

Introduction

That no black or mulatto person or persons shall hereafter be permitted to be sworn or give evidence in any court of record, or elsewhere, in this state, in any cause depending, or matter of controversy, where either party to the same is a white person.

—5 Laws of Ohio 53, approved January 25, 1807

IN 1841, the *Colored American*, an African American newspaper, ran a story entitled “Civil Condition of the Colored People in Ohio.” It reported the murder in Cincinnati of a black man by a white. The *Colored American* had frequently published articles describing how the Black Laws had subordinated and degraded African Americans. It reported this story not only because it was news that merited coverage but, more important, because it illustrated the continued injustice of the Black Laws. This article specifically exposed how the “oath law” protected unscrupulous whites by excluding “the testimony of a colored person against a white person.”¹ In previous articles, the paper had reported numerous instances of whites embezzling, swindling, and even stealing property and money from blacks. The paper had already predicted that the testimony law would enable “a white to murder a colored man, in the presence of colored persons only, and under the operations of this law, or as it had been interpreted, the murderer might go unpunished.”² The 1841 case tragically proved the accuracy of this prediction.

The episode involved Charles Scott and his brother (whose name is unknown), two free African Americans who lived in Cincinnati. White

men hired the Scotts, ostensibly to help them drive cattle across the Ohio River into Kentucky. The editors of the *Colored American* suspected that whites, including local constables in Covington, had invented the scheme to kidnap the men. Once in Kentucky they immediately had the brothers arrested as fugitive slaves. Luckily, a white individual from Cincinnati immediately came forward to offer testimony of the free status of Charles's brother. Charles, however, remained in jail for six weeks, until another Cincinnati white finally vouched for him.³

Infuriated by his ordeal, Charles Scott immediately filed a complaint against his abductors in Hamilton County. The kidnappers demanded that he withdraw the suit, and when Charles refused, they shot him dead "in his own house, by his own fireside."⁴ The Hamilton County prosecutor obtained a warrant for the arrest of the assailants. When they were brought to trial, the testimony law became the center of the controversy. Under this 1807 law, "no black or mulatto person" was "permitted to be sworn or give evidence in any court" in Ohio "where either party" was "a white person."⁵ The testimony law barred Scott's wife, a witness to the murder, from offering evidence against the white defendants. The prosecution called another witness, a light-complexioned mulatto woman, whose testimony was challenged on grounds that the rules of evidence also applied to this class of persons. Forced to consider these objections, the trial judge faced a disturbing dilemma: should he strictly adhere to the law and allow the accused to go free, since there were no approved witnesses against the defendants? Or should he admit the mulatto witness under a broad interpretation of the statute? The judge chose the latter route, and the defendants were convicted for the murder of Charles Scott.⁶ (The *Colored American* did not report on their sentences, nor is the official transcript of the trial available.)

Ohio did not inaugurate the practice of using legal principles to abridge the civil and natural rights of racial minorities. The thirteen original English colonies had done so for many years, relegating African Americans to the status of chattel property. By the time of the Revolution, American slavery stood out as a glaring contradiction in the new political community being forged in the New World. The philosophy of natural rights was laid down in the Declaration of Independence and was one of the core foundations of the new Confederation government. As a committee of the judiciary of the Ohio state house of representatives reported in 1837,

The right of citizenship, of ingress and egress, to and from all the States, and the privileges of trade and commerce, was secured to all free persons within its jurisdiction, irrespective of color. From the formation of the Confederacy until the adoption of the present Constitution of the United States, there were no constitutional restrictions imposed upon this race, unless they were slaves. They were entitled to the rights and privileges of any other class, and recognized as citizens, in the several States of the Confederacy. Under the Territorial government, they exercised the right of suffrage, in common with all other citizens, down to the time of the adoption of our present constitution, and formation of a State Government. They voted for delegates to attend the Convention, to form our present Constitution, in 1802.⁷

Moreover, the Constitution created in Philadelphia in 1787 embodied many of these principles. The preamble asserts that two of the aims of government are the duties to “establish justice” and “insure domestic tranquility.” It also implies the equality of all people before the law. Political repression solely on account of race, color, or ancestry would seem to have been contrary to these principles written into the documentary history of the United States.

The founders of Ohio also expressed lofty ideals when they declared their reasons for establishing a state. The purpose of the state, the Ohio constitution of 1802 declared, was “to establish justice, promote the welfare and secure the blessings of liberty to ourselves and our posterity.”⁸ The theory of natural rights formed the underpinnings of both federal and state governments, including that of Ohio. One of the challenges facing Americans and Ohioans, therefore, would be reconciling the ideals of the republic with the history of American slavery and legalized discrimination.

From the territorial period in the mid-1780s through the early years following admission into the Union in 1803, Ohio enacted a category of legislation commonly referred to as the Black Laws. These statutes had one specific objective: to make life for African Americans in Ohio so intolerable that these men and women would not use the free state as a refuge from the oppression of slavery. The “Negro evidence law” was only one of many statutes Ohio lawmakers enacted to accomplish this

purpose. Others included a registration law that required blacks entering the state to show on demand a certificate of freedom, authenticated by a court of record and filed with the clerk in the county where they resided. The residency law directed African Americans already living in the state to register with a county clerk. A labor law provided that Ohio residents could hire only those African Americans possessing a certificate. The state fugitive slave law granted slave owners a right of recapture and penalized anyone who interfered with the process. Revised in 1807, the registration law provided that, within twenty days of their entry into Ohio, African Americans were required to enter into a five-hundred-dollar bond with two property holders and that these freeholders, if called upon, would be required to apply the funds to the welfare or liability of the emigrant. Other Black Laws barred African Americans from enrolling in the militia, serving on juries, and attending public schools.⁹

Racial discrimination was obviously a glaring contradiction of the natural rights philosophy.¹⁰ This book argues that race-specific laws could not long endure in a country that made freedom and equality the birthright of its people. It chronicles the black struggle to bring the political community and the social culture of Ohio in line with the American creed. Specifically, it tells the story of the injustice aimed at African Americans and it identifies an early civil rights movement dedicated to eliminating the Black Laws of Ohio and to limiting and abolishing slavery.

Some of the stories presented in this work have never been told before, such as the experience of Charles Scott—his death and the trial that came after. These narratives give a fuller picture of how Ohio evolved from a state that initially denied equality to black Americans to one that eventually changed these laws. By the 1840s, progressive whites in the North and blacks had become optimistic, believing that they had finally begun to change hearts and minds. There is evidence that Ohio judges began to place greater emphasis on fairness in their courtrooms and that they began to minimize the effects of the Black Laws whenever possible. If strictly interpreted and enforced in the Scott case, state law in 1841 would have protected the white defendants because neither a black nor a mulatto could have given sworn testimony against them. The murderers would have been set free.

Since at least the early 1830s, the Ohio Supreme Court consistently had ruled that only persons with over 50 percent white blood were entitled to the privileges of whites.¹¹ The judge in the Scott case made whiteness and blackness a variable and more subjective factor than the supreme court had established. Applying case law loosely, he concluded that various shades of persons could be at least 50 percent white. While the *Colored American* lamented the testimony law, it considered the Scott case a hopeful sign—a positive indication of a new day when “[t]he ‘Black Laws’ will soon give way to make room for just ones.”¹² The correspondent looked to the day when common defense, safety, and justice would become the norm in Ohio “without regard to complexion.”¹³ The Ohio legislature abolished the Black Laws piecemeal, eliminating the registration law and the testimony law in 1849, as well as a few other provisions, such as the exclusionary public school law. The legislature finally abolished the remaining Black Laws in 1886.¹⁴

The murder of Charles Scott highlights the grave injustice of the Black Laws of Ohio. The subsequent trial also illustrates that Ohio judges were forced to take a stand on how these laws would be executed. However, we cannot be sure that the judge in the Scott case was defending black rights. He may have been acting to prevent violence that could go beyond the black community and threaten whites. If a white person killed anyone in the presence of a black witness he would get away with it. Thus, the trial judge modified the testimony law to give the murderers what they justly deserved—their day in court and the possibility of conviction.

The editors of the *Colored American* considered the decision an important one. They used the Scott case to argue that a growing number of progressive whites had begun to realize that the testimony law undermined the prosecution of justice:

The Ohio people are beginning to arrive where they might necessarily expect to be carried by warring against right, as they have done in the enactment of such laws. They find it necessary now, as one might argue, to violate their *intent* (for it was intended to operate only against the colored people and cut off all colored testimony), necessary to save themselves, to keep society pure. It will not do to let the murderer loose. If the flood gate to murder is let down, he might murder some of us; therefore, though we

have but *colored testimony*, which this law intended to rule out, I will adhere strictly to the letter, and allow this colored person, being neither a “black or a mulatto,” to offer testimony against the defendant, and rid society of a murderer.¹⁵

In an age when state and federal law by omission or commission denied blacks the equal protection of the laws, civil rights reformers looked for a silver lining wherever they could find one. They considered the verdict in the Scott case and others like it as a sign that they were making progress. The *Colored American* and progressive whites marked the decision as a victory for their cause. This book tells the story of how Ohio grew from a state that denied fundamental rights to blacks into a state that eventually provided most, if not all, of the legal protections the *Colored American* and its readers sought. In the late antebellum and Civil War era, Ohio did not immediately become a society where people were judged by the content of their character and not the color of their skin. Nevertheless, by the 1880s Ohio had become a state with black men serving in its legislature. Benjamin W. Arnett, of Greene County, Jere A. Brown, of Cuyahoga County, and George W. Williams, of Hamilton County, served in the Ohio General Assembly before 1890 and played a decisive role in abolishing the last remnants of the Black Laws in 1886.¹⁶ From this perspective, black Ohio offers one example of the origins and evolution of the civil rights movement in America.