now with confidence pronounce that the law from the Territory will be rejected" but that Congress also "appear[ed] determined to pass a law giving their consent to our admission into the union."\textsuperscript{108} Massie received independent confirmation of the Republicans' support from Congressman John Fowler of Kentucky, who assured him that "[t]he people in your Territory has [sic] warm friends in the Republican party of this Congress, and are willing to accommodate you to the utmost of your wishes."\textsuperscript{109} He urged Massie to redirect the petition campaign to the issue of statehood. Petitions requesting statehood poured into Washington and by the end of April the Republicans in

\textsuperscript{106}Massie to Worthington, 3 January 1802, in Massie, \textit{Massie}, 178 and Smith, \textit{St. Clair Papers}, 2:552.

\textsuperscript{107}Massie to Worthington, 18 January 1802, in Massie, \textit{Massie}, 183.


\textsuperscript{109}Fowler to Massie, 9 February 1802, in Massie, \textit{Massie}, 196-97.
Congress, over Federalists’ objections, passed the Enabling Act which authorized Ohioans to hold a statehood convention.\textsuperscript{110}

The tide had turned. While Federalists controlled the presidency and Congress there had been a symbiotic relationship between the Ohio Federalists leaders and the national government—their connections in Washington gave them credence and political clout in the Territory and their political clout in the Territory gave them political clout in Washington.\textsuperscript{111} With the Republicans’ national victory in 1800, the momentum shifted to the Ohio Republicans. They had succeeded in lobbying Congress not only to reject the Division Act but to pass the Enabling Act, permitting Ohio to hold its first constitutional convention. The convention would decide if Ohioans wanted statehood, and if so, frame a constitution.

As the first state to be carved out of the Northwest Territory, Ohio would set the pattern for the rest of the territory. Would back-country farmers who had purchased their land on credit and the town artisans be full members of the civic and political community? What of slavery; would Ohio come in as a free state or would Ohioans reopen the question? If it came in free, what rights would Ohio’s Africans Americans have? Would they be included in the community Ohioans imagined for themselves?

\textsuperscript{110}United States Statutes at Large, 2:173-175; also reprinted in Patterson, Ohio Constitutions, 56-60 and in Ryan, “From Charter to Constitution,” 74-78.

\textsuperscript{111}Cayton, Frontier Republic, 26.
CHAPTER 2
THE CONSTITUTIONAL CONVENTION

I
Delegate Election Campaign

The Enabling Act passed by Congress in April 1802 provided for the election of delegates to the constitutional convention at the ratio of one delegate for every twelve hundred inhabitants. This meant a total of thirty-five delegates: ten from Hamilton County (Cincinnati was the county seat), five for Ross County (Chillicothe), four for Washington County (Marietta), five for Jefferson County (Steubenville), two delegates each for Trumbull, Belmont, Fairfield, and Clermont counties and three for Adams County.¹

The Act also broadened suffrage considerably. The Northwest Ordinance had limited voting rights to men who owned a “freehold in fifty acres.”² The Territorial Assembly had previously voted to enlarge suffrage, but Congress had not acted on the

¹United States Statutes at Large, 2: 173-175; also reprinted in Patterson, Ohio Constitutions, 56-60 and in Ryan, “From Charter to Constitution,” 74-78.

²Ryan, “From Charter to Constitution,” 53. The Ordinance contained two distinct residency requirements in addition to the freehold requirement: merely residence in the district if the male had been a citizen of “one of the States,” or if not, two years residence in the district. Ibid.
proposed change. Now, the Enabling Act provided that “all male citizens of the United States, who shall have arrived at full age and reside within the said territory at least one year previous to the day of election, and shall have paid a territorial or county tax,” as well as those who were qualified to vote for representatives of the Territorial Assembly, could vote for the convention’s delegates. Congress placed no restrictions on who could be elected a representative to the convention. As with the Northwest Ordinance, the Enabling Act did not limit suffrage expressly to white men. The constitutional convention election, in effect, a referendum on statehood, would be the first election in which most male residents would be eligible to vote.

A change in the election laws was expected to increase voter turnout greatly from the territorial assembly election in 1800. While the prior law permitted voting solely at the county courthouse, the Election Law of 1800 created election districts based on townships. Since the original counties were extremely large, the old system had forced


4Without adding this latter provision, some men who previously qualified to vote by virtue of property and residency would have been disfranchised by the U. S. citizen requirement.


6Chase, Statutes of Ohio, 1: 304-306.
Map 2.1 Ohio County Boundary Lines in 1801
Map 2.2 Voting Locations in Hamilton County

some voters to travel long distances. The change to township voting locations meant in
Hamilton County, for example, there would be nine polling places distributed throughout
the county, rather than a single location at the county courthouse in Cincinnati, in the
extreme southwest of the county.

But there was some confusion whether the election law of 1800 would apply. The Enabling Act referred to the original election law, which had been repealed. Worthington had not noticed this discrepancy in time to have the act rewritten. His inattention to this detail gave the Federalists an opening to exploit. Jacob Burnet, a Cincinnati Federalist, argued that no election could take place since the act referred to a repealed law. Republicans thought it a ruse to "distract the minds of our Citizens." Congress had not intended to refer to a repealed law, they countered, and the current law should apply. The Republicans prevailed, and the election was conducted under the 1800 law with township-based polling locations.

The election, scheduled for October 12, 1802, generated vigorous campaigning throughout the Ohio Territory. "Politicks beg[a]n to run high" and voters were "glutted with hand-bills and long tavern harangues." The newspapers, particularly the Western Spy in Cincinnati and the Scioto Gazette in Chillicothe, provided additional forums for campaign statements and political discussions. Candidates and commentators tried to

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7See for example, Cincinnati Western Spy, 24 July 1802.

8Charles Willing Byrd to Nathaniel Massie, 7 June 1802, in Massie, Massie, 209-10.

9Worthington to Massie, 26 May 1802 in Massie, Massie, 207 and Massie to Worthington, 1 October 1802 in Smith, St. Clair Papers, 2: 591.
persuade voters of the importance of the election. They were facing their “most momentous crisis.”

“Never ha[d] an event of equal importance taken place in the North-Western territory.” They would be “exercis[ing] a duty the most important that can occur within the narrow limits of human existence.” The election would decide whether they and their “posterity may ever after be either happy or miserable.” An “old farmer” wrote “particularly to [the] young men,” urging them not to be indifferent and “to hold fast the republican principles which your noble ancestors purchased for you at the risk of life and limb, and [which] a number of them sealed . . . with their blood.”

They must elect “men of talent, of character and of republican principles,” men of “integrity and wisdom.” The wrong choice of a candidate would not only “strip” them of their natural rights but also “millions not yet born” who would “curse [them], the forefathers, for so imprudent a choice.” With so much at stake it was essential that the candidates “deal openly’ with them and they hoped that “none will be so base to creep into the important trust under disguise.” Voters wanted “an opportunity to know [whether the candidates’] views, their interests and political sentiments are congenial.”

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10“Yellow Jacket,” *Cincinnati Western Spy*, 18 September 1802. Candidates Edward Tiffin, Michael Baldwin, and James Crawford also referred to the election as a “crisis.” *Chillicothe Scioto Gazette*, 28 August 1802, 4 September 1802.


12“A Farmer,” *Cincinnati Western Spy*, 24 July 1802; New Market Township Address, *Cincinnati Western Spy*, 21 August 1802.

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They requested "a free interchange of opinions" to enable "the people [to] have positive assurances of the [candidates'] opinion[s]" on the "important subjects."\(^{13}\)

"Hot Times About Slavery"

Slavery was one of the "important" subjects, that generated "hot times."\(^{14}\) The newspapers filled with columns written by subscribers and candidates' statements on the question. Slavery became an important campaign issue for two reasons. First, some residents were genuinely concerned that there would be an attempt to permit "limited" slavery in the new state--slavery would be legal in Ohio but slaves would become free at a certain age. Second, some Federalists and candidates tried to turn the slavery issue to their advantage. The Federalists claimed that the Republicans, particularly those in the Virginia Military District, intended to authorize slavery. St. Clair led the attack. Writing as "An Old Inhabitant of Hamilton County," he challenged the Republicans' commitment to republican principles, "[T]here is not a single man in the county of Hamilton that is not a republican both in principle and practice, nor in the territory, except perhaps a few who wished to introduce negro slavery among us, and those living chiefly in the counties of Ross and Adams." He warned the voters that "any man willing to entail slavery upon part of God's creation" would "as readily enslave his neighbors as the poor black that has

\(^{13}\)New Market Township Address, *Cincinnati Western Spy*, 21 August 1802; "A Farmer," *Cincinnati Western Spy*, 24 July 1802; "To the Electors of Ross County," *Chillicothe Scioto Gazette*, 28 August 1802.


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been torn from his country and friends.” The Republican leaders wanted “slaves and offices to live upon without work[ing] themselves.” In Washington County, Federalists charged the Republicans “want[ed] such a system adopted.” Likewise, the leading Republican candidate in Jefferson county complained that the Federalists “represented me as a friend to slavery.”

Republican candidates in Ross county responded. For Tiffin, “[t]he introduction of slavery, was it practicable, I should view as the greatest national curse we could entail upon our country.” James Dunlap echoed Tiffin in almost identical words. Massie felt that “the introduction of slavery would ultimately prove injurious to our country.” “[A]lthough it might at present, and for some time hence, contribute to improve it,” he continued, “yet it would operate as a temporary convenience for a permanent evil—I am clearly of the opinion that it ought not to be admitted in any shape whatever.” Worthington reminded the voters that “I was decidedly opposed to slavery

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16They had been asked to describe their positions on slavery and three other issues, statehood, the Jefferson administration, and Congress’ propositions for statehood, in a “Farmers hand-bill” signed by seven citizens, Duncan McArthur, William Keran, William Robinson, David Stockton, William Rodgers, John Crouse, and James Dean. They distributed their handbill throughout the county and had it published in the newspaper. Chillicothe Scioto Gazette, 28 August 1802.

17Chillicothe Scioto Gazette, 28 September 1802.
long before I removed to the territory.” Indeed, “[t]he prohibition of slavery in the territory was one cause of my removal to it.”

Candidates combined humane and economic grounds for opposing slavery with dire warnings of the consequences for white Ohioans. It was “an undeniable fact that all men should be free—a right that the Supreme Being gave every species of men,” James Crawford said. Ohioans should “contemplate the awful consequences of slavery in the southern states—insurrections, murders, house burnings.” Besides, if they admitted slavery “what will become of the poor farmers? Their produce will bear no price, their encouragements will cease, and in all probability they will become an easy prey for the rich and avaricious part of the community.”

Michael Baldwin echoed these sentiments. “There can be nothing more repugnant to the feelings of a man not hardened in iniquity,” Baldwin wrote, “than the idea of a man depriving his fellow of his liberty, and placing him by force and violence into an abject state of slavery and misery.” He too warned of the consequences for whites. If they admitted slavery, “our present equal distribution of property would be destroyed by the accumulation of large estates. A few such individuals would amass large fortunes, at the expense of their fellow citizens, for the greater part of the slaves would be in the possession of the opulent. Labor and industry, the very life and support of every country, would be brought into contempt, and our citizens degenerate into idleness, luxury and

18*Chillicothe Scioto Gazette*, 28 September 1802.

19*Chillicothe Scioto Gazette*, 4 September 1802.
dissipation.” Worst of all “whenever the slaves should become numerous, we should be in continual danger of having our throats cut.”

Federalists were not the only ones to accuse the Virginians of supporting slavery. Elias Langham, an announced Republican candidate in Ross county, suggested that Worthington was not really opposed to slavery. Langham was irritated that Worthington, Baldwin, and Tiffin had been able to place their candidate statements in the same issue in which a hand-bill prepared by six residents requesting such statements had been printed in the Scioto Gazette. He was convinced it had been done intentionally to prevent other candidates from submitting their statements before a proposed convention to elect delegates was scheduled to take place. “No other candidate can now give you his sentiments before the time appointed for your meeting! [S]o, you see the proposed meeting timed!!,” he complained. He noted his own opposition to slavery and offered as evidence a bill he had submitted as a member of the territorial legislature that would have banned slavery and invalidated labor contracts made by African-Americans out of the territory. Langham included the roll call vote on the bill to show that he and only one other legislator had voted for it. Worthington had been among those who had voted nay.

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20Chillicothe Scioto Gazette, 28 August 1802.

21The bill stated: “That no species of slavery shall be admitted in this territory under any color or qualification whatever, nor shall any contract made without this territory, with any black or mulatto person be binding on such black or mulatto person herein.” Chillicothe Scioto Gazette, 4 September 1802.

22Langham also questioned Worthington’s dedication to the Jefferson administration by including another vote in the legislature involving a resolution complimenting
Reaction to Langham came quickly. The next issues of the *Scioto Gazette* carried several columns attacking him, one titled “By their deeds ye shall know them.” According to one writer, Langham’s “sneaking, canting, whining, whisky drinking and pipe smoking conduct artfully conceal[ed] the history of his red Tory coat.” He alerted the readers to the fact that Langham had had the “audacity and unparalleled effrontery to make a motion in the house of representatives to reject all petitions on the subject of a state government—to turn a deaf ear to the petitions of the people.” Another charged that Langham had “dealt in *lies and detraction,*” and explained the context in which the anti-slavery bill had been discussed in the legislature. He informed the readers that the matter arose when some Virginians requested the legislators pass a bill permitting them to bring their slaves with them into the territory. Langham chaired the committee to which the petitions were referred and he subsequently proposed a bill that would have permitted “limited” slavery. The motion to amend this proposal, the one that Langham had cited in his candidate statement, had been defeated, according to the writer, because the Northwest Ordinance already prohibited slavery, so the bill “was nugatory,” but also because it would invalidate the contracts of free African-Americans if they had been President John Adams for his years of service to the country at the expiration of his presidential term. Langham and four others had voted against the resolution; Worthington voted with the majority in passing the resolution. *Chillicothe Scioto Gazette,* 4 September 1802.

23The writer referred to an actual coat Langham had owned and claimed that Langham had deserted the patriot cause during the Revolution when the situation looked bleak and had returned when the situation improved.

24“*That no person shall be held to labor or service for a longer term than until he or she shall arrive to the age of 35 years.*”
contracted out of the territory. When the legislators voted on Langham’s limited slavery proposal, all except Langham voted to strike out the language. The writer concluded confidently that he “ha[d] done what [he] had promised;” he had shown that Langham’s statement was “as false as perversity could make it.”

While some Federalists sought to taint Republicans with slavery, others, in Ross County, sought to win votes by promising to introduce it. John S. Wills was “in favor of its admission, and if elected, will use every effort to introduce it.” The benefit to Ohio outweighed moral concerns. “[P]olitical good and moral good do not always go hand and hand,” he argued. “[I]f wealth is brought to our country -- if our resources of revenue are increased, is this not a political good?” Wills also justified slavery not only as a political good but also on humanitarian grounds: “If it is humanity to give alms to a beggar, is it not equally so to take negroes from hunger and nakedness to a place plenty both of food and raiment?” he asked. Finally, he challenged the conventional view that slavery was a political evil. “[T]he civilized world for ages have been in this practice, from which there seems to arise at least a presumption, that such customs are not only eminently useful, but founded in political justice.”

Another candidate, John Macan urged that “it would be much more consistent with the rights and privileges of a free people” to “leave it in the power of the people, by

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25 *Chillicothe Scioto Gazette*, 11 September 1802. Langham wrote again making new accusations against Worthington which prompted another round of articles excoriating Langham. See *Chillicothe Scioto Gazette*, 11 September 1802 and 18 September 1802.

26 *Chillicothe Scioto Gazette*, 11 September 1802.
legislative act, to admit or prohibit” slavery, rather than permanently prohibiting it in the constitution. In Macan’s opinion it was “both foolish and absurd to throw away and divest ourselves of a privilege, which almost every state in the union holds as a just right.” He was particularly concerned that a constitutional prohibition would “gag the mouths of themselves and their posterity, in a matter which the people of several other states, similar to us in situation, think so important.” In effect, Macan argued, “we will not then be upon an equality with the other states, and scarcely Republican.” To claim that future generations would not be able to determine their own best interests “would be arrogance and presumption.”

Repudiation of Macan and Wills came as swiftly as that of Langham. In a scathing attack, a writer denounced them as “lost to all sensibility, complete political reprobates.” Macan and Wills were “noted feds, and negro slavery is the bait by which they mean to catch republicans.” He urged Republicans not to fall for their trap. “Never, never stain, never contaminate the veins of republican principles with such black, corrupted stuff.” If they voted for them, Macan and Wills would “laugh at your instability,” they would “mock your principles,” they only wanted to “divide your councils and destroy your influence.” Republicans must “be firm, be united, stand to the pillars of freedom,” and “resist the heralds of slavery.” He also warned Republicans that Ohioans had “enemies enough on our frontiers. If they introduced slavery they would

27 *Chillicothe Scioto Gazette*, 11 September 1802.
“create another in our bosoms.” Undoubtedly, the slaves would “make a common cause with the Indians, to our great annoyance.”28

More than mere political intrigue inspired some residents to raise the issue of slavery. Both the Cincinnati Western Spy and the Chillicothe Scioto Gazette, the main territorial newspapers, printed a number of articles and comments by subscribers discussing the issue. One writer, sounded the two main themes of the anti-slavery argument: “1st. That slavery is not founded in right. 2d. That it will be bad policy to admit slaves into the state when formed.” As to the first argument, “all men have by the law of nature an equal right to life, liberty, and the produce of their own labour,” one writer urged. For another, “slavery was contrary to the rights of man.” For others it was an “undeniable fact that all men should be free--a right which the Supreme Being gave every species of men.”29

The anti-slavery writers spent most of their time rebutting arguments that slavery would benefit Ohio and convincing their readers that it would hurt instead. Proponents of limited slavery had advanced two main arguments in its favor: it would populate the territory and “gradual emancipation . . . will be doing a kindness to the slave.” To those who argued that slavery would bring “men of wealth and talents” to Ohio, they asked “what reason have we to believe that men of wealth and talent will not come and reside among us at all events?” Others thought that “[i]f a country is to be populated at the

28"Yellow Jacket," Chillicothe Scioto Gazette, 18 September 1802.

29Chillicothe Scioto Gazette, 21 August 1802; Cincinnati Western Spy, 24 July 1802; Chillicothe Scioto Gazette, 4 September 1802.
expense of blood, the less it is so populated the better.” Besides, slave owners
“consider[ed] it disgraceful to sweat in the field of labour.” Ohio should want to “attract
the most valuable classes of citizens . . . the real cultivators of the soil.” Slavery would
“discourage the poor laboring white citizens and would create greater distinctions in
society and destroy that social connection and sympathy which ought to exist in every
well regulated society. If, instead, Ohio prohibited slavery, “thousands of industrious
citizens” would come.30

To those who argued that gradual emancipation was a kindness, they should
promote it in Virginia and Kentucky where slavery already existed. It would be doing the
slaves “more kindness by letting them alone,” for “[t]heir growing numbers in the
southern states must e’er long produce their liberty, either by revolt, or law.” Further,
slaveowners could not be trusted to remain content with limited slavery. If Ohio
permitted it, “slaveholders [would] settle among us who will use every influence and
stretch every nerve to do away the spirit of such restrictions, and e’er long will
accomplish their purpose.”31

To these arguments they added one last appeal—to fear. “Can we tell whose blood
is to pay the price” for slavery, they queried. Clearly, slave owners lived “in constant
dread of their lives,” and slaves, quite justifiably would “want the blood of their tyrants.”
Other writers agreed. “[D]aily experience proves how much those states in which

30 Cincinnati Western Spy, 31 July 1802; Chillicothe Scioto Gazette, 21 August 1802;
Cincinnati Western Spy, 7 August 1802.

31 Cincinnati Western Spy, 31 July 1802.
slavery is sanctioned, have to fear from the enemies in their bosom.” He reminded Ohioans that “[w]e can of late rarely see a southern newspaper, in which it is not stated that an insurrection of the negroes is expected, or has taken place.” Another author reiterated the notion that slavery would place “enemies” in Ohio’s “bosom:” “Indians on our frontiers—Negroes in our bosoms are now become our enemies—France, England and Spain join the coalition and then let us weep for the effusion of human blood.”

They urged voters to “make choice of men that will stand opposed to the introduction of slavery.” They warned their fellow citizens to beware “of false sophistical appearances.” “[E]very professing Republican [must] be sifted on this important article.” Having done so, voters should “discard the man from your confidence, however, popular he is, who would take any step to introduce slavery among us.” However, “benevolent their designs,” such candidates were “unfit to be entrusted with the important business of forming a constitution for a free State.” Let it be known that “SLAVERY, shall not be found on this bank of the Ohio.”

Almost none of the commentators questioned that Ohio had the right to choose whether to come in as a free or as a slave state. But a few disagreed. Frank Stubblefield insisted that the Northwest Ordinance’s ban on slavery foreclosed the issue. He argued that “the obligation [they were] under by compact, of prohibiting slavery and involuntary

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32 *Cincinnati Western Spy* 31 July 1802; *Chillicothe Scioto Gazette* 18 September 1802.

servitude . . . was binding upon the northwestern and Indiana territories and cannot be altered but by common consent.” According to Stubblefield this meant that Congress and “the people of all the states which may be formed in the territory” would have to agree to alter the compact. He believed it “continue[d] to be equally binding on us when we become a state.” When the convention met, the delegates should “not uselessly spend time in discussing the supposed expediency of a limited slavery . . . the only question ought to be, [w]hat are the aptest words to be comprised in an article of the constitution for perpetuating that [anti-slavery] stipulation.”

Although the Ross county Republican leaders felt wronged by the Federalists’ charges that they supported slavery, and thought it an attempt to “create dissension” among them, clearly some Republicans did support slavery. Duncan McArthur acknowledged that the Federalist candidates in Ross county who claimed to advocate slavery did so “to deceive those republicans who wish for slavery.” In Cincinnati, the “Friends of Humanity,” worried that the Republican Societies in the territory had not given the subject “serious attention.” They feared that “a number of those whom we call republican, and who might be held up to our view as candidates to the convention, are such as wish, if possible, to introduce slavery among us.” One commentator thought it clear that there were “certain members of congress” who wished to “introduce slavery among us,” but if Ohioans would create a constitution “in conformity with the article of the compact,” it would “blast the illiberal expectations of the slave scourging junto in

34Stubblefield wrote a series of columns on issues relating to the convention, one of which dealt with slavery. Cincinnati Western Spy, 7 August 1802.
congress.” The extensive discussion, well beyond Federalist-induced allegations, indicates that citizens, dedicated to Ohio coming in as a free state, were not positive that it would. They clearly thought it was an open question and worked hard to convince voters that slavery, humanitarian issues aside, was not in Ohio’s best interests. Would they succeed? The Northwest Ordinance had envisioned a north free of slavery at a time when every state except Massachusetts was a slave state. Would the hope of freedom be borne out? The future of the whole experiment depended on Ohio. If it came in as a slave state, in all likelihood so would the rest of the Northwest territory.

Nominating Conventions

Ross county Republicans worried that while many speakers and writers on the campaign issues were “no doubt actuated by the purest of motives, others with equal pretensions to zeal are assiduously engaged in dividing the minds of the people, and stirring up the spirit of party amongst them, that they may become easy prey to their designs.” To meet the challenge, seven Republicans proposed that they “unite on some plan.” Otherwise, “persons may be elected to the convention with whom two-thirds of the people of the county may be dissatisfied.” If they adopted “no system,” they might place themselves “in a situation more disagreeable and dangerous, than that from which we are now likely to disengage ourselves.” If so, they would have only themselves to blame.

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35 When Congress passed the Northwest Ordinance in 1787, only Massachusetts, by judicial interpretation of the state constitution, had abolished slavery. Vermont had written a constitution in 1777 that prohibited slavery but had not yet been admitted as a state. Arthur Zilversmit, The First Emancipation: The Abolition of Slavery in the North (Chicago: University of Chicago Press, 1967), 113-116.
blame. "Shall we then go on as with our eyes blindfolded," they asked?" They proposed that Republicans meet in their respective election districts and elect two representatives to a county-wide convention. Those delegates would decide which candidates' "principles, in their opinions, will be supported, and be congenial to the wish of a majority of the citizens of Ross County at the approaching election." Although the convention never took place, and despite their fears, there were so few Federalists in Ross county that there was little risk that any could be elected. Nonetheless, the Federalists were not willing to concede Ross county to the Republicans. An amazed, perhaps amused, Worthington told Massie that he would "be astonished to find the pains taken by the few federalists in this place to send federal representatives to the convention." 

In contrast, Hamilton county Republicans utilized a nominating convention very effectively. There Republican Societies played a pivotal role in the election. Cincinnati Republicans were divided. Some leaders had joined Federalists to support the Division Act, because it would make Cincinnati the capital of one of the divisions and eventually the capital of a state. As it became apparent by 1802 that statehood was inevitable, they abandoned their alliance with the Federalists. The Cincinnatians realized that they were out of step with Republicans in the county's interior, who strongly supported immediate statehood. But the damage had been done for some potential Republican candidates. In August, seventeen of the Hamilton County Republican Societies sent delegates to a

36 *Chillicothe Scioto Gazette*, 28 August 1802.

nominating convention that produced a slate of ten candidates, the “Big Hill” ticket. Notably absent from the ticket were William McMillan and John Smith, two Republican leaders associated with the Marietta alliance.\(^\text{38}\)

Not everyone welcomed the nominating process. St. Clair, in his “Old Inhabitant of Hamilton” persona, blasted the Republican societies as “a kind of court of Inquisition” because persons could join only if voted in by the membership. He questioned their motives. The societies claimed, according to St. Clair, that “their design is to keep persons who are not republicans out of the [constitutional] convention, but it looks like a formed design to get themselves in.” He charged that the societies had been manipulated by the Chillicothe leaders “for the very purpose of sewing dissension among us that their schemes might be the easier effected.” He urged the voters to question whether the Big Hill candidates “favored the views of the Chillicothe people” and reminded them that “the interests of the people of Chillicothe and those of Hamilton county are not the same in every respect, indeed in some cases, they are opposed to each other.” He warned that Cincinnati had to send men “that can meet them [the Chillicothe leaders] on any ground. If they “rather send those that will play their game, we had better leave it to them entirely, and save the trouble and expense.”\(^\text{39}\)

Others argued that there were “a number of characters, equal if not superior to the greater part of those offered in the [Big Hill] ticket.” Since it was “probable that but few

\(^{\text{38}}\)Cincinnati Western Spy, 13 August 1802.

\(^{\text{39}}\)Cincinnati Western Spy, 28 August 1802.
of them will succeed or meet public approbation,” they needed another nominating
convention. A member of the Cincinnati Republican society responded that “the ticket
was formed by delegates from 17 different Republican Societies throughout the county,”
and he felt “justified in asserting, that it will be supported by a very large majority of
Republicans.” He warned Republicans “that if every unanimity was necessary to
promote the interests of the territory, it is indispensably so at this present awful juncture.”
He strongly encouraged support for the official ticket. Nonetheless, an alternative
nominating convention met and endorsed its own ticket, including Federalists as well as
Republicans such as William McMillan and John Smith. Subscribers sent in other
tickets, as well, to be published in the Cincinnati newspaper.

Republicans in Belmont County sent three representatives from nine local
committees to a county convention to nominate their candidates. The Federalists held a
convention in Washington County to nominate theirs. Although the Federalists
significantly outnumbered Republicans in Washington County and could be expected to
send their candidates to the convention, the campaign generated lively debate.
According to Federalist Ephraim Cutler, Washington county became a “boisterous sea of
revolutionary politics.” In Adams township, a Republican reported “hot times about
slavery and republicanism,” and that “[t]he Party is weak here, but d___d saucy.”

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40Cincinnati Western Spy, 21 August 1802; 28 August 1802..
41Cincinnati Western Spy, 13 August, 21 August, 28 August 1802.
42Ephraim Cutler to Manasseh Cutler, 31 August 1802, Cutler papers; Jehial Gregory
to Return Meigs, 8 August 1802, in Cutler, Cutler, 66.
Aggressive campaigning, the importance of the issues, the broadened suffrage, and increased convenience of polling locations generated a large voter turn-out. In Hamilton County it was more than six times larger than what it had been in the previous assembly election. Elsewhere voting doubled or tripled compared to earlier territorial elections.\(^43\)

The Republicans won a tremendous victory. Of the ten delegates elected from Hamilton county, nine were Republicans. Eight of them had been nominated on the "Big Hill" ticket. A ninth, John Smith, won despite his absence from the ticket. Voters in Clermont county, which had recently been carved out of Hamilton county, elected two Republicans. Adams, Fairfield, and Trumbull counties also elected Republicans. Jefferson county split its delegation with two Federalists and three Republicans. Not surprisingly, the Republicans swept the Virginia Military District counties of Ross and Adams with Nathaniel Massie, Thomas Worthington, Edward Tiffin, James Grubb, and Michael Baldwin winning in Ross county. Also, as expected, the Federalists prevailed in Washington County with the election of Rufus Putnam, Benjamin Ives Gilman, Ephraim Cutler, and John McIntire. A pleased Thomas Worthington wrote Jefferson that "the republican ticket has succeed [sic] beyond my most sanguine expectations." He happily reported that 26 of the 35 delegates were Republicans, seven were Federalists, and two were "doubtful."\(^44\)


\(^{44}\) Carter, Territorial Papers, 3: 254.
Of the thirty-five delegates, one-half were under the age of 40: Michael Baldwin was the youngest at age 26, Thomas Worthington was 29 years old, and Edward Tiffin was 36 years old. Rufus Putnam was one of the oldest at the age of 64.  

Five delegates were prominent church leaders. Tiffin was an ordained Methodist deacon and one of the pioneers of Methodism in Chillicothe. John Smith, a lay preacher from Pennsylvania, was the first pastor of the Baptist church at Columbia. Philip Gatch was a Methodist clergyman in Clermont County. John W. Browne, an independent minister, was particularly active in the Miami Valley preaching at various houses in the interior settlements and forming Congregational churches. Paul Updegraff, of Jefferson County, was the leader in establishing the Quaker Meeting at Mt. Pleasant in 1800.  

Many would be considered land speculators. Massie and Worthington were large speculators in the Virginia Military District. Putnam, Cutler, Gilman were speculators in the Ohio Company’s Tract. John McIntyre, the son-in-law of Ebenezer Zane the founder of Zanesville, owned a large amount of land in the Ohio Company tract as well. Bazaleel Wells, the founder of Steubenville, had large holdings in Jefferson county.

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45 Utter, 9; Charles Rice, a collector of autographs of famous Ohioans, compiled biographical information about the constitutional convention delegates that is contained in the Charles Rice Papers.

46 Downs, 99; Utter, 10.
Ten delegates were Virginians.  Five delegates came to Ohio from Maryland.  Six other delegates came to Ohio from New England states.  Seven delegates came to the Ohio frontier from Pennsylvania.

Ten had training in the law.  Two were physicians.  One had founded a classical school near Cincinnati and another was a schoolmaster also.  One delegate, Benjamin Gilman, was the leading merchant of Marietta, but also promoted ship building. His ships sailed from the Muskingum river to Europe.

Despite the Republicans grievances against St. Clair, he had appointed them to numerous local offices. All of the delegates had previously held some local office such as justice of the peace, clerk or judge of a county court, or officer in the militia. Many of

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48 James Caldwell, Philip Gatch, James Sargent, John Milligan, and Bazaleel Wells.

49 Michael Baldwin, David Abbot, Samuel Huntington, Ephraim Cutler, Benjamin Ives Gilman, and Rufus Putnam.

50 Emanuel Carpenter, Jeremiah Morrow, John Paul, John Reily, John Wilson, Jr., Rudolph Bair, and James Grubb.

51 Baldwin, Samuel Huntington, Charles Willing Byrd, Frances Dunlavy, Thomas Kirker, Henry Abrams, Emanuel Carpenter, John Kitchel, John Smith, and Benjamin Ives Gilman

52 William Goforth and Tiffin

53 Francis Dunlavy and Israel Donalson.
the delegates had held territorial office. Eleven had been elected legislators, one had been
the appointed clerk of the Legislature.\textsuperscript{54}

II

The Convention

The delegates convened at the court house in Chillicothe on November 1, 1802
and completed their work on November twenty-ninth. They immediately elected a
President and Secretary pro tempore and created two committees, a standing committee on
Privileges and Elections that was charged with validating the delegates’ credentials and a
committee to prepare and report “rules for the regulation and government of the
convention. On the second day, the delegates elected Edward Tiffin president.\textsuperscript{55} Tiffin,
addressing the delegates, assured them of his “utmost impartiality” in enforcing the
conventions rules of procedures, and expressed his confidence that his duties as chair
would be “pleasing and easy” since the characters of the delegates left “no doubt but that
the utmost propriety and decorum will be observed.”\textsuperscript{56}

\textsuperscript{54}Cutler (2nd Terr.); Darlington (1st and 2nd Terr.); Dunlavy (2nd Terr.); Goforth (1st Terr.); Massie (1st and 2nd terr.); Milligan,(2nd Terr.); Morrow (2nd Terr.); Putnam (2nd Terr.); John Smith (1st and 2nd Terr.); Tiffin (1st and 2nd Terr.); Worthington (1st and 2nd Terr.); Reily had been the clerk. Eliot Howard Gilkey, \textit{The Ohio Hundred Year Book} (Columbus: Fred J. Heer, State Printer, 1901) being a revised and enlarged edition of The Ohio Statesmen and Hundred Year Book by W. A. Taylor, 1892; the names of the members of the first legislature are on pp. 131-132 and of the second legislature on pp. 142-43.

\textsuperscript{55}Tiffin had been speaker of the House in each of the three sessions of the Territorial Assembly.

\textsuperscript{56}The journal of the constitutional convention is contained in \textit{Ohio Archaeological and Historical Publications} 5 (1897): 80-132, 83. Hereafter cited as Journal.
On the third day, the delegates passed their rules for the convention. They gave Tiffin the right to appoint the members of committees, subject to addition or amendment by motion of a delegate. They required that each provision of the constitution receive three general readings. Two thirds of the delegates comprised a quorum, a majority of those delegates voting on an issue prevailed, and no member could vote on a question if he had not been present when it was before the convention.\(^57\)

The delegates, perhaps not fully sharing Tiffin's confidence that they would act with the "utmost propriety and decorum," included several rules to assure that they would. They agreed that a member should rise to speak and address the President respectfully.\(^58\) While the President was putting a question to the convention or addressing the convention, no one should walk out or cross the room; when a member spoke, no one should engage in private conversations nor should a member pass between the speaker and the chair.\(^59\) To assure the presence of a quorum, the delegates also agreed that the President, with seven members, could send for absent delegates and order their censure or discharge.\(^60\) Further, an officer could be appointed to take the absent delegate into custody and bring him to the convention; the officer to receive one dollar per day to be paid by the "delinquent."\(^61\)


\(^58\)Rule 7, *Journal*, 85.

\(^59\)Rule 11, ibid.

\(^60\)Rule 6, ibid.

\(^61\)Rule 22, ibid., 86.
On the third day, St. Clair's addressed the delegates. Animosity toward St. Clair was so strong that many opposed allowing him that courtesy. He had irritated the Republican delegates the first day of the convention by showing up without invitation, "1st Consul like," and telling them to turn in their election certificates to his secretary for registration, which they refused to do. His efforts to organize the convention having been repudiated, he requested the right to address them. The delegates voted to permit him to speak by a vote of 19 to 14, but with the understanding that he did so as a private citizen, not as Governor of the Northwest Territory. Only Republicans voted against him but others, including Nathaniel Massie, voted to allow him to speak. Massie, one of St. Clair's strongest opponents, predicted, "[G]ive him rope and he will hang himself."

62Ibid., 87; Sears, Thomas Worthington, 96.


64John Smith to Jefferson, 9 November 1802, partially reprinted in Sears, Thomas Worthington, 96.

65Journal, 87. Voting against him: Abrams, Baldwin, Carpenter, Darlington, Donaldson, Gatch, Goforth, Grubb, Kitchel, Kirker, Milligan, Wilson and Worthington. Massie was unable to persuade the other Virginia Military District delegates to let St. Clair speak.

66Letter from John Smith to Nathaniel Massie, 22 January 1803, reprinted in Massie, Massie, 222-23.
And he did. He started by explaining his efforts to organize the convention.

Since Congress “had not prescribed the mode” in which the convention should meet, he had come “to clear that difficulty; but you got over it without my assistance.” He was astonished at how far the territory had come in the fourteen years of his governorship from a “wilderness” to the present time at which Ohio would take its place in the nation. He reminded them that a constitution should secure not only political liberty, but also be the foundation of the people’s “welfare and respectability.” He described his feelings as that of a father who has watched over the education of his son and now watches anxiously for the son to step into a world of dangers, where “the first [step] would probably be decisive of his future.” As their father he had tried to avert “the evils that hung over them.” He chided them that it was “too much the fashion of the times to complain of oppression when none is felt.” He argued that their territorial government, while not as democratic as the rest of the United States had been as much as it could be “consistent with a colonial state.” He prided himself on having administered the laws faithfully and “by gentle means the spirit of obedience to them” and had endeavored to instill “a love of order without which civil society can not exist.” He warned them that “party rage is stalking with destructive strides over the whole continent.” Such a “baneful spirit [had] destroyed all the ancient republics” and the United states seemed headed in the same direction.67

67Smith, St. Clair Papers 2: 592-93.
St. Clair proceeded to “offer some advice.” Ignore the Enabling Act, he urged. It was unconstitutional as “an interference with the internal affairs of the country, which [Congress] had neither the power nor the right to make.” “[T]he act is not binding on the people, and is in truth a nullity,” he reiterated. “For all internal affairs we have a complete legislature of our own, and in them are no more bound by an act of Congress” than from France. St. Clair excoriated Congress for eliminating Wayne County from the area to constitute the new state; those residents’ rights had been “bartered away like sheep in a market.” Finally, he criticized Congress for adding four propositions to the Enabling Act which the delegates were asked to approve. According to St. Clair, Congress offered nothing but demanded much. Congress’ offer to provide a section from each township for the use of schools had already been granted in the Northwest Ordinance. By settling the land “the contract ha[d] been complied with.” Congress’ offer of a portion of the proceeds from land sales to be used for roads was also “a mere illusion” and coupled with conditions . . . that insult us.”

St. Clair concluded his address by urging the delegates to repudiate Congress’ proposals, form their own government for the entire Territory, conduct a census, and demand admission as a state free from any conditions. “It would be incomparable better that we should be deprived of a share in the national councils for a session or two, even for years, than that we should be degraded to an unequal share in

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68One condition about which St. Clair complained was that Ohio would have a single representative in the House of Representatives. Although St. Clair thought this unfair, it was based on the 1800 census which was the basis for apportionment for all of the states. Congress also proposed that the new state levy no taxes on federal lands for five years.
them for nine years [until the next census]... If we submit to the degradation, we should
be trodden upon, and what is worse, we should deserve to be trodden upon.”

St. Clair must have known his speech would not receive a favorable reception. He
blamed Republicans for the baneful party spirit. A Republican-controlled Congress had
passed the Enabling Act at the urging of Ohio's Republicans. And it was a Republican
dominated convention to whom he spoke. Massie's suggestion that St. Clair would
“hang himself” with his own words proved correct. Worthington forwarded the speech to Jefferson on November eighth, to apprise him of St. Clair's “wishes and opinions in
this business.” Jefferson's Secretary of the Treasury, Albert Gallatin, also sent a letter
to the president, calling the speech “indecent & outrageous.” Before the delegates
finished writing Ohio's constitution, Jefferson fired St. Clair. Informing St. Clair of his
removal, Secretary of State James Madison wrote St. Clair that the president thought his
speech displayed "an intemperance and indecorum of language toward the Legislature of
the United States, and a disorganizing spirit and tendency of very evil example." To
add insult to injury, instead of sending the letter directly to St. Clair, Madison gave the


70St. Clair's speech was not printed in the Convention Journal. However, St. Clair himself ordered a copy printed.


72Gallatin to Jefferson, 20 November 1802, ibid., 3: 76.

73Madison to St. Clair, 22 November 1802, in Smith, *St. Clair Papers*, 1: 245.
letter to Charles Willing Byrd, the Secretary of the Territory, St. Clair's political enemy and his successor as Governor, to deliver to St. Clair.\textsuperscript{74}

Pattern of the Convention

The delegates immediately rejected St. Clair's advice. They voted on the threshold question contained in the Enabling Act: "\textit{Resolved}, that it is the opinion of the convention that it is expedient, at this time, to form a constitution and state government."\textsuperscript{75} Ephraim Cutler cast the sole negative vote. In his memoirs, published in 1890 by his daughter, Cutler claimed that the other Marietta Federalists, Gilman, Putnam, and Wells, told him prior to the vote that they had decided that it would be prudent to vote yes. Cutler wrote that he could not in good conscience vote for statehood at that time. He believed his colleagues voted yes so they could exert greater influence in the convention proceedings.\textsuperscript{76} He wrote proudly to his father:

You have no doubt seen by the papers that the vote for accepting the law of Congress, and proceeding immediately to form a state government, passed by a majority of thirty-two to one; this one, sir, was simply \textit{me}; and I do think it a favorable circumstance, to have had the opportunity to place my feeble testimony against so wicked and tyrannical a proceeding--although I stand alone.\textsuperscript{77}

\textsuperscript{74}Ibid.

\textsuperscript{75}\textit{Journal}, 88. In the Enabling Act, Congress required the convention to vote on statehood before going on to write a constitution.

\textsuperscript{76}Cutler, \textit{Ephraim Cutler}, 68.

\textsuperscript{77}Ibid.
The delegates proceeded to the substantive business of the convention. Over the course of the first two weeks they created committees to draft particular Articles or other provisions of the Constitution. After the initial housekeeping committees, they created committees primarily in the sequence that the Articles would appear in the Constitution. The first committee, created November second, was charged with drafting both the Preamble and Article I. Pride of place in the Constitution went to the Legislature. Tiffin emphasized the importance of this committee by appointing a delegate from each county. Members by motion added six members, creating the Committee of Fifteen. With fifteen members, almost one-half of the delegates helped frame the initial report.

Two days later, he appointed a committee to draft the Bill of Rights and a Schedule to implement the Constitution, again followed two days later by the committee to draft Article II, the Executive Authority. On November ninth he established the committees to draft Article III on the Judiciary. Three days later he appointed members to

78 The first committee they created was the Standing Committee on Privileges and Election which was charged with validating the election credentials of the delegates. The second committee was the Rules committee. They also quickly created a committee to provide fuel and stationery and to solicit bids for the printing of 700 copies of the Convention Journal (although the delegates reserved the right to vote for the printer to whom the contract would be awarded) as well as a committee to revise the Journal before it went to press.

79 Byrd (Hamilton), Gatch (Clermont), Darlinton (Adams), Massie (Ross), Carpenter (Fairfield), Putnam (Washington), Milligan (Jefferson), Huntington (Trumbull), and Caldwell (Belmont).

80 Paul and Smith (Hamilton), Kirker (Adams), Worthington (Ross), Gilman (Washington) and Wells (Jefferson).

81 Tiffin appointed the same Committee of Fifteen assigned to draft Article I to the Committees on Articles II and III.
committees to draft Articles IV, V, and VI, for Electors, Militia, and Civil Officers respectively. He finished his appointments to committees on November twelfth with a committee for Article VII, to contain General Regulations and Provisions, and a committee to consider Congress' propositions contained in the Enabling Act.

The days of the convention fell into a pattern. Delegates split their time between committee meetings and sessions of the convention to debate the draft provisions reported by the committees. After a committee reported its proposed Article, the delegates, meeting as "the committee of the whole," read it for the first time, debated it, proposed amendments, and then laid the Article on the table, to receive a second reading on a subsequent day. The second reading in the committee of the whole proceeded in the same manner. In the final days, Articles were reported to the convention, no longer acting as a Committee of the Whole, read for the third time and came up for its final vote. Thus, on any given day, different Articles stood at various stages in the process.

Twenty-nine days later the delegates finished their work. Despite the vitriolic partisan campaign, the delegates voted on a straight party line basis only once. the Federalists made a motion to submit the constitution to a ratification election. The Republicans defeated the proposal.82

82Although the Federalists chided the Republicans for this, the Republicans' decision was based, most likely, on a concern that the Federalists would try to delay statehood.
Vision of Government

Would the New Market township farmers of Ross County be pleased with the delegates' handiwork? During the campaign, they had issued a widely circulated and reprinted hand-bill in which they had made their desires well known as to what they did not want in a constitution. “We do not want a constitution too favorable to grandeur, elegance and wealth . . . [w]e do not want a constitution to prepare for the way for undue advancement of one class of citizens above others . . . [w]e do not want a constitution to deprive any of the sons of liberty of their natural rights.” They had also made clear what they wanted. “[W]e want a constitution that will set the natural rights of the meanest African and the most abject beggar, upon an equal footing with those citizens of the greatest wealth and equipage . . . We want a constitution that will hold the rights of election free and sovereign in the hands of her citizens . . . We want a constitution that equally regards the life, the property, the liberty and happiness of every class of citizens, without favor, affection or partiality.”

Had the delegates enshrined their own vision into the new constitution? In his campaign address to the electors of Ross County during the convention delegate campaign, Michael Baldwin expressed his view that “the people ought to part with as little power as possible . . . that the legislative powers be vested in the immediate representatives of the people,” and the executive officer “should have no share in the

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83New Market Township Address, Cincinnati Western Spy, 21 August 1802. New Market Township was in Ross county. A committee of three signed the address. It was widely circulated and reprinted in the Cincinnati newspaper “by particular request.”
legislative power.” Further, he wanted “frequent elections; equal rights to all men; protection to the poor from the avarice and oppression of the rich— to the weak from the graft of the mighty.”

John W. Browne, a Republican delegate from Hamilton county, had “rejoice[d] in the prospect this country enjoys of forming a constitution which may assert and maintain the invaluable rights of the people in elections, and it is my opinion, that every resident citizen who pays taxes towards the support of government should vote for its various officers.” He believed that “the whole legislature and executive branches ought to be annually chosen by the people.” Local officials in the townships and counties “ought to be chosen by the people” with “certain state officers particularly the supreme judges, by joint ballot of the senate and house of representatives . . . In short, I am fully of the opinion, that every officer under government both civil and military, should as much as possible be filled by the public vote, and that only in such cases where their vote cannot be so properly taken, it should be otherwise.”

Had Baldwin and Browne succeeded? How would the New Market farmers view Ohio’s constitution? How would a young man living in the east view Ohio at the birth of its statehood? That young man could look to Ohio in 1803 and see a state full of promise and opportunity, both economic and political. A settler of modest means could buy land. The national government had millions of acres to sell and had settled, finally, on a land

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\(^{84}\) Chillicothe Scioto Gazette, 28 August 1802.

\(^{85}\) Cincinnati Western Spy, 2 October 1802.
policy that favored small farmers. He could buy a homestead with just a down payment, clear the land, raise crops, get them to market, and pay the government over time. Other economic opportunities abounded as Ohio’s population began to boom and towns expanded to serve the frontier economy.

And that young man could look at Ohio’s constitution and see political opportunity. After one year’s residency, he became fully vested in the polity—a full member of the community. He did not even have to own his land outright or have made his fortune. So long as he showed his commitment to his new home through residency and becoming liable to pay a state or county tax or even just by working on his local roads (and every able-bodied man was expected to do so), he could vote. He could elect his state representative and his state senator. He could be assured that they would look out for his and his neighbors’ interests or be quickly replaced, for they came up for reelection annually or every two years. If he had political aspirations himself he need only meet the age requirement to qualify to be a candidate. No property qualifications stood in his way. He could vote for the governor and feel confident that the governor

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86 The Harrison Act of 1800.


88 Article I, Sections 3 and 5.

89 Article I, Sections 4 and 7.
could not build up a corrupt and oppressive patronage system since the constitution gave
the governor little power.\textsuperscript{90} Although his elected legislators selected the state and county
judges,\textsuperscript{91} he could elect his local justice of the peace, who could handle the minor
criminal and civil disputes of daily life.\textsuperscript{92} He could elect all of his county and township
officials.\textsuperscript{93} He could even serve in the militia and elect his own officers.\textsuperscript{94}

A Bill of Rights was a monument to his "rights and liberties."\textsuperscript{95} It assured him that
he was free to worship God according to his own conscience.\textsuperscript{96} It protected him from
unwarranted searches and seizures, and a warrant could be issued only if based on
probable cause. His right to jury trial was "inviolate." If he was criminally prosecuted,
he had the right to know the charges against him, to receive bail in non-capital offenses,
to testify on his own behalf, to face witnesses testifying against him, to compel witnesses
to testify, and the right to a speedy trial. If convicted he had the right to receive a penalty
that was proportionate to his offense, since the "true design of all punishment [was] to
reform."\textsuperscript{97}

\textsuperscript{90}Article II.
\textsuperscript{91}Article III, Section 8.
\textsuperscript{92}Article III, Section 11.
\textsuperscript{93}Article VI, Sections 1 and 3.
\textsuperscript{94}Article V.
\textsuperscript{95}Article VIII, Section 1.
\textsuperscript{96}Article VIII, Section 3.
\textsuperscript{97}Article VIII, Sections 5, 8, 11, 12, 14.
It protected his right to speak, to assemble, and to petition the government. It protected the press and if prosecuted for statements made about a public official, he could offer truth in his defense. He had the right to bear arms. The Bill of Rights also protected his property, his right to rely on contracts, his access to the courts for a remedy for all injuries to either his property or his reputation, and his right to incorporate. If he fell on hard times, he could not be imprisoned for his debts once he offered his property to his creditors and the schools remained open to his children, no matter how poor he became. It protected his right to vote; the legislature could never pass a poll tax.

In 1835, young lawyer Salmon P. Chase, future United States Senator and Supreme Court Justice, extolled the statehood constitution’s virtues. Surely, Ohio’s constitution was, indeed, a bastion of liberty.

There was only one problem. To enjoy all of these rights, that young man needed to be white.

98 Article VII, Sections 6, 19.
99 Article VIII, Section 20.
100 Article VIII, Sections 4, 16, 7, 27.
101 Article VIII, Sections 15, 25.
102 Article VIII, Section 23.
103 Article IV, Section 1.
CHAPTER 3
A BASTION OF LIBERTY?: AFRICAN-AMERICANS' RIGHTS UNDER OHIO'S FIRST CONSTITUTION

It is not surprising that Ohio’s statehood constitution provided rights to men and not women. In 1803 it went almost without saying that women should not receive equal political rights. Only in New Jersey did women have the right to vote at this time and it was taken away in 1807. Women were dependent and a republic required virtuous citizens who were independent. Women simply did not qualify. Nor is it surprising that the young man had to be white. In 1803 most of the northern states were still slave states. Only Vermont and Massachusetts, had fully abolished the institution; gradual emancipation had just begun in others.¹ In most of these states the first generation to be freed had not yet come of age.² Slavery supporters in New York and New Jersey, the

¹For a discussion of the first emancipation movement see Arthur Zilversmit, The First Emancipation: The Abolition of Slavery in the North (Chicago: University of Chicago Press, 1967). Vermont’s constitution of 1777 abolished slavery. In Massachusetts, the courts interpreted the state constitution to abolish slavery in the 1780s. According to the 1790 census, no slaves resided in Massachusetts by that date. Reportedly courts in New Hampshire also ruled slavery unconstitutional under the state’s Bill of Rights but it is unclear whether the rulings applied only prospectively to slave children born after its adoption in 1783. Slaves resided in New Hampshire in 1792. Zilversmit, 112-117. Pennsylvania passed the first gradual abolition law in 1780 followed by Connecticut and Rhode Island in 1784 and New York in 1799. Ibid., 131, 121-124, 184.

²Rhode Island’s law freed children born after a certain date. However, Connecticut, Pennsylvania, New York, and eventually New Jersey, provided that children born after a certain date became free after a certain period of service lasting anywhere from 21 years to 28 years. Under these laws, Connecticut’s first freed generation came of age in 1809,
northern states with the greatest concentration of slaves, successfully fought gradual abolition for decades after the Revolution. By 1803 New Jersey still had not passed a gradual abolition law. And, of course, opposition to slavery did not translate into equal political and civil rights for free blacks.

It was not even certain that Ohio would be free of slavery. If Ohioans moved clearly in that direction, they would set the pattern for the status of African-Americans in the free societies of the northwest. In hindsight, it seems a foregone conclusion that, even if free, Ohio's African-American males would be denied political and civil rights. But this issue too was not settled as Ohio's constitutional convention met in 1802. If campaign rhetoric was translated into reality, Ohio would become only the second state to enter the union without the taint of slavery in her history, and the first from the northwest, where so much of the nation's future lay.

An abolition movement was gaining momentum in the north and free black men could vote in many states, even in the south. Ohio stood at the critical moment to decide


3Zilversmit, 175-99.

4Vermont prohibited slavery in its first constitution in 1777. However, according to Arthur Zilversmit, there were a few slaves in Vermont in the colonial period. Zilversmit, 4. Arguably, Ohio would be the first state to come in without any slavery in its history. However, there may have been slaves in Ohio prior to passage of the Northwest Ordinance and it is possible some African-Americans were held in slavery under the ruse of indenture even after Congress passed the Northwest Ordinance.

5Some state constitutions written during the Revolutionary period did not expressly exclude free African-Americans from voting. According to John Hope Franklin and
the place of free blacks in the north—a decision that the western states would address in the next few years and that northern states would revisit. In a state without slavery would African-Americans be members of the political and civic community or not? The most divisive and debated issue at the 1802 constitutional convention was the question of what rights the constitution would provide for Ohio’s African-Americans.

I

1802 Constitutional Convention

The threshold question the delegates had to address was whether Ohio would be a fully free state. The issue of slavery had been hotly debated during the delegate campaign. The Federalists had claimed that the Republican candidates were pro-slavery. The Republicans had denied the claim and insisted that the Federalists had falsely accused them in an effort to defeat their candidacies. Ephraim Cutler, a Federalist


6Indiana, Illinois, Michigan, and Wisconsin, the other states carved out of the Northwest Territory, would look to Ohio when they wrote their constitutions. In the next few decades most of the northern states would reconsider the rights of African-Americans. New Jersey removed the right to vote in 1807; in 1818 Connecticut limited the right to vote to African-American males who had previously voted; in 1821 New York removed property qualifications for white males but left them in place for Black males; in 1838 Pennsylvania removed the right to vote.
delegate from Washington County, claimed that despite the Republicans' public campaign statements to the contrary, that there was support in the convention among the Kentucky and Virginia Republicans to modify Ohio's anti-slavery position. According to Cutler's account, he single-handedly saved Ohio as a fully free state. Cutler claimed that the chairman of the Committee on the Bill of Rights, John Browne, submitted a constitutional provision that "No person shall be held in slavery, if a male, after he is thirty-five years of age; or a female, after twenty-five years of age." Cutler commented, "the handwriting, I had no doubt, was Mr. Jefferson's."*Cutler, Cutler, 74. Cutler also claimed that when he and Worthington had been in Washington during the debates over the Division Act and Enabling Act that Worthington told him that Jefferson had expressed to Worthington that "such an article, or a similar article, might be introduced into the convention; and that [Jefferson] hoped there would not be any effort made for any thing farther for the exclusion of slavery from the state, as it would operate against the interests of those who wished to emigrate from the slave states to Ohio." Ibid.

Cutler informed the committee that "those who had elected me to represent them were very desirous to have this matter clearly understood," and he proposed each committee member write a section that expressed their views on the subject. The next day, Cutler presented his proposal, "There shall be neither slavery nor involuntary servitude in this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted." Browne responded by asserting that Browne's proposal

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7Cutler was the son of Manasseh Cutler, one of the founders of the Ohio Company who had successfully negotiated the purchase of the Ohio company lands from Congress in 1787. Ephraim Cutler had served in the Territorial Legislature.

8Cutler, Cutler, 74. Cutler also claimed that when he and Worthington had been in Washington during the debates over the Division Act and Enabling Act that Worthington told him that Jefferson had expressed to Worthington that “such an article, or a similar article, might be introduced into the convention; and that [Jefferson] hoped there would not be any effort made for any thing farther for the exclusion of slavery from the state, as it would operate against the interests of those who wished to emigrate from the slave states to Ohio.” Ibid.

9Ibid.
“was thought by the greatest men in the Nation to be, if established in our constitution, obtaining a great step toward a general emancipation of slavery.” Cutler urged the committee members to vote against Browne’s proposed section on the grounds that the Northwest Ordinance, and its ban on slavery, constituted a compact to which they were legally bound. He succeeded in having Browne’s proposal rejected and his accepted but only by the narrow vote of five to four.  

Cutler reported that other efforts were made to weaken the section but the “Jeffersonian version met with fewer friends than I expected.” He remembered an instance in the convention when he barely prevented the introduction of some “obnoxious matter” into the antislavery clause. Having been absent due to illness when a “material change was introduced,” he was warned by fellow Federalists Putnam and Gilman that he stood in danger of “los[ing] his favorite measure.” He returned to the convention barely in time to switch a single vote which “cost [him] every effort [he] was capable of making,” to do so, thereby retaining the section in its original form.

Is Cutler’s dramatic story correct? Did Ohio narrowly come in as a free state, saved from slavery by a single vote?

Cutler’s version is suspect. His memoirs, written late in life, are clearly written to glorify the role of the Federalists and criticize the Kentucky-Virginia Republicans.

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10 Cutler, Cutler, 75.

11 Ibid. Cutler says Baldwin, Dunlavy, Goforth, and Updegraff voted with him and that Donalson, Grubb, and Woods voted with Browne.

12 Cutler, Cutler, 76-77.
whenever possible. The Federalists "had an earnest desire to give our labors, in their results, a strong democratic tendency," he wrote. As to the Republicans, he charged that "[s]trange as this may appear, it is not uncommon with that party to support with the greatest zeal very strong, aristocratic doctrines." His efforts to cast the Federalists as the true protectors of democracy against the "aristocratical" tendency of the Republicans reveals his potential bias in recounting the convention events.

More importantly, he is clearly wrong on an essential part of his story. There were no slavery or indenture-related motions recorded in the convention journal as passing by a single vote. Cutler confused the issue. He remembered correctly that an African-American rights issue was decided on a single vote, and that by that vote an "obnoxious matter" did not come into the constitution. He remembered wrongly that the issue related to slavery or involuntary servitude.

There are other concerns about Cutler's story. If the committee vote was so close-five to four—why did not one of those in the minority raise the issue on the floor of the convention? Cutler says that Israel Donalson supported Browne's proposal for limited slavery, yet Donalson later wrote to Cutler that he had a "perfect recollection of the eighth article [the Bill of Rights] of our constitution, which at the time met my

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13Ibid., 78. He made the comment in reference to some Republicans having supported giving the governor veto power.

14I do not intend to suggest that he has deliberately misrepresented the events, merely that he is incorrect in some of his recollections. However, I do think he has a tendency to exaggerate the role of the Federalists and demonize the Republicans. I agree that he correctly asserts that he was a dedicated advocate for African-Americans rights in the convention. The issue that was decided by a single vote is discussed infra.

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Donalson's recollection seems to confirm that there was no real controversy about prohibiting slavery.

Cutler wrote his memoirs after Browne's death, so we do not know how Browne might have responded to Cutler's claims. However, we do have Browne's voting record in the convention. He consistently voted for African-Americans' rights, well beyond merely voting to prohibit slavery. He voted in favor of African-American suffrage, in favor of an explicit definition of involuntary servitude, and against restriction of civil rights. It seems very unlikely that Browne would have voted so consistently for these rights, particularly suffrage, yet have been the proponent of slavery, even if for a limited time. However, even if Browne suggested the proposal in committee as Cutler claims, Browne had to know there was no support for slavery in the convention, not even among the Virginia-Republicans.

Virginia-Republicans such as Tiffin, Worthington, and Massie had served in the territorial legislature and had voted to deny petitions from people who wanted to bring their slaves with them to Ohio. They all made written public statements concerning their opposition to slavery during the delegate campaign. Their anti-slavery positions seem to have reflected the majority view of their constituents as well. During the campaign, two Ross County candidates who had expressed support for slavery were soundly defeated in the election, receiving the least votes of any of the candidates.

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\(^{15}\)Donalson to Cutler, 20 December 1841; reprinted in part in Cutler, *Cutler*, 77n. Apparently Donalson had written to Cutler at the request of a mutual friend to provide Cutler with his recollections of the convention.
Cutler himself was one of the Federalists the Republicans claimed had spread false rumors about their slavery position. As one Republican reported to a candidate: “News is spreading here that you want such a system [slavery] adopted. Mr. Cutler told Mr. Abbot that it was so . . . Others . . . spare no pains in spreading the report . . . I will spare no pains in detecting the Federal villainy . . .” Cutler may have been remembering his own accusations more than what really happened.

What can be concluded about Cutler’s version of events? Perhaps John Browne raised the proposal in committee as Cutler claims, and perhaps it was at the behest of or in deference to Jefferson and reflected Jefferson’s views. But if so, the proposal for limited slavery did not have support in the convention. It was not a close issue; Ohio was not saved from slavery by a single vote. That said, however, there is no reason to deny Cutler’s claim that he wrote the antislavery provision, nor deny him credit for his strong support of African-Americans’ rights.

Although there was no real controversy concerning the prohibition against slavery and involuntary servitude, there was some controversy concerning two proposed clauses that invalidated certain indentures. The Bill of Rights Committee’s proposal prohibited slavery and involuntary servitude but also invalidated certain servitude agreements that might be used as a ruse to circumvent the slavery prohibition. The section in its entirety read:

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16Jehial Gregory to Return J. Meigs, 8 August 1802, reprinted in part in Cutler, Cutler, 66.
There shall be neither slavery nor involuntary servitude in this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted; nor shall any male person, arrived at the age of 21 years, or female person arrived at the age of 18 years, be held to serve any person as a servant, under the pretense of indenture or otherwise, unless such person shall enter into such indenture while in a state of perfect freedom, and on a condition of a bona fide consideration, received or to be received, for their service, except as before excepted. Nor shall any indenture hereafter made and executed out of the State, or if made in the State, where the term of service exceeds one year, be of the least validity, except those given in the case of apprenticeships.\textsuperscript{17}

Delegates made a motion to delete the second clause which failed twenty-one to twelve.\textsuperscript{18} It is difficult to determine why some delegates wanted this clause removed. It is not simply a measure of a delegate’s position on slavery or African-Americans’ rights.\textsuperscript{19} Later votes on political and civil rights reveal clear divisions among the delegates: a pro-rights faction at one end, an anti-rights faction at the other, and six swing

\textsuperscript{17}The Journal of the convention is reprinted in \textit{Ohio Archaeological and Historical Publications}, 5 (1897), 80-132, 111. Hereafter, \textit{Journal}.

\textsuperscript{18}Ibid.

\textsuperscript{19}Helen M. Thurston analyzed the voting in the convention concerning African-American rights. As a result of her analysis she categorized the delegates into groups such as “anti-slavery, pro-negro,” “anti-slavery, anti-negro,” “ultra pro-negro,” and “independent.” She considered the involuntary servitude vote an indication of a delegate’s position on African-American’s rights. I think she erred in doing so. She considered a vote to retain the language to be “pro-Negro” and a vote to delete the language to be an “anti-Negro” vote. By categorizing this vote in this way, she dilutes the pro-rights positions of some of the delegates and minimizes the strong anti-rights position of others. She also failed to recognize the Hamilton County support for the amendment. Helen M. Thurston, "The 1802 Constitutional Convention and Status of the Negro," \textit{Ohio History} 81 (1972): 15-37.
votes in the middle. Of fourteen delegates who favored political rights for black men, six voted to delete the indenture language and eight voted against deletion.\(^2^0\) Of the fourteen delegates in the anti-political rights group, eleven voted against deletion.\(^2^1\)

Geographically, the proposed deletion amendment had its greatest support in the Hamilton County delegation: seven of the ten Hamilton County delegates voted for it.\(^2^2\) Again, there was no correlation among Hamilton county delegates between positions on striking the indenture clause and on black political rights. For example, Browne and Byrd, two of the pro-rights Hamilton County delegates, voted to retain the language, while the other four, Dunlavy, Kitchel, Paul, and Wilson voted to remove it. Three of the four Hamilton County swing votes, Morrow, Reily and Smith, voted to delete the language while Byrd voted to keep it. Furthermore, the two Clermont County delegates who voted consistently with the Hamilton County “pro-rights” delegates, also split on the issue. Gatch voted to keep the clause in the constitution while Sargent voted to remove it. Clearly, the position on political rights was not controlling the vote on the amendment.

\(^2^0\) Voting to delete the language: Dunlavy, Grubb, Kitchel, Paul, Sargent, and Wilson. Voting to retain the language: Browne, Cutler, Gatch, Gilman, Goforth, Putnam, Updegraff, and Wells. Ibid.

\(^2^1\) Abrams, Baldwin, Carpenter, Donalson, Humphrey, Huntington, Kirker, McIntire, Milligan, Woods, and Worthington. Massie did not vote; Bair and Caldwell voted to strike out the language.

\(^2^2\) Dunlavy, Kitchel, Morrow, Paul, Reily, Smith, and Wilson.
The delegates who opposed having this language in the constitution may have been less concerned with its effect on slavery than with its effect on servitude contracts in general; the race-neutral limit on indentures would apply to white indentures as well as black indentures. The delegates addressed this concern later in the convention when some members proposed the insertion of the words “of any negro or mulatto” into the third clause of the section. The clause would then have read: “Nor shall any indenture of any negro or mulatto, hereafter made and executed out of the State, or if made in the State, where the term of service exceeds one year, be of the least validity, except those given in the case of apprenticeships.” This amendment passed twenty to thirteen. Six of the Hamilton County delegates supported it: the three who had earlier supported retaining the other limitation on indentures—Browne, Byrd, Goforth—and three who had wanted it removed—Kitchel, Morrow, Smith. Under the final language, whites could freely enter indentures, but indentures could not be used as a subterfuge to maintain black people in temporary slavery.

As a result of these votes, Ohio’s constitution went beyond merely prohibiting slavery. It contained extra protection so that indentures could not be used to get around the prohibition. How did the anti-black rights delegates vote on the stringent servitude language? They supported it: they wanted the language in the constitution. Interestingly, such strongly “anti black rights” delegates as Abrams, Baldwin, Donalson, McIntire, Milligan, and Woods voted both to retain the limitation on indentures in the second

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clause and against restricting the invalidated out-of-state indentures to only those of a “negro or mulatto.” Although they were opposed to equal political and civil rights for free blacks, they strongly opposed slavery under any guise. It is important to understand that the opponents’ positions on political and civil rights for Africans and African-Americans were not a reflection of their views on slavery.

We have seen the reasons for the delegates’ antipathy towards slavery in their campaign statements. They objected to slavery because of its immorality, its inhumanity, its injustice. But they also objected on economic grounds. As Michael Baldwin, a Ross County delegate and member of the anti-rights faction, explained: “Our present equal distribution of property would be destroyed by the accumulation of large estates. A few such individuals would amass large fortunes, at the expense of their fellow citizens . . . Labor and industry, the very life and support of every country, would be brought into contempt and our citizens degenerate into idleness, luxury and dissipation.” Their concern was slavery’s pernicious effect on free white labor. Their strong anti-slavery position was not at all inconsistent with their strong anti-rights position.

While the delegates unanimously agreed that Ohio would be a free state, questions concerning the political and civil rights of Ohio’s African-Americans became the focal point of the convention’s most contentious debates. As later reported by Jacob Burnet, a leading Cincinnati Federalist, the struggle over political and civil rights for black Ohioans threatened the convention. According to Burnet, the debates generated “great warmth of feeling . . . and fears were entertained, that, if they [the questions regarding African-
Americans' rights were not soon disposed of; they would greatly embarrass, if not entirely defeat, the object for which they were assembled."  

The first critical votes concerning African-Americans' rights concerned the right of suffrage. The Committee on the Elective Franchise reported a proposal enfranchising white males who established one year's residency and were charged with a county or state tax. The very first amendment from the floor of the convention was to remove the word "white." Fourteen delegates--more than forty percent of those voting--supported the amendment, but nineteen voted against it.  

Having lost their initial amendment, the advocates of political rights for Ohio's African-Americans moved to their next position. They proposed that "all male Negroes and Mulattoes now residing in the territory shall be entitled to the right of suffrage, if they shall within ________ months make a written record of their citizenship." The pro-rights delegates could argue that Ohio's resident African-Americans had helped to build a state out of a frontier. Further, it was one matter to put future residents on notice that if ________

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27 By the third and final reading of this section, it provided one year in which to record citizenship. Journal, 122.

28 Journal, 114.
they came to Ohio they would have no right to vote, but it was a completely different matter to take the ballot away from those already in Ohio. Since African-American men had voted in the delegate election, denying them the right to vote would be depriving them of vested rights. This time the vote was nineteen in favor of the amendment with fifteen opposed. Ohio’s African-American men had the right to vote.

Proponents of black rights pushed on. They next proposed an amendment to enfranchise the “male descendants” of these resident Negroes and Mulattoes. This time, however, they lost by a single vote, sixteen to seventeen. For some reason, Philip Gatch, an advocate of equal political rights, failed to vote on this amendment; had he done so the vote would have been a tie, leaving Edward Tiffin, as president of the convention, to decide the outcome. So as the first debates on suffrage concluded, the delegates had decided to give full political rights to African-American males who certified their residency within a year.

These three suffrage votes are very revealing. They demonstrate that the delegates were equally divided at each end of the spectrum. Fourteen delegates consistently voted

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for African-American political rights;\(^{31}\) fourteen delegates consistently voted against them.\(^{32}\) Who were these delegates? The advocates for rights included five of the seven Federalists.\(^{33}\) Of the nine Republicans in the group, six came from Hamilton County.\(^{34}\) Both delegates from Clermont County voted in this group,\(^{35}\) as did a lone Republican from Ross County. It's particularly remarkable that James Grubb, the Ross County delegate, consistently voted with the advocates of political equality in this group. The other three Ross County delegates voted consistently with the anti-black rights group.\(^{36}\) Tiffin, the President, was the fifth Ross County delegate, and he rarely voted. Apparently, Grubb cast his votes for political rights in the face of stiff opposition from his colleagues. Geographically, support came from southwest Ohio and the Marietta area.

\(^{31}\)Browne, Cutler, Dunlavy, Gatch, Gilman, Goforth, Grubb, Kitchel, Paul, Putnam, Sargent, Updegraff, Wells, and Wilson. I include Browne in this group even though he voted against suffrage for resident African-Americans. Having voted in favor of removing the word “white” in its entirety and also voting in favor of enfranchising the male descendants, I consider his “no” vote either a mistake or a protest vote. He is the only delegate to vote “yes”, “no”, “yes” in this series of votes. He may have been concerned that by accepting suffrage only for resident African-American males, the pro-rights delegates would not be able to revisit the vote on removing the word “white” at a later point in the convention. I also include Gatch in this group. He voted “yes”, no vote recorded, “yes.” The critical vote for inclusion in this group is the delegate’s willingness to remove the word “white.”

\(^{32}\)Abrams, Baldwin, Bair, Caldwell, Carpenter, Donalson, Humphrey, Huntington, Kirker, McIntire, Massie, Milligan, Woods, and Worthington.

\(^{33}\)Cutler, Gilman, Putnam, Updegraff, and Wells.

\(^{34}\)Browne, Dunlavy, Goforth, Kitchel, Paul and Wilson.

\(^{35}\)Gatch and Sargent. Clermont County was originally part of Hamilton County.

\(^{36}\)Massie, Worthington, and Baldwin.
Support from the Federalists in Marietta was not very surprising, given their New England backgrounds. However, the fact that Marietta was across the Ohio River from slave-owning Virginia and that Hamilton and Clermont counties were across the river from slave-owning Kentucky did not dampen their support for equal political rights.

The core group of opponents of black political rights included one Federalist from Marietta, John McIntire. In addition to Ross County, the Republicans came from Fairfield, Jefferson, Belmont, Trumbull, and Adams counties.\textsuperscript{37} These included the counties of the Virginia tract, the area of the territory that had been reserved for Virginians as part of the land cessions to the national government. This Virginia connection was critical to the outcome of the rights issues. McIntire, the lone Federalist in this group, for example, did not come from New England as had the other Federalists. He came from Virginia. The Virginians had grown up in a slave culture. It had repelled them, but it also left them unable to conceive of free blacks as equals. Tiffin, Massie, and Worthington freed their slaves when they left Virginia but they brought many of them with them to work as their domestic servants or tenant farmers. They were free, but they were still subservient—not the independent citizens required to govern a virtuous republic. Notably, delegates from the counties with the largest African-American populations tended to vote “anti-black rights.”

\textsuperscript{37}From Fairfield County, Abrams and Carpenter; from Jefferson County, Bair, Humphrey, and Milligan; from Belmont County, Caldwell and Woods; from Adams County, Donalson, and Kirker, and from Trumbull County, Huntington.
We do not have precise population figures for the number of African-Americans in Ohio in 1802. The census of 1800 recorded the number of black people in Ohio in that year, but Ohio's population had increased dramatically each year thereafter. As of 1800, there were only a few hundred African-Americans in Ohio and, of those, 125 resided in Ross County where three out of four of the delegates voted consistently against political rights for African-Americans. Jefferson County had the next largest African-American population, 35. Three of its five delegates—the Republicans—voted strongly against political rights for African-Americans. Many, if not most, of these African-Americans were likely the freed slaves of Virginians now working for their former masters as servants, artisans, farm laborers, or tenant farmers.

With equal members at each extreme, six swing votes determined the results—the four remaining delegates from Hamilton County and one each from Adams and Trumbull counties.\(^{38}\) Five were Republicans, and one was the lone Federalist from Hamilton County.\(^{39}\) When either faction picked up four votes, they won—either by passing their own amendment or by defeating their opponents. In the vote to enfranchise resident African-Americans, the core group of advocates for rights picked up these swing votes to win. Nine of the ten Hamilton County delegates united on the issue.\(^{40}\) However, when it came time to extend the vote to the male descendants, two of the Hamilton County swing

\(^{38}\)The swing votes from Hamilton County were Byrd, Morrow, Reily, and Smith; from Adams County, Darlinton and from Trumbull County, Abbott.

\(^{39}\)Reily was a Federalist.

\(^{40}\)As discussed previously, Browne, from Hamilton County, voted against enfranchising resident African-Americans. See footnote 31.
votes shifted back to the opponents, as did the Trumbull County delegate. Again, Hamilton County made the critical difference.

Later the same day of the suffrage votes, the opponents of African-Americans' rights launched a counterattack, reaching well beyond political rights. They proposed inserting a new section into the general regulations Article on the constitution:

No negro or mulatto shall ever be eligible to any office, civil or military, or give their oath in any court of justice against a white person, be subject to do military duty, or pay a poll-tax in this State; provided always, and it is fully understood and declared, that all negroes and mulattoes now in, or who may hereafter reside in, this State, shall be entitled to all the privileges of citizens of this State, not excepted by this constitution.

They succeeded. Nineteen delegates voted for the rights restriction and sixteen voted against it. In this vote, thirteen of each group stayed consistent; each faction lost one member to the other group. James Grubb now voted against rights. He may have succumbed to pressure from the other Ross County delegates, or he may have believed in limiting African-Americans to the right to vote, but not to hold office. Samuel Huntington, a Republican from Trumbull county, had voted consistently against any

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41 Reily and Smith voted against enfranchising the male descendants as did Abbott.

42 Article VII contained a variety of provisions including the official oath for state offices, a definition of and prohibition against bribery at election, creation of future counties, established the state capitol, provided for future amendments to the constitution, and set the boundaries of the state.

43 Journal, 115-16.

franchise rights but now voted with the rights supporters. He was not willing to include free blacks in the political community, but was unwilling to restrict other rights. Huntington’s and Grubb’s reversal kept the extreme groups equally balanced with fourteen members each.

The opponents of rights picked up four of the swing votes: Byrd, Darlinton, Morrow and Smith. Their nineteenth vote came from Edward Tiffin, who voted with them even though there was no tie—the only time he did so in the convention. So by the end of the day, the delegates had voted both to enfranchise resident African-Americans and then to deny them and other African-Americans other political and civil rights.

The delegates revisited both the suffrage amendment and the anti-civil rights amendment at the end of the convention when both issues came up for final passage. Reconsidering the section permitting resident African-Americans males to vote, the delegates now tied—seventeen to seventeen. Convention President Tiffin would decide the outcome. He reconfirmed his anti-black rights position by voting against political

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45 Huntington was the nephew and stepson of a former President of the Continental Congress and Governor of Connecticut. He graduated from Yale and trained in the law. With the death of his stepfather and his shift to Republicanism, he felt that his political ambitions in Connecticut would be thwarted. He moved to the Western Reserve in 1801. He initially courted the favor of Governor St. Clair and supported the division of the Ohio Territory. However, in private correspondence prior to the convention he revealed that he was a dedicated Republican and had been offered a judgeship for his support of the Republicans in the convention. When he arrived in Chillicothe for the convention, he boarded with the Federalist delegates. However, they saw little of him at the boarding house and were “astonished at [his] course” in the convention. Jeffrey P. Brown, “Samuel Huntington: A Connecticut Aristocrat on the Ohio Frontier,” Ohio History 89 (1980): 420-25; Cutler, Cutler, 69.

46 Journal, 122.
rights for Ohio’s resident African-American males. His biographer tells us he did so because he was concerned “[t]hat the immediate neighborhood of two slave-holding States made it impolitic to offer such an inducement for the influx of an undesirable class to the new State.”

What happened to produce a tie? James Grubb, the anomalously pro-political rights delegate from Ross County, again defected from the pro-black political rights group. With fellow Ross County Republicans Worthington, Massie, Baldwin, and Tiffin all opposing black rights, Grubb’s continued support for political rights probably became more and more difficult. Worse, the convention was being held in Chillicothe, his county seat. The public attended the sessions. His previous votes were known. He most likely had come under pressure from his constituents. Joseph Darlinton, a Republican from Adams County, the adjoining county and also part of the Virginia tract, also defected from the pro-black rights group. He too had voted contrary to the other delegates from his county and must have come under tremendous pressure to switch.

The final, critical vote came from John Smith, a Republican from Hamilton County. He became the only Republican from Hamilton County to vote to reverse the earlier decision on voting rights. Although a Republican, Smith had not been endorsed by the Hamilton County Republican party in the delegate election but had won anyway. The Hamilton County Republicans could not keep him within the fold. If they had been able to do so, the outcome would have been different. As a result of these reversals, there would be no voting rights for any African-Americans in Ohio.

47Gilmore, Tiffin, 76.
Defeated on the suffrage issue, the rights proponents succeeded, but barely, by a vote of seventeen to sixteen in removing the restrictions on other rights agreed to earlier.\textsuperscript{48} The original sixteen who had voted against the restrictions days earlier remained firm.\textsuperscript{49} One delegate who previously voted for the restrictions—the Federalist from Marietta, John McIntire—did not vote. Tiffin, who had also voted for the restrictions earlier, did not vote this time. John Milligan, a Republican from Jefferson County, switched. In the previous vote, the delegates from Jefferson County had divided along party lines, with the Federalists supporting civil rights for African Americans and the Republicans favoring restrictions. Now, Milligan broke with his party and joined his county’s Federalist delegates to remove “the obnoxious matter” as Ephraim Cutler called it.\textsuperscript{50} In his memoirs, Cutler related that he realized that Milligan was the swing vote and specifically aimed his arguments at him, reminding Milligan of comments Milligan had made in the territorial legislature. As the convention adjourned, the rights proponents failed to secure political rights for African-Americans but succeeded in preventing restrictions on other rights.

We can speculate about what might have made a difference. If the Hamilton county delegates had been united, or if the Federalists had been united on a party basis, voting rights for resident African-American males would have remained in the

\textsuperscript{48}Journal, 124-25.

\textsuperscript{49}Abbot, Browne, Cutler, Dunlavy, Gatch, Gilman, Goforth, Huntington, Kitchel, Paul, Putnam, Reily, Sargent, Updegraff, Wells, and Wilson.

\textsuperscript{50}This is the vote Cutler confused with the anti-slavery clause in the Bill of Rights.
constitution. But most of all we might speculate about the difference it would have made if Virginia had not retained a right to part of the Ohio Territory. For clearly, the Virginians made up the core of the anti-rights faction. Moreover it had been the Virginians who had pushed for early statehood at a time when they had their greatest influence in the state. So we might also speculate what would have happened if statehood had been delayed until after the heavy New England migration that would soon take place to the Western Reserve. The Western Reserve would become the heart of Ohio’s anti-slavery and equal rights movement as the century progressed.\(^1\)

Was Ohio’s statehood constitution a bastion of liberty? Certainly for white men it was. As for Ohio’s African-Americans, looking at it in 1802 fresh from the convention, clearly not as much so. But there were reasons for gratification too. The convention proposed a state constitutionally committed to the prohibition of slavery, not merely de jure but also de facto. There would be no end run around the antislavery provision under the guise of indentured servitude. And that commitment was permanent, since the constitution could never be amended to permit slavery—the only issue in the constitution so protected.\(^2\) Other than denying the right to vote, the constitution contained no restrictions against African-Americans rights, political or civil. In fact, an African American male could be elected to office, if white men chose to do so. The Bill of Rights

\(^1\)Although it is likely that Ohio’s population would have exceeded 60,000, at which point statehood was automatic, before the New England immigration would have affected the political situation.

\(^2\)“But no alteration of this constitution shall ever take place, so as to introduce slavery or involuntary servitude into this State.” Article VII, Section 5.
was race neutral and it specifically provided that schools must be open to the poor, "without any distinction or preference whatever."^53

II

The Black Laws

Ohio's statehood convention reveals that some Ohioans were able to envision a free community of blacks and whites with black men fully integrated into the polity. Others could not imagine such a community. For them, black people were indelibly "other." Very quickly after the convention, it became clear that most white Ohioans fell into the second group. Their community was white, and they wanted to keep it that way. White Ohioans' fears that Ohio would become an asylum for fugitive and freed slaves dictated the legislature's racial policy for the next sixty years.

Ohio's geographical closeness to slave-owning Kentucky and Virginia affected these fears in two ways. Southern Ohio was closely bound economically to the south; Cincinnati was "a southern city on free soil."^54 White southern Ohioans did not want to do anything to antagonize southern states by appearing to be a haven for runaway slaves. At the same time, they also did not want Ohio to be a dumping ground for the worn-out slaves of Kentucky and Virginia, discarded when their masters had no more use for them.

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^53Article VIII, Section 25.

and sent them to live out of state. As a result, most white Ohioans wanted the legislature to do everything possible to discourage the immigration of runaways or freed slaves.

The legislature complied. In January 1804, it passed the first of its anti-black immigration laws. The law required every "black or mulatto" person to produce a certificate from a United States court attesting to his or her freedom.\(^{55}\) They also had to register themselves and their children with the county clerk.\(^ {56}\) The law penalized whites who employed African-Americans without proof of freedom\(^ {57}\) and established additional penalties for harboring slaves.\(^ {58}\) The penalties for whites included fines, one-

\(^{55}\)"Section 1. Be it enacted . . .  that from and after the first day of June next, no black or mulatto person, shall be permitted to settle or reside in this state, unless he or she shall first produce a fair certificate from some court with the United States, of his or her actual freedom, which certificate shall be attested by the clerk of said court, and the seal thereof annexed thereto, by the said clerk." Laws of Ohio, 1803-04, 2:63.

\(^{56}\)"Section 2. That every black or mulatto person residing within this state, on or before the first day of June, one thousand eight hundred and four, shall enter his or her name together with the name or names of his or her children, in the clerk's office in the county in which he, she or they reside, which shall be entered on record by such clerk, and thereafter the clerk's certificate of such record shall pay to the clerk twelve and an half cents: Provided nevertheless, That nothing in this act contained shall bar the lawful claim to any black or mulatto person."

\(^{57}\)"Section 3. That no person . . .  shall be permitted to hire, or in any way employ any black or mulatto person, unless such black or mulatto person shall have one of the certificates . . .  under pain of forfeiting and paying any sum not less than ten nor more than fifty dollars, at the discretion of the court, for every such offense, one half thereof for the use of the informer, and the other half for the use of the state; and shall moreover pay to the owner, if any there be, of such black or mulatto person, the sum of fifty cents for every day he, she, or they shall in otherwise employ, harbor or be recoverable before any court having cognizance thereof."

\(^{58}\)"Section 4. That if any person shall harbor or secret any black or mulatto person, the property of any person whatever, or shall in anywise hinder or prevent the lawful owner or owners from retaking and possessing his or her black or mulatto servant or servants, shall, upon conviction thereof, by indictment or information, be fined in any sum not less
half of which went to “the informer.” The law protected slave owners’ claims to African-Americans, providing a process by which they could recover a slave.\footnote{Section 6. That in case any person or persons, his or her agents or agents, claiming any black or mulatto person that now are, or hereafter may be in this state, may apply upon making satisfactory proof that such black or mulatto person or persons is the property of him or her who applies to any associate judge or justice of the peace within this state, that associate judge or justice is thereby empowered and required, by his precept, to direct the sheriff, or constable to arrest such black or mulatto person or persons, and deliver the same in the county or township where such officers reside, to the claimant or claimants or his or their agents, for which service the sheriff or constable shall receive such compensation as they are entitled to receive in other cases for similar services.}

Within a few years, white Ohioans placed further restrictions on black immigration. An 1807 law provided that no “black or mulatto person” could immigrate to Ohio without entering into a “bond with two or more freehold sureties, in the penal sum of five hundred dollars” to guarantee his or her “good behavior.” The sureties agreed to support newcomers if they proved unable to do so themselves. Enforcement was left to the township overseers of the poor. Again, the law penalized whites who hired African-Americans who had not complied with the statute’s requirements. The legislature doubled the maximum penalty from fifty dollars to one-hundred and made the white person liable for the African-American’s support if he or she became unable to support himself or herself. It also excluded them from juries and even prohibited African-Americans from being “sworn or giv[ing] evidence in any court of record, or elsewhere, than ten nor more than fifty dollars, at the discretion of the court, one-half thereof for the use of the informer and the other half for the use of the state.”
in this state, in any cause depending, or matter of controversy, where either party to the same is a white person.\textsuperscript{60}

The vision of many Ohioans of an all-white community extended especially to public school education. In contrast to this vision, the state's constitution mandated that "the poor" must be permitted "equal participation in the schools" which "shall be open for the reception of scholars and students and teachers, of every grade, without distinction or preference whatever."\textsuperscript{61} When the legislature passed the public school act it created school funds for "the use of common schools, for the instruction of youth of every class and grade without distinction." But they did distinguish among the children. The law also "[p]rovided, [t]hat nothing in this act contained shall be so construed as to permit black or mulatto persons to attend the schools hereby established." This initial school law created two school funds, one based on white Ohioans taxes and the other based on African-Americans taxes.\textsuperscript{62} The practical effect, in most places, was inadequate funding for African-American schools.

Within two years the legislature repealed the law and replaced it with one that provided for a common school system for the "instruction of white youth." Now, however, they excluded the property of blacks and mulattoes from taxation without

\textsuperscript{60}An act to amend 'An act to Regulate Black and Mulatto Person,'” Laws of Ohio, January 25, 1807, 5:53; Laws of Ohio, February 9, 1831.

\textsuperscript{61}Ohio Constitution, Article VII, Bill of Rights, Section 25.

\textsuperscript{62}Laws of Ohio, 27 (1828-29): 72-73.
providing any kind of fund for the education of black youth.\textsuperscript{63} When the legislature amended this law, as it did in 1838 and 1839, it continued to exclude the property of blacks and mulattoes from the taxable base and to omit any provision for the education of black youth.

Finally, to make sure that Ohio did not become a haven for worn-out freed slaves unable to support themselves, the legislature excluded African-Americans from poor relief. In 1829 it passed a law that made poor relief available only to persons who had established "a legal settlement" in a township. To establish legal settlement, a person must have resided in the township for three years "without [having been] warned by the Overseer of the Poor." The law also provided which township constituted the legal residence of apprentices, indentured servants, and married women for purposes of poor relief. No matter how long African-Americans resided in a township they could never be considered legal residents for this purpose, for the law specifically excluded them. In 1831, the legislature revised the law, shortened the qualifying period of residency to one year, and continued to exclude African-Americans.\textsuperscript{64}

By the 1830s, to reside in Ohio, African-Americans were required to have a certificate of freedom, register with the clerk of courts, and post a $500.00 bond. Despite compliance with these requirements, and no matter how economically self-sufficient they became, they were for many purposes not considered legal residents. They could not

\textsuperscript{63}\textsuperscript{Laws of Ohio, 29 (1831), 94, 414-423.}

\textsuperscript{64}\textsuperscript{Laws of Ohio, 1829, 29: 320. "[N]othing in this act shall be so construed as to enable any black or mulatto person to gain a legal settlement in this State."}
serve in the militia, vote, testify in a case involving a white person, serve on a jury, have their children educated in the public schools, or secure poor relief.

III

Judicial construction of "white"

As the Ohio Code became replete with laws creating distinctions and exclusions based on race, it was inevitable that the courts would have to determine who was white in order to enforce the statutes. The first reported case in which the Ohio Supreme Court interpreted the meaning of the word white was Polly Gray v. The State of Ohio. Gray, who was one-quarter African-American, had been charged with robbery, and in her trial the prosecutor called an African-American man as a witness for the state. Daniel Van Matre, Gray's lawyer, objected that the man was incompetent to testify because the law barred any negro or mulatto from testifying in a case in which either party was a white person. The Common Pleas court judge observed Gray, decided she was "of a shade between the mulatto and white," and then permitted the testimony of the black man.

Gray appealed. Van Matre first argued that Gray herself was a competent witness under the law. The statute made only negroes and mulattoes incompetent as witnesses against a white person. According to Van Matre, "a mulatto is a person begotten between a white and a black." Since Gray was neither a black nor a mulatto, she was a competent witness where a white person was a party, he argued. "She thus being upon a level with

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654 Ohio 353 (1831). Unfortunately, reported Ohio Supreme Court cases date only from 1824. Nonetheless, the case seems to be one of first impression since the court does not cite to any of its precedents.
whites, the same privileges ought to be extended to her." A white defendant could not be the subject of an African-American’s testimony and neither could Gray.

The prosecutor conceded Gray was neither a negro or a mulatto. But neither was she a white woman, and the testimony statute applied only to cases in which one party was white. Gray could testify in a case involving a white person, not because she was white, but because the statute was “silent, as it regards persons of the prisoner’s color, being neither black, white, nor mulatto." But, since she was not a white woman, he argued, she could not invoke the statute to bar a black or mulatto person from testifying against her.

In a syllabus of its holding, the Court ruled that “[a] negro is not an admissible witness, against a quarteroon, on trial charged with a crime." Before reaching this conclusion the Court disparaged the law; it was “one which a court is called upon to execute with reluctance.” Yet, it “ha[d] no alternative but to yield to the expression of the legislative will.” The statute recognized three descriptions of race—white, black, and mulatto— which the Court believed were “well known, by the same terms, in life.” The justices doubted whether they could “refine upon these obvious distinctions. Or whether good policy, or good sense requires us to raise the necessity for further discrimination.”

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66Ibid. There seems to be consensus that a mulatto was a person who was precisely one-half African-American.

67Ibid.

68Ibid. In Ohio, the syllabus is court-written and contains the holding of the case, unlike United States Supreme Court cases in which the reporter prepares the syllabus and it has no binding effect.
They were “unable to set out any other plain and obvious line or mark between the different races. Color alone is [in]sufficient. We believe a man, of a race nearer white than a mulatto, is admissible as a witness, and should partake in the privileges of whites.”

They reached their conclusion “partly because we are unwilling to extend the disabilities of the statute further than its letter requires, and partly from the difficulty of defining and of ascertaining the degree of duskiness which renders a person liable to such liabilities.”

The Court’s ruling is quite remarkable. There was no dispute that Polly Gray was “colored.” Yet the Court ruled she was entitled to “partake of the privileges of whites.” The decision made people of obvious “color” legally white. It is also remarkable that the Court was willing to do so in a context that harmed the state’s interests: the Court’s ruling prevented the prosecutor from presenting testimony that the defendant had committed a crime. Had the Court simply permitted color to be the basis upon which to decide who was white for legal purposes, judges and juries would have decided based on a subjective

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69Ibid., 354. The reported opinion states that “color is sufficient.” I conclude this is an error and that the court stated that color was “insufficient.” I base this on the context of the sentence; it contradicts the justices’ statement that they would be unable to define “the degree of duskiness.” I also base my conclusion on statements in later cases in which the court cites the Gray opinion. See for example, the discussion of Williams v. Directors of School District, No. 6, infra. I have been unable to locate a copy of the opinion printed earlier than 1872 and do not know for certain whether the error occurred in the original report. In any event, I do not think the error caused any confusion to lawyers. They relied heavily on the syllabus which is all that would be included in a digest of the court’s opinions. See for example, Simeon Nash, A Digest of the Decisions of the Supreme Court of Ohio Contained in the First Twenty Volumes of the Ohio Reports (Cincinnati: H. W. Derby, 1853).

70Ibid..
standard. If the local white community perceived the person to be non-white, he or she
would not be white legally. Instead of permitting a community-based standard, the court
adopted an objective standard based on parentage, not appearance. In doing so, the Court
allowed the most expansive definition of “white” possible under Ohio law.

The Gray ruling potentially had enormous consequences. Would the Court extend
its construction of white to the constitution’s definition of an elector? Would the Court
permit children of color to be considered legally white and entitled to attend the common
schools with “pure” white children? It would be logical for the Court to use the same
definition of white where it appeared in other contexts. But there were obstacles to
challenging voting and school restrictions that were not present in a challenge to the
testimony statute. Voting and school cases would involve suits against officials: election
judges in voting cases and school directors in school cases. Would the court permit suits
against these officials acting in their official capacity? If voting was merely a privilege,
would the court be willing to construe the term “white” broadly in that context? Besides,
the Court particularly disliked the testimony statute because it interfered with the judicial
system. As a later justice described it, “In all my experience, both at the bar and as a
member of this court, I can not recollect a single case in which this law has been found
subservient to the ends of justice. On the contrary, its uniform effect has been to prevent
justice, both public and private.” Some whites understood that the law impaired their
rights as well. At times, it operated against the interest of the state, as in the Gray case, in

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others against that of a white claimant. How far would the Court be willing to go in a different context?

A partial answer came a few years later in Williams v. Directors of School District No. 6. Williams, a resident and taxpayer in Cincinnati’s Hamilton county, sued the school directors for refusing to allow his five children to attend school, because, Ohio law provided a common school system only for “white” children. At trial, Williams proved that he was one-quarter African-American. His wife, the mother of his children, was white. He had been taxed for the school fund, and his five children had been turned away from the school. The trial court instructed the jury against him and they found for the defendants.

On appeal, the lawyers for the school directors pointed out that Williams might have had a claim under the previous school law. It “used to prohibit black and mulatto” children, and Williams’ children were neither black nor mulatto, they conceded. But the school law had been reworded to reserve the school fund “for white children only.” William’s children could not attend because they were not white.

71 Jordan v. Smith, 14 Ohio 199, 203 (1846). In this case, the court excluded the testimony of an African-American woman the white male plaintiff wanted to call as a witness to the signing of a note by another African-American woman. The court’s ruling meant the African-American defendant won the case.

72 Wright’s Rep. 578 (1834). The case is sometimes miscited by the court as Williamson v School Directors, Wright 178 (1833). Because it was a circuit court opinion it was not reported in the official reporter, The Ohio Reports. Instead it appears in a one volume reporter issued by Justice Wright for the 1831 to 1834 terms. He reported it as having been decided by himself and Justice Lane at the May term, 1834 in Hamilton County.

73 Ibid., 579.
Supreme Court justices Wright and Lane, sitting for the Supreme Court in circuit,74 framed the issue: “The real question we are asked to decide is, whether the children of a white mother, and a father three-quarters white are white children within the meaning of the law?” They answered yes. Citing their decision in Gray the justices reiterated that “persons nearer white than a mulatto, or half blood[,] were entitled to the privileges of whites.” They rejected the school directors’ argument that they “resort to the color or complexion to determine who are white persons and do not inquire of the blood,” scorning too their “shabby meanness” in taxing Williams for the school fund yet excluding his children from the school.75

Paradoxically, Polly Gray’s lawyer represented the school directors in the Williams case. His arguments in the two cases were not entirely inconsistent. On behalf of Gray he had argued that she should have the same privilege that whites had to use the testimony law since she was a competent witness under the statute, being neither black

74Ohio’s constitution required the Supreme Court to hold a term in each county once a year. Two justices, of a total of three initially and four after 1807, represented a quorum to sit “in circuit,” in a county. As the number of counties mushroomed (84 by 1848), the burden of traveling to each county became significant. The justices divided the state into areas with two justices traveling within each area. Since circuit opinions did not represent a majority of the full court, the system led to conflicting opinions at times, resulting in confusion about the law. To partially address the problem, the legislature required the Court to sit at least once a year at the capital sitting, “in bank,” with all of the justices hearing cases, including cases reserved for the full court from circuit court cases. Since the circuit court opinions represented only two justices’ opinions, if the other two justices disagreed, there would be no in bank decision. So while the circuit court opinion was a Supreme court ruling, it did not have stare decisis effect on the court sitting in bank.

75Ibid., 579-80. Unfortunately, Mr. Williams lost his case anyway due to pleading errors.

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nor mulatto. He had never actually argued that she was “white.” In Williams, he seemed to concede that if the law merely excluded blacks and mulattoes, the Williams children were not excluded; but if the law provided for white children only, he was not willing to declare them legally white. Perhaps the court had gone farther than he expected or even wanted by declaring Polly Gray legally “white.” Or perhaps he had no objection to extending the privilege when it came to the testimony statute but drew the line if it meant children of color went to the same schools as “pure white” children. Of course it may just have been two different clients with two different interests. In any event, his own victory in Gray caused his defeat in the Williams case.

In his syllabus of the Williams case, Justice Wright expanded the Gray ruling, not merely by applying it to the school case but in broadening the application. The Gray syllabus had dealt only with the narrow issue before the court: whether an African-American could testify against a “quarteroon.” In summarizing Williams, Wright boldly stated that “persons having more than one half white blood are entitled to the privilege[s] of whites.” And to put to rest the question of using color to determine “whiteness,” he noted that “the term white children in the law describes blood not complexion, which would be an unsafe guide.”

But the Williams case was a ruling of two Supreme Court justices on circuit, not reported in the official reports and without the full precedential weight of an “in bank”

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76Ibid., 578.
ruling. The Gray ruling remained the Court’s only construction of the word “white” sitting as the court in bank. Whether the full Court would extend it to voting and school cases remained an open question. Election judges and school directors could continue to exclude African-Americans in the belief—or hope—that the full court would not extend it.

Relying on the ambiguity of the law, the trustees of Zenia township in Greene county turned away Parker Jeffries, one of whose grandparents was Native-American, when he tried to vote in a local election. Jeffries sued, and the jury found that the trustees had denied him the right to vote because he was a “person of color.” Judgment was held in abeyance for the Supreme Court to rule on the issue of law.

In his argument to the Court, Jeffries’ lawyer first focused on the threshold question of whether he could sue the trustees. Citing one case from outside the jurisdiction, he stressed the “importance of the right” to vote and that unless the suit could be brought, the “right [was] at the complete mercy of the trustees.” He warned the Court there were implications beyond race for the trustees could always find “an excuse for rejection of any vote opposed to them politically or otherwise” The trustees’ lawyer argued that they were immune from suit because they were acting as judges of elections and it was a well-settled principle of law that judicial officers could not be sued when

77The Ohio Supreme Court used the phrase “in bank,” rather than “en banc.” See for example, Parker Jeffries v. John Ankeny, et al., 11 Ohio 372, 373 (1842).

78Ibid.
acting within the scope of their jurisdiction. Further, "the right of suffrage [was]
conferred upon white persons, and them alone." 79

In another contemporaneous case, the trustees of Wilkesville township in Gallia
county had refused to permit Edwill Thacker to vote in a justice of the peace election.
Tried before a jury in the common pleas court, the trustees offered testimony that Thacker
had "some negro blood in him." Thacker asked the judge to instruct the jury that if he
was nearer white than mulatto, he was entitled to vote. The judge refused. Instead, he
instructed the jury that if Thacker had "any negro blood whatever, he was not entitled to
vote." Thacker's case was argued before the Supreme court the same term as Jeffries. 80

Thacker's lawyer also first addressed the actionability of the suit, citing a series of
cases from Massachusetts and reminding the court of the Williams case, which had
permitted a suit against school directors without a showing of malice. The Court's
decisions in Gray and Williams already had decided the issue, he argued. "[S]ince these
decisions, such persons have been considered white, and have been permitted to vote, and
their votes were decided to be legal, in the contested election from Hamilton county, in
the session of 1840-41." Simply put, he thought "[t]he only question then is, will the
court maintain its own decisions?" 81

Ruling first in the Jeffries case, the Supreme Court answered the threshold
question: could the trustees be sued for conduct in their official capacity. The trustees'

79 Ibid., 373.

80 Edwill Thacker v. John Hawk, et. al., 11 Ohio 376, 376 (1842).

81 Ibid., 377-379.
lawyer had proffered a series of cases in which both the Ohio court and other jurisdictions had held that mere error alone did not give rise to an actionable claim. The Court could have avoided the race issue by following this line of cases. It did not. The Court acceded that “it is generally true, that no suit lies against an officer, for a mistake in the exercise of his judicial discretion, but when the Court “reflect[ed] how highly the privilege of voting is generally valued” and that there would be “no other remedy than this action,” the Court felt “a necessity exists for entertaining the [lawsuit].”

The court then posed the key question: did the constitution “exclud[e] from voting all persons having the intermixture of any other blood than that of entirely white persons.” The Court noted that persons like Jeffries, “the offspring of whites and half-breed Indians,” had voted and even “filled offices, and worthily discharged the duties of officers.” In fact one man “is now a clerk of this court, and two are now members of this bar.” “Disfranchisement for this cause will be equally unexpected and startling,” the Court observed. The Court felt the matter was “clearly settled” by its previous rulings in *Gray* and *Williams* and again confirmed that “all nearer white than black, or of the grade between mulattoes and the whites, were entitled to enjoy every political and social privilege of the white citizen.” In the *Thacker* case, the court simply referred to its decision in *Jeffries* and ruled the common pleas judge’s instruction to have been in error.

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83 Ibid., 374-75.

84 *Thacker v. Hawk*, 11 Ohio 376, 376 (1842).
Justice Read wrote lengthy dissents in both cases expressing his alarm at the majority’s rulings. In the *Thacker* case, he argued that the constitution was quite clear: it conferred the “enjoyment of the elective franchise on *white* persons only, and by the force of its terms, excludes all persons who are not *white*.” What did white mean? It meant “*pure white, unmixed.*” Read thought it quite obvious that “[t]he word expresses a simple idea, quality, or principle, homogeneous, not made up or compounded of two different elements or qualities.” Therefore, according to Read, “[a] mixture of black and white is not *white*; white and black may be mixed in different proportions—they may be more white than black, or more black than white; but a preponderance of the one or the other color will not make the mixture a pure white, or a pure black.” To hold as the majority had, was in Read’s opinion, “a direct and open violation, both of the letter and spirit of the constitution.”

He cited to the 1802 constitutional convention where “this question [whether to limit the franchise to white males] was [a] matter of warm, if not bitter, discussion.” Under Ohio’s constitution, African-Americans “have the moral right whilst suffered to remain, to claim the protection of our laws, and to be treated with justice and humanity, but, beyond that, they have no claim.” The black laws had been passed specifically “to induce them to leave.” “Indeed, the hope has always been cherished, that the time would come when this unfortunate race should be removed from our community, and placed in some position where they could, among themselves, enjoy their own government, and

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85Ibid., 379.
administer its affairs; or at least, that Ohio, which is free from slavery, should be rid of a population which, while they remain among us, must be miserable and degraded.\textsuperscript{86}

For Read, the "exclusion of persons of color, or of any degree of colored blood, from all political rights is not founded upon a mere naked prejudice, but upon natural differences." Indeed the "Creator himself" had fixed the barriers between the races, and to break them down, "in a political and social amalgamation, shocks us as something unnatural and wrong." If people would consult the "wisdom of history" and "the principles of human nature," they would "be convinced that the two races never can live together upon the terms of equality and harmony."\textsuperscript{87}

Read expressed his fear that the Court's decision "conferring political rights upon all less than half black, is an inducement for such to immigrate to the state and remain here. But there was another fear, which he made known in his dissent in Jeffries: the court's rulings "would admit into our common schools all persons who were less than half negro, or black." According to Read, it was well known "that the people of Ohio will not permit their children to be compelled to associate with persons of part negro blood in our schools."\textsuperscript{88}

Reed's fear that the Court would extend the definition of white to children of color and permit them to attend school with "pure" white children was realistic. The Court suggested that it would do so in \textit{Chalmers v. Stewart}, the same term as the \textit{Jeffries v. Ankeny}.\textsuperscript{88}  

\textsuperscript{86}Ibid., 383-84. 

\textsuperscript{87}Ibid., 384. 

\textsuperscript{88}Jeffries v. Ankeny, 11 Ohio 372, 376 (1842).
and *Thacker* cases. Chalmers was a teacher employed in a public school financed partly from the common school fund and partly from private subscriptions. Stewart had signed a subscription obligating himself to pay Chalmers four dollars to teach two of his children. When Stewart realized that Chalmers had admitted "colored" children to the school, he withdrew his children and refused to pay the subscription. Chalmers sued for payment. The trial court sustained Chalmers' attorney's objection to Stewart's proffered evidence that Chalmers had illegally permitted colored children to attend the school, even though, apparently, Chalmers admitted it. The jury then found for Chalmers.

On appeal, the Supreme Court reversed and remanded for retrial, ruling that "[a] school subscription in aid of the common school fund imposes no obligation to pay, if black children are admitted into the school, or those who are notoriously vicious, corrupt, immoral, or profane." In reaching this decision, the Court confirmed that the schools were open only to "white" youth. But it also noted that "[w]ho white children are, has in principle, been determined by this court as the present term," citing *Thacker v. Hawk*. Thus, mixed race children could hope to attend Ohio's public schools. At the same time, because the comment was not made part of the syllabus, Justice Read could still hope that he could prevent an in bank ruling that colored children could legally attend the public schools with white children.

His hopes were dashed within the year. Thomas Lane sued the school directors of the public school for Silvercreek township in Greene county for refusing to allow his

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89 *James C. Chalmers v. Robert Stewart*, 11 Ohio 386 (1842), syllabus, 386. Justice Wood explained a teacher would forfeit his right to compensation if he filled the school with prostitutes and thieves, for example. Ibid., 388.

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three children to attend the public school. Lane asserted that his mixed-race children were legally white. The jury found that one of his children who had been denied entrance was “of negro, Indian and white blood, but of more than one-half white blood.” The case went to the Supreme Court for a ruling on the law. Lane’s lawyer argued that “the word white, as used in the common school law now in force, is . . . the same which has been used in all the former laws on the subject,” and the Court’s previous rulings in Gray and Williams had settled the legal construction of the word white.90

The school directors’ lawyer made several arguments. He questioned whether the school directors could be sued for their official acts, whether a person “one shade nearer white than black,” could be legally construed to be white, and whether “the rights of an individual [are] increased by the mixture of Indian blood, or do the Indians, under the common school laws, stand upon the same footing with the negroes.” Because the “subject [was] one of great importance to the peace and harmony of the community, and, in a large portion of the state, of great excitement, and intimately connected with the prosperity of the whole system of common schools in the state, he felt compelled, “not only as an advocate” for his client, but also because of “his own views on the subject,” to hopefully “contribute something to the settlement of the question.” He strongly urged the court to adopt a position that the word white meant “the pure white race.” He noted that “Justice Kent in his commentary on American law,” took such a view.91

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90 Thomas Lane v. Matthias W. Baker, et al., 12 Ohio 237 (1843). He did not cite to Jeffries and Thacker although the cases had been decided the year before. Perhaps, the only cases mentioned in the record were those he argued before the lower court.

91 Ibid., 240-41.
He recognized the court’s previous rulings in *Gray* and *Williams* but argued that they were not binding on the present case. He distinguished the *Gray* case because it dealt with the law governing testimony, and “being an abridgement of liberty, was construed strictly.” The *Williams* case, having been decided as a circuit decision and based on *Gray*, was not binding on the present case. Further, he argued, “Indians are not citizens, neither can [they] be,” and “they have no political rights.” They “as much as negroes,” were excluded from the schools “by reason of color.” The court must “decide the laws as they find them,” he insisted, “and leave to the Legislature the policy of enacting, if within the pale of the constitution.”

Chief Justice Lane issued a very short opinion on behalf of the court. The justices found “no cause to change the opinion expressed in [Jeffries v. Ankeny] in which ‘they followed former decisions,’” citing the *Gray, Williamson, Jeffries, and Thacker* cases. Their syllabus simply stated: “[y]outh, of Negro, Indian, and white blood, but of ‘more than one-half white blood,’ are entitled to the benefit of the common school fund.”

Did school districts follow the ruling and admit “colored” children into the white schools? At least some did, and some teachers, like James Chalmers, went further by admitting black children in direct violation of the law. Others did as well. William Southard sued Hugh Stewart and the other school directors in Paint township in Fayette county for “wrongfully admitting colored children,” which, according to Southard, forced

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92Ibid., 241-42.

93Ibid., 242, 239. There is no recorded dissent although the Court noted that it was the ruling of “a majority of the court.” Ibid., 242.
him to remove his children from the school and pay for their education elsewhere. The school directors challenged the constitutionality of the school law but the trial court refused to recognize it as a defense to the action. The jury awarded Southard $25.00 and the school directors appealed.

Chief Justice Birchard issued the court’s decision that Southard could not maintain his lawsuit, because the “acts complained of are not charged to have been done either willfully or maliciously.” At most the directors stood accused of “misjudg[ing] the law and acted erroneously.” Southard had suffered no injury. Birchard carefully distinguished *Lane v. Baker*. The wrongful rejection of a child in that case, inflicted “a positive injury” and constituted a “positive denial of a right.” In contrast, Southard at most complained of “an act which possibly may annoy one in the exercise of a right.” If one applied Southard’s claim to a voting case, it would permit a person to sue because his vote was “neutralized” by an election judge’s error in permitting an unqualified person to vote. The Court specifically refused to expand actions against township trustees beyond *Jeffries v. Ankeny* and *Lane v. Baker*. Doing so would “place it in the power of captious persons to break up probably three-fourths of the schools in the state.”

The school directors had “formally waived all matters of both form and substance,” to have the Court reach the constitutionality issue. But the Court declined.

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94The Court was not suggesting that three-fourths of the schools in the state were illegally admitting black children, but that it would open the door for other lawsuits. “If suit may be maintained for an error in admitting colored children (and we think it was probably wrong), it must be on a principle that will enable every member of the school district to maintain an action for the same, or for any other mistake in the discharge of [the trustees’] duties.” *Hugh C. Stewart et. al., v. William R. Southard*, 17 Ohio 402, 402-406, (1848).
Justice Birchard explained that they “cannot with propriety be called on to perform a work of mere supererogation.” It was their duty “to decide such questions only as become necessary to ascertain the rights of the parties litigant, and are legitimately presented upon the record.” The Court could not “admit that parties have the power to call for an opinion on a matter not thus presented, and which is out of the case.”

In its first decision judicially constructing what it meant to be “white,” the Ohio Supreme Court adopted the most expansive definition possible under Ohio law. Any person who was more than one-half white was legally white, no matter how “colored” in appearance. Over the next years, the Court expanded the definition to apply to voters and to children. Despite periodic challenges to the Court’s definition, it remained firm. But the recurrence of challenges, and the dissents of Justice Read, reveal serious divisions among white Ohioans as to who they were willing to include in the community.

Although the Court adopted an expansive view of what it meant to be white, the Court never invalidated the Black Laws, despite constitutional challenges. The Court consistently avoided the constitutional issues when presented to them. In 1848, Salmon P. Chase and his partner challenged the constitutionality of the statute restricting black testimony against whites. They argued that the law violated two provisions in Ohio’s Bill of Rights. The law deprived African-Americans of the right of “enjoying and defending life and liberty, acquiring and possessing property, and pursuing and obtaining happiness and safety.” These rights could not be “enjoyed or exercised,” they argued, “if

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95Ibid., 406.

the legislature may at pleasure deprive any man or every man of the testimony necessary
to defend his life, or liberty, or property—testimony unimpeached, of crime, incapacity, or
interest.” They also directed the Court to the “open courts” clause of the Bill of Rights,
which provided “[t]hat all courts shall be open, and every person for an injury done him
in his lands, goods, person, or reputation, shall have remedy by due course of law, and the
right and justice administered without denial or delay.” They challenged the Court to
reconcile the constitution with the statute. “What remedy can a man have,” they asked,
“if the witnesses to establish his case be excluded? What is the process to compel
attendance of such witnesses worth, if they cannot be examined when produced?”

The Court acknowledged that the lawyers had “ingeniously argued” the
constitutional issue, but found in their client’s favor on other grounds. Having done so,
the Court determined “it is unnecessary to notice them [the arguments] more particularly.
The proper time to decide them will be when a case arises which will make a decision of
those points decisive of the controversy.” The Court never ruled on the constitutionality
of the testimony statute, just as the Court had refused to reach the constitutional question
concerning the school law in *Stewart v. Southard*.

IV

No Bastion of Liberty

In 1802 an African American could look to Ohio’s constitution and see its
potential to become a bastion of liberty, and nothing in the constitution precluded him

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97Ibid., 168.

98Ibid., 169.
from coming to Ohio to take advantage of it. But the fortress proved to be a mirage. It soon became apparent that the constitution contained merely the illusion of liberty. The early Ohio legislatures placed into statutory law what the anti-black rights delegates had failed to place in the constitution. Law after law took away the civil rights of Ohio’s African-Americans. Indeed, the Black Laws imposed restrictions far surpassing anything proposed for the constitution. The contested constitutional section had restricted office-holding, militia service, and the right to testify against whites, but it had specifically protected all other rights. There is, therefore, a terrible irony in the last victory of the pro-rights group, of which Cutler was so proud. Had they failed, there would have been fewer restrictions against African-Americans than resulted from their victory.99

So, while Ohio’s statehood constitution imposed no limits on African-Americans’ civil rights, neither did it protect them. In the end, for Ohio’s African-Americans, it was no bastion of liberty at all.

99 Justice Read, in his Thacker v. Hawk dissent, agreed that the proposed anti-rights amendment in the 1802 constitutional convention would have invalidated, and perhaps prevented, some of the Black Laws. “This last proposition [the anti-rights amendment], if adopted, would so far have recognized persons of color as citizens, that the legislature could never have enacted laws to remove them from the state; and employing the term ‘black and mulatto,’ might have been construed to confer full political rights upon all persons less than half black or mulatto.” Thacker v. Hawk, 11 Ohio 376, 383, (1842).
Not all white Ohioans agreed with the community defined by the Black Laws. Some imagined a very different community, the community the pro-rights activists at Ohio’s constitutional convention had envisioned, one in which African-Americans shared equal rights with white Ohioans. They joined Ohio’s African-Americans to fight the Black Laws by lobbying the legislature for repeal and by challenging them in the courts. African-Americans developed their own community and, with some support from whites, created private institutions for education and poor relief to substitute for those denied them by the law. Other white Ohioans agreed that African-Americans should have equal rights—the right to vote, to hold office, to testify in court, to serve on juries—just not in Ohio, or even in the United States. These white Ohioans envisioned parallel communities—one in Ohio that included only whites, one in Africa where, they said, African-Americans could enjoy all the rights of whites in their own country.
II

The Colonization Movement in Ohio

The Early Movement

On 28 December 1816, in the Hall of the United States House of Representatives, a group of well-known and well-respected men founded the American Colonization Society to "promote and execute a plan for colonizing (with their consent) the free people of colour, residing in our country, in Africa, or such other place as Congress shall deem most expedient." The Society's first president was Bushrod Washington, a United States Supreme Court justice and the nephew of George Washington. Its vice-presidents included Henry Clay, Daniel Webster, John Randolph, Francis Scott Key, and Andrew Jackson. As Jackson's presence suggests, initially the colonization movement attracted both opponents and defenders of slavery. Some of colonization's supporters believed that the success of the emancipation movement depended on a plan to transport the emancipated slaves out of the United States. Others argued that colonization to Africa had many other benefits: "We would be cleared of them; we would send to Africa a population partially civilized and christianized . . . . And blacks would be put in a better condition." Some southern slave owners could see colonization as a way to protect slavery. They feared the mere presence of free blacks could induce slaves to seek their own freedom. Colonization also offered a way to dispose of troublemakers and slaves

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1 *African Repository*, XXV, 14. The *African Repository* was the newsletter of the Society.

who had ceased to be productive. For some white northerners it answered the dilemma of what to do with the influx of freed slaves from the South.

Ohio newspapers publicized the American Colonization Society’s founding, and Ohioans involved in anti-slavery work discussed its merits. In 1818, a local association of the Union Humane Society, an early Ohio anti-slavery society, created a committee to report on colonization. Some Ohio anti-slavery advocates questioned whether colonization would perpetuate slavery rather than end it. Charles Osborn thought it “would powerfully tend to perpetuate slavery by keeping other expedients out of view.” Others argued that African-Americans were natives of the United States and that colonization advocates were wrong to define free blacks as a “nuisance.” Some branded the Colonization Society founders as hypocrites who had no intention of colonizing their own slaves. Bushrod Washington was criticized particularly bitterly when he sold fifty-four slaves to a New Orleans slave owner. Most critical were Quakers involved in anti-slavery work.5

But many white Ohioans, some prompted by humanitarian motives and others by racism, embraced colonization. In 1817 residents of four counties petitioned the Ohio Legislature that “measures may be taken to effect the emancipation and colonization of people of color.” The legislature responded by passing a resolution “instructing” Ohio’s

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3Richard Frederick O’Dell, The Early Anti-Slavery Movement in Ohio (Ph.D. diss., University of Michigan, 1948), 293.

4The Philanthropist, 3 September 1818.

5O’Dell, 294-298.
United States Senators and “requesting” Ohio’s United States Representatives to “use their best endeavors” to pass national legislation supporting emancipation and colonization.®

In 1824, the Ohio legislature debated a proposal by Henry Steece, a representative from Adams County, for a specific colonization plan. Steece’s plan called for a national law “which should provide that all children of persons now held in slavery, born after the passage of such a law, should be free at the age of twenty-one years . . . providing they consent to be transported to the intended place of colonization.” His resolution also recognized that “the evil of slavery is a national one, and that the people and the states of this Union ought mutually to participate in the duties and burdens of removing it.” ^

The House passed Steece’s preamble and resolutions as proposed, but the senators debated the issue. Some thought colonization impractical but intended to vote for the resolutions nonetheless. Another senator thought it would be “murder” to send African-Americans to Africa, given the reports of the high death rate experienced by those who had gone there. Senator Matthew Simpson, who had been born in Ireland, reminded the senators that anti-slavery agitation in England had encouraged Parliament to act against slavery. Others particularly liked Steece’s recognition that slavery was a national problem calling for a national solution. Jonathan Sloan agreed that slavery was a national

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®Ohio Senate Journal, 1817, 103-137; Laws of Ohio, January 29, 1818. The wording of the resolution is interesting. Since the legislature elected Ohio’s senators they could be “instructed” to take certain actions. On the other hand, since Ohioans directly elected their representatives, the legislature felt it could merely “request” assistance from them.

problem and a "curse," but thought the southern states should propose the solution. Debate finally centered on Steece's preamble which denounced property in men. Some senators thought it too harshly worded and likely to antagonize southern slave owners unnecessarily. Senator Alexander Campbell, a former Virginian, recounted some of the horrific sights he had witnessed in Virginia, and urged the legislators to do all they could to end slavery. Senators should not be worried about the slave owners' reactions, he insisted. They expected harsh language. The senate resolved the issue by deleting the preamble and voting for the resolutions. The legislature sent the proposals to the governors of each state asking that he present them to his state's legislature for approval. Eight northern states concurred but Georgia and five other states repudiated the plan.8

In addition to petitioning the legislature to take action, white Ohioans also formed their own colonization societies, some as auxiliaries of the national society. In a flurry of organizing in late 1826 and early 1827, Ohioans created at least thirty colonization societies. As with the national society, well-known Ohioans enrolled in the local societies. Elder statesmen such as Bezaleel Wells and Edward Tiffin, who had been on opposite sides of the African-American's rights issue at the statehood constitutional convention, found common cause in colonization. Southern Ohioans, from counties with the largest African-American population, were not alone in supporting colonization. Residents of the Western Reserve in Portage, Trumbull, Cuyahoga, and Columbiana counties, where anti-slavery sentiment was growing in the 1820s, formed societies as

8Ohio House Journal, 1823-34. 196; Ohio Senate Journal, 1823-24, 157; Columbus Gazette, 22 January 1824; Laws of Ohio (1823-24), 160; O'Dell, 303. The resolution is also reprinted in Middleton, The Black Laws in the Old Northwest, 20.
The presence of colonization societies in the Reserve indicates a genuine belief on the part of some Ohioans that the goal of emancipation could be achieved most speedily by offering colonization as a companion.

While some southern Ohioans undoubtedly shared the anti-slavery sentiments of the Western Reserve, others feared the influx of freed slaves into Ohio. Ohio's African-American population had grown from a few hundred in 1800 to almost 10,000 in 1830, having almost doubled in the preceding decade. Many southern white Ohioans supported colonization to maintain white homogeneity. Public addresses urging Ohioans to support colonization revealed the dual goals of ending slavery and promoting a white-only community.

The proliferation of local colonization societies led to calls for a state-wide organization. In December 1827, colonizationists created the Ohio State Colonization Society with the former governor, Jeremiah Morrow, as president. Of the ten vice-presidents, six were ministers, two of whom were presidents of Ohio universities, and three were lawyers, one of whom was the Speaker of the Ohio Senate. The Ohio organization was an auxiliary to the national society and had as its purpose the "colonization on the coast of Africa (with their consent) of the free people of color of the United states, and such as may from time to time obtain their freedom." In particular, the Society would aid "free colored persons of Ohio to emigrate to Africa."  

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9 O'Dell, 306-08.

10 Reverends R. H. Bishop, president of Miami University and Reverend R. G. Wilson, president of Ohio University. Abraham Shepard was the Speaker of the Senate. Appendix to "A Brief Exposition of the Views of the Society for the Colonization of Free
In its address to the citizens of Ohio, the Society argued that only colonization could unite the North and South in removing slavery. Colonization would benefit African-Americans because they would always be “degraded” in the United States. Although emancipated slaves in Greece and Rome had been able to become useful citizens, it was “because nature had branded them with no characteristic difference of complexion.” However, in the United States, “a manumitted slave remains a negro still, and must ever continue in a state of political bondage; and it is obvious that he who is deprived of the inherent rights of a citizen can never become a loyal subject.” As proof of free African-Americans’ “degradation” and the need to place them “into a separate community in a country of their own,” they cited statistics from northern states, including Ohio, indicating that African-Americans comprised a much higher percentage of prison inmates than they did of the general population.11

Although Society members believed that slavery was evil there was also danger in “letting loose a horde of emancipated outlaws in the heart of our country.” Southerners freeing their slaves would send them out of their states; therefore manumission came “at the expense of our safety and happiness in this and other free states.” If this was not enough to frighten white Ohioans into supporting colonization, they also warned them that “in the fearful event of a servile war, it would not be in the slave-holding states, and among slaves that those schemes of blood and ruin would be laid and ripened in to


11Ibid., 82-83.
maturity, but here, where they enjoy enough of freedom to feel their chains and to encourage them in an effort to break them off, and are not under the watchful restraints of a master.”

Colonizationists regarded “the black population among us as a great national evil, moral, political, and social; which extends to all parts of our Union, and which tends to the destruction of our happiness and theirs, and which all should labor to remove.” They extolled the efforts of the national society to create the colony of Liberia in Africa and expressed confidence that the national government would support their endeavors. According to the Ohio Society, colonization would benefit Ohio’s African-Americans because they “never can be admitted to the full enjoyment of those rights as fellow citizens.” If, instead, they would emigrate to Africa, there they could live “under a constitution and government adapted to their situation [with] all the rights and privileges which of right belong to a separate independent community.” Thus colonization to Africa was the perfect solution: it would benefit African Americans, it would benefit the United States by permitting the gradual abolition of slavery, and it would even benefit Africa where the black colonizers would bring civilization and Christianity as well as interfere with the international slave trade.13

The Ohio colonization movement received support from churches, to which the missionary aspect of colonization appealed. The Ohio Presbyterian and Lutheran Synods endorsed colonization, as did the Ohio Baptist Convention. Students and faculty at

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12Ibid., 84-85.

13Ibid., 86-87.
Ohio’s colleges and universities also supported colonization, forming auxiliary societies at Kenyon College and Dennison, Miami, and Ohio Universities. Within ten years, one hundred colonization societies existed in Ohio, most of them in the southern part of the state. The Ohio Society’s appeal to white fear resonated best.

The same month that the Ohio Colonization Society met for the first time, gathering in the Hall of the House of Representatives, Governor Alan Trimble stood in the same building and reiterated their concerns about the effect on Ohio if the influx of African-Americans remained unchecked. In his annual address to the legislature he urged it to provide financial aid for colonization because it was “a question of grave and solemn inquiry how long Ohio will continue to tolerate the immigration of this unfortunate and degraded race. Their rapid increase has already given serious alarm to many of our citizens and it may even now be necessary for us to adopt some measure, to counteract the policy of the slave states.” The legislature created a committee to report on the Governor’s message. Headed by a Ross county representative, the committee urged the legislature to seek federal money for the American Colonization society, to authorize the governor to financially support Ohio African-Americans’ colonization to Africa, and to draft a bill to prevent settlement in Ohio by any colored persons who were not citizens of some other state.

14Henry Noble Sherwood, “Movement in Ohio to Deport the Negro,” Quarterly Publication of the Historical and Philosophical Society of Ohio 7 (1912), 60, 64. Sherwood calculates thirty out of forty-five city societies and thirteen out of nineteen county societies were located in the southern or central part of the state. O’Dell, 312-14.

Representatives debated the constitutionality of the immigration restrictions, some arguing that African-Americans had the same rights as whites to remain in the state. Others suggested that further legal restriction would be meaningless for it would take the "entire militia" to prevent immigration. The members of the House agreed to seek federal funds, refused to authorize the governor to spend money, and instructed a committee to draft further legislation. A month later, the House passed a bill that required state officials, such as township trustees, to take African-American immigrants before a justice of the peace or a mayor to determine whether the person was a resident of Ohio or a citizen of another state. If they were neither, they were to be removed from the state. The officials charged with responsibility for the law, and persons who assisted African-Americans in evading the law, could be fined. The House passed the bill but the Senate indefinitely postponed action on it. Both Houses agreed to send another resolution to Congress to work for a national law supporting colonization.\(^{16}\)

During the 1830s interest in colonization declined for a number of reasons. After more than a decade, results were disappointing. Supporters had been unable to collect sufficient private donations to fund large-scale colonization. Their efforts to create a national program financed by the government had failed. No national plan could succeed without support from the southern states, which had not been forthcoming. The increase in the free African-American population in the North convinced some whites it was impractical to Colonize all free African-Americans. African-Americans had not

supported colonization as the white promoters had hoped. More and more anti-slavery activists began to repudiate colonization’s racist underpinnings.\textsuperscript{17}

\textit{“Ohio in Africa”}

There was renewed interest in the colonization movement in Ohio in the 1840s, in large part due to the skills and determination of the Ohio agent of the American colonization Society, David Christy. He continued to press the Ohio legislature for funds, devising a strategy of creating a special colony in Africa for Ohio’s African-Americans. The strategy grew out of the 1848 offer of $5,000 by Charles McMicken, a prominent Cincinnati lawyer, to enable the Ohio Society to purchase land north of Liberia for a new colony, “Ohio in Africa.”\textsuperscript{18} Christy devoted the next several years to the project. He appealed to the general public, Ohio churches, the state legislature, and finally to the Constitutional Convention to secure the remaining funds to pay Ohio African-Americans to emigrate to the new colony.

To educate the public and lobby the legislature, Christy gave a series of lectures in the Hall of the Ohio House of Representatives.\textsuperscript{19} In the first, he analyzed the history of the slave trade and concluded that “the planting and building of Christian Colonies on the

\textsuperscript{17}O’Dell, 353-54.

\textsuperscript{18}Although named “Ohio in Africa,” the colony would be available for emigration by free blacks from Ohio, Indiana and Illinois. Edward Wesley Shunk, “Ohio in Africa,” \textit{The Ohio State Archaeological and Historical Quarterly} \textbf{51} (1942): 80.

\textsuperscript{19}The lectures, given between 1849 and 1852, were combined and published as \textit{Christy’s Lectures on African Colonization and Kindred Subjects} (Columbus: J. H. Riley & Co., 1853).

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coast of Africa, is the only practical remedy for the slave trade." He then analyzed the history of slave emancipation in the United States and its effect on the population of free blacks in the north. Of particular concern to Ohioans, Christy argued, was the fact that free blacks were concentrating in Ohio. He argued that this was so because the influx of foreign immigration in the northeast states provided a source of cheap labor that forced African-Americans to move west. Illinois and Indiana’s new constitutions placed barriers to emigration into those states which meant that Ohio received a disproportionate number of African-Americans from the south and the east.

Christy further analyzed the African-American population within Ohio’s counties and chastised northern Ohioans who objected to colonization and “charge[d] us, of the southern, with being destitute of the ordinary feelings of humanity and benevolence, because we are disposed to discourage the further immigration of colored men into the state, and because we advocate a separation of the races by colonization.” Although he conceded that northerners seriously believed what they said, he mockingly wondered whether “perhaps if we had only three to a county, like old Geauga [County], we too, might be disposed to catch them for pets, to amuse our children, as we do mocking birds and paroquets [sic].” As to their suggestion that the solution to “negro degradation” was to elevate them and prepare them for citizenship, Christy argued that the “opposition

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20“A Lecture on African Colonization: Including a Brief Outline of the Slave Trade, Emancipation, Relation of Liberia to England &,” ibid., 11. Each of the four lectures is separately paginated. Hereafter this lecture will be referred to as Lecture 1.

21Ibid., 24.

22Ibid., 22.
to granting them equal social and political privileges in Ohio is a "fixed fact." Further, "it is the settled conviction of nearly all our thinking men, that colored men, intellectually, morally, or politically, can no more flourish in the midst of whites, than the tender sprout from the bursting acorn can have a rapid advance to maturity beneath the shade of the full-grown oak."^23

Both the public and the legislature responded positively to Christy’s lecture. The lecture so impressed members of the General Assembly that forty-three of them sent him a letter indicating that they were “desirous of promoting the discussion of the topics connected with a provision to be made for the people of color, and that the greatest publicity should be given to the facts and statistics contained in your interesting and eloquent Lecture on African colonization.” They requested a copy for publication.^24

Christy addressed the General Assembly the next year on “African Civilization, as connected with, and dependent upon, American Colonization.”^25 Again he impressed the legislators. They were “desirous of securing to the public the means of fully and calmly investigating the subject of the provision which ought to be made for our colored people, and believing that the facts contained in your Lecture on African Colonization . . . would materially aid in the promotion of that object, we would respectfully request a copy of the

^23Ibid., 29.
^24Ibid., 2.
^25Christy Lectures, 2:3.
The same day they sent their letter to Christy, they passed a Joint Resolution, on a vote of fifty-one to fourteen, instructing Ohio’s Senators and Congressional representatives to seek the national government’s recognition of the independence of Liberia and to “use all honorable means to induce the free blacks of the United States to emigrate to that country.”

III

National Negro Conventions

Although not unanimous, most free African-Americans, including Ohio’s African-Americans, rejected colonization. Within a month of the founding of the American Colonization Society in 1816, three thousand African Americans convened in Philadelphia to express their opposition. They issued an address to the “Humane and Benevolent Inhabitants of Philadelphia, informing them that Philadelphia’s African-Americans, “a portion of those who are the objects of this plan, and among those whose benefits, with them of others of color, it is intended to promote; with humble and grateful acknowledgments to those who have devised it, pronounce and disclaim every connection

26 Letter from fifty members of the General Assembly to David Christy, dated 5 February 1850, 2:2.

27 Laws of Ohio, February 5, 1850. Also reprinted in Middleton, 22-23.

with it; and respectfully and firmly declare our determination not to participate in any part of it.\textsuperscript{29} African-Americans elsewhere in the North echoed the Philadelphians.\textsuperscript{30}

However, events in Ohio led northern African-Americans to re-think their position. In June of that year, the trustees of Hamilton township, where Cincinnati was located, served notice to the African-American community that they intended “rigidly” to enforce the requirement that blacks and mulattoes had to post a $500.00 bond guaranteed by two freehold sureties. Although the law had been part of Ohio’s Black Laws for more than twenty years, it had not been enforced generally. The trustees gave Cincinnati’s African-Americans thirty days to comply with the law or leave the state. In the same public notice, the trustees reminded white Cincinnatians that the law made it illegal to “employ, harbor, or conceal” an African-American who had not complied with the law.\textsuperscript{31}

Several accounts of the events in Cincinnati attribute the trustees’ actions to a recent Ohio Supreme Court decision ruling the Black Laws constitutional.\textsuperscript{32} The \textit{African Repository}, the newsletter of the American Colonization Society, reported the Court had so ruled. A contemporary commentator, writing under the pseudonym “Wilberfore,” reported that “the doctrine advanced by the Supreme court of this state, in support of the constitutionality of these laws was this: Our constitution was framed and adopted by

\footnotesize{\textsuperscript{29}Mehleringer, 278, n7.}

\footnotesize{\textsuperscript{30}Mehleringer, 286-295; Foner, History of African-Americans, 1:593-94.}

\footnotesize{\textsuperscript{31}Cincinnati Gazette, 29 June 1829.}

\footnotesize{\textsuperscript{32}Quillin, The Color Line in Ohio, 32; Philip Foner and George E. Walker, Proceedings of the Black State Conventions, 1840-1865 (Philadelphia: Temple University Press, 1979), 1: xi.}
white people, and for their own benefit; and they of course had a right to say on what
terms they would admit black emigrants to a residence here, and whether they would
admit them on any conditions whatever.\textsuperscript{33} Despite the contemporary reports, however,
the Ohio Supreme Court never issued such a ruling. Charles Hammond, the editor of the
\textit{Cincinnati Gazette}, addressed the confusion in an editorial later that summer.
Responding to an allusion to the supposed decision in the \textit{National Intelligencer},
Hammond wrote that “the judicial decision spoken of . . . was not a solemn decision of
the supreme court, as has been asserted, but that of the Chief Justice only, hastily made,
without serious argument, upon a question of habeas corpus.” Hammond’s account
deserves credence. Besides being the editor of the \textit{Cincinnati Gazette}, Hammond was an
attorney. Moreover, when he wrote his editorial he was also the official reporter for the
Ohio Supreme Court, having been appointed the first official reporter in 1823 and serving
until 1839.\textsuperscript{34} Hammond well understood the concept of \textit{obiter dicta}.

From Hammond’s account it appears that the Chief Justice made the comments
alone, not even sitting as a two justice circuit court. The case itself sunk into legal
oblivion. It had no binding precedential value. The Supreme Court never referred to it in
later opinions. We do not even know the names of the parties involved.\textsuperscript{35} Public reports

\textsuperscript{33}\textit{Cincinnati Gazette}, 24 July 1829.

\textsuperscript{34}Following the practice of the United States Supreme Court reports, the first nine
volumes of \textit{Ohio Reports} carry Hammond’s name.

\textsuperscript{35}There is no record of the actual case. Even if it was a circuit court decision,
those decision were not included in the official reports. The practice was to file them
with the clerk’s office in the county court in which the Supreme Court sat. The
Cincinnati Courthouse burned in 1884 destroying earlier court records. Justice Wright
of the Chief Justice’s comments may have emboldened the trustees to act, they may have had no effect on the decision whatsoever. The trustees had been under pressure from constituents to prevent any further increase in Cincinnati’s African-American population, which had exploded in the previous decade, from a few hundred to more than two thousand, accounting for almost ten percent of the overall population.36

Unable to comply with the law, Cincinnati’s African-American community responded by sending representatives to Canada to report on the potential for settling there. They received a welcome from the Governor who told them “[t]ell the Republicans, on your side of the line, that we royalists do not know men by their color.”37 Upon receiving word from their agents, Cincinnati’s African American leaders publicly notified white Cincinnatians that “the coloured people have obtained a place to emigrate to,” but since many African-Americans had been denied employment, they could not afford to leave. The leaders appealed to “the Generous Public” for donations.38 They also asked the trustees for more time to prepare their departure.

By August, some whites grew impatient. In a violent outburst, they attacked African-American homes and businesses. African-Americans defended themselves,


38 Cincinnati Gazette, 3 August 1829.]
killing at least one of the attackers. By the fall, more than one-half of the city’s African Americans--between one and two thousand people--had departed.

Hammond, who had warned the trustees to think carefully about the consequences of their plan, analyzed the results in the Gazette. They had “driven away the sober, honest, industrious, and useful portion” of the city’s African-American population. According to Hammond, “the vagrant [was] unaffected by it.” The result was the loss of “the moral restraint, which the presence of respectable persons of their own colour imposed upon the idle and indolent, as well as upon the profligate.” Having to sell their homes and businesses under forced circumstances, property-owning men of color had been subjected to “great sacrifices.” The trustees' actions had affected whites as well, exposing employers of African-Americans to “suits by common informers, where no good or public motive was perceptible.” Because “employers were afraid” to hire African-Americans, it had “reduced honest individuals to want and beggary, in the midst of plenty and employment.” “The oppressor and the common informer” had preyed on “the weak and the defenseless under color of law.” Hammond condemned all Cincinnatians, even those who had not actively participated or benefitted from the exile of the African-Americans. For Hammond, the events had “demonstrated the humiliating fact, that cruelty and injustice, the rank oppression of a devoted people, may be consummated in the midst of us, without exciting either active sympathy, or operative indignation.” “The common tie of humanity, the more tender union of Christian brotherhood, the convulsive emotion that swells the freeman’s bosom at the view of

39The law provided that one-half of the fine went to the "informer."
injustice and tyranny, have, no one of them, been awakened into action,” he lamented. Cincinnatians had permitted “dead apathy” to prevail, “whilst the ignoble passions of a few have perpetrated an extensive mischief–demoralizing in its principles, and suicidal in its consequences, as time must make manifest.”

African-Americans elsewhere in the north reacted to the news from Cincinnati. Philadelphia free blacks met on February 16, 1830 to express their sympathy, protest the expulsion, and to “to vindicate the cause of our oppressed people.” Fearing that Ohio would set a trend for the north, African-American leaders, later that year, called for a national convention to meet in Philadelphia for the express purpose of “devis[ing] plans and means for the establishment of a colony in upper Canada.” Forty men attended the first National Negro Convention. They issued an address to “The Free People of Colour of these United States.” Although convinced that “all men are created equal, “ and “are endowed with unalienable rights,” states, such as Ohio, had passed laws that “compell[ed] an unprotected and harmless portion of our brethren, to leave their homes and seek an asylum in foreign climes.” Although they did not doubt the sincerity of many members of the American Colonization Society, they continued to reject colonization in Africa. Instead, they recommended forming a settlement in upper Canada. They also created a national organization, the American Society of Free Persons of Labour, to act as a parent society to state and local organizations, which held national conventions over the next five years.41

40 Cincinnati Gazette, 17 August 1829.

Within two years the Society reversed the decision of the first delegates. In 1833 they repudiated colonization to Canada and resolved to improve African-Americans' social, economic, and political rights in the United States. They met nationally in 1834 and 1835 but the planned convention for 1836 never took place because of conflict between New York and Philadelphia African-American leaders over New Yorkers' support for separate black institutions such as schools and churches. Philadelphia's African-Americans formed the American Moral Reform Society, which met annually from 1836 until 1841 but never garnered significant support outside Pennsylvania. African-Americans called for the recreation of the national convention movement and, after a lapse of seven years, delegates met in Buffalo in 1843. They met again in New York in 1847. In 1848 they met in Cleveland.42

At the 1848 convention, Frederick Douglass presided with William H. Day, a young Ohio leader, elected secretary. The convention easily passed resolutions endorsing anti-slavery work, increased business education for African-Americans, frequent convening of state and national conventions, and a demand for equality before the law without regard to color. Resolutions concerning women's rights, what work qualified as "honorable, and political participation generated controversy."43

National conventions and most state conventions prior to 1848 had not allowed women to participate. Some did not even permit them to attend. Therefore, although


women attended the Cleveland convention the business committee had not provided for their participation. Martin Delany proposed a resolution recognizing women’s right to participate equally in the convention. The convention delegates initially voted to indefinitely postpone Delany’s motion. However, later in the convention, a Mrs. Sanford, supported by Frederick Douglas, raised the issue again. As a result, the convention passed a resolution stipulating that the invitation to “persons” to attend the convention included women. But there is no record of any effort to amend the delegates’ resolution concerning equal rights to include sex equality. The tepid endorsement of women’s attendance but not full participation, nonetheless made the Cleveland convention the first to recognize any right of women to participate in a national political convention.

The delegates also debated what work should be considered “honorable.” Douglass represented one extreme, unsuccessfully endorsing a resolution recognizing that all work was honorable. Martin Delany represented the other extreme. He blamed Africans Americans themselves for being disproportionately represented in menial occupations. The delegates compromised supporting business education and encouraging African-Americans to become “entrepreneurs as well as caretakers.”

Most controversial was whether to pass resolutions recommending the newly formed Free Soil Party. Some delegates, like Douglass, eschewed any political involvement. Others chastised the Free Soil Party for having failed to include an equal

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44 North Star 29 September 1848; Salem (Ohio) Antislavery Bugle, 13 October 1848; The Liberator, 13 October 1848; Bell, 361-62.

45 Bell, 360-61, 366.
rights plank in its platform. The delegates compromised by passing a resolution that recommended the Free Soil movement and its Buffalo convention but also expressed their “determin[ation] to maintain the higher standard and more liberal views which have heretofore characterized us as abolitionists.”

Although the national movement lay dormant for the next five years, African-Americans continued to meet in state conventions. Philip Foner and George Walker argue that state conventions were perhaps more significant than the national movement, because they reflected the “grass-roots” thinking of free blacks in the north and were more representative of a cross-section of the free community. The Ohio delegation to the 1848 national convention had requested that the Central State Committee issue a call for a convention to be held in January 1849. The committee complied and issued a call for a mass convention to be held in Columbus starting on January 10, 1849. Instead of sending delegates, the committee recommended “affording every man who feels the weight of the yoke, and is tired of wearing it, and has sufficient intelligence to contribute aught to remove it, a fair opportunity to do so.” Ohio’s African-Americans held statewide conventions almost every year prior to the Civil War. Initially they focused their efforts on repeal of Ohio’s Black Laws.

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46Bell, 364-65.
47Foner and Walker, Black State Conventions, xv.
48They held conventions in 1849, 1850, 1851, 1852, 1854, 1856, 1857, 1858, and 1865. The records of the conventions are reprinted in Foner and Walker, 213-353.
Attempts to repeal the Black Laws started as early as 1808. That year, the Legislature considered a bill to repeal the 1807 act but sent it to a committee where it languished, never to resurface. Another attempt the next year met a similar fate. Reports that slave catchers, illegally kidnapping Ohio African-Americans, could not be brought to justice because African-Americans were the only witnesses, prompted another attempt to repeal the testimony statute in 1816. It also failed. A similar bill failed by five votes in 1823. When the repeal failed, the rights advocates proposed an amendment that would permit African-Americans to testify if two "respectable" whites vouched for their character and truthfulness. This also failed. 49

A concerted effort to repeal the laws began in the 1830s and increased as the Ohio abolition movement strengthened in that decade. Reacting to the 1829 Cincinnati riot and the 1831 laws further restricting African-Americans' rights, 50 abolitionists, Quakers, and African-Americans began annually petitioning the Ohio Legislature for change. The Ohio Anti-Slavery Society, formed in 1835, made repeal of the Black Laws one of its goals. In 1836 the Society obtained 1800 signatures on petitions to change the laws. 51


50 Excluding African-Americans from juries, eligibility for poor relief, and public education.

51 Ohio House Journal, 1836-37, 695-98. For a discussion of the earlier anti-slavery movement in Ohio see Richard Frederick O'Dell, "The Early Anti-Slavery Movement in Ohio," (Ph.D. diss., University of Michigan, 1948)
The legislature reacted in a variety of ways. Petitions submitted by African-Americans generated the most hostility. When Senator Benjamin Wade submitted petitions signed by African-Americans, other senators led an unsuccessful attempt to expel him from the Senate. In 1841 a motion to reject all petitions on behalf of African-Americans nearly succeeded. Over the years the legislature referred the petitions, as well as petitions requesting further restrictions on African-Americans, to committees that periodically issued reports.

Before 1844 there was no Democratic support and only limited Whig support for repeal, almost all of it coming from the Western Reserve. Whigs from southern counties and counties with the largest population of African-Americans consistently voted against repeal measures. Thus, even when the Whigs controlled the legislature, repeal efforts failed. Abolitionist disenchantment with the Whigs led to the creation of third parties in the 1840s, first, the Liberty party and then the Free Soil Party. Ohio abolitionists' willingness to throw their support to non-Whig candidates had affected the Assembly elections in 1838 and 1842 and made repeal of the Black Laws a more important factor after 1844. In February of 1845, the Senate passed a bill, 17-16, permitting an African-

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53 *Columbus Ohio Statesman*, 29 December 1841.

54 For an analysis of the voting on repeal measures during this time see, Leonard Erickson, "Politics and Repeal of Ohio's Black Laws, 1837-49," *Ohio History* 82 (1973): 154-175.

55 Ibid., 156.
American to testify if a white man attested to his character. In the House, eighteen Democrats and twelve Whigs combined to defeat it, 30 to 23.  

Repeal became a statewide issue in the gubernatorial race the following year. William Bebb, the Whig candidate, expressed his commitment to repeal. Lest he alienate too many voters, he clarified his position near the end of the race. Speaking in Mercer County, an anti-repeal county, he voiced his opposition to giving African-Americans the vote, admitting them to juries, and to the public schools. The Whigs “black-baited” the Democratic candidate David Todd, claiming that he had supported repeal in 1838 and had not objected to funding black schools. Bebb won. The Whigs also won control of the House and tied the Democrats in the Senate. Despite making repeal a campaign issue, the Whigs did not repeal the Black Laws. Instead, the House passed a bill that would submit the issue to a referendum. This permitted anti-repeal Whigs to vote for the bill confident it would be defeated at the polls. The Senate refused to pass it, even though the Whigs had a majority present on the day of the vote.  

After a decade of annual attempts to repeal all or part of the laws, the pattern of voting was clear. Democrats throughout the state opposed repeal. It did not matter whether they represented constituents in northern or southern counties. Nor did the population of African-Americans in the county affect Democrats’ votes. Democrats from northwestern counties consistently voted against repeal even though only a handful of


57 Ibid., 159.
African-Americans resided in their counties. Whigs divided on the issue. Whigs from the Western Reserve strongly supported repeal, but Whigs from southern counties and counties with the greatest population of African-Americans strongly rejected it. Had the Whigs been united, repeal could have passed at any time during the years they controlled the legislature—most of the 1830s and 1840s.58

In 1848, a confluence of national and state issues provided a unique opportunity for repeal of the Black Laws. The Whigs had selected General Zachary Taylor, a slave owner, for President, alienating some Ohio Whigs and driving them to join anti-slavery leaders in the Free Soil Party. Free-Soilers backed Martin Van Buren for President while the Democrats supported Lewis Cass. Ohio’s electoral votes went to Cass but Taylor won the presidency. On the state level, Ohio free-soil candidates won critical seats in the Ohio House and Senate. Of the nine free-soil winners in the House, five had won with support from the Whig party, two had won with support from the Democratic party and two had run in opposition to both Democrat and Whig candidates. This placed the two independent free-soilers, Norton S. Townshend and John Morse, into a pivotal role. Thirty-two Democrats had been successful as had twenty-nine Whigs. The free-soil candidates who had won with Democrat or Whig party support were expected to vote with that party on non-free soil issues. This meant each of the parties had thirty-four adherents.59 Particular events made control of the House crucial for both parties. In

58Ibid.

59Some accounts list the number of free-soil winners as eight, instead of nine, counting the ninth free-soiler (a Democrat free-soiler) as a Democrat. Either way, the pivotal role of the independent free-soilers is the same. See Erickson, 172.
addition to deciding who would be speaker and control the organization of the House, Whig and Democratic claimants contested two positions from Hamilton County.\textsuperscript{60} The House would decide which of them to seat. Both parties wanted to elect their candidates to the two openings on the state supreme court, where it was anticipated the election dispute would eventually be appealed. Each party wanted its candidate to fill the United States Senator opening as well.\textsuperscript{61}

Townshend had been instructed by his free soil constituents “to act with any party, or against any party, as in his judgment the cause of freedom should require.” When the anti-slavery members held a conference and discussed voting in unison, Townshend would not agree. He felt the other Free Soilers were obligated to the Whig party. To agree meant obligating himself to vote with the Whigs, contrary to the instructions from his constituents. Morse took the same position. Morse also believed that if they could not persuade the Whigs to support “anti-slavery men or measures” they might persuade the Democrats. Townshend concurred. “In Ohio many young Democrats were participating in anti-slavery movements under the name of the Free Democracy,” he remembered, alluding to Salmon P. Chase and his followers. At the end of the

\textsuperscript{60}The previous year the Whig-controlled legislature had passed an apportionment bill that changed voting in Hamilton County. Previously, Hamilton County’s five representatives were elected on a county-wide basis, which gave Democrats an advantage. The legislature created an electoral district from Whig wards in Cincinnati from which two representatives were to be elected. Whigs won in the newly created electoral district but Democrats won county-wide. The Democratic County Clerk issued certificates of election to the five Democrats, while the election judges gave certificates to the two Whigs. Under the constitution, the House decided which candidates to recognize.

conference, the other Free Soilers voted to exclude the two of them from any future conferences. This convinced Townshend that he and Morse would need to act independently.62

Townshend and Morse each had their own preferred candidate for United States senator, with Townshend preferring "Free Democrat" Chase and Morse preferring anti-slavery Whig Joshua Giddings. Chase had made a strong impression on Townshend when, as a young medical student, he watched Chase, then a young attorney, argue for the freedom of the slave Matilda in a Cincinnati courtroom. The men had met over the years at anti-slavery conventions as well as political conventions of the Liberty and Free-Soil parties. Giddings also had a strong record in anti-slavery work. Giddings was the United States representative from Morse's district and Morse knew him personally. As Townshend relates the events, both Morse and Townshend "cared more for a reliable anti-slavery man than any particular individual." Since Chase and Giddings both had excellent anti-slavery credentials, each was acceptable to both men.

In addition to assuring that Ohio sent an anti-slavery man to the U. S. Senate, Morse and Townshend dedicated themselves to repealing Ohio's Black Laws. Townshend thought the testimony law the "[w]orst of all," exposing black Ohioans "to all sorts of wrongs, . . . without legal protection." Chase happened to be in Columbus arguing a case when the legislature convened. At Townshend's and Morse's request, Chase drafted the bill to repeal the Black Laws that Morse submitted to the Legislature. Townshend and Morse then agreed to their plan. Morse would go to the Whigs and offer

his and Townshend's support of the Whig candidates for the Supreme Court if they would repeal the Black Laws and join Morse, Townshend, and the Whig-oriented Free Soilers to elect Giddings senator. Most of the Whigs agreed, but four or five refused because of their constituents' dislike of Giddings' anti-slavery views. Townshend then went to the Democrats with the same offer, substituting Chase for Giddings. A number of the Democrats objected, but the party put heavy pressure on them to go along. And so the deal was struck.63

On January 3, 1849 the House elected a Democratic speaker. Townshend became a member of the elections committee which was to issue a report concerning the contested Hamilton County seats. With Townshend's support, the committee recommended recognizing the Democrats on the grounds that the apportionment law was unconstitutional.64 When the Senate and House came together in joint convention, the legislators elected Chase senator on the fourth ballot and two Democratic candidates became Supreme Court Justices. "Fortunately for anti-slavery progress," according to Townshend, "the Democratic party had at that time several popular candidates for the two judgeships, and to avoid controversy between their friends the two Free Soilers were allowed their choice from the number."65


64 The constitution stated: "Representatives shall be chosen annually by the citizens of each county respectively."

65 Townshend, "Salmon P. Chase," 121.
As Townshend and Morse brokered their deal, men and women, white and black, met at the Bethel church in Columbus on January 10, 1849 for the first Convention of the Colored Citizens of Ohio. Forty-one African-American men enrolled their names as delegates representing twelve counties throughout the state. They had "pastors of churches, school teachers, students, farmers, plasterers, house painters, printers, barbers, independent barbers, (shave anybody, white or colored,) and Black-smiths" among them. The first day they elected Dr. Charles H. Langston president and created business and rules committees, as well as a committee to obtain use of the Hall of the Ohio House of Representatives for a public address. Initially this committee included a "white friend," Eli Nicholls, but one of the other members of the committee, David Jenkins, had second thoughts about the appointment. The next day Jenkins requested Nicholls be removed from the committee. Several delegates objected strenuously to Nicholls' removal, but Dr. Langston "thought we ought to show the world we were capable of doing our own business. After extensive debate the delegates removed Nicholls from the committee. To the delight of the convention, the next day, the reconstituted committee reported that the Legislature had agreed to their use of the Hall the following evening.

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66 Four from Hamilton, four from Ross, fifteen from Franklin County, one from Muskingum, one from Jackson, one from Fayette, seven from Lorain, one from Cuyahoga, one from Richland, one from Pickaway, two from Fairfield, and one from Union. Foner and Walker, 219-110.

67 Ibid., 227.
Norton Townshend had made the motion on their behalf in the House of Representatives.®

The object of the convention was their "elevation, moral, intellectual, and political," to which Ohio's Black Laws stood in their way. "They must be repealed," the organizing committee had urged.®' Over the next three days the members discussed various resolutions and created committees to draft an address to the citizens of Ohio, prepare a petition to the Legislature requesting repeal of the Black Laws, and a memorial to Congress requesting repeal of any national laws that made distinctions based on color. They passed resolutions supporting anti-slavery work, education for black children, and encouraging united action by African-Americans to work for their rights. They urged all of Ohio's African-Americans to encourage slaves to flee, assist them when they did, and to fight slave catchers. Those who refused to aid fleeing slaves "should be considered a bitter enemy to the cause of justice and humanity." Ministers who closed their pulpits to anti-slavery work were "not unworthy only of the name of minister, but of the honored appellation, MAN."®

African-Americans must realize that the only way to elevate themselves "as a people" was through "concerted action." Liberty was "comparatively worth nothing to the oppressed without effort on their part." Any conference or association of African-Americans who were afraid to speak out against slavery deserved reprobation. Blacks

68Ibid., 223.

69Ibid., 218.

70Resolutions 12, 13, 14, 20, 21; ibid, 229-130.
who discriminated against other blacks "should be esteemed outcasts." They should be thankful to white friends for assisting their cause but should "pursue an independent course." However, their goal was integration, not separatism, resolving that "the attempt to establish churches or schools for the benefit of colored persons EXCLUSIVELY, where we can enter either upon equal terms with the whites, is in our humble opinion reprehensible."\(^7^1\)

Where, such as in public education, their children could not enter on equal terms with whites, they would work to create their own school system. They decried the recent school law that meant they paid taxes that benefitted only white children's education. They committed to raising funds to pay lawyers to challenge the law. African-Americans should encourage their children to train in the mechanical trades or agricultural and professional pursuits so that they would not be trapped in menial occupations.\(^7^2\)

Three issues prompted significant debate: the role of churches in promoting slavery, colonization, and a demand by women for the right to participate in the convention. John Watson argued that the Methodists were opposed to African-Americans "as a people." Reverend J. M. Brown rose to their defense and the two men engaged in a "dialogue much to the amusement of the convention." Watson also rebuked the Baptist Church. Elder Wallace Shelton agreed because he had been silenced by his

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\(^{71}\) Resolutions 4, 15, 20, 29; ibid.

\(^{72}\) Resolutions 16, 17; ibid., 229.
church because of his anti-slavery views. Deleting references in the resolutions to any specific church satisfied a majority of the members.73

On the second day of the convention Jenkins spoke against the proposed resolution condemning colonization. He thought “there were some circumstances under which it would be beneficial to emigrate.” L. Dow Taylor was convinced that Jenkins misunderstood the resolution but Jenkins assured him that he well understood it. “He was in favor of a scheme whereby we all might move out of the United States,” he insisted, for “we can never be anything in the United States.” J. L. Watson suggested he see “how the founders of this scheme [colonization] will treat you.” Williams urged the delegates to consider the matter with care as it affected all African-Americans, not just those in Ohio. He for one “did not want to look up to the white man for every thing. We must have a nationality,” he urged. He was willing to go anywhere they could be an independent people. John Mercer Langston gave an impassioned speech. He regretted the issue had come before the convention. He agreed they needed to “battle on and battle ever.” Yet, he was willing to leave, “dearly as I love my native land, (a land which will not protect me however),” to go wherever he could be free. Prejudice against African-Americans was strong and he “was fearful it would remain so.” To become anything they must have a nationality. “The very fact of our remaining in this country, is humiliating, virtually acknowledging our inferiority to the white man.”74

73Foner and Walker, 224, resolution 20; ibid., 230.

74Ibid., 223.
After initial debate, the delegates decided to send the matter to committee to issue a report. The next day the committee issued a majority report signed by two members, John Mercer Langston and W. Hurst Burnham, and a separate minority report signed by the third committee member, Watson. The majority’s resolution opposed “any scheme of colonization, in any part of the world, in or out of the United States, while a vestige of slavery lasts.” But “in the event of universal emancipations,” they were “willing, it being optional, to draw out from the American government, and form a separate and independent one, enacting our own laws and regulations.” Watson’s minority report “resolved, That we will never submit to the system of colonization to any part of the world, in or out of the United States; and we say, once for all, to those soliciting us, that all their appeals to us are in vain. Our minds are made up to remain in the United States and contend for our rights at all hazards.”

When the delegates resumed debate, Langston claimed that Watson privately endorsed the majority report but was “afraid to express himself.” Langston was not afraid to express his private opinion. White prejudice ran deep; they would never overcome it. “If you ask a white man whether you may associate with his daughter, or whether you may marry her, he will tell you, no!” According to Langston, at Oberlin the colored school had been “brought into existence on account of the prejudice even there.” He challenged the other delegates to deny it. Day, a graduate of Oberlin, quickly took up the challenge. Another delegate, Thomas Brown, a trustee of Oberlin, also rose to speak in defense of the college when the President ruled the discussion out of order. Watson

\textsuperscript{75}Ibid., 225.
vociferously denied Langston's claim that he privately endorsed colonization. "He was unwilling that a single sentiment should emanate from him in favor of the scheme."

Elder Shelton reminded the delegates that they were "free-born Americans, but are robbed of our rights by our American-born brethren." Some African-Americans had the right to vote, and they "love the soil upon which we were born." He urged the delegates to stay in the United States, fight for emancipation, and when that day came he felt "assured that you will never regret that you have remained in this country." The delegates adopted Watson's stringent repudiation of colonization.  

Near the end of the convention, Mrs. Jane P. Merrit submitted a resolution on behalf of the women in attendance, expressing anger at their treatment. Women had "been invited to attend the Convention," but had "been deprived of a voice." It was "wrong and shameful," they protested. They would "attend no more after to-night, unless the privilege is granted." Over opposition, the delegates "finally adopted," a resolution "inviting the ladies to participate." The Ohio women had pushed the issue of women's rights within the African-American convention movement further than in Cleveland the previous year.

Although the male delegates voted to allow women to participate, they did not include equal rights for women in their agenda. They often used gender neutral terms in their Declaration and resolutions, referring to "free colored people" and "colored citizens." The argument that it was wrong to deny African-American taxpayers the right

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76 Ibid., 229
77 Ibid., 227.
to vote applied equally to some African American women, but the delegates asked the repeal only of laws that made distinctions based on color. They asked that the “word ‘white’ in the State Constitution be stricken out at once and forever.” The word “white” was “illegitimate” in Ohio’s constitution, not the word “male.”

The delegates issued an address to the citizens of Ohio claiming Ohio’s Black Laws violated the basic principles of government upon which both the United States and Ohio were founded: that “governments were instituted among men deriving their just powers from the consent of the governed” for the express purpose of securing rights. Reminding Ohioans that black men had voted for the delegates to Ohio’s statehood constitutional convention, the delegates to that convention, although initially giving them the right to vote, had taken their right to vote away. Yet they continued to be required to support a government in which they had no say and for institutions such as schools and asylums to which they had no access. They argued that the United States constitution based citizenship on nativity and protected the privileges and immunities of its citizens, which included them. Further, the Bill of Rights of Ohio’s constitution gave them equal rights with all other Ohio citizens. They gave specific examples of legislation they deemed unconstitutional under Ohio’s constitution; the “testimony” law violated the “open courts” clause. Their children’s exclusion from schools violated the schools

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78 Article 8, section 7: “All courts shall be open, and every person, for any injury done him in his lands, goods, person or reputation, shall have remedy, by the due course of law, and right and justice administered without denial or delay.”

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clause in the Bill of Rights,\textsuperscript{79} fostering ignorance that encouraged vice. Worse, segregating children engendered hatred. Those in authority must either repeal the Black Laws that were “black enough to merit a birth place other than in the free soil of Ohio” or “openly repudiat[e] the free principles which she is bound to regard as her higher law.”\textsuperscript{80}

The delegates also addressed David Christy’s memorial to the General Assembly. Receipt of Christy’s memorial may have influenced the delegates’ decision to issue their strongly-worded anti-colonization resolution. They emphatically rejected Christy’s claim that the increase in the black population was an evil. They assailed Christy’s confident assertion that Ohioans would never repeal their Black Laws. They believed the laws would be repealed but in any event they were determined to “remain amid the broken columns of our temple of liberty, and cry, ‘Repeal, Repeal, Repeal,’ until that repeal is granted.”\textsuperscript{81} In a separate passionate address to Ohio’s African-Americans, they implored all “to pledge ourselves never to cease our resistance to tyranny, whether it be in the \textit{iron} manacles of the \textit{slave}, or in the unjust \textit{written} manacles for the \textit{free}.”\textsuperscript{82}

\textsuperscript{79}Article 8, section 25: “No law shall be passed to prevent the poor in the several counties and townships within this state, from an equal participation in the schools, academies, colleges, and universities within this State, which are endowed, in whole or in part, from the revenue arising from the donations made by the United States for the support of schools and colleges; and the doors of said schools, academies and universities, shall be open for the reception of scholars, students and teachers, of every grade, without any distinction or preference whatever, contrary to the intent for which the said donations were made.”

\textsuperscript{80}Foner and Walker, 233.

\textsuperscript{81}Ibid., 234.

\textsuperscript{82}Ibid.

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On January 30, less than two weeks after the closing song of the convention, the Ohio House of Representatives considered Morse’s bill. Morse’s bill revised the school law for the public education of black and mulatto children. The prior year, the legislature had passed a law that, for the first time, permitted public education for colored children. It had not been controversial because creation of the schools was merely discretionary, and no white taxpayer money went to their support. If any white taxpayer or parent did not want colored children to attend the common schools with white children and if there were more than twenty colored children in a school district, school directors were authorized to establish separate colored schools supported by property taxes paid by black taxpayers. Morse’s bill made the creation of the colored schools mandatory. For the first time in its history, Ohio would require public education for colored children. Morse’s bill also provided that black male taxpayers would elect separate school directors who would have access to black property taxes to pay for the schools. The bill specifically repealed the 1804 and 1807 anti-immigration acts and “all parts of other acts so far as they enforce any special disabilities or confer any special privileges on account of color.” The House passed the bill 52 to 10 with 4 Democrats and 6 Whigs in opposition. Later in the day an additional Democrat and Whig, who had purportedly locked themselves in the...
sergeant at arms' office to avoid having to vote, added two more no votes making the final vote, 52 to 12.\textsuperscript{84} 

The Senate referred the bill to its judiciary committee. The committee recommended amending it to preserve discrimination in juries and poor relief. It also provided fines up to $500.00, and imprisonment until the fine was paid, of any person who “brought, or persuade[d] or induce[d]” any person to come into the state “who is likely to become chargeable as paupers . . . or to become vagrants.” The Senate approved the committee’s recommendations with some Senators trying unsuccessfully to exclude their counties from the bill’s effects. The House agreed to the Senate amendments. Ohio’s resident African-Americans and new immigrants no longer had to register a certificate of freedom or post a $500 surety bond to be employable. They could testify in court on the same terms as whites. Their children could attend public schools, most likely segregated schools. On the other hand, if they went to court, their cases would be decided by white juries. They continued to be taxed for state institutions for the poor without being eligible for any relief.

The statute also continued to call into question their status as residents since it stated that no negro or mulatto could establish a legal settlement for purposes of qualifying for poor relief. The Senate amendments reveal that white Ohioans were not willing to have an African-American sit in judgment of a white person and that they did not want Ohio to be an asylum for the worn-out slaves of the South. After years of struggle, African-Americans and white supporters, particularly anti-slavery activists from

\textsuperscript{84}Ohio House Journal, 1848-49, 15, 16, 179, 197-98.
the Western Reserve, could celebrate a partial victory. They had not succeeded by converting anyone to their cause. Townshend and Morse had finessed the victory by adroitly playing the political cards they had drawn.

Whig newspapers down-played the significance of the repeal. "Our sense of gratification at the repeal of the Black Laws does not result from any conviction that some great end in ethics or politics has thereby been attained," wrote the editor of the leading Whig newspaper, *The Ohio State Journal*. Although "many [thought] that the repeal of these laws would greatly meliorate the condition of the colored race in Ohio. We think differently." "It is but a fancied gain," he opined. Undoubtedly "the Western Reserve district is happy, but they have few subjects to be affected by the act." In the southern part of the state where most of "the colored population reside from choice," the *Journal* predicted the laws would be kept in force, "especially the one denying them the right to bear witness against a white." "It is the prejudice of education--ingrain[ed] in the very constitution of society, and cannot be eradicated by mere parliamentary forms and enactments," the paper concluded.85

The *Ohio Statesman*, the leading Democrat newspaper tried to calm outraged Democrats. "We regret that a disposition exists on the part of our Democratic friends in some parts of the State to make a fuss about the repeal of the so-called Black Laws of Ohio," it said. The paper assured readers "the Democratic party has always stood

85*Columbus Ohio State Journal*, 24 February 1849.

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opposed to placing the black man upon an equality with the white.”86 But some Democrats remained unreconciled. An “indignation meeting” in Fairfield County passed resolutions blasting the legislators for repealing the laws. “[T]he majority of the members of the Ohio Legislature have betrayed the confidence reposed in them by their constituents and have proven that they are a set of base hypocrites and dishonest politicians,” they charged. They reiterated, “[W]e are opposed to free-soilism, abolitionism, demagogism and negroism.” The editor of the Lancaster Eagle reported that the resolutions represented the “sentiments of two-thirds of the county.”87

The editor of the Ohio State Journal had been correct in claiming that the Western Reserve delighted in repeal. The Cleveland Herald’s editor "rejoice[d] that even at this date [forty years after enactment] the cause of Humanity and Right have triumphed over oppression and injustice. They are now wiped out never again to be reenacted in free Ohio.”88

The anti-slavery press, disappointed there had not been complete repeal, nonetheless celebrated the partial victory. The editor of The Antislavery Bugle recognized, “This is not equity, though an approximation that way; and as society now is, favors like this should be received.” Echoing the sentiments of the editor of the Ohio State Journal, he did “not expect speedily to see this prejudice against the colored man

86 Columbus Ohio Statesman, reprinting a statement from the Clark County Democrat, 5 March 1849.

87 Lancaster Ohio Eagle, 15 February 1849; reprinted in the Columbus Ohio Statesman, 22 February 1849.

88 Cleveland Herald, 13 February 1849.
destroyed for it is a law written upon the human soul, ‘That they whom we knowingly injure we hate,’ and not until we cease to oppress the colored man shall we wholly cease to hate him.” Nonetheless, he concluded, “this bill, defective as it is, has many good features, and we hail its passage as an earnest of the good times coming. Far be it from us to let the remembrance of what the Legislature has not done, cause us to forget what it has done.”

Outside the Western Reserve, the Whig press vilified Morse and particularly Townshend. Forty years later, Albert Gallatin Riddle, one of the Whig Free-Soilers, remained bitter. “The repeal of the Black Laws was the great moral equalization of the arrangement,” he observed, “the sanctuary in which the parties [to the deal] always take refuge.” This alone justified the arrangement. Morse and Townshend had to admit the deal was bad for it resulted in the admission of the Democratic contestants to the Hamilton County seats in "disregard of law, of private conviction and alleged faith.” According to Riddle, no deal had been necessary to repeal the Black Laws. Looking to the final vote of 52 to 10 in the House and 23 to 11 in the Senate, Riddle argued that “this almost unanimity shows that there never was a day, after the organization of the House, when a bill for the repeal could have been defeated.” Riddle ignored the fact that enough Whigs voted against the measure even in 1849 to have killed it if Democrats had opposed

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89 *Salem (Ohio) The Antislavery Bugle*, 16 February 1849.
it. The voting record of the previous decade, for both Democrats and Whigs, refutes Riddle's claim.90

With the partial achievement of their goal to repeal the Black Laws, Ohio's African-Americans focused on obtaining the right to vote. Suffrage became the centerpiece of their movement because the legislature had placed a referendum on the ballot for Ohioans to decide whether to hold another constitutional convention. Whether to hold a new convention had been a political bone of contention between the Democrats and the Whigs for a number of years. The Whigs had repeatedly blocked efforts to hold a convention but the Democrat-Free Soil legislative coalition of 1849 made it possible to pass the legislation placing the referendum on the ballot. Impetus for a convention came from various sources. Lawyers pushed for a convention to revise the judiciary, particularly the Supreme Court, which had fallen woefully behind on its docket. The statehood convention delegates' decision to require the Supreme court to sit annually in each county made some sense when there were only eight counties. By 1848, Ohio had eighty-four counties which meant the Justices spent most of the year traveling from county to county. Democrats argued for limitations on the legislature's ability to incur state debt, which exceeded $20 million by 1849, and restrictions on its authority to grant exclusive charters of incorporation. In the fall of 1849, Ohio's white male voters overwhelmingly endorsed the proposal to hold a constitutional convention by a vote of 145,698 in favor and 51,161 opposed.

90A. G. Riddle, "Recollections of the Forty-Seventh General Assembly of Ohio, 1847-48 [sic]," 1 Magazine of Western History 6 (1887): 341-351; Erickson, 171, 175.
But many Ohioans had their own agenda for constitutional change that had nothing to do with that of the politicians and lawyers. To them, a constitutional convention provided the opportunity to perfect their own imagined community.
CHAPTER 5
“EFFUSIONS OF FOLLY AND FANATICISM”

I
Introduction

The constitutional convention delegates gathered in Columbus on May 6, 1850. They had hardly begun to organize the convention, appointments to the standing committees had not even been made, when Benjamin Stanton, a delegate from Logan County, rose to address the delegates. He desired to present a memorial signed by citizens of Logan and Hardin counties that was “worthy of their attention and examination.”¹ It had been written, he explained, by an “able and distinguished” citizen of his district who had spent “much time and labor” writing the argument contained in his petition. Stanton urged the members to have it printed and distributed so that each of them could read it carefully.² James Loudon, a delegate of Brown county, agreed with Stanton because the petition addressed a subject of great concern to his constituents. Indeed, he believed their feelings on the matter “outweigh[ed] perhaps all other feelings with regards to the doings of this Ohio convention.”³ The subject of the memorial: “To Extradite the Negro Population of Ohio.”

¹Logan and Hardin counties are located in the central western section of the state.  
³Debates, 1: 29. Brown county is bordered by the Ohio river across from Kentucky.
Following the discussion and vote on whether to print and distribute the memorial, delegate Joseph Thompson of Stark County announced that he, too, had a memorial to present. His constituents, unlike Stanton's, urged the delegates to re-write the constitution so that "equal rights to the whole people, without regard to color or sex, may be engrafted as a provision of the new Constitution."^4

These first two memorials, one to remove Ohio's African-Americans from the state and the other to make Ohio's African-Americans and women equal citizens, set the boundaries of the 1850 debate concerning the place of Ohio's African Americans within Ohio's constitutional framework. Were they citizens of the state? If, so what rights did they have? Was suffrage a right or privilege of citizenship? The 1850 constitutional convention delegates would be asked to revisit the question of the place of Ohio's African-American men within the polity. They would be debating the place of women within the polity for the first time.5

The memorials also reflect the efforts of people outside the convention to influence the work of the delegates. For members of the Ohio Colonization Society the constitutional convention offered an opportunity to effect their goal of relocating Ohio's African-Americans to Africa. For African-Americans the 1850 Constitutional Convention afforded another opportunity to remove the word "white" from the state’s constitution. For Ohio women, the convention provided the impetus to seek, for the first time, the elimination of the word "male."


^5As discussed in Chapter 3, the 1802 convention delegates spent considerable time debating the place of African-Americans in Ohio but did not debate the place of women.
The Colonization movement at the Convention

With the convening of the constitutional convention, David Christy, the agent for the Ohio colonization movement, turned his attention to the delegates. He continued his series of lectures, this time addressing the members of the constitutional convention. In his seventy-three page lecture, building on his previous expositions, he expounded on the "Present Relations of Free Labor to Slave Labor, in Tropical and Semi-tropical Countries." In it he argued that free labor, provided by the immigration of Europeans, could replace slave labor in the United States. Slave holders would be compensated for their slaves who would go to Africa where they would "develop its resources and civilize its inhabitants." Ohio could do its part by providing for the emigration of Ohio's African-Americans to "Ohio in Africa." Since voluntary contributions were insufficient and "public sympathy, throughout the Union, cannot be aroused in behalf of the free colored people, as it can for the slave," each state needed to provide for the emigration of its own residents. Since some Ohio legislators had expressed concern that they lacked the constitutional power to appropriate money for the colony, Christy told the delegates that "the insertion of a clause in the Constitution, . . . will ensure Legislative action, and may lead the State to adopt and cherish this offspring of benevolence--Ohio in Africa--and

\[\text{\footnotesize 6Christy intended to give the lecture in person but the cholera epidemic in Columbus caused the convention to adjourn early and relocate to a later date in a different location. Instead, Christy had the lecture printed and distributed to the delegates, "after consultation with some of [the delegates]." He also provided them with copies of his first two lectures. Christy Lectures, 3:2.}\]

\[\text{\footnotesize Ibid., 3:3.}\]

\[\text{\footnotesize Ibid., 3:70-72.}\]
lead the State to adopt and cherish this offspring of benevolence—Ohio in Africa—and thus create a new and efficient agent for the overthrow of oppression and the promotion of human liberty."

III

African-Americans at the Convention: “Hear Us For Our Cause”

By the time of their 1850 convention, Ohio’s African-Americans could celebrate the repeal of most of the Black Laws. Now, the delegates focused on securing the right to vote from the upcoming Constitutional Convention. A number of resolutions dealt with this issue, nearly all couched in terms of male suffrage. Every “colored man” had a duty on his behalf and “his brethren” to secure their political rights. As “men” they were entitled to “all the privileges and immunities granted to other men.” “No object [is] so dear to a freeman as the right of suffrage, and no man can be free without it.”

Nevertheless, one resolution stood out as gender-neutral: “the Elective Franchise is a right of inestimable value, and a liberty that the citizens of all well regulated governments should enjoy and cherish; ... it is of the highest importance that every one should be prompt and energetic in the acquirement and defense of such natural and inalienable rights.” The Constitutional Convention should “alter the Constitution in such

9Ibid., 3:72.

10The 1849 convention had been called as a “mass” convention. It was decided that the next convention would be a delegate convention. All of the delegates were males, although women attended and may have participated in discussions. One of the resolutions passed at the convention provided “that all persons present during the Session of the convention, be hereby requested to participate in the discussion of the questions which may come before the convention.” [italics added] Foner and Walker, 251.

11Ibid.
a manner as to give to all citizens of the State without discrimination, this heavenestowed and inalienable right.” The “public mind” should be “agit[ed]” to “our claims
to all rights in common with other citizens, and especially to the right of suffrage.”

The delegates planned to send lecturers throughout the state to raise the issue of
suffrage prior to the election of delegates to the constitutional election. They also
prepared to send a representative to address the constitutional convention about “the
interests and claims of the colored people of the State.”

The delegates to the constitutional convention had not yet voted on the suffrage
provision when Ohio’s African-Americans held their next convention in January 1851.
At the 1851 convention the delegates made clear that they sought suffrage only for
African-American men. The committee addressed the constitutional convention
delegates “in behalf of the Colored Men of Ohio, . . . present[ing] to them a few things
relating to the interest of the Colored Men of this State, and particularly in regard to
amending the present Constitution, by striking out the word ‘white’ . . . thereby
permitting colored men to exercise the Elective Franchise, with the same restrictions
only, which are imposed upon you.”

In their formal address, “Hear Us For Our Cause,” they argued that fundamental
principles upon which the United States had been founded gave them the right to vote.
The Declaration of Independence clearly stated that “‘all men’--not a part of the men--but
‘ALL men are created equal.’” Similarly, governments were instituted to protect the

\[^\text{12} \text{Ibid., 251-252.}\]
\[^\text{13} \text{Ibid., 269.}\]
The naturalization clause of the United States constitution “recognizes the principle that natural birth gives citizenship, otherwise there seems to us to be no sense in the naturalization laws.” Those who had been born in the United States and in Ohio were citizens of Ohio. They had, then, the rights and immunities of citizens, among which, the delegates insisted, was the right to vote. They reminded the constitutional convention delegates of another fundamental principle: no taxation without representation. To confirm that Ohio’s African-Americans made a substantial contribution to the economy of the state, and were, indeed, taxed without the right of representation, they cited statistics concerning the value of property owned by African-Americans. African-Americans had helped to build the United States alongside whites; they had died in the Revolution and the War of 1812 serving their country. Finally, they appealed to the convention “TO GIVE US OUR RIGHTS—WE ASK NOTHING MORE.”

IV

The Ohio Women’s Rights Movement

“Never did men so suffer”

Ohio women also held their own convention to organize for the constitutional convention. The Ohio Women’s Convention held in April, 1850, was the first women’s rights convention in Ohio and the second in the nation. Prompted by the opportunity to

14Ibid., 272.

15The first convention met in July, 1848 at Seneca Falls, New York and reconvened in Rochester, New York two weeks later. Elizabeth Cady Stanton and Susan B. Anthony, eds., History of Woman Suffrage, 6 vols. (Rochester: Susan B. Anthony;
change the constitution, the organizers of the 1850 Women’s Convention published and circulated a Call for Convention to the women of Ohio and sent letters of invitation to prominent Ohio and national women’s rights advocates. The Call announced the goal “to concert measures to secure to all persons the recognition of Equal Rights, and the extension of the privileges of Government, without distinction of sex and color.” The time was right. “The meeting of a Convention of men to amend the Constitution of our (?) State presents a most favorable opportunity for the agitation of this subject,” the women enthused.

Although unable to attend the convention, Elizabeth Cady Stanton encouraged efforts to change the constitution. “The remodeling of a Constitution, in the nineteenth century, speaks of progress, of greater freedom, and of more enlarged views of human rights and duties,” she exhorted. It was “fitting that, at such a time, Woman, who has so long been the victim of ignorance and injustice, should at length throw off the trammels of a false education, stand upright, and with dignity and earnestness manifest a deep and serious interest in the laws which are to govern her and her country.”

Women and men gathered in Salem, Ohio, on April 19 and 20 for the Women’s Convention, holding meetings at the Baptist Church and the Friends Meeting House.


16 The first publication of the Call contained the names of 34 women. Later publications expanded the list to 80 women. Salem (Ohio) Anti-Slavery Bugle, 30 March 6 April; 30 April 30 1850.

17 Proceedings of Ohio Women’s Convention (Cleveland: Smead & Cowles Press, 1850), 3; Salem (Ohio) Anti-Slavery Bugle, 30 March 1850.

18 Proceedings of the Ohio Women’s Convention, 15.
Salem was home to the Western Anti-Slavery Society, a Garrisonian group, whose paper the *Anti-Slavery Bugle* had published the Call for the Convention.\(^{19}\) The *Bugle* devoted several issues to coverage of the convention and increased circulation to non-subscribers to generate support for the movement.\(^{20}\) The editor proudly justified the coverage of women’s rights in an anti-slavery journal:

> No enlightened Abolitionist, we are sure, will require of us any apology for this course . . . . This great movement of Woman is a legitimate (and we might add a robust and beautiful) child of Anti-Slavery . . . . No one [reform] promises to be more serviceable to the world or more helpful to its Parent than this. Let no one wonder, therefore, at any display of maternal or paternal fondness on the part of Abolitionists toward this favorite child of their deepest affections.\(^{21}\)

The first strategic decision made by the women was to permit men to attend but not to participate as officers, committee members, share the platform, or even address the convention.\(^{22}\) The Salem convention was the only antebellum women’s rights convention that excluded men’s participation.\(^{23}\) As Paulina W. Davis reported, in her history of the first twenty years of the movement, “*Never did men so suffer.*” “They implored just to


\(^{20}\) *Salem (Ohio) Anti-Slavery Bugle*, 27 April 1850.

\(^{21}\) Ibid.

\(^{22}\) *Proceedings of the Ohio Women’s Convention*, 3-5; Frances Dana Gage to R. A. S. Janney, 16 November 1876, Janney Family Papers, Ohio Historical Society; *History of Woman Suffrage*, 1:110.

\(^{23}\) DuBois, 191. In 1869 Elizabeth Cady Stanton proposed that membership in the National Woman Suffrage Association be limited to women. However the resolution was defeated. DuBois, ibid.
say a word," she reported. "But no, the President was inflexible, no man should be heard. If one meekly rose to make a suggestion, he was at once ruled out of order." This strategy contrasted with the proceedings at Seneca Falls where no woman had been willing to preside, leaving the job to Lucretia Mott's husband.25

The Salem Convention passed resolutions and prepared a memorial to be presented to the Constitutional Convention as well as an Address to the Women of Ohio. It established a publication committee to distribute the Proceedings, including the Resolutions, Memorial, Address, the minutes, letters to the convention from prominent women's rights advocates, and Elizabeth Jones's keynote address.26

Jones told the audience that in the short time before the Constitutional Convention convened women should "express our opinions in regard to our wrongs, and to exercise one of our few remaining rights, by petitioning for a redress of our grievances." 27 The Convention's Address exhorted the women of Ohio to demand their

24Paulina W. Davis, A History of the National Woman's Rights Movement for Twenty Years (New York: Journeymen Printers' Co-Operative Association, 1871), 8. Davis added, perhaps as a pointed rebuke for the exclusion of women delegates from the World Anti-Slavery Convention in London in 1840, that "For the first time in the world's history men learned how it felt to sit in silence when great questions were pending." Ibid. The statement is reprinted in History of Women Suffrage, 1:110.


26Jones, originally from Oneida County, New York, came to Ohio in the 1840s as an anti-slavery speaker. She was a former co-editor of The Anti-Slavery Bugle with her husband, a Quaker abolitionist whom she had met on a speaking tour. They organized anti-slavery societies in Ohio and Jones became a well-known speaker on abolition, women's legal rights, and women's health issues. Van Skiver Gagel, "Ohio Women Unite," 7.

27Proceedings of the Ohio Women's Convention, 41.
rights from the Constitutional Convention. “Let it not be our fault if the rights of humanity, and not alone those of ‘free white male citizens,’ are recognized and protected. Let us agitate the subject in the family circle, in public assemblies, and throughout the press. Let us flood the Constitutional Convention with memorials and addresses, trusting to truth and righteous cause for the success of our efforts.”

“A progeny of slave”

In her letter to the Ohio Women’s Convention, Elizabeth Cady Stanton encouraged the women to petition for the right to vote. “The grant to you of this right will secure all others, and the granting of every other right, whilst this is denied, is a mockery,” she argued. The women agreed, sending the Constitutional Convention a memorial demanding “not only the Right of Suffrage, but all political and legal rights that are guaranteed to men.” They based their demand on a theory of natural rights, the rhetoric of the American Revolution, and the Declaration of Independence. They argued that “the rights of humanity, the rights of man are universal, inalienable and possessed by every person no matter what color, sex, condition or clime.” “Just government is derived from the consent of the governed,” they insisted. Exclusion of women from participation in the government of Ohio violated that principle. Existing statutes and constitutional provisions “which sanction this prohibition are null and void.” They repeatedly denounced “taxation without representation,” appealing to the principles of the American

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28 Ibid.
29 Proceedings of the Ohio Women’s Convention, 15-16; Other letters were also read at the Convention including letters from Lucretia Mott and Lucy Stone, ibid., 26-28.
Revolution. Subjecting women to laws they did not help to make, "when applied to males, would be the exact definition of political slavery."

The Address also included an appeal based on the special role of women as educators within the family, in a variation of the concept of Republican motherhood. "[N]o wonder that so many of our politicians are dough-faced serviles, without independence or manhood," they argued. "[N]o wonder our priests are time-serving and sycophantic; no wonder that so many men are moral cowards and cringing poltroons, without self-respect. What more could be expected of a progeny of slave?"

They did not blame their servile position completely on men. They challenged other women to recognize that they participated in their own subjugation. Women who failed to understand and act against their own oppression did so as a result of "ignorance or degradation" and delayed the day when equality would be recognized. Those who

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31Ibid., "Address to Women," 10-15; Jones Address, 30-48. Jones extended the argument to all women, including those without property, because tariffs affected the cost of goods they purchased.


33Ibid. In the aftermath of the American Revolution, women developed the concept of republican motherhood: women must educate their sons to become the virtuous citizens upon which the success of the republic depended. In addition to providing women with a special civic role, they used the concept of republican motherhood to expand women's educational opportunities so they could fulfill this responsibility. See, Linda Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1980) and Mary Beth Norton, *Liberty's Daughters: The Revolutionary Experience of American Women, 1750-1800* (Boston: Little, Brown, 1980).
were content with an idle, aimless life shared "the guilt as well as the suffering of their own oppression."\(^{34}\)

Anticipating the argument that most women did not seem to want the vote, Jones analogized women's situation to African-American slavery. Those who opposed slavery denied the right to own slaves even if the slave had become so degraded that he did not ask for freedom, she argued. "The very fact that Woman does not rebel, that she does not rise and demand her rights, is the strongest argument that can be deduced in favor of the agitation of this subject."\(^{35}\)

Newspaper coverage in the *Anti-Slavery Bugle* and Horace Greeley's *The New York Tribune* prompted editorial responses to the women's demands.\(^{36}\) Greeley commented favorably on the convention: "The deliberations and discussions of the Convention appear to have been conducted throughout with dignity, propriety and ability, affording a model which Congress, our Legislatures and other masculine assemblages might creditably imitate. As to the women's demand for suffrage, he found "it is the assertion of a natural right and must be conceded." He also recognized that women had not been adequately represented by men as seen in discriminatory laws concerning married women's property and wages and the discrepancy between working women's wages and men's wages. However, after making these concessions, Greeley argued there

\(^{34}\) *Proceedings of the Ohio Women's Convention*, 9.

\(^{35}\) Ibid., 33.

\(^{36}\) The *Anti-Slavery Bugle* had a special relationship with Greeley and relied on *The Tribune* for national and foreign news. *The Bugle* provided Greeley with reports from the women's convention which Greeley reprinted in *The Tribune*. *Anti-Slavery Bugle*, 20 April 1850; 11 May 1850.
were practical problems to women’s suffrage, revealing not only gender but class bias: “Many of the lovely, the delicate, the gentle, the domestic, will be reluctant to discharge their Political duties, and will with difficulty be brought to the polls, while the reckless, the shameless, the unwomanly, will be sure to attend, and to vote at least once.”37

Editorials in the Liberty Party Paper, the North Star, the Cincinnati NonPareil, and the Impartial Citizen commented favorably. Dismissive criticism came from the New York Commercial Advertiser: “We happen to think the whole movement too droll for drollery and too facetious for wit, and shall endeavor to speak of it with all gravity, albeit we confess that abstinence from merriment is about the most difficult of our present duty.”39 The harshest criticism came from the Syracuse Daily Star: “Four or five hundred ‘silly women’ held a meeting lately at Salem, Ohio in consequence of the approaching Convention to form a new State Constitution. . . . Ohio had better keep the men at home to feed the children, make the clothes, darn the stockings, nurse the infants, and send the women, with breeches on, to legislate.”40

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37 Greeley’s editorial was reprinted in the Anti-Slavery Bugle, 11 May 1850.

38 Anti-Slavery Bugle, 25 May 1850.

39 Ibid. The editor was responding to Greeley’s statement that “it is easy to be smart, to be droll, to be facetious, in opposition to the demands of these Female Reformers.” Anti-Slavery Bugle, 11 May 1850. Greeley replied to the Commercial’s editorial: “Difficult as abstinence on such provocations is conceded to be, we suspect it is a trial which the Commercial could encounter more safely than almost anyone.” Anti-Slavery Bugle, 25 May 1850.

40 Anti-Slavery Bugle, 25 May 1850.
The 1850 Constitutional Convention

These three social movements—the Ohio colonization movement, the Ohio African-American’s rights movement, and the Ohio women’s rights movement—converged at the 1850 constitutional convention. Some petitioners asked the delegates to include in the new constitution state-supported removal of Ohio’s African-Americans and state-prohibited immigration of African-Americans. Other petitioners asked the delegates to remove any distinctions based on race. Still others asked that distinctions based on color or sex be eliminated.

Some historians have argued that commercial, political, and social ties between residents of southern Ohio counties and slave-holding communities across the Ohio River created particular hostility in that region toward any recognition of political rights for African-Americans. As one historian has described it, “the National Road was to Ohio politics what Mason and Dixon’s line was to national politics—a line of cleavage.” This produces a powerful image but does it hold true? One way to evaluate its reliability is to analyze geographically the counties from which petitions originated and how the delegates voted on these issues.

Petitioners from Logan, Hardin, Jefferson, Brown, Hamilton, Jackson, Butler, Ross, Vinton, and Lawrence counties requested that the new constitution provide for the

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41David Carl Shilling, “Relation of Southern Ohio to the South During the Decade Preceding the Civil War,” Quarterly Publication of the Historical and Philosophical Society of Ohio 8 (1913): 3.
removal of Ohio’s African-Americans and a prohibition against further immigration.\textsuperscript{42} Petitioners from two counties, Belmont and Lawrence, also urged that African-Americans be denied the right to vote.\textsuperscript{43} Seven of these counties lay south of Ohio’s “Mason-Dixon” line, while two of the four that lay north of it, Jefferson and Belmont, bordered the Ohio river across from Virginia. Only Logan and Hardin counties lay north of the National Road and did not border a slave state.\textsuperscript{44}

Citizens from twelve counties submitted petitions asking that the delegates incorporate woman suffrage into the constitution.\textsuperscript{45} The largest number of petitions and signatures came from three counties in the Western Reserve requesting equal rights for all citizens “regardless of color or sex.”\textsuperscript{46} Petitions from seven counties requested rights for women without mentioning race.\textsuperscript{47} Petitioners from Muskingum county asked for rights on behalf of white women.\textsuperscript{48} Women in Athens county petitioned only for married women’s property rights.\textsuperscript{49} Of the six counties from which petitioners requested rights without regard to sex or color, two lay below the National Road--Warren and Clark.

\textsuperscript{42}There were 84 counties at the time. Debates, 1:28, 458, 459; 2:5, 140, 191, 339.
\textsuperscript{43}Ibid., 1:236, 386.
\textsuperscript{44}See Map 5:1.
\textsuperscript{46}Stark, Portage, and Columbiana, in which Salem is located.
\textsuperscript{48}Ibid., 1:59.
\textsuperscript{49}Ibid., 1:298.
Map 5.1 Petitions requesting removal/ban on immigration or deny African-American rights
Map 5.2 Petitions requesting removal of distinctions based on sex or on sex and color
Map 5.3 Petitions requesting removal of distinctions based on race or color

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Petitioners from fourteen counties requested rights for African-Americans, variously described as rights for "colored people," "colored citizens," "colored men," or rights "irrespective of complexion or race." Of these counties, Greene, Butler, Warren, and Clinton lay below the National road, which bisected two other counties, Franklin and Miami.

As the maps indicate, the National Road did not represent an impenetrable barrier dividing the state into two sections: anti-African-American rights in the south and pro-African-American rights in the north. Support for state-supported colonization, state-prohibited emigration, equal rights for African-Americans, and equal rights for women existed in pockets north and south of the National Road. However, stronger support for colonization and a ban on emigration existed in the southern portion of the state while stronger support for African-Americans' and women's rights existed in the north central and northeast section.

"Effusions of Folly and Fanaticism"

The mere submission of these petitions prompted debates among the delegates. When Stanton presented the memorial for extradition, James Loudon expressed his approval and remarked that his constituents, whether Whig or Democrat, "believe[d] with

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51 The practice at the convention was for a delegate to present petitions from his constituents, then the petitions were referred to the appropriate standing committee. Unfortunately for historians, the actual petitions, with a few exceptions, were not made a part of the record. The delegates explained the subject of the petition and sometimes included the name of one citizen associated with it and the number of signatures.

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the fathers of this State—the pioneers of 1802, when they drew up the constitution under which we are now assembled, that this should be a State for the white man, and the white man only." Reuben Hitchcock took exception to Loudon’s statement and, referring to the Journal of the 1802 convention which he had with him, pointed out that African-American male suffrage was defeated by a vote of 14 to 19. For Hitchcock, this was “conclusive evidence that it was not the purpose, at least of all who framed the constitution, to exclude colored citizens from a residence in this State.” Indeed, many were “in favor of extending equal rights and privileges to them.”

Without formally voting on it, the delegates refused to have Stanton’s extradition memorial printed and distributed. However, the delegates re-visited the issue later in the convention when James Worthington, the son of Thomas Worthington and a delegate from Ross and Pickaway counties, presented a similar memorial that had been submitted by Daniel Drake, a well-known and well-respected resident of Cincinnati. Worthington argued that the memorial should be printed and distributed because it was “upon a subject of much importance and one upon which there existed a good deal of feeling.” Other delegates pointed out that it would be unfair to print Drake’s memorial without printing those that presented the other side. Twenty-six delegates agreed with Worthington to have Drake’s memorial printed but fifty-eight delegates disagreed.

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52 Debates, 1:29.
53 Ibid.
54 Ibid., 2:158-59.
It was the custom that delegates presented petitions but that the petitions were not reported in the record in their entirety. But James King of Butler county had his constituents' petition reprinted into the convention's journal. In it they asked that African-Americans be removed from the state and further immigration be prevented so that the combination of actions "will eventually restore to the state of Ohio, a population of free white people, and none other." They justified their demands as follows:

A separation we regard as alike advantageous to both races; and therefore without wishing to injure the negroes, we ask that they may be removed. But as the power of removal is an important one, we wish it exercised with great prudence and humanity. No negro should be deprived of his property, without receiving a compensation in money; and none should be removed until provisions are made for them in another country. But, whatever may be the consequences to the negroes, the happiness and welfare of the white race, both as to the present and future generations, requires the removal, and therefore it should be done.55

The petitions asking for "equal rights and privileges" without regard to race or sex generated the most opposition. When Thompson first introduced the petition that the women's rights convention submitted,56 William Sawyer, a delegate representing five

55Ibid., 2:191.

56No memorial is recorded as having been submitted by the Ohio Women's Convention. However, Thompson's memorial came from citizens of Stark and Columbiana counties. A few days later when delegates debated the propriety of accepting a petition asking for equal rights "without distinction of color," a delegate said that "a few days ago a petition was presented by the gentleman from Columbiana (Mr. Quigley) signed by many ladies of that county." There is no record of Quigley having previously submitted any petitions, although he was the representative from Columbiana. It was the practice of the delegates to refer to each other as "the gentleman from ----." The Reporter later inserted the actual name of the delegate into the record. Therefore, I conclude the reference to "the gentleman from Columbiana" actually refers to Thompson, the delegate from Stark county, and the petitions signed by "many ladies" from Columbiana county are the petitions he submitted and were generated as a result of the Salem Women's Rights Convention. Ibid., 1:31, 58.
counties in the northwest corner of the state, promptly objected that his “sense of duty to his constituents” would not allow him “to sit here and permit even his fellow citizens to petition that negroes shall be entitled to all the privileges and immunities of white men, without raising his voice against it.” Thompson’s response that “he did not consider himself committed to the support of the doctrine of the petitioners” drew laughter.57

Sawyer expanded at length on his objections a few days later when another delegate presented a petition asking for equal rights “without distinction of color.” Sawyer told the delegates that he believed in the principles of the Declaration of Independence. He also believed that African-Americans had the right “to hold office . . . to sit as a judge, to serve as a juror, to be a witness, to vote as an elector, . . . to have a right to possess and control everything” he had--but not in the United States. According to Sawyer, God intended that the United States should “be governed and inhabited by the Anglo-Saxon race.”58 Sawyer’s demand for a vote on the admission of the petition prompted other delegates to express their belief that citizens had the right to submit “respectful” petitions on any subject that was relevant to the convention’s work. However, many also went on record as opposing the substance of the petition.59 One delegate reminded them that “a few days ago a petition was presented . . . signed by many ladies . . . the subject matter of that petition was quite as extravagant as that of the present.” The convention had accepted the earlier petition and he felt that “no matter how

57 Ibid., 1:31.
58 Ibid., 1:57.
59 Ibid., 1:57-59.
extravagant the object of a petition might be" it should be accepted and referred to the appropriate committee.\textsuperscript{60}

John Lidey, of Perry county, wanted to know if the petitioners were white or black men for he would support only the right of white men to petition. Lidey was the only delegate to join Sawyer in voting against accepting the petition.\textsuperscript{61} Sawyer and Lidey picked up votes later, however, when J. Milton Williams presented the first petition signed solely by African-Americans. Twenty-six delegates voted to reject it.\textsuperscript{62} Of the 31 counties they represented, seventeen lay north of the national road and fourteen lay south of it. In a number of counties, north and south, delegates from the same counties disagreed on the issue. Democrats and Whigs voted for and against the issue but the only five Whigs who voted to reject the petition all came from southern counties or a county bordering a slave state.\textsuperscript{63}

\begin{footnotes}
\textsuperscript{60} Ibid., 1:58.
\textsuperscript{61} Ibid., 1:59.
\textsuperscript{62} Ibid., 1:59-60. Voting to reject the petition: Richard W. Cahill (Crawford, Democrat), Wesley Claypoole (Ross), George Collings (Adams, Whig), Leander Firestone (Wayne), Elias Florence (Pickaway, Whig), H. N. Gillet (Lawrence, Whig), John Green (Ross, Whig), D. D. T. Hard (Jackson, Democrat), G. W. Holmes (Hamilton, Democrat), John J. Hootman (Ashland, Democrat), J. Dan Jones (Hamilton, Democrat), James B. King (Butler, Democrat), John Larwill (Wayne, Democrat), John Lidey (Perry, Democrat), James Loudon (Brown, Democrat), H. S. Manon (Licking, Democrat), Daniel Peck (Belmont, Whig), A. N. Riddle (Hamilton, Democrat), D. Robertson (Fairfield, Democrat), E. C. Roll (Hamilton, Democrat), William Sawyer (Auglaize, Democrat), Sabirt Scott (Auglaize, Democrat), B. P. Smith (Wyandot, Democrat), James Struble (Hamilton, Democrat), H. Thompson (Shelby, Democrat), and the President of the convention, William Medill (Fairfield, Democrat).
\textsuperscript{63} See Map 5:4. The five Whigs are: George Collings (Adams, Pike, Scioto, Lawrence counties), Elias Florence (Pickaway, Ross), H. Gillet, (Lawrence, Scioto), John Green (Ross, Pickaway) and Daniel Peck (Belmont).
\end{footnotes}
Map 5.4 Delegates voting to refuse to accept African-American petitions
Linking rights for women with rights for African-Americans generated additional controversy at the convention. As Frances Dana Gage noted, the women’s petitions were “perhaps the 1st that ever were presented to a deliberative body of Constitution maker [sic] for the Equality of Women and Negroes.” One delegate referred to the petitions as “effusions of folly and fanaticism.” Another delegate doubted whether “petitions proposing to class the negro population of Ohio side by side with our wives and daughters can be altogether respectful.” He therefore urged the other delegates to “suggest to their constituents the propriety of separating in their petitions, and distinguishing carefully between the two subjects.”

When the dismissive comments became known publicly, some citizens responded. B. B. Hunter, of Ashtabula county in the Western Reserve, presented a petition on behalf of some of his white constituents asking that the constitution contain no distinctions based on color. Hunter assured the delegates that the language was “entirely respectful throughout.” Further, he advised them, the petitioners had suggested that it would “be well for this Convention to remember its obligation, also to use respectful language to the people, and not characterize these petitions as ‘ebulations (sic) of folly and fanaticism’ and other equally exceptionable expressions.” Hunter agreed completely with his

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64Gage was an early women’s rights activist in Ohio. She wrote her recollections of the 1850-51 effort to obtain the vote to Rebecca Janney, a women’s rights activist who led the effort for woman suffrage at the 1873 constitutional convention, for inclusion in Elizabeth Cady Stanton’s and Susan B. Anthony’s History of Woman Suffrage. Frances Dana Gage to R. A. S. Janney, 16 November 1876, Janney Family Papers, Ohio Historical Society.

65Debates, 1:76.
constituents and remarked that he found it "quite singular" that so many delegates routinely referred to themselves as "emanating from the people," of "being directly responsible to the people, " and calling themselves "servants of the people," "yet all the time indulg[ing] freely in insinuating and disrespectful language to the people."®

Votes in the convention

On July 5, 1850 the standing committee issued its report on the elective franchise. It proposed that "every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year" have the right to vote. Delegate E. B. Woodbury immediately proposed an amendment to remove the word "white." William Hawkins then proposed amending Woodbury's amendment to remove also the word "male." The amendments failed at that time but were renewed when the section came up for final debate.®

Norton Townshend, who had played the pivotal role in the repeal of the "Black Laws" and had been elected a delegate to the convention from Lorain county, led the argument on behalf of African-Americans.® He organized his lengthy statement around four themes: to include the word "white" was unjust, anti-democratic, impolitic, and ambiguous. Using the rhetoric of the American Revolution, he argued that it was unjust
because all men were created equal, each endowed with natural rights. All would concede that governments must have the consent of the governed to be valid. Taxation without representation had been the very basis of America’s revolution. If the delegates excluded African-Americans from political rights, they would be violating these cherished principles.  

Townshend also argued that the inclusion of the word “white” was anti-democratic. He recognized his own youth “while I see around me many whose hair has grown grey in the study of democratic principles.” He cleverly reminded delegates, particularly Democrats, of the very words they had used in other debates. Citing Jefferson, delegates had pronounced that democracy meant “equal and exact justice to all men.” To include the word “white” would be amending Jefferson to say “equal and exact justice to all white men— or all men except negroes.” The delegates had talked often of the principle of special privileges to none. Townshend agreed with this principle and would not vote to place “any man above the common level.” But just as he would not vote “to place another man’s feet higher than his own, nor would he “consent . . . to place any a man a hair’s breadth below the common level.”

For Townshend, it was also impolitic to include the word “white” because they should “give to all inhabitants of the State the full benefits of the powerful stimulus of hope and ambition. According to Townshend’s view, the law should be a protector, not a bar to progress. If the delegates failed to “offer the strongest inducements to the

\*Debates, 2:550.
\*Ibid., 2:550-551.

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intellectual and moral elevation of every person, they would be responsible for “whatever invasion of our rights may be the consequences.”

Townshend challenged the delegates to consider seriously exactly what the word white meant. It was ambiguous, he suggested. He conceded that perhaps the word had some legal meaning known to the lawyers, but he reminded them that the judges of election were “often plain, common sense men, who will understand words in a plain common sense.” In any event, “who are white persons,” he asked. “Did it mean only Anglo-Saxons?” he queried. If so, some of the members of the convention might be eliminated. He reviewed the recognized race divisions and asked how many of the caucasians would be called white. He even challenged them to answer what constituted a Negro, when they considered all the various tribes in Africa.

In his conclusion, Townshend anticipated opponents’ objections. Some said that the United States was not African-Americans’ country. “Is it yours?” he challenged, reminding them that “caucasians were not the aboriginal race.” If they claimed it as their country because of their birth in it then African-Americans had just as strong a claim having “been as many generations here as [they].” He also anticipated the argument that the races could not live together. To this he pointed to the history of Saxons and Celts. Members of both races could be found in the convention, and they got along in “perfect

\[\text{[Ibid., 2:551.]}\]

\[\text{[Ibid., 2:551-552.]}\]
harmony.” But did they in Ireland? If they wanted “to excite a war of races, [they] have[d] only to practice oppression” as in Ireland, Townshend warned the delegates.\textsuperscript{73}

Other advocates echoed Townshend’s references to the revolutionary principles upon which the United States had been founded. One delegate added an argument based on the United States constitution. Delegate Humphreville cited the privileges and immunities clause of the United States Constitution and argued that voting was a right and privilege protected under it. He chastised the members of the convention by reminding them that the delegates to the 1802 convention had been “more liberal on this matter, than the members of this Convention.” Although African-Americans’ political rights had not been granted, it had been a very close vote. He thought it would be “hoping against hope” that the current convention would vote to enfranchise African-Americans. On a desultory note, perhaps anticipating the vote to come, he warned them they were “progressing, then, it seems in the cause of human liberty, but we are progressing the wrong way.”\textsuperscript{74}

William Sawyer, the outspoken opponent to any rights for African-Americans, made a very simple statement: “We citizens are white men, and we have acquired this country, (whether by fair, or foul means,) and it belongs to us.” Simeon Nash suggested they needed to be practical. He could not vote for African-American suffrage because he did “not believe it would be in accordance with public opinion.” If they disregarded public opinion, they would be “send[ing] forth the constitution with its’ death warrant

\textsuperscript{73}Ibid., 2:552.

\textsuperscript{74}Ibid., 2:552-553.
written on it.” Perhaps to assuage concerns that justice had no place in his reasoning, he added that it would not benefit African-Americans because “such is the state of public feeling that this right granted would inevitably lead to the oppression of the colored population. We may say that these antipathies are wrong, unchristian, but foul words will not do away with facts.”?

The delegates voted. Humphreville’s dour prediction came true. Sixty-six delegates voted against enfranchising Ohio’s African-American men and only twelve voted for it. All of the supporting votes came from the counties of the Western Reserve. The next day, ten delegates who had been absent for the vote asked leave to have their votes read into the record. One added his name to those who had voted for African-Americans’ rights, nine voted against. The additions made the final vote 75 to 13.??

“So low and obscene”

After the vote on removing the word “white” failed, delegate E. B. Woodbury then proposed an amendment to remove the word “male.” Norton S. Townshend again led the speakers in favor of the motion. He prefaced his remarks with a statement that although the petitioners did not reside in his county, he was acquainted with many ladies who agreed with their views. He assured the delegates that the women were refined and intelligent and none “more faithfully discharge all duties that pertain to their families and

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75 Ibid., 2:553.
76 Ibid., 2:554, 556.
77 Woodbury, born in New Hampshire, had lived in Ohio since he was 6 years old. He was a delegate from Ashtabula County, was married, and practiced law. Ibid., 1:6.
Townshend’s legal and political arguments in support of woman suffrage echoed those expressed at the Women’s Convention. Women had equal rights with men, an equal interest in government, and were equal to men in intelligence and virtue. Just government depended on the consent of the governed.

Addressing the arguments against suffrage, Townshend rejected virtual representation and the corrupting influence of politics as valid reasons to deny women suffrage. If a woman’s interests were well-protected by her father, husband, brothers and sons, then why was she subject to so many legal disabilities with scarcely any existence under the common law? Like men, only women could decide for themselves whether politics offended their sense of propriety. If politics were as corrupting as claimed, then men should abstain also, and fathers should warn their sons to stay away. While he agreed that there were some problems in politics, these problems provided a greater reason why women should be involved “for men always behave like barbarians, when deprived of the refining and moralizing influence of woman.” Women should be admitted to politics not to make woman worse, but to make politics better.” Although he recognized that the right to vote was not the sole panacea for all of woman’s wrongs because she suffered from social wrongs such as unequal education and exclusion from employment, the convention could not address those issues but could restore to her rights of which she had been deprived.79

78Ibid., 2:555.
79Ibid.
The records of the convention contain no reference to any argument in opposition to the amendment. For all other issues discussed at the convention the record includes statements of proponents and opponents. In 1876, Frances Dana Gage, one of the most active Ohio women abolitionists, temperance, and women’s rights reformers, recalled that at the time of the convention a correspondent of the State Journal, a Whig newspaper, reported that the “discussion of these memorials . . . was so low and obscene and that it was voted it be ‘dropped out of the record.’”® The amendment to remove the word “male” failed by a vote of 72 to 7.® As with the vote for African-American suffrage, the delegates who voted in favor of the amendment represented counties in the Western Reserve.

Votes on Colonization and Ban on Emigration

The delegates formally debated the issues of state-supported colonization and state-prohibited immigration during discussions on the powers of the Legislature. Jacob Blickensderfer, a delegate from Tuscarawas county, proposed an amendment that would empower the legislature to appropriate money for consensual colonization to Africa “whenever in the opinion of the General Assembly it can be done without causing an immigration of such persons from adjoining States.”® G. W. Holmes, of Hamilton County, quickly moved to amend Blickensderfer’s proposal so that the legislature would

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®Frances Dana Gage to Rebecca Anne Smith Janney, 16 November 1876. There is no record of a vote to expunge part of the Convention’s record and I have been unable to locate the reference in the State Journal. Gage wrote a pseudonymous column for the State Journal and may have been referring to a conversation she had with a reporter.

®Debates, 1:555.

®Ibid, 2:597.

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be required to "prohibit black or Mulatto persons from emigrating [sic] into, or becoming residents within the limits of our State." However, when Peter Hitchcock suggested that Holmes' amendment would either defeat the constitution or at least "array a great many votes against it" and Blickensderfer expressed his wish to have his proposal considered by itself, Holmes withdrew his amendment.

Jacob Perkins and S. Humphreville, known advocates of African-American rights, objected that paying state funds for colonization violated the limits on the government's right to tax. Perkins admonished the Democrats for being inconsistent, they had said "over and over again, that governments were instituted for certain ends, and those ends were simply the preservation of social order, and the administration of justice; and that the right of taxation was limited solely to those objects." Humphreville also objected because the Colonization Society was a philanthropic society and, thus, it was inappropriate to have the government support it. He pointed out that bible and tract societies, even abolition societies, could be considered by some to be philanthropic, yet none of these were considered the proper objects for state financial support.

Perkins and Humphreville, both from northern counties, also raised objections based on demographics. During the suffrage debate, delegates from southern counties had been quick to point out that it was easy for northerners to advocate equal rights since few African-Americans lived in their counties. Now, the northerners turned the southerners' arguments against them. The tax would be unjust, Humphreville argued,

83Ibid., 2:598.
84Ibid., 2:598.
because the African-American population was “very unequally distributed throughout the State. There may be 20,000 in the part of the state south of the national road, while there are not 20 hundred north of it.” Perkins demanded to know “what right they have to appropriate my money to carry the negroes of Ross county to Africa. If they are shaved by a black barber, what right do they have to tax us, who are shaved by a white barber?”

David Chambers, of Muskingum county, disagreed. Colonization “was thought by many to be the grandest scheme now in existence, to build up a nation and erect a free government in Africa.” It was “a great and worthy object” to move the African-American population to Africa, and he believed “it was perfectly justifiable to tax all the people of Ohio” for such a “great measure.” Holmes claimed that colonization benefited African-Americans because it would “relieve a class that cannot be equal with the white population of the State.” William Hawkins, from Morgan county, countered Humphreville’s argument that colonization was mere philanthropy for, according to Hawkins, it addressed a “growing evil.” He wished to make it clear that he did not feel “any hostility to the colored population,” he merely “desired to improve the only means at present existing to relieve them and us, from existing evil.” Hawkins was particularly puzzled that “the peculiar friends of the colored race—those who had voted to extend to

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85Ibid.
86Ibid.
87Ibid., 2:599.
them the right of suffrage” would object to colonization. In Africa, “they can have a
country of their own, and be free under their own government.”

James Taylor, from Erie county, objected to Hawkins’ characterization of the
rights advocates as “peculiar friends of African-Americans.” They were not “the peculiar
friends of that, or any other portion of the people,” Taylor insisted. They stood “upon an
entirely different basis—that of equal rights.” Instead, he suggested, it was the supporters
of colonization who were “peculiar.” After all, they “wish[ed] to tax the people of the
State to remove those whom they say, are unfit to participate with them in a republican
government, to another coast, there to build up a model republican government.” They
were encouraged as “friends” to support colonization, yet if the proposal were to
“colonize and remove from the State the Germans or the Irish; who would fail to see in it,
the act of an enemy and not of a friend.”

The terms of the debate shifted sharply when D. P. Leadbetter, of Holmes county,
rose to speak. He warned the delegates they were “beginning in the wrong place—if you
desire to remedy the evil, you must first shut down the gate and prevent any more from
coming in.” Funding colonization without preventing further immigration would make
Ohio “the great lazar house for all runaway and emancipated negroes from the Slave
States” for the southern states would “thrust upon [Ohio] their worthless emancipated
slaves.” He advised them to consider what was happening in adjoining states. Southern

88Ibid.
89Ibid., 2:601.
90Ibid., 2:598.
states already had plans to remove their free African-Americans, and Indiana had plans to shut its border. Ohio was particularly vulnerable because it was separated only by a river from two slave states. Further, he argued, it was unfair to encourage African-Americans to emigrate to Ohio “when they cannot enjoy the privilege of those with whom they are surrounded.” He “would hold out no false hopes—hopes they can never realize.” After hearing Leadbetter speak, Holmes immediately reintroduced his amendment requiring the legislature to ban all further emigration of African-Americans.

Holmes agreed with Leadbetter that if the state appropriated money for colonization without closing the borders to immigration “all who desired to go to Africa would rush from the adjoining States.” Hawkins echoed their concern that without a ban on immigration southern states would “send away those [slaves] that are becoming helpless from age, and which otherwise they would be bound to support.” He informed them that it was already known that the Governor of Virginia proposed such a plan.

Delegates opposed to the ban on immigration countered with a variety of arguments. Most opponents based their objections, in part, on its intrinsic inhumanity. Peter Hitchcock was unwilling to “say the Black man shall have no place upon the face of the earth, upon which he may set his foot. Such inhumanity as this, I do not want to see in this constitution.” For William Bates, “it would be cruel of us—if in opposing the

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91 Ibid., 2:599.
92 Ibid.
93 Ibid.
94 Ibid., 2:598.

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policy of the slaveholders [to send “worn-out” slaves away] we increased the bitterness of the sufferings of its victims.” While he did not wish to invite freed slaves to Ohio, “we ought to treat them with common rights of humanity, when they do come.” He also warned them that “civilized nations of the earth would look with astonishment at such an act, performed by a constitutional convention of the free and flourishing state of Ohio.”

George Collings compared the freed slaves to “the Israelites when pursued by the relentless King of Egypt.” A constitutional prohibition against immigration would be saying to the freed slaves “if your master thrust you out we will meet you on our shore and you shall be drowned in the Ohio rather than you shall be allowed to put your feet upon our shores.” If they did not choose to treat them as equals, that was one matter, he argued, but “the highest laws of humanity require[d] that [they] should not thrust them out as beasts of the forests or beasts of prey.”

Opponents also argued the ban would be unconstitutional under the United States constitution for it would “come directly into conflict with a provision in the Federal constitution, by which the citizens of each state, have the broad shield of National protection thrown over their rights in immigrating from one state to another.” William Bates also pointed out that Massachusetts and South Carolina were already enmeshed in a dispute concerning the rights of African-Americans. A ban on immigration would place

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95 Ibid., 2:599.
96 Ibid., 2:602-03.
97 Ibid., 2:600.
Ohio on South Carolina’s side which would be “deeply mortifying” to many Ohioans.®

Jacob Perkins agreed that the ban would violate the privileges and immunities clause of the U. S. Constitution because “negroes are citizens in New York and Massachusetts and some of the other of the states, and they claim the right to enter this State and to acquire and possess property under the Constitution of the Union.”®® George Collings advised the delegates that the issue had already been decided in a federal case in St. Louis where “it was declared by the United States Court that he [an African-American male who had immigrated from another state] had the rights of a citizen. What may be the rights of a citizen in any State, is a question for each State to determine itself; one thing is very clear, that if they [Missouri] had no right to thrust him out, they had no right to prevent his going into the State . . . therefore, I think we have no rights to incorporate any provision in our Constitution.”®® Simeon Nash of Gallia county, summarized his opposition succinctly: “the Constitution of the United States is directly in the teeth of this amendment. This is with me an insuperable objection to it.”®®

Opponents also reiterated Hitchcock’s initial warning that the proposal would “array a great many votes against” the new constitution. The proposal would in effect revive one of the recently repealed Black Laws and “to revive the same thing, in a worse form, and embody it in the constitution and thus place the subject as far as possible

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® Ibid., 2:600.
®® Ibid., 2:601.
®® Ibid., 2:602.
®®® Ibid., 2:604.
beyond the power of the people to correct it again, could not fail to produce a strong
opposition to the whole document."\textsuperscript{102} James Taylor did not want to discuss the general
merits of the proposal, instead, his concern was "to see this Constitution adopted by the
people." If they included the ban, could they "secure the support of the people of Ohio?"
He implored them to consider "that the Constitution must now encounter various hostility
and not array against it, unnecessarily, an undefined degree of opprobium [sic]. Instead
of a cloud, as small as a man's hand, the agitation now invoked may prove a tempest
filling the whole heaven, and in which the fate of the instrument we propose, may be
sealed."\textsuperscript{103} S. J. Andrews did more than implore the other delegates, he warned them
"that the people of the northern part of the state are utterly opposed to any such provision,
and if you insert it, you may depend upon it that they will vote against the constitution as
one man." Even if they did not have the votes to defeat the constitution immediately but
were forced "to submit to it for a time," Andrews assured the delegates "that with this
provision in it, your new Constitution instead of being an instrument of peace, will be an
exhaustless fountain of strife and contention; and that the people of the north, whose
feelings are thus outraged, will not 'give sleep to their eyes, nor slumber to their eyelids,'
until they have stricken out this obnoxious feature."\textsuperscript{104}

To the above arguments the opponents added one other; the state had already tried
to prevent immigration with the Black Laws and it simply could not be done. As Nash

\textsuperscript{102} Ibid., 2:600.
\textsuperscript{103} Ibid., 2:600-01.
\textsuperscript{104} Ibid., 2:604.
reminded them: "[w]e have tried this legislation for forty years, and it has failed. Such a
claw cannot be executed. They will come here; and you cannot take them back without
violating the laws of the Slave States and running directly into the jaws of the
penitentiary." George Collings asked: "why repeat in our Constitution a law which has
been on our statute book nearly since the first foundation of our government—a law which
has been utterly inoperative . . . and from the very fact of it being inoperative, it will only
tend to bring your Constitution into disrepute." S. J. Andrews agreed "the people well
understood [from the experience with the Black Laws], that a law that could not be
enforced was only contemptible, and ought to be repealed." Jacob Perkins challenged
proponents to explain how they could enforce a ban. "Would you surround the State with
custom houses? Would you turn our whole population into negro catchers? Would you
stand upon the shoals in the Ohio River and thus keep them from crossing. It cannot be
done. You may have captains and you may have militia companies, and you may watch
all the fords of the Ohio River, but you will never be able to guard your boundary and to
prevent it being crossed any more than you can prevent pigeons from passing in the
air." 

Of the eight speakers who spoke vehemently against the ban, four came from the
Western Reserve and were known to be African-Americans’ rights advocates, having

105 Ibid., 2:600.
106 Ibid., 2:603.
107 Ibid.
108 Ibid., 2:601.

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voted to remove the word “white” from the constitution.109 Their opposition was expected. However, the other four had not supported African-American rights, and three came from southern counties with significant African-American populations. The opposition of these three, Bates, Collings, and Nash, is remarkable given that two of them represented counties, Adams and Gallia, that bordered the Ohio River across from Kentucky and Virginia.110 Bates, of Jefferson County, opposed the ban in the face of specific petitions from some of his own constituents urging removal and an immigration ban.111

Strong support for the ban came from Hamilton County, the county with the largest African-American population. This contrasted with the 1802 convention in which Hamilton county delegates provided significant support for African-American rights. Holmes sponsored the ban and Reemelin, another Hamilton County delegate, indicated that he had been specifically instructed by his constituents to support it.112 With pronounced opposition coming from other southern border counties and in the face of

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109 Perkins from Trumbull county, Taylor from Erie county, Andrews from Cuyahoga county, and Humphreville, from Medina county.

110 Bates represented Jefferson county, Collings represented Adams county, and Nash represented Gallia county. Adams county bordered the Ohio river across from Kentucky and Gallia bordered the Ohio river across from Virginia.

111 The petition asked “for the removal of the black and mulatto population from this State, and to prevent their further emigration into it.” Debates, 1:458. On an earlier occasion, Bates had also presented a petition signed by Quakers who opposed removal. Ibid., 1:167.

112 Reemelin expressed his personal opinion that a ban would be ineffectual but “knowing [removal and a ban on immigration] to be the will of nine-tenths of his constituents he had to obey.” Ibid., 2:601.

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arguments that the ban was unenforceable, unconstitutional, and would defeat ratification of the new constitution, Holmes withdrew his amendment a final time.

Clearly the constitutionality of the ban concerned a number of delegates because Elijah Vance of Butler County immediately proposed a new amendment aimed at a middle ground. He proposed that "the General Assembly shall by such appropriate legislation as may be consistent with the Constitution of the United States, discourage the emigration of the free black population of other States, and territories, of the Union, into this State." Without further debate, the delegates voted on Vance's amendment, defeating it 39 votes in favor and 58 opposed. The weakened proposal did not satisfy all supporters of an absolute ban, the Hamilton County delegates voted for it nonetheless. Nor did it satisfy the outspoken opponents of the ban, all of whom voted against it. The vote proceeded to Blickensderfer's original proposal for state-financed colonization which met with even less success--it was defeated 26 to 71. Without some restraint on future immigration, more delegates abandoned state-financed colonization--even Holmes, from Hamilton County, voted against it.114

113 Ibid., 2:604.
114 Ibid., 2:605.
Map 5.5 Delegates voting for restrictions on African-American immigration

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Map 5.6 Delegates voting for state-financed colonization
VI

Conclusion

Although the proposals to delete the words “white” and “male” from the franchise clause of the Constitution failed overwhelmingly, Ohio women gained from the experience nonetheless. The convening of the constitutional convention had prompted them to organize and hold a successful convention of their own in which they had progressed beyond Seneca Falls by conducting it themselves. Their convention also reflected the progression of the nascent women's rights movement in general. At Seneca Falls, demanding the right to vote had been a controversial issue, the only resolution that did not pass unanimously. At Salem two years later, the demand came naturally and as a matter of course. In their petition campaign, they had raised, probably for the first time in a constitution-making forum, the connection between race and gender discrimination. White males had determined to exclude both of them from the polity but, for them, justice required that they both be admitted into the political community.

They also created a permanent organization. They organized the Ohio Woman Rights Association in 1852, the first state suffrage organization, held annual conventions, and hosted the national Woman's Rights Conventions in 1854 and 1855. They directed their attention to the State legislature seeking reform of married women's property law and to persuade the legislature to hold a referendum on a suffrage amendment. In 1857 they organized a petition campaign collecting 10,000 signatures. They did not secure

\[\text{Hauser, 87-88.}\]

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the referendum but succeeded in obtaining married women’s property reforms in 1857 and 1861.

As in the 1802 constitutional convention, the advocates for equal rights for African-American men did not succeed. Nor, as in 1802, did their strongest opponents, who wanted all African-Americans removed from the state. Nonetheless, there was a critical difference between the 1802 convention and that of 1850. In 1802 supporters comprised more than forty percent of the delegates; by 1850 they represented less than fifteen percent. James Worthington, the son of Thomas Worthington, seems to have represented a significant number of white Ohioans when he observed that a fellow delegate “says that at the time of the Revolution there was less prejudice against the black race than there is at present. That is undoubtedly true; and it is also true that the prejudice, if you will so call it, has increased at each successive period of time, and the irresistible inference from such a state of facts is, that the longer the two races occupy the same soil, the greater will be their revulsion and the stronger the prejudice.”16

Having failed to receive the vote from the convention, Ohio’s African-Americans would turn to the state legislature in efforts to have the issue placed on the ballot for a state-wide vote. Their opponents could hope to reopen what it meant to be “white” by raising court challenges under the new constitution.17

16 Debates, 2: 639.

17 Ohio’s white male voters ratified the new constitution proposed by the 1850-51 constitutional convention. 226
The new constitution and changes in the school law became the judicial focal point for continuing resistance to the Ohio Supreme Court’s liberal interpretation of whiteness. Some white school officials had continued to refuse admission to children of color no matter how remote the African lineage. The new constitution and school law revision provided yet another excuse to flaunt what had been established law for decades. In this context the justices considered a school case which forced them to confront white resistance, the new constitution and laws, and their own prejudices.

In 1856, Enos Van Camp sued the Board of Education of Logan in Common Pleas Court for refusing to admit his son and an indentured apprentice to the local public schools. He claimed the children were white. The School Board insisted that the children were not white, regardless of the percentage of white heredity, because they were “distinctly colored” and were “generally understood to be and treated as such, in society and by the community generally.” The Board did not dispute that the children met the legal standard established by the court and observed for almost thirty years. They admitted the children had a “small portion more white than black or African blood—say

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five-eights white and three-eights African blood." Nonetheless, the Board asked the court to reverse its long line of cases, dating over a period of almost thirty years, holding that complexion and color was not the legal standard for whiteness. Van Camp filed an answer to the Board’s claim, asserting that it failed to raise a legal defense based on the Board’s own admissions. The District Court reversed a decision of the Common Pleas court in Van Camp’s favor, and he appealed to the Supreme Court.

The implications were enormous. If the court reversed, the standard for what it meant to be white would be established community by community—by white communities, that is. The consequences for the Van Camp children were also significant. There were no public schools for colored children in the school district. The township had collected taxes and set them aside in a fund for “colored” schools but had not created any, because there were fewer than thirty African-American children in the district. If the Court exempted the Van Camp children from the “white” public schools, there would be no public school they could attend.

\[\text{\textsuperscript{2}}\text{Ibid., 406-07.}\]
\[\text{\textsuperscript{3}}\text{Ohio’s new constitution revised the state court system significantly. One change was the creation of an intermediate level of courts, the district courts, between the common pleas courts and the Supreme Court.}\]
\[\text{\textsuperscript{4}}\text{The law required school boards to create separate “colored” schools only if there were thirty or more colored children in the district.}\]
\[\text{\textsuperscript{5}}\text{9 Ohio St. 407.}\]
The Court split three to two. Justice Peck, delivering the opinion for the majority, reviewed the history of Ohio school laws. He noted that before 1848 the school laws provided only for the education of “white youth,” exempting black and mulatto-owned property from the taxable base for the school fund. In 1848, for the first time, the legislature provided for the education of black and mulatto children based on a property tax paid by black and mulatto persons. However, that law specifically provided that no white tax dollars could be used to support colored schools, which meant in effect there was not enough money to create colored schools. According to Peck, the legislature remedied the situation in 1853 with a new law “conceived in a more liberal and patriotic spirit,” and gave “the colored youth their full share, in proportion to their numbers, of the common school fund,” no longer restricting “them to the miserable pittance collected from the colored taxpayers.” The new law made “provision for the education of all children within the state;—children of all races and shades of color.”

To decide what the terms “white” and “colored” meant in the 1853 statute, the Court “look[ed] to the state of things existing at the time, the evils complained of, and the remedies sought to be applied.” The Court noted that “for nearly two generations, blacks and mulattoes had been a proscribed and degraded race in Ohio. “It would be strange, indeed, if such a state of things had not increased[,] in the present generation, the natural

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6Ohio’s new constitution also expanded the number of justices on the supreme court to five. Under the old constitution the court had only four justices which caused problems when the court was divided. If the court split two to two, there would be no decision rendered.

7Ohio St. 409-10.
repugnance of the white race to communion and fellowship with them.” It might not be “consistent with true philanthropy,” the Court acknowledged, “it [was] nevertheless true, that in many portions, if not throughout the state, there was and still is an almost invincible repugnance to such communion and fellowship.” Yet, the Court continued, “a class had grown up among us, which, though partly black, had still a preponderance of white blood in their veins.” The courts, “influenced in some degree by the severe and somewhat penal character of the restrictions as to blacks and mulattoes, had held that such persons were not only entitled to vote at elections, and testify in our courts of justice, but were also admissible into the schools for white children.” The Court thought it “notorious that these decisions, especially the last, did not receive the hearty approval of the state at large.” This did not surprise the majority, since “[t]he prejudice of ages could not be dissipated by one or more judicial decisions, and the frequent suits brought to enforce such admission, evidenced such feeling on the part of young and old.”

Returning to an analysis of the 1853 statute, the Court found three discrete objects to the legislation: to divide the youth of the state into two classes, to provide more effectively for their education, and to have them separately instructed. Did Van Camp’s children belong to the white or colored category? It seemed clear to the Court that “they are not in the ordinary, if they are in a legal sense, white . . . they are, in fact, if not in law, colored children.” The philologist Noah Webster, “define[d] ‘colored people’ to be ‘black people’—Africans or their descendants, mixed or unmixed,” the Court pointed out. This was also consistent with “the common understanding of the term,” so that “[a]
person who has any perceptible admixture of African blood, is generally called a colored person.” The legislature intended the law to remedy certain “evils,” one of which the Court thought “was the repugnance felt by many of the white youths and their parents to mingling, socially and on equal terms, with those who had any perceptible admixture of African blood.” The “long years of hostile legislation” had taken their toll, fostering “[t]his feeling or prejudice, if it be one.” Recognizing the reality of the situation, “[t]he general assembly, legislating for the people as they were, rather than as, perhaps they ought to have been, while providing for the education and consequent ultimate elevation of a long degraded class, yielded for the time to a deep-seated prejudice, which could not be eradicated suddenly, if at all.”

The Court felt that “[s]uch an arrangement, in the present state of public feeling, is far better for both parties— for the colored youth, as well as those entirely white.” If the legislature had forced “those a shade more white than black . . . upon the white youth against their consent, the whole policy of the law would be defeated.” Certainly, “[t]he prejudice and antagonism of the whites would be aroused; bickering and contention become the order of the day, and the moral and mental improvement of both classes retarded.” To give to the words “white” and “colored”, anything other than “their ordinary and common acceptation . . . would do violence to the legislative intent, and perpetuate the very evils that act was intended to remedy.” The Court noted that this was the meaning given to the terms when the law was passed “in many portions, if not throughout the state. The colored population, whether more or less than mulatto,
affiliated with the blacks. Schools were organized, and a wholesome rivalry inaugurated between the two classes.”

Twenty-five years after the first school case, in which the Ohio Supreme Court had found that “complexion . . . would be an unsafe guide,” the Court held that “children of three-eighths African and five-eighths white blood, but who are distinctly colored, and generally treated and regarded as colored children by the community where they reside, are not, as of right, entitled to admission into the common schools, set apart under said act, for the instruction of white youths.”

Children of color who had been attending public schools with “white” children under the previous legal interpretation no longer could do so, unless all of the white parents agreed to it. Now, each white community would decide who they regarded as “colored” and prevent those children from attending the white schools, even if it meant there would be no public schooling for the children at all. On the other hand, children with more than one-half African-American background had always been excluded and the 1853 statute provided for the first time an expectation that there would be some public education for them—if there were enough African-American children in the school district to legally require a separate school.

The majority opinion in Van Camp revealed the pressure the justices felt from growing popular resistance to admission of colored youth in white schools. The majority

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9Ibid., 414-15.
11Van Camp, 9 Ohio St. 407, syllabus, (1859).
opinion also reveals the influence of the personal prejudices of the justices. The key to understanding the significant reversal of court precedent involved in the decision is recognizing the social context in which it occurred. As noted in the Court's opinion, it was "notorious" that earlier decisions had not received "the hearty approval of the state at large." The Court openly acknowledged the popular prejudice against colored citizens and conceded that the prejudice could not be overcome by judicial decision, at least in terms of a critical social institution such as the schools. It is apparent from the majority opinion that the court recognized that continued efforts to integrate white schools would further arouse the "antagonism" of whites and "retard the moral and mental improvement of both classes."

The majority accomplished its legal revolution by holding that the definition of "white" should be determined by community usage. It put a favorable gloss on the result by emphasizing that the amendments to the education laws were favorable to the colored class. The majority suggested that the 1853 amendments were more "liberal" and "patriotic" and gave "colored youth their full share." In language anticipating the future doctrine of "separate but equal," the Van Camp majority concluded that the arrangement for separate schooling of white youth and colored youth "is far better for both parties--for the colored youth, as well as those entirely white." The majority view was predicated, of course, on the questionable notions that quality educational facilities would actually be made available to colored youth and that separation was necessary.
Justice Sutliff dissented.\textsuperscript{12} He objected first on the basis that “caste-legislation, the inveterate vice of absolute governments is inconsistent with the theory and spirit of a free and popular government like ours; asserting in its bill of rights the equality of all men.” Even if it were proper to organize people into classes, Sutliff thought “it will always be impracticable to any considerable extent, without encountering inextricable difficulties. It made no difference whether the “basis of the classification be a difference in races, religion, language, color, or any physiological peculiarities.” Given these difficulties, “a strict construction against all unnecessary extent of such legislation should, therefore, be preserved.” He disagreed with the majority that “the popular or philological meaning of the word ‘colored’ [was] now under consideration.” What was at issue was “the legal construction of the words ‘colored’ and white.”\textsuperscript{13}

Sutliff reviewed the history of Ohio’s public school legislation but reached a different conclusion than the majority. In 1848, when the legislature passed the first law providing for African-American public schools, it included the terms “black and mulatto persons” in the title but used the terms “black and colored” within the statute itself. To Sutliff this meant that the words were synonymous. To corroborate his conclusion, he pointed out that when the legislature amended the act in 1849, it included a section specifically stating that “the term colored, as used in this act, shall be construed as being of the same signification as the term ‘black or mulatto’ as used in former acts.” Sutliff argued that the term “colored” in the 1853 act must retain the same meaning “unless the

\textsuperscript{12}Chief Justice Brinkerhoff also dissented but did not write an opinion.

\textsuperscript{13}9 Ohio St. 420-22.
legislature ha[d] clearly expressed in the latter statute an intention to change the
collection.'" Sutliff also thought it significant that "the constitutional convention of
1850, well knowing the construction so given the word ‘white’ in the old constitution,
and the legislation under it, accepted and approved that construction, by inserting the
same word ‘white’ citizen in the new constitution.""15

Sutliff then recapped the Ohio Supreme Court case law construing the terms
white, black and mulatto. “And this holding of our courts [defining “white” expansively]
I regard as strictly in accordance with the general rule applicable to such statutes.
Statutes which are in restraint of natural liberty, or which derogate in any manner from
the general law, and laws which have an apparent hardship in them, are to be interpreted
in such manner as not to extend beyond what is clearly expressed in the law to any
consequences to which the law does not necessarily extend.” Sutliff finished his opinion
by chastising the majority. “It was both unwise and wholly out of character with the
progress, the general intelligence, and liberality of the age, at this time,—more than 10
years after the repeal of the ‘black laws,’ so called, and more than half a century after a
liberal and humane interpretation of those disabling statutes has been inaugurated, and
constantly, ever since then, maintained—to overrule all the decisions of the many able and
wise judges who have preceded us, to give an extent and effect to those disabling statutes,
which this court has always heretofore, time and again, refused to do."16

149 Ohio St. 422-25.
15Ibid., 435-36.
16Ibid., 436-37.
The dissent in the *Van Camp* case highlights the social and personal policy preferences controlling the majority opinion. Justice Sutliff specifically criticized the majority for its use of a community standard for the definition of who was white. The dissent stressed that for 30 years the court had emphasized a legal interpretation of the words, not a social one. The dissent accused the majority of resurrecting the effects of the disabling statutes and rolling back the years of progress towards a more humane and liberal construction of such laws.

The majority in *Van Camp* made it clear that they were not deciding whether the court’s previous definition of “white” still applied to the right to vote under the new constitution. There would be “time enough to determine their applicability to the new constitution, when the question is before us.” That time came one month later when they decided Alfred Anderson’s claim against election judges in Butler County. The parties had submitted the case to the common pleas court on an agreed statement of facts that Anderson’s father was white, his mother was “three-fourths white and one-fourth African blood,” and that neither he nor his mother had ever been slaves. The election judges had denied him the right to vote solely on account of his “admixture of African blood.” They had also agreed that the judges had not “been actuated by malice or ill-will . . . but supposed themselves to be in the line of their official duty.” If the court found the

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179 Ohio St. 419.
18 *Alfred J. Anderson v. Thomas Millikin et. al.*, 9 Ohio St. 568 (1859).
law to be in Anderson’s favor, he agreed to recover only nominal damages. The trial court ruled in favor of the election judges and Anderson appealed to the Supreme Court.¹⁹

Justice Gholson, who had joined the majority in Van Camp, wrote the opinion for a unanimous court. He thought “[t]here was, probably, no word in the constitution of 1802, the meaning of which had been more fully and authoritatively settled by judicial construction, than the word “white,” as connected with the exercise of the elective franchise.” At the time of the 1850 constitutional convention, men with more than one-half white blood could vote. Therefore the question before the court was “whether it was the intention of [the new elective franchise section] to deprive the persons above described of a right which they had before enjoyed--and of a right so valuable and highly prized as that of an elector?” It seemed clear to Gholson that “[i]n any ordinary case--in any case in which feeling and prejudice did not enter as elements to disturb judgment--no one would probably claim that a most important right once enjoyed, and, necessarily, in its nature continuous, was abrogated and annulled, unless the intent to do so was clearly and explicitly expressed.” Gholson assured the public that the justices would uphold their official oath and administer justice, “without influence from any prejudice we might personally feel, or from any which we might suppose felt by others.”²⁰

Although the Court could decide the case quite simply, using the ordinary rules of construction, “the interest and importance of the question demand from us further remarks. We are bound to presume, that those who framed the present constitution, knew

¹⁹Ibid., 568-69
²⁰Ibid., 570-71.
what judicial construction the words of the former had received.” Not content with this bare assertion, Gholson quoted the constitutional convention delegates when they debated the amendment to remove the word white. One delegate, Gholson pointed out, had argued “that the term white is vague in its signification’ and has no practical meaning.” To this delegate, Worthington had responded that “such might have been the case, if the word had not received a practical construction for near fifty years, but there is now no question that may, with more safety, be submitted to any of our tribunals, from the Supreme Court to the Justice of the Peace.”

Having established that the constitutional convention delegates knowingly used the word white with an understanding of the Court’s legal construction of the word, the Court could have stopped there. But the Court had another issue it wanted to address. Anderson had a particular reason for including in his agreed statement the fact that neither he nor his mother had ever been slaves. Anderson had to skirt the United States Supreme Court’s decision in Dred Scott v. Sandford, because Ohio’s new constitution gave the right to vote to “white male citizens of the United States” who met certain residency requirements in Ohio. As a result, Gholson felt compelled to spend considerable time analyzing the Dred Scott decision.

Gholson opined that “it is a mistake to suppose the question whether any degree of the blood of the African race would prevent a person from being a citizen of the United States, was presented or decided in [Dred Scott]. On the contrary, “the plaintiff in that

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21Ibid., 571.
22Dred Scott v. Sandford, 19 How. 393 (1857).
case was . . . 'a negro of African descent whose ancestors were of pure African blood, and
who were brought to this country and sold as slaves.'" Quoting Justice Taney
extensively, Gholson concluded that Taney was limiting his opinion to a class "only that
is, of those persons who are the descendants of Africans who were imported to this
country and sold as slaves." He thought it "not probable" that the Supreme Court would
announce a rule "excluding persons, having any mixture of the blood of the African race,
from the rights of citizenship," without referring to and analyzing state constitutional and
legal provisions relevant to the issue. Having reviewed state racial restrictions on voting,
Gholson concluded that "we do not think that one can be found which will countenance
the idea that any the least admixture of African blood will preclude a person from being
considered a citizen of the United States." But the Ohio Supreme Court need not be
concerned with "what rule upon the subject the courts of the United States may think
proper to adopt," for the Ohio Court felt "clear, that no restriction or limitation upon the
meaning of the term "citizen of the United States," supposed to result from the [Dred
Scott] decision . . . or from any which may be made, can affect its meaning as used in our
constitution."33

Finally, the Court addressed a law the Ohio General Assembly had passed in
1857, "An Act to Preserve the Purity of Elections." In it the legislature required election
judges to turn away any person with a "visible admixture" of African blood. If the judge
failed to do so, he could be imprisoned for up to six months and sued by any citizen of the
county for $500.00 in damages. Gholson recognized that the legislature had "expressed a

33Anderson, 572-577.
view of the meaning of the word ‘white,’ . . . in conflict with that which we have stated to
be the one intended.” Gholson acknowledged that there were cases in which subsequent
legislation might guide the court, but not be obligatory on it, in construing terms. Indeed,
“there are cases involving this very question of color, in which legislative intent would
properly be our guide.” The Van Camp case had been one of them and the Court had
been willing to recognize the legislature’s “intention that a classification should be made,
bounded as well upon the visible admixture of color and upon social intercourse, as upon
the degree of the blood of the African race.” But, Gholson explained confidently, “no
intelligent statesmen or lawyer,” would claim “that it is within the scope of legislative
power to give to the courts an authoritative construction of a provision of the constitution
of the state.” It was the Court’s responsibility to determine “in what sense the word
‘white’ was used in the constitution, and that sense, when ascertained, we suppose to be
obligatory both upon us and the general assembly of the state.”

Gholson summarized for the Court. “The word, we have shown, had received, at
the time of the adoption of the present constitution, a clear and settled construction.”
“Doubtless,” he conceded, “this construction may not have been satisfactory to many
persons; [but] the time and the opportunity to have expressed dissatisfaction were during
the deliberations of the convention. The constitutional convention could have change[d]
the construction which the courts had given.”

Wary of public reaction to the Court’s opinion, Gholson reminded the public that
“it would be a grave error to suppose that the judges of this court, whatever be their
individual views, have the same right to reexamine the construction given to the word
Can the Van Camp and Anderson decisions be reconciled? The Court thought so. Van Camp’s lawyer had argued that it would be incongruous to have light mulattos voting as white men yet have their children excluded from the white schools. The Court disagreed. “If the [school] law excluded [light mulattos] altogether from the means of education, it might be somewhat incongruous to permit them to participate in the elections; but when their education is enjoined and the means provided, though in separate schools, no such incongruity can arise.”

But the real reconciliation between the two cases lay elsewhere. It lay in the Court’s and the white public’s fears that the races would mix. The difference in the tone of the Anderson decision from that of the majority opinion in Van Camp is quite revealing. The Anderson opinion is devoid of the extensive discussion of popular passions and prejudice that appear in the Van Camp decision. The Anderson opinion is focused on legal constructions and interpretations and emphasizes the duty of the court to interpret the new constitution without regard to the legislature’s views. Justice Gholson specifically emphasized that the Court’s decision was being made without regard to any prejudice on the part of the justices or any prejudices that might be felt by others.

24 Van Camp, 421.
As a practical matter, the political and social consequences of the *Anderson* decision simply did not compare to those involved in *Van Camp*. The *Anderson* decision affected voting, a transient event occurring a few times a year involving limited interaction between the participants. In contrast, *Van Camp* involved the specter of growing public resistance to integration of educational institutions motivated by fears of daily racial interaction and "mongrelization," fears apparently shared by some of the justices. The act of voting would not involve coerced "communion and fellowship" between the races, which the *Van Camp* court had noted was so repugnant to whites in Ohio. In comparison, there was little risk that voting rights for colored citizens would have any significant impact on election outcomes given the realities of voting restrictions and the relatively small number of "whites" of African lineage in Ohio. Indeed, the *Anderson* court commented on the long history of voting privileges for "white" citizens of color in Ohio.

As can be seen, the court rationalized its rejection of precedent as to the definition of whiteness in the school case by presuming separate but equal educational opportunities for children of color. A social crisis caused by integration could be avoided. Voting rights involved no such social crisis. In any event, there was no way to have separate voting for people of color since it was an all or nothing proposition.

I

**Legislative Schizophrenia: Ohio's Response to the 14th and 15th Amendments**

In 1867 Ohio's African-Americans had cause for celebration. On January 11th the General Assembly ratified the Fourteenth Amendment and in April the legislators
decided to place the issue of African-American male suffrage on the ballot. The proposed amendment to Ohio’s Constitution would remove the word “white.”

Ohio Republicans had been divided on the question of African-American suffrage. In March, in the Ohio House of Representatives, 23 Republicans from southern districts had joined Democrats to defeat a referendum bill. The Ohio Senate passed its own bill, on a straight party line vote, and sent it to the House. There, Republicans amended the bill to add a provision that would disfranchise army deserters. If the referendum passed, Republicans expected to pick up the African-American vote at the same time removing the threat of thousands of hostile white voters. In a number of districts the margin between the Republicans and Democrats was so small that enfranchising African-American men and disfranchising some white men could shift the balance to the Republican Party. Further, Republicans thought the addition of the deserter disfranchisement provision would overcome negative reaction to African-American suffrage in conservative districts. With the party exerting strong pressure on recalcitrant Republicans to preserve party unity, the amended bill passed on a straight party vote.

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26 Bonadio, 94-98; Roseboom, 457.
But party unity quickly fell apart. Later in April the Republicans found themselves reeling from the results of municipal elections. Democrats won the mayor’s office in Columbus, Cleveland, and Cincinnati while Republicans barely managed to win in Toledo and Dayton. Many Republicans blamed the loss on the party’s support for the African-American male suffrage referendum. Some went so far as to demand that the party explicitly repudiate the issue. The deserter disfranchisement provision also proved an embarrassment rather than a boon. The United States Army listed over 27,000 Ohioans as deserters. However, 7000 soldiers had left the army only after Appotomax. They too would be disfranchised despite their loyal service during the war. Ohio’s Republicans sought a quick resolution. They had Ohio’s United States Congressmen pass legislation reclassifying those who had deserted after April, 1965 so they would not be subject to civil disabilities. Nonetheless, resentment toward the provision remained.

In October, Ohio’s white male electorate cast their ballots for the suffrage referendum. In thirty-two counties a majority supported the amendment, but in fifty-six they voted it down. Statewide 2555, 340 voters approved of enfranchising black men while 255, 340 opposed it.

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27Bonadio., 98-100.
28Roseboom, 458; Bonadio, 97-98.
29See election map.
30Although the difference between the two votes is 38,353, the measure actually lost by a larger margin. Ohio’s constitution required an amendment to pass by a majority of those voting at the election. Voter drop-off counted against the amendment. Supporters of African-American male suffrage needed 50,00 more votes to have the amendment pass.
Map 6.1 Counties voting in favor of African-American male suffrage, 1867
With their hopes dashed for a change in Ohio’s constitution, African-American men and their supporters looked to the national government for an amendment to the United States Constitution to enfranchise black men. But before that happened, the situation in Ohio took a bizarre step backward.

The white male voters who had repudiated African-American male suffrage had also given the Democratic Party a resounding victory. The Democrats gained control of both houses of the state legislature and had narrowly missed capturing the governorship as well. The Democratic legislators immediately took action. On the first day of the 1868 legislative session, Senator Lawrence offered a joint resolution “rescinding the resolution passed Jan. 11th A.D., 1867, relative to amending the Constitution of the United States, and withdrawing the assent of the State of Ohio to the proposed 14th constitutional amendment.” The senators agreed to print the resolution. When the resolution had not been received from the state printer five days later, Senator Lawrence passed another resolution asking the clerk to inquire into the delay. That same day, the House passed its own proposed joint resolution “rescinding resolutions relative to an amendment of the constitution of the United States, passed January 11, 1867,” which it forwarded to the Senate. The Senate referred the House proposed joint resolution to its standing committee on federal relations. The committee reported back to the Senate proposing some amendments to the House resolution and adding a provision instructing Governor Rutherford B. Hayes, to request the national government return all documents on file concerning Ohio’s prior ratification of the amendment.31

Opponents tried to delay. First, they moved to lay the resolution on the table. When that failed, Senator Griswold moved for a delay until the next morning, but that too failed. The Senate then proceeded to vote on each of the proposed amendments. The same nineteen Senators voted “yes” on every amendment. Three more times the opponents tried to delay the final vote, moving to adjourn, moving to recess until 8:30 pm, and moving one last time to place the issue on the table. The coalition of nineteen voted them down each time. Within the hour, the nineteen senators had voted together on seventeen straight votes to push the resolution through.

The next day, Senator Griswold presented a written protest on behalf of himself and the other “Union Senators” concerning the passage of the resolution. Griswold vociferously protested the previous day’s actions both as to the substance of the resolution and the manner in which it had been passed. The Fourteenth Amendment was both necessary and just, he argued. He reminded the Senators that it had been discussed throughout the state prior to the election of 1866 and had received the endorsement of the people of Ohio. To Griswold, the large voter turn-out for that election confirmed that the voters wanted the amendment ratified. The Senators objected to the manner in which the resolution had been forced through the Senate and resented the fact that debate had been

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32 Berry, Campbell, Carter, Dickey, Dowdney, Emmitt, Evans, Godfrey, Golden, Hutchinson, Jamison, Kenney, Lawrence, Lynn, May, Rex, Scribner, Stanbaugh and Winner.

33 Biggs, Brooks, Burrows, Conant, Corey, Everett, Griswold, Hall, Jones, Keifer, Kessler, Craner, Potts, Simmons, Torrence, Woodworth, and Yeoman.

34 Ohio Senate Journal, 64: 34-39.
closed off. They were insulted particularly that they had been denied even just a few hours delay. “Finally, when they consider the transcendent solemnity and importance of those acts of the General Assembly which relate to changes in the fundamental law, and contrast them with ordinary legislation, which is always subject to amendment or repeal, they the more earnestly deprecate the hasty and arbitrary disposition of this question, and feel that they owe it to their dignity as men and Senators, and to the constituents they represent, to record this their earnest protest.”

The day after the protest, the Senate received notice from the House that it had signed their joint resolution and the President of the Senate then signed it as well. A week later, Senator Lawrence, impatient to have the Senate’s recision sent to Washington, proposed another resolution. This time his resolution asked the governor to inform the senate whether he had forwarded the copies of the resolution to the national government. Governor Hayes wrote back that he had not received the resolutions until he had received their inquiry. He explained that although the secretary of state normally sent copies of acts and resolutions to him, the Senate’s original resolution included a statement that copies were being sent directly to the United States Congress, the President, the Ohio Senators and Representatives, as well as the governors of each of the states. As a result,

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35Ohio Senate Journal, 64: 45-46. It was signed by L. D. Griswold, James C. Hall, Homer Everett, Homer C. Jones, Abel M. Cory, Philo B. Conant, A. Simmons, L. D. Woodworth, J. Twing Brooks, Thomas R. Biggs, H. Kessler, J. Warren Keifer, B.F. Potts, John F. Torrence, S. Craner, D.A. Dangler, J. B. Burrows, S.N. Yeomen. There are 18 names signed in protest: Dangler must not have been present the day before when the vote was taken, his name is not included in any of the votes but he signed the protest.

36Ohio Senate Journal, 64: 47.
the Secretary of State had thought he did not need to forward the resolution to the governor. Upon receipt of Hayes’ response, Lawrence, intolerant of any delay, promptly moved a resolution to inquire into the Secretary of State’s conduct in the matter. The resolution passed.37

Although the legislature’s action failed to rescind ratification of the Fourteenth Amendment, its conduct did not bode well when Congress submitted the Fifteenth Amendment to the states for ratification. The amendment barred the state and federal government from denying the right to vote based on race. On April 1, 1869, the Ohio House of Representatives adopted a joint resolution, in which they asked the Senate to concur, “rejecting the 15th amendment to the constitution of the United States, proposed to the several states for their ratification, providing for negro suffrage.” The Senate referred the resolution to its committee on federal relations. On Friday, April 30, the Committee issued a scathing report opposing black suffrage and recommending that the Senate adopt the resolution.38

The committee members charged that the Fifteenth Amendment changed “the very elementary structure of our government, by overthrowing the fundamental principle on which the union of the States was originally formed, by depriving them of the power to control their own elective franchise.” If they permitted “any authority outside of a State [to] regulate her right to decide who shall take part in making laws for its domestic affairs, such State ceases to be a self-governing community, which is the very essence of

38 Ibid., 65: 433, 670-71.

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a government, republican in form.” They angrily denounced Republican congressmen for violating their pledge not to change the suffrage laws in states such as Ohio. The committee members reminded the Republicans that in their national convention, the Republicans had recognized a need to give “equal suffrage to all loyal men” in the south out of consideration “of public safety, of gratitude and of justice,” but had promised that “the question of suffrage in all the loyal States properly belongs to the people of those States.” Ohioans had already rejected negro suffrage. Congress had already, “for its own purposes . . . illegally conferred suffrage upon 700,000 negroes to rule the States of the South” and it now wanted to “put the same yoke upon States heretofore free.”

The committee members warned of dire consequences if they ratified the Fifteenth Amendment. Since the Fourteenth Amendment made all persons born in the United States citizens, it gave the right of citizenship to all “Indians, civilized and uncivilized.” Under the Fifteenth Amendment, they too would be given the vote. Worse, Senator Sumner had a bill pending in Congress that would remove the word “white” from the naturalization laws. Soon, in addition to Negroes and Indians, there would also be “Chinamen,” of whom there were already 70,000 in California. With Chinese women arriving in the United States, “the Pacific slope will soon be overwhelmed by their immigration, if they are to be invited over to take part in the affairs of our government.” “Negro fanaticism should pause in view of such consequences, the logical result of a theory which sacrifices the traditional liberty and constitutional independence of its own

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40 Ibid., 163.
race to the Moloch of a corrupt centralism at Washington, which stands ready to seize
upon the votes of the African and Asiatic races, every the subservient tools of despotic
chieftains, to accomplish the political schemes of a great moneyed power [railroad
monopolies].”

Congress was “disregarding the teachings of all history, that the only basis of a
stable nationality is the homogenity [sic] of the people, in contra distinction to
mongrelism, the experiment is to be tried of conducting a republican government by a
forced political fusion of bitterly hostile races from the antipodes of the human family.”
It had taken “four centuries of common government and bloody wars to obliterate the
distinctions between the norman and saxon races who were physiologically similar. Now,
Congress was trying “by a mere paper decree, to compel millions of the Anglo-Saxon
race to share political power with their former negro slaves, an inferior race, who never
took any part in organizing and maintaining this or any other civilized government.”
They could also learn from science which showed that “amalgamation” resulted in the
deterioration of both races. If they pursued this course, “the doctrine of mongrel races in
our Government will be destructive to the workings of our republican institutions, and
result in permanent injury to both white and black.”

If the Amendment passed, the consequences for Ohio would not be devastating
because “in Ohio, and other States, . . . the smallness of the negro element cannot

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41Ibid., 162-63.

42Ibid., 163-64.

43Ibid., 166.
practically effect the very fabric of society.” But it would be “the height of cold-blooded cruelty and malevolent revenge to inflict, by our votes, a torturing curse upon others which would not be endured for a moment by our own people if the negro was in equal numbers in our midst.”

One committee member issued a minority report. He also recommended the Senate refuse to ratify the Amendment but proposed they do so “without any apology therefore, and without the argument accompanying the report, as recommended by the majority of the committee.” The senators took his advice and by a vote of nineteen to fourteen passed the resolution refusing to ratify the Fifteenth Amendment. The Speaker of the House signed the joint resolution on May 3, 1869 and forwarded it to the Senate the next day at which time the President of the Senate signed it as well. Less than a year later, the legislature reconsidered and on January 27, 1870 it ratified the Fifteenth Amendment.

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44Ibid., 165.


46Ibid., 65: 704.

47Ohio Senate Journal, 56, 44.
II

Separate But Equal

Despite Ohio's checkered history concerning the Fourteenth Amendment, it provided a weapon to challenge the state's segregated school system. William Garnes, a "colored" man, sued the Board of Education of his local school district in Norwich Township in Franklin County. There was only one public school in the subdistrict, but on orders from the local school directors, the teacher refused to accept his three children. There were not twenty "colored children in Garnes' subdistrict, but adding the children of his subdistrict with the children of an adjoining school subdistrict, there were more than twenty children. The township board of education formed a joint district, within the limits of the two white districts, for the education of the colored children. Garnes wanted his children to attend the white school in his subdistrict.48

Garnes attorney argued that the law violated the Fourteenth Amendment to the United States Constitution. The citizenship clause of the Amendment meant "[t]here is no longer in this country, or in any State in this country, as there once was, an intermediate class of people standing half way between citizens, and aliens born in the country, and yet not of the country,—whose position is undefined and whose rights are doubtful and undetermined." To require Garnes' children to attend school outside their subdistrict abridged Garnes' privileges as a citizen because the law required "a certain class of citizens to submit the management and control of their school fund to a board not

48 The State, ex rel, William Garnes v. John McCann, et al., 21 Ohio St. 198 (1871), 203.
chosen by themselves, while it secures to another class the privilege of having their proportion of the school fund appropriated and managed by the [board] elected by the voters of the subdistrict.” Simply put, he argued, “the statute secures to one class a privilege denied to another.” He distinguished the Court’s decision in Van Camp in which the Court had held that the school law was one of classification and not exclusion because it had been decided at a time when “[c]lass legislation was . . . permitted—color could then be made a basis of classification, as well as age or sex, without violating the Constitution of the United States.”

The school board’s attorney, C. N. Olds, argued that since the Van Camp decision, the school law had “been amended and made more liberal,” so that “school[s] for colored children may now be, and the one established in this case, is, in fact, equal in every particular, if not superior to the one established for white children.” Therefore, he concluded that the classification based on color was not “in conflict with either the letter or the spirit of the 14th Amendment.” According to Olds, the “the various powers of the board of education are largely discretionary, to be exercised according to their own best judgment, and with due regard to the peculiar circumstances, wants, interests, and even prejudices, if you please, of each particular locality or neighborhood.” Every day the board made classifications based on “age, or sex, or scholarly attainment,” why, asked Olds, “may they not also classify by color, if, in their judgment, it becomes necessary or expedient for them to do so?” To do so did not abridge any of Garnes’ privileges, nor deny him equal protection of the laws, because “[h]e has every right and privilege under

\[\text{\textsuperscript{49}}\text{Ibid., 198-99.}\]
the school laws of this State that I have. The only difference between us, is that I am required to send my children to one school house, and he to send his to another."\textsuperscript{50}

Olds thought the Court should keep in mind that "in defining the rights of citizenship and settling its immunities by legal adjudication, we do well to remember that social equality is not one of the elements of citizenship." Olds believed that "it can neither be created nor controlled by constitutions, legislative enactments, or judicial decisions." Instead, "it is the creature of a higher and more subtle law than any and all of these. School boards can neither make nor unmake it. The "lex scripta' which prescribes, defines and enforces it, is recorded only in the affections, the sensibilities, the intellectual tastes and affinities in the inner life of the man or woman."\textsuperscript{51}

Justice Day wrote for a unanimous Court. The colored school "affords to such children all of the advantages and privileges of a common school, equal to those of the school for the white children in Garnes subdistrict." Although the colored school was not located within the subdistrict, it was "as convenient and accessible" for Garnes's children, as was the white school "to some families of white residents in that subdistrict." The board of education "had appropriated the full share of the funds [the colored children] were entitled to, and that [the school] was equal in its advantages and privileges to any common school in the township." Indeed, the colored school was open "for a longer period each year than the school for white children in [Garnes'] subdistrict can be maintained." These facts made it apparent to the Court that Garnes had brought his suit

\textsuperscript{50}Ibid., 210-02.
\textsuperscript{51}Ibid., 202.
not because his children had been excluded from the public schools but solely “to test the
right of those having charge of them to make a classification of scholars on the basis of
color.”

Having reviewed the state law, noting that some colored children might be excluded from public schools if there were fewer than twenty colored children in an area, the Court specified that it would not decide the “validity of the provisions of this section that were not necessary to the determination of the case.” Garnes’ children were not excluded “from a common school education equal to that of other youth. Were this not the fact, more doubt would arise.” But since the colored and white children both “enjoy substantially equal advantages in different schools, and the separate school for colored children is clearly authorized by the statute, the only doubt that arises is as to the constitutional validity of the law which authorizes such separation on the basis of color: and that is the real question in this case.”

The Court dismissed any claim based on Ohio’s constitution because the constitution placed “no restrictions on the legislative discretion in terms of classifying school children,” therefore, according to the Court, those “enjoying equal privileges with all, cannot complain . . . the legislature has the power to regulate, for the general good.” The court then analyzed the Fourteenth Amendment challenge. Justice Day agreed that “[u]nquestionably all doubts, wheresoever they existed, as to the citizenship of colored

52Ibid., 203-04.
53Ibid., 207.
54Ibid.

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persons, and their right to the 'equal protection of the laws,' are settled by this Amendment.” However, the Court did not think that the question of what privileges and immunities were embraced by the Amendment had as yet “been judicially settled.” The justices concluded that the amendment referred to “only such privileges or immunities that are derived from or recognized by the constitution of the United States.” If they were correct, “then the clause has no application to this case, for all the privileges of the school system derive solely from the constitution and laws of the State.” The legislature could, the Court believed, repeal all laws creating a public school system and the Fourteenth Amendment would not be a bar.\(^{55}\)

But even “conceding that the 14th [amendment] not only provides equal securities for all, but guarantees equality of rights to the citizens of a State, as one of the privileges of citizens of the United States,” the school law “does not attempt to deprive colored persons of any rights.” Indeed, “[o]n the contrary it recognizes their right, under the constitution of the State, to equal common school advantages, and secures to them their equal proportion of the school fund.” The law merely regulated “the manner in which the right will be enjoyed.” According to the Court, “[e]quality of rights does not involve the necessity of educating white and colored persons in the same school, any more than it does that of educating children of both sexes in the same school, or that different grades of scholars must be kept in the same school. Any classification which preserves substantially equal school advantages is not prohibited by either the State or federal

\(^{55}\)Ibid., 209-10.
The state law classifying children "on the basis of color, does not contravene the Constitution of the State, nor the 14th Amendment of the constitution of the United States, and that colored children residing in either of the districts for white children, are not, as of right, entitled to admission into the schools for white children." Thus the Court ruled that "separate but equal" was constitutional decades before the United States Supreme Court did so in Plessy v. Ferguson.
CHAPTER 7
“WE THE PEOPLE, NOT WE THE WHITE MALE CITIZENS”

I
1873 - 74 Constitutional Convention

“The right of suffrage shall not be abridged or denied to any citizen”

Ohio's 1851 Constitution required that the question of whether to convene a state Constitutional Convention be presented to the voters every twenty years. A majority of the electorate voted to convene a new constitutional convention in the 1872 referendum on the issue. Ohio women again raised the issue of suffrage for the 1873 Constitutional Convention.

Women’s rights advocates had reorganized after the hiatus caused by the Civil War. In 1869 they created the Toledo Women’s Suffrage Association, recreated the Ohio Woman Suffrage Association, and held the founding convention of the American Woman Suffrage Convention in Cleveland. Rebecca Anne Smith Janney emerged as one of the chief organizers of the suffrage petition campaign aimed at the 1873-1874 Constitutional Convention. Janney and her husband were involved in most of the reform issues of the nineteenth century. Quakers who had worked in the anti-slavery, temperance, and women’s rights movements before the Civil War, they continued their efforts after the war in temperance, women’s rights, and prison reform.¹ Janney organized a women’s

¹The Biographical Encyclopedia of Ohio of the Nineteenth Century (Cincinnati and Philadelphia: Galaxy Publishing Company, 1876), 469.
convention in 1872 and circulated petitions which were to be returned to her so she could submit them to the Constitutional Convention. This time, citizens representing thirty-three counties from all over the state submitted petitions in support of women suffrage, with approximately 8000 signatures.

The woman-suffrage memorials fell into three categories: 1) those petitioning to strike the word “male” from the qualifications of voters; 2) those calling for women to receive all the rights pertaining to citizenship; and 3) those insisting that the right of suffrage should not be abridged or denied to any adult citizen except for crime, insanity, or idiocy. The third category of petitions, which carried the largest number of signatures, would require the removal of both the word “male” and the word “white” from the constitution.

The emphasis on the rights of citizenship and the denial of a state's power to “abridge” those rights had taken on new meaning in light of the passage of the Fourteenth Amendment. Article one provided: “No state shall make or enforce any law that shall bridge the privileges and immunities of citizens of the United States.” Francis Minor, an attorney, and Virginia Minor, his wife, developed a theory that the Fourteenth Amendment barred states from denying women the privilege, as citizens, to vote. Minor presented his theory at the St. Louis women’s rights convention in 1869, where the

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2 Jane Swisshelm to R.A.S. Janney and Frances Dana Gage to R.A.S. Janney, Janney Family Papers, Ohio Historical Society; Memorials used as scrap paper in the Janney family papers, ibid.

3 Minor cited Corfield v. Coryell, 6 F.Cas. (E.D. Pa. 1823) to argue that one of the “privileges and immunities” of citizenship was the elective franchise which the Fourteenth Amendment now protected.
delegates passed a resolution adopting it. He wrote to Elizabeth Cady Stanton and Susan B. Anthony at the Revolution explaining his argument. The Revolution reprinted the St. Louis resolutions and circulated 10,000 copies. Stanton and Anthony’s National Woman Suffrage Association made it the basis of a “New Departure” strategy. Women would assert the right to vote under the Fourteenth Amendment and sue election officials who denied them the ballot.

The language of the Fifteenth Amendment supported the argument that the Fourteenth Amendment secured the right to vote, advocates of the New Departure argued. It “does not confer suffrage; it recognizes a right already conferred.” The omission of the word “sex” from the Fifteenth Amendment did not mean that states could abridge the right to vote on account of sex. The Amendment specifically referred to African-Americans because, unlike women, African-Americans had previously been denied the

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4 The Revolution was the newsletter published by Stanton and Anthony to promote women’s suffrage.


6 Albert Gallatin Riddle, a constitutional lawyer, testified in support of the theory before the United States House of Representatives Judiciary Committee when Virginia Woodhull presented a memorial and testified in support of Congress passing a declaratory resolution to the effect that the Fourteenth Amendment recognized the right of suffrage for women. Stanton, Anthony, and Gage, eds. History of Woman Suffrage, II, 418. For a complete version of Riddle’s argument see The Right of Women to Exercise the Elective Franchise under the Fourteenth Article of the Constitution (Washington, D.C.: Judd & Detweiler Printers, 1871).
rights of citizenship. Although the United States Supreme Court would rule against Virginia Minor’s claim in 1875, in 1873 the argument still had some promise.\(^7\)

“The dainty fingers of woman”

The chief advocate of suffrage at the 1873 constitutional convention was Akron attorney Alvin C. Voris.\(^8\) Voris pressed to have the issue removed from the standing committee on the elective franchise to a select committee. The members of the standing committee were known to be opponents of woman suffrage, he argued. Fairness dictated the issue be presented by its “friends.”\(^9\) The chairman of the standing committee opposed the change. To the delegates' laughter, he assured Voris that “any memorial emanating from the ladies, or in favor of the ladies, or even the ladies themselves, are safe in the hands of the Committee on Elective Franchise.”\(^10\) But Voris persisted and succeeded in getting the issue referred to a select committee of which he was appointed chairman.\(^11\) As expected, the select committee proposed the removal of the words “white male” from the


\(^8\) Voris, a Republican, served in the Ohio legislature before the Civil War. He had a distinguished record in the Civil War and was breveted as a Brigadier General. The Biographical Cyclopedia and Portrait Gallery (Cincinnati: Western Biographical Publishing Company, 1883), 1:257-259.

\(^9\) Debates, 1:358-59, 388.

\(^10\) Debates, 1:360.

\(^11\) Ibid., 1:389.
constitution. The proposal was so controversial that delegates worried that the entire constitution might be defeated, if it were accepted. To offset that concern, the committee recommended that it be submitted as a separate proposal in the ratification election.

The delegates agreed to a "careful and exhaustive argument on the subject." In recognition that he was the "champion" of the issue in the convention, and one of its leading advocates in the state, the delegates suspended the rules on time limitations to allow Voris to speak as long as he chose. Voris argued for more than three hours before a full gallery of spectators. Whether the right to vote was deemed a natural right or a political privilege, women had a right to suffrage equal to men, he asserted. One by one, he discredited the arguments advanced in opposition to enfranchising women: that women were unfit to vote from lack of experience, that the physical differences between men and women prevented them from being voters, that women had no need for the ballot as their interests were protected by men, and that politics would have a corrupting influence on women.

Women differed from men, Voris conceded, but he denied that the differences should disqualify women from voting. Women could acquire the experience necessary to be voters, just as men had. The physiological differences were no hindrance because "the exercise of the ballot is one of the lightest and most easily performed functions in the world. The dainty fingers of woman can put the vote where it will do the most good, as well the arm of Hercules." Moreover, men were not excluded from voting by virtue of

12Ibid, 2:1816.

13Ibid., 2:1819.
physical infirmities. ‘Virtual representation’ was no representation as history had shown. Women needed to protect rights which arose out of “her peculiar organization and nature,” which men could not fully appreciate. That women would be “overcome with corrupt influences,” was a presumption “at variance with the character of woman.” Just as women had already been in the forefront of “The great moral reformity enterprises of the day,” so women would be “an efficient auxiliary in reforming the politics of the day.”

Thomas W. Powell, an attorney from Delaware County and the chief opponent of the issue, read a thirty-three page statement into the record. In Powell’s view, the differences between men and women confirmed that women should not vote. Nature had established a division of labor in which men were assigned the difficult and dangerous labors and women were assigned “the more genial duties and care of the home.” To confirm the natural order of the division of labor, Powell noted that nature provided that there were 20 to 22 male births to every 19 to 20 female births as a “wise arrangement of nature to compensate for the rough and perilous vocations of men. That is, one in every

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14Ibid., 2:1826, 1828.

15Powell’s family migrated from Wales when he was three years old. He studied law in Pennsylvania then decided to “go West and grow up with the Country.” He served in the Ohio House of Representatives before the Civil War and was elected a probate judge after the war. He considered himself to be a “Jeffersonian democrat” but voted for Lincoln, Grant, and Hayes. At the time of the convention he was 76 years old. The Biographical Cyclopaedia and Portrait Gallery, (Cincinnati: Western Biographical Publishing Company, 1884), 3:638-39.

16Ibid., 2:1830.
20 of the males is required as a sacrifice and homage to the female portion of the human
family.” 17

Powell reserved his harshest criticism for women who advocated suffrage. They
desired notoriety, denounced marriage, wished to discard home and family relations, and
wanted to give the duties of motherhood to the state. 18 In contrast, he wished to maintain
“the sacred home, the handiwork of a true woman and a female instead of a home that is
rendered neglected and desolate by attention to politics.”19 Powell’s final argument,
voiced by a number of other delegates, was that a majority of women did not want the
vote.20 “This opposition of the best part of the women of our country is a fatal objection
to the project, for it would be tyranny and oppression to force upon them the duties and
responsibilities of the ballot without their consent.”

Two delegates made constitutional arguments based on the “New Departure”
theory of the Fourteenth and Fifteenth Amendments. They argued that since the
Fourteenth Amendment guaranteed the privileges of citizenship and the elective franchise
was one of those “privileges,” women, as citizens, could vote. The Fifteenth
Amendment proscribed abridging the right on account of race as a necessary protection
for African-Americans, who previously had not been considered to be citizens. There

17 Ibid., 2:1835.
18 Ibid., 2:1831, 1834.
19 Ibid., 2:1839.
20 Ibid., 2:1836.
was no authority to abridge the right of women. Powell countered the "New Departure" argument by distinguishing between civil rights and political rights. "It's been decided by the highest tribunals over and over again, yet they insist to the contrary," he complained. 

Although the delegates voted in favor of the suffrage Amendment 49 to 41, the vote was 4 short of the 53 vote majority of delegates the convention rules required on an issue. The delegates included in the proposed new constitution a provision permitting women to hold office, under the school laws, except the state commissioner of education. However, the new constitution failed to pass at the ratification election.

V

1912 Constitutional Convention

By 1909, agitation for social and political reform had reached such a peak that the Ohio legislature submitted a referendum on holding a constitutional convention to the voters a year earlier than required. The 1912 convention included all of the classic 

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21Ibid., 2:1842, 1871.

22Ibid., 2:1837.

23Ibid., 2:1870.

24The constitution’s defeat was attributed primarily to temperance activists who opposed an Amendment to license alcohol. Although the license Amendment was submitted as a separate proposal from the new constitution, temperance advocates voted against both the license proposal and the new constitution as a hedge in case the license Amendment passed. Other reasons given for the defeat included the length of the convention (public interest had waned) and the perception of the new constitution as a "lawyers’ constitution," in reference to the large number of lawyers among the delegates. Charles B. Galbreath, History of Ohio, vol. 2, Constitutional Evolution of Ohio (Chicago and New York: The American Historical Society, Inc., 1925), 78-9.
Progressive Era reform issues: municipal home rule, initiative and referendum, workers’ compensation and other labor reform issues, as well as women's suffrage and temperance.

Ohio women campaigned vigorously prior to, during, and after the state Constitutional Convention to assure that a woman suffrage amendment passed. The Ohio Woman's Suffrage Association (OWSA) had been reorganized in 1885 and had operated continuously ever since. It remained autonomous from both the American Woman's Suffrage Association (AWSA) and the National Woman's Suffrage Association (NWSA). Other suffrage groups within the state joined as autonomous units of the OWSA. Both Toledo and South Newbury had strong suffrage societies which had not affiliated with the state association until it pledged it would remain independent of the two national groups. Only when the NWSA and AWSA merged into the National American Woman’s Suffrage Association (NAWSA) in 1890 did the OWSA affiliate with the national group. It had very strong ties with the NAWSA by the time of the 1912 Constitutional Convention. Harriet Taylor Upton, the leader of the state association, was also NAWSA’s treasurer and located its headquarters in the Warren County Courthouse from 1903 to 1910. Although some other women's organizations, such as the Woman's Taxpayers League and the College Equal Suffrage League, remained independent of the OWSA, the OWSA coordinated suffrage activities for major campaigns.

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25 Kathryn Mary Smith. "The 1912 Constitutional Campaign and Woman's Suffrage in Columbus, Ohio" (Master's thesis, Ohio State University, 1980), 11-12.


27 Smith, 11-12.
In preparation for the Constitutional Convention, the OWSA formed a campaign committee, opened campaign headquarters in Toledo, conducted field work, and voted to petition the convention to submit the woman's suffrage proposition as a separate item on the ballot from the rest of the new Constitution. The OWSA tried to encourage the election of delegates who were sympathetic to woman's suffrage. They estimated that 56 of the 119 elected delegates supported submitting the amendment to the electorate. Upton and other OWSA representatives successfully lobbied the president of the convention to appoint sympathetic members to the suffrage committee. When the convention met in Columbus in January 1912, suffrage organizers opened headquarters there. In addition to the OWSA, the Woman's Taxpayers League and the Woman's Christian Temperance Union also maintained offices in Columbus from which to lobby delegates.28

Suffragists registered as official convention lobbyists and worked to influence members of the Elective Franchise Committee. During the Committee’s hearings and deliberations they held theatrical events and paraded to the Statehouse. Some suffragists directly influenced the Convention’s suffrage committee’s work, for example, drafting a suffrage proposal for the Committee’s consideration.29 The suffragists also testified, discussing the differences between men and women and insisting that men could not fairly represent women. Advocates argued that women were needed in politics to fight against impure food, for better roads, and against high living costs. Anticipating the

28Ibid., 27-29.

29Ibid., 30.
arguments of opponents that women would be contaminated by the ballot, they claimed that women would instead purify politics. 30

Other women organized to oppose the proposed amendment. They too testified before the franchise committee and held a rally. The anti-suffragist witnesses favored limiting suffrage to exclude working people and those of foreign birth. They argued that granting universal suffrage would permit undesirable women to vote. On February 14, 1912, the committee issued its report, rejecting the anti-suffrage arguments and proposing an amendment to Ohio's constitution that would remove the words "white male" from it. Newspapers nicknamed the committee report the "Con-Con's valentine" to Ohio's women. 31

"We the people, not we the white male citizens"

At the convention, proponents of woman suffrage controlled the debate. They passed resolutions limiting the time of each speaker, cutting off debate after only a day and a half. They consistently tabled attempts by opponents to have the issue submitted to women before submitting it to the male electorate. Opponents accused the suffrage proponents of being afraid to have the issue debated fully and fairly. 32

The male delegates speaking in favor of woman suffrage echoed the arguments the women had made in committee. They consistently argued that women were the

30*Columbus Citizen*, 9 February 1912.

31*Columbus Citizen*, 14, 15 February 1912.

equals of men and that the right to vote was a natural, inalienable right.\textsuperscript{33} The principle of
government of, by, and for the people required enfranchising the one half of the citizens
who had been denied the right to vote.\textsuperscript{34} Without equal rights women were enslaved.
Denial of the right to vote was taxation without representation.\textsuperscript{35} Delegates who
supported the initiative and referendum must, to be consistent, also support submission of
the woman suffrage proposal.\textsuperscript{36} Women would not be tainted by politics rather they
would purify politics.\textsuperscript{37} Some delegates connected woman suffrage with temperance.\textsuperscript{38}

W. B. Kilpatrick, the delegate from Trumbull County who opened debate on the
issue, sounded each of these themes.\textsuperscript{39} He argued that the right to vote was a fundamental
right of all of the people and essential to a democracy. He made a special appeal on
behalf of working women, stating that women who had to work for a living did not share
the "high estate" which male opponents claimed to be the special province of women.

\textsuperscript{33}\textsuperscript{Ibid, 1:600, 603, 612.}
\textsuperscript{34}\textsuperscript{Ibid., 1:600, 618.}
\textsuperscript{35}\textsuperscript{Ibid., 1:608, 617, 618.}
\textsuperscript{36}\textsuperscript{Ibid., 1:602, 616, 623.}
\textsuperscript{37}\textsuperscript{Ibid., 1:614, 615, 618, 621.}
\textsuperscript{38}\textsuperscript{Ibid., 1:612, 618.}
\textsuperscript{39}Kilpatrick, a democrat, was 35 years old, an attorney and former mayor of
Warren, Ohio. Harriet Taylor Upton, \textit{A Twentieth Century History of Trumbull County
Ohio} (Chicago: The Lewis Publishing Company, 1909), 1:183. Warren, the home of
Harriet Taylor Upton and headquarters of the OWSA, had a long history of suffrage
support.
Working women deserved and needed the right to vote to improve their working conditions.40

Kilpatrick also made the argument, echoed by a number of other delegates, that it would be inconsistent to support the initiative and referendum yet vote against sending the suffrage Amendment to the electorate. Kilpatrick closed his argument by quoting Susan B. Anthony, whom he called “one of the greatest, strong true democratic women.” He read into the convention record Anthony’s analysis of the Preamble of the United States Constitution: “‘We the people, not we the white male citizens, nor yet we the male citizens.’”41

Herbert S. Bigelow, the Convention president,42 had indicated prior to the convention that he opposed a woman suffrage Amendment because he feared it would defeat the new constitution at the ratification election. He assumed that the proposed constitution would be submitted to Ohio voters as it had in the past, with voters casting a single vote for or against the constitution in its entirety. Bigelow believed it was more important to assure that the initiative and referendum became part of Ohio’s Constitution than to secure woman suffrage. After all, once these procedures became part of the

40*Debates, 1:600-603.*

41*Ibid. 1:604.*

42Bigelow, 42 years old, was well known as a progressive and prominent in social reform movements including an earlier campaign for the initiative and referendum. An ordained congregational minister, his church in Cincinnati became known as the People’s Church and Town Meeting. After the convention, he served one term in the Ohio House of Representatives. Charles B. Galbreath, *History of Ohio, 2:820.* He was elected president of the convention only after 16 ballots and symbolized the fight for control of the convention between the progressive and conservative forces.
constitution they could be used to present the issue of woman suffrage to the voters later. To minimize the risk to the constitution, the elective franchise committee proposed that the suffrage Amendment be submitted to the voters as a separate item in the ratification election. With this change, Bigelow publicly endorsed the Amendment. The last speaker on the issue, he argued that democracy required the delegates to submit the issue to the electorate, that through suffrage women would increase their responsibility and improve their character, and they would improve government.

"The seething cauldron of political corruption"

Opponents argued vociferously that voting was not a right but a privilege which carried duties and responsibilities. It was unfair to place this burden on women when a majority of them did not want it. Only a minority of masculinized women "want to make a fatal leap from the highest pinnacle of the pedestal of creation down to its base, alighting in the seething cauldron of political corruption," delegate Allen M. Marshall expostulated. Worse yet, they were "not satisfied with this descent on their own part." He could not contain himself. "They want to take with them in this fatal leap your daughters and my daughters, beautiful daughters, daughters clothed in their white robes of virgin purity, down with them alighting in the whirlpool of political corruption, and thus immersing their white robes of purity in the indelible stench of the political world, which time can never erase."

Other delegates, although less dramatic, agreed that a minority of women should not impose their will on the majority. Three times opponents of suffrage attempted to

43 *Debates*, 1:607.

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pass a proposal which would have required a preliminary referendum among Ohio women. Only if a majority of them voted in favor of suffrage would the amendment be presented to the male electorate for ratification. Each time opponents of suffrage moved for a woman-only referendum, the proponents of woman suffrage tabled the proposal. Opponents of suffrage accused its advocates of “being afraid of an open discussion.”
Not only did they fear a referendum, they were “throttling” free speech by limiting debate and denouncing opponents as enemies of women, when in fact they were standing up for the ninety percent of Ohio mothers and wives who did not want the right to vote.

At the close of debate, the delegates voted in favor of the amendment 74 to 37. They also voted 76 to 34 in favor of submitting the amendment to the electorate as a separate proposal. The convention subsequently decided to submit every proposed amendment as a separate item. The suffrage amendment appeared as Item 24 of 42 proposed amendments.

After losing the vote on the amendment, opponents of woman suffrage turned to one last tactic that they hoped would defeat the amendment in the ratification election. They succeeded in passing an amendment which would remove only the word

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44 Ibid., 1:626.
46 The third reading passed 74 to 37, final passage came on May 31, with a vote of 63 to 25.
47 The liquor interest had attempted to have the suffrage proposition set off from all the other propositions with the liquor license provision, believing that this would aid in the defeat of the suffrage Amendment, but the delegates at the Constitutional Convention supported the position advocated by the suffragists.
"white" from the qualifications of electors, hoping to divert African-American male voters from supporting the proposed amendment for universal suffrage by giving them a male-only alternative.

Ratification Election

Local and national suffragists considered Ohio a crucial test for the extension of woman's suffrage. If they were successful, Ohio would be the first state east of the Mississippi to grant full suffrage. Five other states had women suffrage referenda scheduled after Ohio's election, and suffragists hoped a positive outcome in Ohio would create momentum in those states. The NAWSA and leading national organizers assisted in the campaign, which ran from May to September 3, 1912, the date of the ratification election. Suffrage associations in the major cities organized local campaigns.48

The women staged fundraisers, printed and circulated literature, held theatrical events, took "trolley tours," spoke at street corners from automobiles, addressed the public in city parks, followed presidential and state candidates running for election that fall, and addressed trade conventions. They brought in national speakers to tour the state, some times targeting particular audiences, as when, Rose Schneiderman, Vice President of the Women's Trade Union League, appealed to working men at the plants and at union meetings.49

48The OWSA established campaign centers in Cleveland, Columbus, Cincinnati, Toledo, Akron, Springfield, Canton, Dayton, Warren and Youngstown. They organized 103 suffrage societies in 78 counties. Smith, 43, 53.

49Smith, 44, 47.
The campaign culminated in a great parade on August 27th, part of the state capital Columbus' centennial celebration. Between 2500 and 3000 women participated with floats, placards, banners, flags, and bands. Harriet Stanton Blatch and Dr. Anna Shaw, president of the NAWSA and a noted orator, joined in the parade and spoke to large crowds afterwards. Proudly, the newspaper described it as the "best suffrage parade outside of New York City."

Anti-suffragists tried to match the pro-suffrage campaign. They circulated campaign literature, displayed signs and advertisements, brought in Minnie Bronson, an anti-suffragist speaker from Massachusetts, and ran ads on the street car lines.\footnote{Ibid.}

Voters cast more votes on the suffrage issue, than any other (586,295). The total in favor (249,420) was the largest vote ever cast for it anywhere in the country. Nonetheless, the amendment was defeated. A limited budget and limited time, the organized opposition of the Ohio State Board of Commerce, and the covert opposition of the liquor interests contributed to the defeat, the OWSA concluded. Remarkably, the amendment to remove only the word "white" also failed, with 242,735 in favor of removal and 265,693 opposed. Despite the fact that the amendment would have no substantive effect--black men could vote before and after the election--white male Ohioans defeated it.\footnote{Secretary of the State, \textit{Annual Statistical Report}, (1913), 657. See election maps for county votes.}
Map 7.1 Counties voting in favor of woman suffrage (remove "white male"), 1912
Map 7.2 Counties voting in favor of removing the word "white," 1912
through amendment to the United States Constitution, rather than Ohio's. However, opponents made one last attempt to prevent it. Anticipating that Congress would soon send amendments to the states concerning prohibition and woman suffrage, in 1918 the liquor industry organized a petition campaign to place a referendum on the ballot. The referendum would amend Ohio's constitution to require that any national amendment the legislature proposed to ratify be submitted to the electorate in a referendum. The liquor industry's amendment passed in the fall of 1918. When the legislature voted to ratify the Eighteenth (prohibition) and Nineteenth Amendments (woman suffrage), opponents mounted another successful petition campaign to have the ratifications subjected to a referendum under the new provision of the constitution. William Hawke sued the Secretary of State to prevent the issues from being placed on the ballot. The common pleas court and the court of appeals ruled in favor of the Secretary of State. Hawke appealed to the Ohio Supreme Court. With one justice dissenting, the Court upheld the lower court decisions ruling that Ohio's constitutional provision was not in conflict with the U. S. Constitution. Hawke appealed to the United States Supreme Court. In Hawke v. Smith, the Court ruled that the legislature's ratification complied with the United States Constitution and superseded any contrary process in the Ohio Constitution.

\[52\] Hawke v. Smith, 253 U. S. 221 (1920).

\[53\] In the referendum on ratifying the eighteenth Amendment, Ohioans voted against ratifying the national prohibition Amendment but voted for a state prohibition Amendment. The referendum on the woman suffrage Amendment, scheduled for November 1920, never took place because of the Supreme Court's ruling in June, 1920. See, David E. Kyvig, Explicit and Authentic Acts (Lawrence: University Press of Kansas, 1996), 241-246.
so, kicking and screaming, Ohio joined the ranks of the other states that had ratified the amendments.

But the words “white male” remained in Ohio’s constitution. In 1923 a petition campaign resulted in having the issue placed on the ballot. Now, with women voting, the amendment removing the words “white male” passed. One hundred twenty-two years, three state constitutional conventions, six state referenda, two national amendments, and dozens of petition campaigns after the words were first written into Ohio’s constitution, “white male” came out, and the dream of the women who had met in Salem Ohio seventy-three years earlier finally came true.\footnote{See election map for county votes.}
Map 7.3 Counties voting in favor of removing "white male," 1923
VI

Conclusion

This study of Ohio's constitutional conventions reveals the synergistic interaction between the struggles for racial and gender equality. Ohioans had to resolve competing visions of its political and social community as it evolved from a territory to a large industrial state. At the heart of these conflicts lay slavery and the status of free blacks. But the struggle over the place of African-Americans in Ohio confined was not confined to its black population. The Ohio women's suffrage movement found its origins, as elsewhere, in the struggle against slavery and eventually led the fight for universal suffrage across lines of race and gender. Ohioans used their constitutional conventions as arenas in which to contest these competing visions of their community, particularly racial and gendered constructions of that community.

Ohio's Statehood Constitutional Convention occurred at a critical moment to decide the place of free African-Americans not only in Ohio's political and civic community, but in the nation. By placing the word "white" in its 1803 constitution, the first northern state to do so, Ohio led the way for the other northern and western states to restrict the rights of free African-Americans in the following decades.

Ohio's African-Americans' exclusion from such public institutions as schools and poor relief, forced them to construct their own communities with churches as the institutional base for social and economic organizations and annual conventions as their base for political activity. A primarily white colonization movement also forced African-Americans to make a critical political decision. Were they Americans who would stay in
the United States and fight for inclusion or were they willing to leave and create their own community elsewhere?

Ohio’s African-Americans’ decision to stay and demand equality revealed fissures in a vision of a white-only community held by many white Ohioans, even at the peak of the Black Laws. White activists joined black activists in the fight for rights, testing the limits of those laws. In Ohio, the Supreme Court played a particularly active role in defining the boundaries of exclusion contained in those laws. By judicial construction, “white” meant any person with more than one-half white blood. With this construction, the Court included people of color in the political community by deciding who could vote, and, in the civic community, by deciding who could attend public schools. The Court’s permissive view of “whiteness” to incorporate people of color engendering further political and social debates over the meaning of community in Ohio. The Court’s opinions themselves and the repeated challenges to the Court’s decisions reflected that the Court did so against the wishes of many white Ohioans. When the Court later excluded children of color from the definition of white, it reflected the Court’s acquiescence to the demands of that segment of Ohio’s white community. Segregated schools legally ended in Ohio in the 1880’s but not without continued resistance by some portion of the white community.

Ohio’s African-Americans focused initially on obtaining basic civil rights denied them by the Black Laws. With their partial victory in 1849, they turned to demanding the right of suffrage. But, initially, their vision of the political community, or at least the public expression of that vision, was limited. They were not prepared to embrace
universal suffrage—black and white; male and female. Instead, they asked only for African-American males to be included in the political community.

In Ohio, women, primarily white, from the anti-slavery movement, demanded an all-inclusive political community at an early stage. Their demand in 1850 for equal rights without regard to color or sex was probably the first such demand ever made to a constitution-making body. The hostile reaction to their demand reveals how very radical it was for its time.

Despite the failure of African-Americans and women to achieve their goals at the 1850 Constitutional Convention, they persisted in their demand to receive equality. Between constitutional conventions, they directed their attention to the legislature to force a constitutional referendum on suffrage. African-American men succeeded in obtaining a referendum in 1867, only to lose at the polls. For African-American men, suffrage came quickly after that loss with the ratification of the Fifteenth Amendment. But white opposition remained long after the Fifteenth amendment and the legislature’s decision to eliminate separate schools. The refusal to remove the word "white" from the Ohio’s constitution in 1912 illustrates the persistence of a white-only vision of the community by a large segment of Ohio’s white men.

Yet, Ohio suffragists, although primarily white and middle-class, continued to link their own status as disfranchised citizens and the rights of African-Americans well past ratification of the Fifteenth Amendment. They did so in two related ways. First, they characterized their disfranchisement as political slavery. Second, they demanded that Ohio’s Constitution recognize universal suffrage. They sought to remove not only
the word "male" but also the word "white" from Ohio's definition of voting qualifications. Only once Ohio women could vote, as a result of the nineteenth amendment, did Ohioans change their Constitution, a symbol of the community, to reflect a community of black and white, male and female on equal terms, by removing the words "white" and "male."
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